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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)
9 KINGRY, Superintendent of the Arizona)
Department of Financial Institutions,)

10 Plaintiff,

v.

11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

12 Defendant.)

Cause No. CV2009-020595

PETITION NO. 22

PETITION FOR ORDER APPROVING
ENGAGEMENT AGREEMENT WITH
DEPUTY RECEIVER

(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.

5 2. At the time of his original appointment as the Deputy Receiver, Mr. Giallanza
6 was a full time employee of the Arizona Department of Financial Institutions (“DFI”). On
7 January 15, 2010, the funding for Mr. Giallanza’s position with DFI was terminated as part of
8 a statewide budget reduction plan. Because Mr. Giallanza, as the Deputy Receiver was
9 heavily involved in all of the management aspects of this Receivership he agreed to continue
10 to carryout his duties as Deputy Receiver for a period of time with the understanding that if
11 the receivership estate acquired unrestricted general funds he would, subject to the approval
12 of this court, be fairly compensated for his services.

13 3. As a number of recent petitions filed with the Court indicate, the receivership
14 estate has now acquired unrestricted general assets from which compensation to the Deputy
15 Receiver could be paid. Accordingly, the Receiver requests that the Court approve the
16 payment of compensation to Thomas Giallanza for his work as Deputy Receiver from and
17 after January 18, 2010 in accordance with the Agreement attached hereto as Exhibit “A”.

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

19 1. Approving the engagement agreement between the Receiver and Thomas
20 Giallanza as Deputy Receiver in this case in accordance with the terms set forth in Exhibit
21 “A”.

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2. For such further relief as the Court may deem appropriate.

Respectfully submitted this 29th day of June, 2010.

GUTTILLA MURPHY ANDERSON

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

1157-001(96654)

AGREEMENT

This Agreement made and entered into effective as of January 18, 2010, by and between the Receiver of Landmarc Capital and Investment Company ("Receiver"), and Thomas J. Giallanza, ("Deputy Receiver").

Recitals

WHEREAS on June 24, 2009, the Arizona Superior Court for Maricopa County in the case entitled State of Arizona ex rel. v. Landmarc Capital & Investment Company, cause number CV2009-020595 ("Receivership Court") entered its *Order Appointing Receiver and Order to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc and on July 10, 2009, the Receivership Court entered its *Order Appointing Permanent Receiver and Injunction* (collectively "Receivership Order"); and

WHEREAS; the Receivership Order, among other things, appointed Thomas J. Giallanza as Deputy Receiver with full authority to act for the Receiver in carrying out the Receiver's duties and responsibilities under the order; and

WHEREAS; at the time of his appointment the Deputy Receiver was an employee of the Arizona Department of Financial Institutions ("DFI"), however, on or about January 15, 2010, due to a reduction in staffing at DFI, the Deputy Receiver ceased being an employee of DFI, although he continued thereafter to serve as the court appointed Deputy Receiver; and

WHEREAS; because of his extensive knowledge of the Landmarc Receivership, the Receiver desires to retain the services of the Deputy Receiver until such time as the Receiver no longer believes his services are needed, and to provide consideration to the Deputy Receiver for such services as provided herein from the funds of the Landmarc Receivership to the extent such funds are available.

NOW, THEREFORE, it is mutually agreed that:

1. Thomas J, Giallanza shall continue to serve as Deputy Receiver of Landmarc Capital and Investment Company and such other entities as may be added from time to time to the Landmarc Receivership.
2. From and after January 18, 2010 until the Deputy Receiver's services are terminated as provided herein, the Deputy Receiver shall be paid for his services at the rate of \$125.00 per hour for time reasonably expended to carry out his duties as Deputy Receiver, which consideration shall be paid solely from the unrestricted general assets of the Landmarc Receivership to the extent such funds become available. The consideration paid under this Agreement shall not exceed \$9,000.00 per month.
3. The Deputy Receiver willingly accepts this assignment from and after January 18, 2010, and acknowledges that part or all of the consideration payable under this Agreement may not be paid because of a lack of funds in the Landmarc Receivership and that the Deputy Receiver shall have no claim for payment of such consideration against the State of Arizona, the

Arizona Department of Financial Institutions, or the Receiver or any of his agents.

4. The Deputy Receiver acknowledges that this Agreement does not establish an employer/employee relationship between the Deputy Receiver and any or all of the following: the State of Arizona, the Arizona Department of Financial Institutions or the Receiver. The Deputy Receiver acknowledges that this agreement establishes the Deputy Receiver to be an independent contractor.


5. The Deputy Receiver shall submit to the Receiver from time to time written invoices for services rendered under this Agreement. Upon approval of those invoices the Special Deputy Receiver is authorized to pay the invoice(s) from unrestricted general assets of the Landmarc Receivership.

6. This Agreement may be terminated by the Receivership Court or the Superintendent at any time upon ten (10) days notice to the Deputy Receiver. The Deputy Receiver may terminate this Agreement upon ten (10) days written notice to the Superintendent.

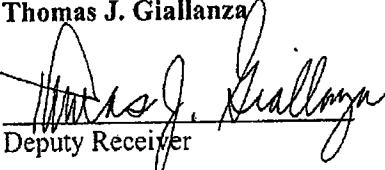
7. This agreement shall be conditioned upon approval by the Receivership Court.

IN WITNESS WHEREOF, we have hereunto set our hands on the day, month and year above written.

Landmarc Capital and Investment Company, in Receivership

By 
Lauren W. Kingry, Superintendent of the Arizona
Department of Financial Institutions, as Receiver

Dated: June 24, 2010

Thomas J. Giallanza

Deputy Receiver

Dated: June 24, 2010