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1 Guttilla Murphy Anderson, P.C.
Ariz. Firm No. 00133300
2 **Patrick M. Murphy** (Ariz. No. 002964)
4150 West Northern Avenue
3 Phoenix, Arizona 85051
Email: pmurphy@gamlaw.com
4 Phone: (623) 937-2795
Fax: (623) 937-6897

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. THOMAS)
L. WOOD, Superintendent of the)
9 Arizona Department of Financial)
Institutions,)
10 Plaintiff,)
v.)
11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)
12 Defendant.)
13)
14)

Cause No. CV2009-020595
ORDER APPROVING PROCEDURES
FOR DISPOSING OF CERTAIN LOANS
WHERE OWNERSHIP BY THIRD
PARTIES IS NOT IN DOUBT
RE: PETITION NO. 4

(Assigned to Judge Sam Myers)

15 The Receiver having filed Petition No. 4, and the Court having considered same, and it
16 appearing to the Court that the matters requested by Petition No. 4 are reasonable, just and
17 appropriate:

18 NOW, THEREFORE, IT IS HEREBY ORDERED:

19 1. The Receiver is authorized to transfer to a new servicing agent any loan being
20 serviced by Landmarc that meets the following criteria and without further order of the Court:
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1 a. All of the beneficial owners of the loan must be evidenced by duly
2 recorded Deeds of Trust identifying the beneficial owners or by duly recorded
3 assignments of the beneficial interests under the Deed of Trust and Promissory Note or
4 assignments of a participation interest under the Deed of Trust and Promissory Note
5 (hereafter referred to as the “Beneficial Owners”).

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

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

11 d. A trustee’s sale foreclosing the lien under the Deed of Trust on the
12 underlying security for the loan has not taken place.

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

15 2. The Receiver shall disburse any accumulated payments under the loan held in
16 Landmarc’s trust account to the Beneficial Owners in proportion to their respective
17 ownership, after obtaining satisfactory arrangements for the reimbursement of Landmarc for
18 any unpaid servicing fees or reimbursable expenses to which Landmarc may be entitled.

19 3. If Landmarc has no interest in the loan (other than for unpaid and earned
20 servicing fees or reimbursable expenses) the Receiver shall, upon receipt of the agreement
21 described in paragraph 5 below, deliver the Loan Documents to (a) the sole Beneficial Owner

1 for servicing by that owner, (b) to an entity unanimously designated by all Beneficial Owners
2 to which beneficial ownership and servicing is transferred, or (c) to a new servicing agent
3 unanimously designated by all Beneficial Owners, which servicing agent shall be a person
4 licensed as an escrow agent under A.R.S. §6-801 *et seq* or an attorney licensed to practice law
5 in Arizona and exempt from licensing as an escrow agent under A.R.S. §6-811(1).

6 4. If Landmarc has an interest in the loan, including but not limited to an interest
7 to a portion of the interest payments or a fractional participation interest in the loan, the
8 Receiver shall, upon receipt of the agreement described in paragraph 5 below, obtain new
9 escrow instructions executed by all Beneficial Owners and deliver those instructions and all
10 Loan Documents to a new servicing agent unanimously designated by all Beneficial Owners,
11 which servicing agent shall be a person licensed as an escrow agent under A.R.S. §6-801 *et*
12 *seq* or an attorney licensed to practice law in Arizona and exempt from licensing as an escrow
13 agent under A.R.S. §6-811(1).

14 5. Before effectuating the transfer of loans as provided above, all Beneficial
15 Owners of the loan shall execute a joint agreement in a form acceptable to the Receiver that
16 contains the information deemed necessary by the Receiver including (a) an identification of
17 the person who is to take over servicing of the loan and receive the loan documents, (b) the
18 servicing instructions to the new servicing agent, (c) the repayment to the Receiver of any
19 negative balance in the trust account for the loan, (d) a release of the Receiver and his agents
20 from any liability to the Beneficial Owners of the loan, (e) an acknowledgement that any
21 claim against Landmarc shall be filed as provided by the orders of the court, and (f) an

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1 indemnification and hold harmless of the Receiver, Landmarc and their agents from any
2 liability arising from the transfer of the loan.

3 6. If after sixty (60) days following the entry of this order, a person is aggrieved
4 by the Receiver's refusal to transfer a current loan as provided herein, that person may file a
5 petition with the Court requesting that the Court order the release of the loan.

6 Dated this ___ day of _____, 2009.

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Judge of the Superior Court

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