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5 Attorneys for the Receiver

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA ex rel. LAUREN )  
KINGRY, Superintendent of the Arizona )  
9 Department of Financial Institutions, )  
Plaintiff, )

Cause No. CV2009-020595

10 v. )

PETITION NO. 23

11 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )  
12 Defendant. )

PETITION FOR ORDER DETERMINING  
THE OWNERSHIP OF THE PROCEEDS  
FROM THE PAYOFF OF THE KIVEL  
LOAN

(Assigned to Judge Sam Myers)

15 Lauren Kingry, as the court appointed Receiver, respectfully petitions the Court as  
16 follows:

17 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
18 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial  
19 Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July  
20 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On  
21 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC Desert*

1 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,  
2 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*  
3 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as  
4 Deputy Receiver and authorized the Receiver to engage and employ Special Deputy  
5 Receivers to carry on the day to day business of Landmarc.

6       2.       At the time of the appointment of the Receiver, Landmarc was servicing several  
7 hundred loans it had made and managing various real estate properties acquired through  
8 foreclosure of those loans. In most cases, various persons had acquired an interest in these  
9 loans through a participation agreement or a warehouse credit facility agreement, which  
10 interests were in some cases evidenced by the recordation of an assignment of a beneficial  
11 interest in the underlying deed of trust and note or the perfection of a security interest in the  
12 note.

13       3.       On February 27, 2010, this Court entered its *Order Re: Petition No. 8*, which  
14 among other things approved procedures for the Receiver to release loan payoff proceeds  
15 without further order of the Court, after the payment to Landmarc of any unpaid servicing  
16 fees or reimbursable expenses to which Landmarc may be entitled, to each beneficial owner  
17 of the loan in accordance with their respective percentage share of the net pay-off proceeds  
18 where the following criteria are met:

19           a.       The beneficial owner of the loan that was paid-off must be evidenced by  
20           duly recorded deeds of trust identifying the beneficial owner or by duly recorded  
21           assignment to a beneficial interest under the deed of trust and promissory note or

1 assignment of a participation interest under the deed of trust and promissory notes  
2 (“Beneficial Owner”);

3 b. The Beneficial Owner agrees to the terms of the transfer of the loan pay-  
4 off proceeds;

5 c. The Receiver has no actual knowledge of an error in the percentage of  
6 beneficial interest owned by the Beneficial Owner;

7 d. The Receiver has no actual knowledge of a failure or inadequacy of  
8 consideration to the Beneficial Owner or the existence of an adverse claim of  
9 ownership or security interest in the Beneficial Owner’s share of the loan pay-off  
10 proceeds;

11 e. The Receiver has no actual knowledge of claims by Landmarc against  
12 the Beneficial Owner who is to receive a share of the loan pay-off proceeds; and

13 f. The Beneficial Owner executes an agreement in a form acceptable to the  
14 Receiver that contains the information deemed necessary by the Receiver, including a  
15 release of the Receiver and his agents from any liability to the beneficial owners of the  
16 loan; acknowledge that any claim against Landmarc shall be filed as provided for by  
17 the orders of the Court; and indemnify and hold harmless the Receiver, his agents and  
18 the estate of Landmarc from any liability arising from the transfer of the loan pay-off  
19 proceeds.

20 4. On or about April 30, 2008, Landmarc made a loan of \$910,000.00 to the  
21 Phoenix Jewish Community Kivel Nursing Home, an Arizona non-profit corporation (“Kivel

1 Loan”) which was secured under a deed of trust recorded on April 30, 2008 by real property  
 2 located in Maricopa County (“Deed of Trust”). On May 15, 2008, Landmarc recorded an  
 3 Assignment of Deed of Trust assigning all of the beneficial interest under the Deed of Trust  
 4 and promissory note to Landmarc Capital Partners, LLC (“Partners”) in exchange for the  
 5 receipt of \$910,000 received from Partners on or about April 30, 2008. Subsequently  
 6 Partners was replaced as the participant in the Kivel Loan by four new lenders (“New  
 7 Lenders”) as follows:

<u>Lender’s Name</u>	<u>Amount Paid to Partners</u>	<u>Percentage Acquired</u>
Kay Investments, LLC	\$108,458.63	11.919%
R.V. and D.J. Hicklin Trust	\$450,000.00	49.451%
Sandra S. Fuller Revocable Trust	\$151,541.37	16.653%
Burton S. Kruglick Trust	<u>\$200,000.00</u>	<u>21.978%</u>
	\$910,000.00	100.001%

13 5. The Receiver has determined that these amounts were paid to and received by  
 14 Partners from the New Lenders between October 1, 2008 and October 14, 2008.

15 6. On November 10, 2008, Landmarc recorded an Assignment of Beneficial  
 16 Interest to the New Lenders and in the percentages set forth in paragraph 4 above. Landmarc  
 17 neglected, however, to first reconvey the beneficial interest under the Deed of Trust held by  
 18 the Partners back to Landmarc before attempting to convey beneficial interest to the New  
 19 Lenders. Accordingly, this attempted conveyance failed and at the present time the beneficial  
 20 interest under the Deed of Trust is held by Partners even though Partners has been paid in full  
 21 for its interest in the loan.

1           7.       On May 20, 2009, Kivel made a principal repayment on the Kivel Loan of  
 2 \$125,000 which was distributed by Landmarc on May 28, 2009 to all of the New Lenders  
 3 except for the Burton Kruglick Trust, as follows:

<u>Lender's Name</u>	<u>Amount Paid</u>	<u>Percentage Paid</u>
Kay Investments, LLC	\$14,898.16	11.919%
R.V. and D.J. Hicklin Trust	\$61,813.19	49.451%
Sandra S. Fuller Revocable Trust	\$20,816.12	16.653%
Burton S. Kruglick Trust	<u>\$ -0-</u>	0.000%
	\$97,527.47	

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9           8.       The failure to pay the percentage share of the principal repayment of \$125,000  
 10 to the Burton Kruglick Trust was the result of the Landmarc bank account being frozen on the  
 11 date of the receivership. Because the check to the Burton Kruglick Trust had not been  
 12 presented for payment by that date unlike the other checks it was never paid. The trust should  
 13 have received a payment of \$27,472.53 (21.978% of the total paid by the borrower) and this  
 14 petition seeks authority to make that payment.

15           9.       On July 8, 2009, Kivel paid to Landmarc the sum of \$635,617.70 in full  
 16 satisfaction of the Kivel Loan and the Receiver is presently holding those funds in  
 17 Landmarc's trust account together with and additional \$66,377.61 for a total held in trust of  
 18 \$701,995.31. On the date of the receivership, June 24, 2009, Landmarc did not hold an  
 19 interest in the Kivel Loan having assigned 100% of the beneficial interest in the loan to  
 20 Partners. Therefore, Landmarc does not have a claim to the proceeds from the Kivel Loan  
 21 except to the extent of the unpaid loan expenses of \$1,000.00.

1           10.     The payoff proceeds held by the Receiver from the Kivel Loan meet all of the  
2 requirements of this Court's *Order Re: Petition No. 8* except for the fact that although the  
3 beneficial owners of the Kivel Loan (the New Lenders) are evidenced by recorded  
4 assignments of beneficial interest under the Deed of Trust those assignments are defective  
5 and Partners appears of record as the beneficial owner of the loan. In addition, the Receiver  
6 is investigating potential claims against Kay Investments and until that investigation is  
7 completed the Receiver intends to continue to retain possession of those funds.

8           11.     Accordingly, in order to correct Landmarc's failure to obtain from Partners a  
9 reconveyance of its interest at the time Partners was paid for its interest in the Kivel Loan, the  
10 Receiver requests authority from the Court to execute, in Landmarc's capacity as the  
11 Manager of Partners, a Deed of Release and Full Reconveyance directly to the borrower,  
12 Phoenix Jewish Community Kivel Nursing Home, an Arizona non-profit corporation.  
13 Furthermore the Receiver requests authorization to pay from the funds held in trust regarding  
14 the Kivel Loan to the receivership estate the sum of \$1,000 as reimbursement of expenses  
15 incurred by Landmarc in this matter to which it is entitled, the sum of \$27,472.53 to the  
16 Burton Kruglick Trust for its share of the principal repayment that was inadvertently not paid  
17 in May 2009 by Landmarc, and then distribute the balance of the funds to: Kay Investments  
18 \$80,274.02 (11.92%), RV & DJ Hicklin Trust \$333,060.71 (49.45%), Sandra Fuller  
19 Revocable Trust \$112,060.71 (16.65%), and Burton Kruglick Trust \$148,026.98 (21.98%).  
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1           WHEREFORE, the Receiver respectfully requests that the Court enter an order:

2           1.       Declaring that the loan proceeds paid to the Receiver in satisfaction of the loan  
3 previously made by Landmarc Capital & Investment Company to the Phoenix Jewish  
4 Community Kivel Nursing Home, an Arizona non-profit corporation (“Kivel Loan”) are  
5 beneficially owned by R.V. and D.J. Hicklin Trust, Sandra S. Fuller Revocable Trust, Burton  
6 S. Kruglick Trust, and Kay Investments, LLC in the percentages set forth in *Petition No. 23*.

7           2.       Authorizing Thomas J. Giallanza, on behalf of Landmarc Capital & Investment  
8 Company as its Deputy Receiver and on behalf of Landmarc Capital Partners, LLC in his  
9 capacity as Deputy Receiver of Landmarc Capital & Investment Company as the Manager of  
10 Landmarc Capital Partners, LLC, to execute such releases, reconveyances and other  
11 documents as may be necessary to vest fee title in the real property which was the security to  
12 the Kivel Loan in the name of Phoenix Jewish Community Kivel Nursing Home, an Arizona  
13 non-profit corporation.

14           3.       Distribute the proceeds from the pay off of the Kivel Loan presently held in  
15 Landmarc’s trust account as follows:

16                   a.       To Landmarc Capital & Investment Company the sum of \$1,000.00  
17 representing expenses relating to this loan due to Landmarc;

18                   b.       To the Burton Kruglick Trust \$27,472.53 as its share of the May 2009  
19 principal repayment that was not previously disbursed;

20                   c.       The balance of funds as follows:

21                           (1)     \$333,060.71 to R.V. and D.J. Hicklin Trust;

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- (2) \$112,060.71 to Sandra S. Fuller Revocable Trust;
- (3) \$148,026.98 to Burton S. Kruglick Trust; and
- (4) \$80,274.02 to Kay Investments, LLC upon final resolution of any claim by the Receiver against Kay Investments, LLC.

Respectfully submitted this 20<sup>th</sup> day of May, 2010.

GUTTILLA MURPHY ANDERSON

/s/Patrick M. Murphy  
Patrick M. Murphy  
Attorneys for the Plaintiff



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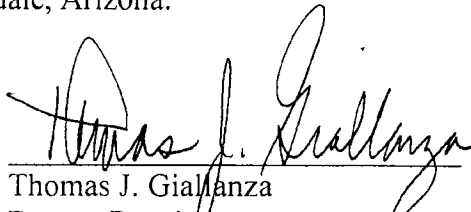
Verification

I, Thomas J. Giallanza, do hereby declare as follows:

I am the Court appointed Deputy Receiver in the action entitled *State of Arizona ex rel. v. Landmarc Capital & Investment Company*, pending before the Arizona Superior Court for Maricopa County, cause number CV2009-020595; I have read the foregoing Petition, and know the contents thereof; that the matters and things contained therein are true in substance and in fact, to the best of my information, knowledge and belief, except as to those matter and things alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 20, 2010 in Scottsdale, Arizona.

  
\_\_\_\_\_  
Thomas J. Giallanza  
Deputy Receiver