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"Responsible Individual¹" for Landmarc was David Crantz. ("Crantz"). Landmarc's business operations can be generally described as a "hard money lender", with Landmarc's primary business facilitating investment into deeds of trust by direct lending to Arizona residents and corporations. At the inception of the Receivership, Landmarc's loan portfolio consists of 344 outstanding loans². In general, Landmarc had three types of investors:

1. Warehouse Credit Facility Lenders

In general, Warehouse Credit Facility Lenders ("WCF Lenders") entered into written agreements with Landmarc that enabled Landmarc to have access to capital of the WCF Lenders to make loans. Pursuant to the written agreements, the WCF Lenders had the ability to review proposed transactions that were presented to them by Landmarc. Approximately twenty-five million dollars (25,000,000) was invested by WCF Lenders in Landmarc. Landmarc, under the terms of their agreements with WCF Lenders, may be liable to the WCF Lenders for damages arising out of any of the loan transactions with the WCF Lender.

2. Loan Participants

Landmarc facilitated investments into deeds of trust with private investors who did not have a Warehouse Credit Facility agreement with Landmarc. ("Loan Participants"). The Loan Participants, under their agreements with Landmarc, bear the risk of loss with respect to any investments with Landmarc. There were approximately 90 Loan Participants.

¹⁹

²¹ A.R.S. § 6-976 requires a mortgage banker to identify a responsible person

Approximately 108 of these loans have already resulted in a foreclosure of the lien under the deed of trust and Landmarc acquiring title or control of the underlying security.

3. <u>Landmarc Capital Partners</u>

In addition to the business of facilitating loans to individuals, Landmarc is the Manager of Landmarc Capital Partners, LLC ("Partners"). Partners was a regulation D securities offering whereby Landmarc raised approximately twenty-seven million (\$27,000,000) from private investors nationwide. The purpose of Partners was to establish a pool of capital that Partners could to use to make or acquire recourse or non-recourse loans to borrowers, secured by deeds of trust. Partner's investors purchased from Partners "units or shares" of participation in Partners which Partners used to fund loans. Many of the investors in Partners were introduced to Landmarc by independent sales agents or investment advisors.

II. Institution of Receivership

On January 22, 2009, the Arizona Department of Financial Institutions ("DFI") began an examination of Landmarc. DFI discovered that Landmarc was insolvent and a Receivership was necessary to protect the interest of the investors in Landmarc.

On June 24, 2009, upon the *ex parte* application of Felecia A. Rotellini, the Superintendent of DFI, Landmarc was placed into a temporary Receivership. The temporary Receivership Order appointed Thomas J. Giallanza, Assistant Superintendent of DFI as the Deputy Receiver. Soon thereafter, the Receiver obtained control of Landmarc's business operations and began to continue to operate Landmarc during the temporary period. During the interim period, Crantz decided not to contest the Receivership of Landmarc and consented to the entry of the *Order Appointing Permanent Receiver and Injunction* ("Receivership Order"). The Receivership Order provides that a preliminary report shall be filed within 90

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days after the entry of this Order and set forth the identity, location and value of the Receivership Assets, and any liabilities.

On August 28, 2009, Arizona Governor Jan Brewer appointed Thomas L. Wood as Interim Director of the Arizona Department of Financial Institutions. By this appointment, Thomas L. Wood is now the Receiver of Landmarc Capital and Investment Company. Pursuant to Order re: Petition No 3, Thomas L. Wood as acting Superintendent of the Arizona Department of Financial Institutions was substituted as the Plaintiff and as Receiver in this action.

III. **Report of Receiver**

DFI has engaged Guttilla Murphy Anderson, P.C. ("GMA") to serve as counsel to DFI as Receiver of Landmarc. DFI has also engaged the services of Lawrence J. Warfield and the accounting firm Warfield & Company CPAs to serve as a Special Deputy Receiver and provide accounting services to Landmarc. The Receiver has completed the following:

- GMA has recorded a copy of the Receivership Order in all Arizona counties where Receivership Assets may be located to ensure that all persons have record notice of the Receivership Order and its provisions.
- The Receiver and his agents have conducted interviews of the employees of Landmarc and retained employees that the Receiver determined were necessary to maintain and eventually wind-up due business operations of Landmarc.
- The Receiver has initiated an examination of Landmarc's financial condition and determined that, according to Landmarc's internal accounting systems, for

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the first six months of 2009, Landmarc had losses totaling \$427,583.34 or about \$71,000.00 per month. This accounting data does not include any of the accrued interest owed WCF Lenders. It appears that the insolvency of Landmarc discovered by DFI examiners has worsened significantly in 2009.

Due to significant unpaid rent obligations, the Receiver determined that it could not continue to operate Landmarc at its Scottsdale location. Accordingly, during the week of July 21, 2009, the Receiver facilitated a move of Landmarc's operations to its current location³.

Upon the successful take over of the operations of Landmarc, the Receiver discovered a number of apparently independent companies were operating out of Landmarc's offices. Despite claims by the principles of these "independent" companies that they were "separate" from Landmarc, the "independent" companies were operated by employees on Landmarc's payroll and all operational functions of these "independent" businesses were managed by Landmarc. Specifically, the Receiver discovered the following Landmarc related companies being operated out of Landmarc's Scottsdale offices:

> Empire Acceptance Inc.- Empire Acceptance Inc. ("Empire") is an Arizona corporation. Public records indicate that Empire is managed and owed by Jeffrey Petersen ("Petersen") who is also a former executive of Landmarc. Empire's business consists of the purchase of distressed properties in foreclosure. In most instances, Empire would obtain mortgage loans from

 $^{^3}$ Landmarc has been moved to 14555 North Scottsdale Road, #340, Scottsdale, Arizona 85254.

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Landmarc that were funded by Partners. DFI has examined many of the loans by Partners to Empire and has determined that the loans were outside reasonable loan to value ratios. On certain occasions, Empire purchased from Landmarc certain properties whose mortgages were being serviced by Landmarc. Many of the Empire properties are currently being utilized as rental properties. As further evidence of the close relationship between the companies and their principals, Landmarc's software programs, Tenant Pro and Mortgage office were utilized to track all payments on Empire properties. The Receiver has provided Petersen with a copy of all files relating to the operation of Empire, including all Empire loan files and documents related to the management of the Empire properties. The Receiver continues to investigate all transactions involving Landmarc and Empire.

Remington Construction - Remington Construction ("Remington") is an Arizona Corporation that holds a suspended contractors license 215822. Public records indicate that Remington is managed and owned by Petersen who is a former executive of Landmarc. According to the Arizona Registrar of Contractors, Malecia Jewel, a former corporate officer of Landmarc, is the corporate secretary of Remington. During interviews with DFI, Petersen acknowledged that while Remington was not actively pursuing any construction projects, Landmarc paid Remington \$299,290.00 since 2006.

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Landmark Equity Funds I, LLC- Landmark Equity Funds I, LLC, appears to be a separate company from Landmarc, yet it was operating out of Landmarc's offices and utilizing Landmarc's employees and computer systems to operate. The Receiver has been advised that according to the corporate records of Landmark Equity Funds I, LLC, Petersen is the Manager and Member of Landmark Equity Funds I, LLC. However, the Receiver has been advised that the issue of who is the manager of Landmark Equity Funds I LLC, is currently contested and an action has been filed in Maricopa County Superior Court for declaratory judgment seeking a declaration that Petersen has been removed as manager. Apparently, Petersen disputes that he has been removed as manager and has caused a complaint to be filed in which, among other things, seeks declaratory relief that Mr. Petersen has not been terminated as manager. The Receiver continues to monitor this litigation and continue his investigation whether Landmarc funds were utilized by Landmark Equity Funds I LLC.

LDM Acceptance and LDM Acceptance Pension Plan - LDM is an acronym for
"Lawrence, David, Marilyn", the first names of Crantz, his mother, Marilyn

Crantz and deceased father, Lawrence Crantz. Accordingly, LDM is a
collection of family members who appear to have investments in Landmarc.

More specifically, Crantz has allegedly utilized LDM Acceptance and LDM
Acceptance Pension Plan ("LDM") to make investments in Landmarc loans.

LDM is represented as having an ownership interest in thirty-two (32) loans in

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Hayden Insurance Ltd and Desert Trails Insurance Company Ltd. - Hayden Insurance Ltd. ("Hayden") and Desert Trails Insurance Company Ltd. ("Desert Trails") are captive insurance companies allegedly licensed and regulated as insurance companies in the island nation of Anguilla. Hayden and Desert Trails have never possessed a Certificate of Authority to transact insurance in Arizona. According to the audited financial statements of Landmarc, it appears that Desert Trails and Hayden received \$5.4 million dollars from Landmarc between 2005 and 2007, apparently to pay for insurance premiums for Landmarc. Despite over five million in premiums, the Receiver has recently been advised that all insurance coverage for Landmarc has lapsed. While Landmarc engaged the services of Tribeca Strategic Advisors, LLC to form and maintain the captives, Crantz controlled both Hayden and Desert Trails. Confusingly, Crantz appears to have used funds paid to Hayden and Desert Trails as insurance premiums in direct investments in Landmarc loans. The Receiver continues to attempt to locate any evidence of any legitimate consideration paid to Landmarc from Hayden and Desert Trails for its alleged ownership in Landmarc loans and investigate the multiple transactions involving Desert Trails and Hayden.

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IV. **Review of Loan Portfolio**

Since Landmarc is insolvent and will ultimately be liquidated, the Receiver has concluded that where possible loans that are being serviced by Landmarc and in which the Receiver is not aware of clouds on the title of the beneficial owners or other potential litigation claims by Landmarc against the beneficial owners, should be transferred out of the receivership to qualified third party loan servicers or to the beneficial owners of the loans. To this end the Receiver established a loan review committee of former Landmarc employees and qualified title and legal personnel to review all of the loans held for servicing by Landmarc. That review is substantially completed. To date the Receiver has identified approximately 90 loans in which the records of Landmarc and a limited title check does not disclose clouds or defects in the title of the beneficial owners. To release these some of these loans from the Receivership, the Receiver has filed his Petition No 4.- Petition for Order Approving Procedures for Disposing of Certain Loans Where Ownership by Third Parties is not in Doubt. The Receiver intends to file similar petitions regarding the release of Receivership Assets in the form of Real Estate Owned ('REO") and loans relating to Landmarc Capital Partners. The Receiver and the Landmarc loan review committee is currently reviewing loans that appear to have clouds or defects in the title of the beneficial owners in an attempt to resolve any discrepancies between recorded documents, internal Landmarc accounting records and other Landmarc documents to resolve potential clouds on title to the subject property. It is contemplated that many of these loans may require a Court Order to resolve clouds or defects in the title of the beneficial owners.

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V. **Status of Pending Litigation**

Upon his appointment, The Receiver discovered that Landmarc is the defendant in seven (7) lawsuits in various Justice and Superior Courts. Pursuant to the Receivership Order, the Receiver has sought or obtained a stay of litigation in the ancillary litigation. The pending lawsuits against Landmarc and the current status of the cases are as follows:

- 1. Lazy 3 LLC et al v Landmarc Capital et al, CV2008-032264 - Stay has been entered.
- 2. Consumer Protection Corp. v Landmarc Capital, CV2008-032383 - the Receiver has filed a motion to Stay this litigation.
- 3. Casa Tierra Community Association v. Landmarc Capital, CC2009 414634SC-Stay of litigation has been entered.
- 4. Thompson v. Landmarc Capital et al, CV2009- 050052- the Receiver has filed a motion to stay this litigation.
- 5. La Place Du Sommet v. Landmarc Capital et al, CC2009-372787. Stay of litigation has been entered.
- 6. Hyatt v. Bennett et al. CV 2009-091456. Stay of litigation has been entered as to Landmarc.
- 7. Quality Ready Mix v. Scot Miesel et al, CV2009-0502- The Receiver has filed a motion to stay this litigation.

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The Receiver continues to actively monitor all bankruptcy cases where Landmarc is a creditor and continues to seek relief from the automatic stay in circumstances where it is necessary to complete a foreclosure of any interest of the Receivership estate.

VI. **Receivership Assets**

The Receivership Assets are defined in the Receivership Order as:

... assets, money, security, causes in action, and property, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of Landmarc and all such assets that Landmarc acquired from the customers, investors and other persons doing business with Landmarc. (See Receivership Order $\P 2.)$

In the Receiver's experience, the principals of Landmarc and others frequently hold title to Receivership Assets in the names of other persons, corporations, or under fictitious names (referred to hereinafter as "affiliates"). Often, the assets held by these affiliates are derived from investor funds. Accordingly, the Receiver anticipates that during the course of the Receivership, he may identify Affiliates, the assets of which may need to be added to the Receivership.

The Receiver has custody of the following Receivership Assets:

- The sum of \$2,703,269.14 located in Landmarc's Trust Impound Account trust a. account at JP Morgan Chase.
- b. The sum of \$17,727.42 located in Landmarc's General Operating Account at JP Morgan Chase.
- The sum of \$201,170.21 located in Capital Partners Trust Account at JP c. Morgan Chase.

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- d. The amount of \$3,400.64 held in an account for the benefit of Rockford Realty or Landmarc, as these funds represent cash deposits for rent to properties that may be managed by Landmarc or Rockford.
- Furniture and other related office equipment located at the original offices of e. Landmarc.

The Receiver has also taken constructive possession of the following Receivership Assets⁴:

- Approximately 93 parcels of real property as REO;⁵ a.
- A condominium in Costa Rica; b.
- Stock in a bank called "NABB" with a valuation provided by Landmarc of c. \$100,000;
- d. Automobiles in the possession of previous Landmarc employees and principles; and
 - A single family home located in Idaho. e.

VII. **Receivership Records**

The Receiver has obtained all of the known records of Landmarc. Specifically, the Receiver has taken custody of approximately 200⁶ boxes of documents that mostly include files related to Landmarc's loans and electronic records that contain standard books of

⁴ Many of these assets are still being investigated by the Receiver. However, these assets were at one time identified as assets of Landmarc on its financial statements and the Receiver will categorize these items as Assets of the Receivership until an investigation into each asset is complete.

⁵ REO is a term for real estate owned. Typically, financial institutions categorize properties that have been foreclosed

⁶ The Receiver is also in control of approximately 250 to 300 boxes of old Landmarc records held at an offsite storage facility.

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original entry and similar accounting records reflecting the financial transactions of Landmarc and its principals. The Receiver has yet to determine if it will be necessary to subpoena any records to reconstruct any financial transactions of Landmarc. Since the Receiver has not has not had sufficient time to review all of Landmarc's records, he expects that the Landmarc records may disclose additional assets and liabilities of Landmarc.

VIII. Receivers Recommendation regarding Bankruptcy

Pursuant to the Receivership Order, in his preliminary report, the Receiver shall recommend to the court whether, in his opinion, based upon his initial investigation, that claims against Landmarc, should be adjudged in Bankruptcy Court. After providing interested parties an opportunity to be heard, this Court is to determine whether to accept the Receiver's recommendation and, if appropriate, issue an order authorizing the Receiver to commence a bankruptcy proceedings. (See Receivership Order ¶6c.)

The Receiver recommends against filing a petition of bankruptcy for Landmarc. In making this recommendation, the Receiver has carefully considered the most significant advantages to a bankruptcy proceeding, the avoidance powers provided under the bankruptcy code and the mechanisms established for the protection of creditors. Neither of these advantages, in the Receiver's opinion, outweighs the benefits of a state court receivership. The corporate defendant's principal purpose appears to be soliciting investments into Partners and managing investments in loans made by Landmarc and its clients. As such, the corporate defendants do not need to be reorganized. Instead, the assets of the corporate defendants

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need to be recovered by the Receiver and distributed to the investors. See Commodities Future Trading Com'n v. FITC, Inc., 52 B.R. 935, 938 (N.D. Cal. 1985)

When making the recommendation against filing a petition in bankruptcy, the Receiver discovered two potential preferences that may be avoidable under 11 U.S.C §574. However each of these potential preferences can also be recovered through state court litigation and the provisions of the Receivership Order. Specifically:

\$1.1 M payment to SEM Investments on May 19, 2009.

In December of 2008, a lawsuit was filed against Landmarc by Lazy E, LLC; Stoneman Properties, LLC; and SEM Investments, LLC. The Plaintiff's allegedly loaned funds to Landmarc's borrowers and their loans are in default. The loans were secured by assignments of interest in the deeds of trust that were funded by Landmarc but there are no cross-default or cross-collateralization provisions. One of the loans by SEM Investments was personally guaranteed by Landmarc executives Crantz and Petersen. In May of 2009, Landmarc assembled enough cash to pay off the SEM Investments loan. Since this loan was the only obligation that was personally guaranteed by Crantz and Petersen, Landmarc tendered payment of \$1,109,217.80 to counsel for SEM Investments, on May 19, 2009. As of the date of the Receivership it was unclear if SEM Investments LLC negotiated the check⁷. It is undisputed that SEM Investments was advised of the Receivership on June 26, 2009, and any attempt to negotiate the check would be in violation of the Receivership Order. SEM

⁷ The Receiver is currently investigating the date the check was negotiated and by whom.

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Investments did not respond to this letter and only recently advised that the check was negotiated, but unsure of the exact date.

Under bankruptcy law it is possible that this transfer could be determined to be a preference under 11 U.S.C §574, however, there are potential defenses in bankruptcy to potential preference action and state law claims that would be just as effective to recover these funds, especially since the payment to SEM Investments may have been negotiated in violation of the Receivership Order. The Receiver continues to investigate this transaction.

Recordation of Security Interests by Landmarc Investors

The avoidance powers of the bankruptcy court can be utilized to set aside any action by any parties to create a security interest or lien in property of Landmarc within 90 days of Landmarc filing bankruptcy. The Receiver believes that at least one investor may have recorded certain security interests in Landmarc loans within the preference period. More investigation would need to be conducted to determine the exact nature and timing of the recordation and Landmarc's role, if any, in causing a delay in the recordation of security interests on behalf of investors. 11 U.S.C §574 does provide that a debtor can avoid security interests in property of Landmarc that we acquired within 90 days of the bankruptcy, but 11 U.S.C §574 also provides a litary of potential defenses to these claims. While the Receiver reports that there may be these potential preference claims, the Receiver believes that if an investigation determines that a security interest was filed against the property of Landmarc inappropriately, the Receivership Court can adjudicate the merits of any dispute as effectively as the Bankruptcy Court.

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Finally, it can not be disputed that the professional fees incurred in a Landmarc bankruptcy would be significant and likely in excess to the assets of Landmarc. As the Court may be aware, another "hard money lender", was put into bankruptcy by creditors. 89 The Mortgages Ltd Chapter 11 proceedings in bankruptcy have been monitored by DFI and despite a recent confirmation of a plan of liquidation, the professional fees appear to be in excess of 12 million dollars. 10 In contrast to a bankruptcy case, a DFI receivership can seek to pay its professional fees from the Arizona Receivership revolving fund, pursuant to A.R.S. §6-135 et seq. While DFI can be reimbursed for its expenses from the assets of Landmarc, the administration of the case is not directly on the backs of the investors of Landmarc.

IX. Conclusion

Accordingly, the Receiver requests the Court enter an order approving the Receiver's Preliminary Report and Recommendations.

Respectfully submitted this 8th day of October, 2009.

GUTTILLA MURPHY ANDERSON, P.C.

/s/Ryan W. Anderson

Ryan W. Anderson

Attorneys for the Plaintiff

⁸ The Mortgages Ltd bankruptcy case started as an involuntary chapter 7 case that was automatically converted to a Chapter 11 case. Mortgages Ltd was a hard money lender about four times the size of Landmarc.

At the time Mortgages Ltd was placed into bankruptcy, DFI was completing its examination.

¹⁰ Dozens of fee requests and objections have been filed in the Mortgages Ltd case. It is difficult to accurately ascertain which fee requests are legitimate. One thing is clear, the Mortgages Ltd Bankruptcy case was an extremely expensive bankruptcy case and legitimate professional fees, as administrative expenses in the bankruptcy will be paid before any investor in Mortgages Ltd.

MASTER SERVICE LIST

State of Arizona ex rel. v. Landmarc Capital & Investment Company IN THE SUPERIOR COURT OF THE STATE OF ARIZONA CV2009-020595

(Rev. 09-29-2009)

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Jeanie Knaack

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Document(s) Filed:

1. Title: Petition No. 5 - Preliminary Report and Recommendations of Receiver / Type: Petition **Document Status:** Accepted

2. Title: Order Re: Petition No. 5 / Type: Proposed Order

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