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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, )  
10 Plaintiff, )  
v. )  
11 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )  
12 Defendant. )

Cause No. CV2009-020595

PETITION NO. 9

PETITION FOR ORDER APPROVING  
PROCEDURES FOR DISPOSING OF  
CERTAIN REAL PROPERTY WHERE  
OWNERSHIP BY THIRD PARTIES IS  
NOT IN DOUBT

(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 for Landmarc on June 24, 2009,  
7 Landmarc was servicing several hundred loans it had made and it was managing various real  
8 estate properties acquired through foreclosure of those loans. In most cases, other persons  
9 had acquired an interest in these loans from Landmarc through a participation agreement or a  
10 warehouse credit facility agreement, which interests were in some cases evidenced by the  
11 recordation of an assignment of a beneficial interest in the underlying deed of trust and note  
12 or the perfection of a security interest in the note.

13 **Order Nos. 4 and 8**

14 3. In order to permit an economical and orderly transfer of clean loans to new  
15 servicing agents, the Court on October 5, 2009, entered its *Order Approving Procedures for*  
16 *Disposing of Certain Loans Where Ownership by Third Parties is Not in Doubt, Re: Petition*  
17 *No. 4* (“Order No. 4”), which among other things, authorized the Receiver without further  
18 order of the Court to transfer to a new servicing agent any loan being serviced by Landmarc  
19 that meets the following criteria:

20 a. All of the beneficial owners of the loan must be evidenced by duly  
21 recorded Deeds of Trust identifying the beneficial owners or by duly recorded

1 assignments of the beneficial interests under the Deed of Trust and Promissory Note or  
2 assignments of a participation interest under the Deed of Trust and Promissory Note  
3 (hereafter referred to as the "Beneficial Owners").

4 b. All Beneficial Owners must agree on the terms of the transfer and the  
5 identity of the new servicing agent.

6 c. The Receiver does not have actual knowledge of a failure or inadequacy  
7 of consideration by the Beneficial Owners or the existence of an adverse claim of  
8 ownership or security interest in the loan or promissory note.

9 d. A trustee's sale foreclosing the lien under the Deed of Trust on the  
10 underlying security for the loan has not taken place.

11 e. The Receiver does not have actual knowledge of claims by Landmarc  
12 against any of the Beneficial Owners.

13 4. Similarly, on February 17, 2010, the Court entered its *Order Re: Petition No. 8*,  
14 which, among other things, authorized the Receiver without further order of the Court to  
15 transfer to each beneficial owner of a loan that has been paid off the beneficial owner's  
16 respective percentage share of the net pay-off proceeds where the following criteria are met:

17 a. The beneficial owner of the loan that was paid-off must be evidenced by  
18 duly recorded deeds of trust identifying the beneficial owner or by duly recorded  
19 assignment to a beneficial interest under the deed of trust and promissory note or  
20 assignment of a participation interest under the deed of trust and promissory notes  
21 ("Beneficial Owner");

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

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

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

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

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

18 **REO to be Transferred to Beneficial Owners**

19          5.     At the time of the appointment of the Receiver, Landmarc held title to or had  
20 under its management or control approximately 107 real properties ("REO"). In nearly all  
21 cases, these properties had previously been the security under loans made or serviced by

1 Landmarc which had been acquired as a result of the foreclosure of the deeds of trust securing  
2 those loans.

3 6. Approximately 33 of these REO are titled wholly in the name of a person other  
4 than Landmarc or one of the other receivership entities. In many but not all cases, the person  
5 holding title is entitled to the use and enjoyment of the property.

6 7. In the interests of the beneficial owners of these REO, the Receiver  
7 recommends that the Court approve the following procedures for the timely distribution of  
8 these REO without further order of the Court provided the titled owner is the beneficial  
9 owner of the loan and resulting REO and there are no adverse claims against the REO.

10 8. To date, the Receiver has identified the following six REO that are titled in the  
11 names of persons other than the Receivership Entities that meet the requirements set forth  
12 below and therefore should be released to the interested parties.<sup>1</sup>

13 **860 City Lights, Prescott (Loan No. 07071164)**

14 9. On or about July 27, 2007, Landmarc made a loan of \$300,000 secured by a  
15 single family residence located at 860 City Lights, Prescott, Arizona (“City Lights Property”).  
16 Pursuant to its Warehouse Credit Facility Agreement with Landmarc, Landmarc agreed to  
17 provide a security interest in this loan to TBM Associates, LLC (“TBM”).

18 10. The borrower subsequently defaulted and a trustee sale was held resulting in the  
19 execution and recordation of a Trustee’s Deed on March 14, 2008, conveying 100% of the fee  
20

21 \_\_\_\_\_  
<sup>1</sup> There are at least 28 additional REO which are titled in the names of non-receivership entities but which have issues that the Receiver is attempting to resolve.

1 title to the City Lights Property to TBM. According to the records of Landmarc, TBM was  
2 the sole beneficial owner of this loan.

3 11. The Receiver has determined that on June 24, 2009, TBM held fee title to the  
4 City Lights Property. The Receiver has obtained a preliminary title commitment on the City  
5 Lights Property which confirms that TBM presently holds fee title and that there are no  
6 clouds on the title, other than for real estate taxes.

7 12. This property meets all of the requirements set forth in paragraphs 26 through  
8 30 below and has already been transferred under terms agreeable to the Receiver and TBM.

9 **2903 W. Madison St, Phoenix (Loan No. 07030984)**

10 13. On or about April 17, 2007, Landmarc made a loan of \$113,750 secured by a  
11 single family residence located at 2903 West Madison Street, Phoenix, Arizona ("Madison  
12 Property"). Pursuant to a Participation Agreement with Landmarc, Landmarc agreed to  
13 assign beneficial interest in this loan to Victoria Cohen ("Cohen").

14 14. The borrower subsequently defaulted and a trustee sale was held resulting in the  
15 execution and recordation of a Trustee's Deed on May 22, 2008, conveying 100% of the fee  
16 title to the Landmarc. Subsequently on or about November 19, 2008, Landmarc executed and  
17 recorded a Quit Claim Deed conveying all of its interest in the Madison Property to H.R.  
18 Cohen Company, Inc. The grantee under the Quit Claim Deed should have been identified as  
19 H.R. Cohen, Inc., a Michigan corporation and this entity was designated by Cohen to take  
20 title to the Madison Property on her behalf. According to the records of Landmarc, Cohen  
21 was the sole beneficial owner of this loan.

1           15.     The Receiver has determined that on June 24, 2009, H.R. Cohen, Inc. held fee  
2 title to the Madison Property. The Receiver has obtained a preliminary title commitment on  
3 the Madison Property which confirms that H.R. Cohen, Inc. presently holds fee title and that  
4 there are no clouds on the title, other than for real estate taxes.

5           16.     This property meets all of the requirements set forth in paragraphs 26 through  
6 30 below, except with respect to a possible claim by Landmarc against Victoria Cohen  
7 regarding an interest in another property.

8 **2815 West Echo Lane, Phoenix (Loan No. 06120859)**

9           17.     On or about January 29, 2007, Landmarc made a loan of \$139,300 secured by a  
10 single family residence located at 2815 West Echo Lane, Phoenix, Arizona (“Echo Lane  
11 Property”). Pursuant to a Participation Agreement with Landmarc, Landmarc agreed to  
12 assign beneficial interest in this loan to Victoria Cohen (“Cohen”).

13           18.     The borrower subsequently defaulted and a trustee sale was held resulting in the  
14 execution and recordation of a Trustee’s Deed on June 25, 2008, conveying 100% of the fee  
15 title to the Victoria Cohen. Subsequently on or about January 23, 2009, Landmarc executed  
16 and recorded a Quit Claim Deed conveying all of its interest in the Echo Property to H.R.  
17 Cohen Company, Inc. even though Landmarc did not hold an interest in the property.

18           19.     This property meets all of the requirements set forth in paragraphs 26 through  
19 30 below, except with respect to a possible claim by Landmarc against Victoria Cohen  
20 regarding an interest in another property.

21

1 **3905 W. Grant Street, Phoenix (Loan No. 07051065)**

2 20. On or about May 31, 2007, Landmarc made a loan of \$80,500 secured by a  
3 single family residence located at 3905 W. Grant Street, Phoenix, Arizona ("Grant Street  
4 Property"). Pursuant to a Participation Agreement with Landmarc, Landmarc agreed to  
5 assign beneficial interest in this loan to Victoria Cohen ("Cohen").

6 21. The borrower subsequently defaulted and a trustee sale was held resulting in the  
7 execution and recordation of a Trustee's Deed on October 23, 2008, conveying 100% of the  
8 fee title to the Landmarc. Subsequently on or about November 19, 2008, Landmarc executed  
9 and recorded a Quit Claim Deed conveying all of its interest in the Grant Property to H.R.  
10 Cohen Company, Inc. The grantee under the Quit Claim Deed should have been identified as  
11 H.R. Cohen, Inc., a Michigan corporation and this entity was designated by Cohen to take  
12 title to the Grant Property on her behalf. According to the records of Landmarc, Cohen was  
13 the sole beneficial owner of this loan.

14 22. This property meets all of the requirements set forth in paragraphs 26 through  
15 30 below, except with respect to a possible claim by Landmarc against Victoria Cohen  
16 regarding an interest in another property.

17 **510 S. 99th Street, Mesa (Loan No. LC050120)**

18 23. On or about February 4, 2005, Landmarc made a loan of \$37,999.13 secured  
19 by a property located at 510 S. 99th Street, Mesa, Arizona ("99<sup>th</sup> Street Property"). Pursuant  
20 to a Participation Agreement with Landmarc, Landmarc agreed to assign beneficial interest in  
21 this loan to Victoria Cohen ("Cohen").



1           24.    The borrower subsequently defaulted and a trustee sale was held resulting in the  
2 execution and recordation of a Trustee's Deed on December 8, 2008, conveying 100% of the  
3 fee title to the Landmarc. Subsequently on or about January 23, 2009, Landmarc executed  
4 and recorded a Quit Claim Deed conveying all of its interest in the 99<sup>th</sup> Street Property to  
5 H.R. Cohen Company, Inc. The grantee under the Quit Claim Deed should have been  
6 identified as H.R. Cohen, Inc., a Michigan corporation and this entity was designated by  
7 Cohen to take title to the 99<sup>th</sup> Street Property on her behalf. According to the records of  
8 Landmarc, Cohen was the sole beneficial owner of this loan.

9           25.    This property meets all of the requirements set forth in paragraphs 26 through  
10 30 below, except with respect to a possible claim by Landmarc against Victoria Cohen  
11 regarding an interest in another property.

12 **Procedures for Transfer of REO without Further Court Order**

13           26.    The Receiver recommends that the Court authorize the Receiver to transfer to a  
14 Transferee any other real property that meets all of the following criteria ("Property") without  
15 further order of the Court:

16           a.    Fee title to the Property must have been vested by a deed recorded prior  
17 to June 24, 2009 entirely in the name of:

18                   (1)    the beneficial owner(s) of the loan made by Landmarc for which  
19                   the Property had previously been the security as reflected in the records of  
20                   Landmarc (hereafter referred to as the "Beneficial Owners"); or  
21

1                   (2)    an entity designated by the Beneficial Owners at the time of the  
2                   vesting to take title on behalf of the Beneficial Owners.

3                   b.    All persons holding fee title and all Beneficial Owners must agree on the  
4                   terms of the transfer of control and of any interest of Landmarc and the identity of the  
5                   Transferee;

6                   c.    The Receiver does not have actual knowledge of a failure or inadequacy  
7                   of consideration by the Beneficial Owners in acquiring their interests in the Property  
8                   or the related loan or the existence of an adverse claim of ownership or security  
9                   interest in the Property; and

10                  d.    The Receiver does not have actual knowledge of claims by Landmarc  
11                  against any of the Beneficial Owners.

12                  27.   The Receiver should be authorized to disburse any accumulated payments  
13                  under the loan held in Landmarc's trust account to the Transferee or Beneficial Owners as  
14                  they may agree, after obtaining satisfactory arrangements for the reimbursement of Landmarc  
15                  for any unpaid servicing fees or reimbursable expenses to which Landmarc may be entitled.

16                  28.   The Transferee or Beneficial Owners shall reimburse Landmarc for any trust  
17                  shortage and for all unpaid expenses incurred by Landmarc in connection with the loan or  
18                  Property and the Receiver shall, upon receipt of such payments and the agreement described  
19                  in paragraph 29 below, deliver the Transfer Documents to the Transferee designated by all of  
20                  the Beneficial Owners.

21

1           29. Before effectuating the transfer of Property as provided above, the Transferee  
2 and all Beneficial Owners shall execute a joint agreement in a form acceptable to the  
3 Receiver that contains the information deemed necessary by the Receiver including (a) an  
4 identification of the Transferee, (b) the repayment to the Receiver of any negative balance in  
5 the trust account for the loan, (c) a release of the Receiver and his agents from any liability to  
6 the Transferee and Beneficial Owners, (d) an acknowledgement that any claim against  
7 Landmarc by the Transferee or Beneficial Owners shall be filed as provided by the orders of  
8 this court, and (e) an indemnification and hold harmless of the Receiver, Landmarc and their  
9 agents from any liability arising from the transfer of the Property.

10           30. The Transfer Documents provided to the Transferee designated by the  
11 Beneficial Owners shall include:

12           a. A copy of any preliminary title report or commitment obtained by the  
13 Receiver together with related documents (the costs of which shall be repaid by the  
14 Beneficial Owners as part of the expenses incurred by Landmarc);

15           b. A Disclaimer of Interest in recordable form disclaiming any interest of  
16 Landmarc or the Receiver in the Property or a deed transferring to the Transferee  
17 designated by all of the Beneficial Owners any and all interest in the Property of  
18 Landmarc or the Receiver; and

19           c. An assignment of any lease for the Property in which Landmarc has an  
20 interest.

21           WHEREFORE, the Receiver respectfully requests that the Court enter an order:

