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9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
10
11 IN AND FOR THE COUNTY OF MARICOPA

12 STATE OF ARIZONA ex rel. ROBERT)
13 D. CHARLTON, Superintendent of the)
14 Arizona Department of Financial)
15 Institutions,)
16 Plaintiff,)
17 v.)
18 LANDMARC CAPITAL &)
19 INVESTMENT COMPANY,)
20 Defendant.)

Cause No. CV2009-020595

PETITION NO. 102

PETITION TO CONFIRM SALE OF
REAL PROPERTY LOCATED AT 5744
E. CHENEY DRIVE, PARADISE
VALLEY, ARIZONA

(Assigned to the Honorable Daniel Martin)

21 Robert D. Charlton, as the Superintendent of the Arizona Department of Financial
22 Institutions and the court appointed Receiver in this matter, respectfully petitions the Court as
23 follows:

- 24 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*
25 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial
26 Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July
27 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On

1 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*
2 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,
3 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*
4 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as
5 Deputy Receiver to carry on the day to day business of Landmarc.

6 2. In accordance with the Receivership Order, the Receiver located and took
7 possession of a vacant parcel of residential property, located at 5744 E. Cheney Drive,
8 Paradise Valley, Arizona (Lot 17) (“Property”). This Property is legally described in Exhibit
9 “1” attached hereto and was acquired in January 2008 by Landmarc Capital & Investment
10 Company (“Landmarc”) pursuant to a Warranty Deed recorded with the Maricopa County
11 Recorder on January 31, 2008 as Document No. 2008-0089153. On the same date Landmarc
12 granted an option to CBI Developers, Inc. (“CBI”) to purchase the Property. The option
13 expired on July 31, 2009 without CBI exercising the option. On March 3, 2008, Landmarc
14 recorded a Quitclaim Deed conveying an 83.936% interest to Landmarc and a 16.064%
15 interest to TBM Associates, LLC (“TBM”).

16 3. On May 21, 2012, this Court entered its *Order Deferring Resolution of the*
17 *Claimed First Out Rights and Claimed Interests in the Presidio 197 Loan and Approving*
18 *Remaining Recommendations of the Receiver, Re: Petition No. 54*, which confirmed the
19 following interests in the Property and its proceeds:

GubinWare	53.04%
TBM	20.87%
Receiver	19.16%

MurrayWare	2.69%
KepesWare	3.98%
WhiteWare	0.26%

The above interest holders are referred to hereafter as the “Beneficial Owners”

4. On April 8, 2010, TBM obtained at its own expense a residential appraisal of the Property indicating a fair market value of \$825,000. On November 1, 2010, the Receiver obtained a residential appraisal indicating a fair market value for the Property of \$350,000.

5. The cost of real property taxes, HOA assessments and insurance on the Property is in excess of \$9,800 per year.

6. Starting in October 2011, the Receiver began marketing the Property for sale. Although the original asking price of \$725,000 has been lowered on several occasions, until December of 2015 the Receiver had never received an offer on the Property.

7. On or about December 17, 2015, the Receiver received an offer from Cipriano Ionutescu (“Ionutescu”) to purchase the Property for \$549,900.00, with \$155,500 to be paid prior to closing and the balance of \$394,000 carried back by the Sellers. The Receiver responded with a counter offer modifying several terms of the contract, including the manner of paying the purchase.

8. Ionutescu accepted the Receiver’s counter offer and the Court had previously approved the sale of this property as reflected in *Order Re: Petition No. 93* entered by the Court on April 1, 2016. Subsequently, the sale fell through and the Property was not sold.

9. In August 2015, the Receiver entered into a listing agreement for the sale of the Property with Cambridge Properties, Inc. (“Cambridge”). The original listing price was

1 \$549,900 and was reduced over the course of the last two years, with the most recent listing
2 price at \$489,900. In May of 2017 the Receiver received an offer of \$450,000 but the buyer
3 insisted on a carryback of \$419,000. After negotiation, the best offer that the Receiver was
4 able to obtain from this buyer was \$450,500, with a carryback of \$406,000 at 5% over 48
5 months. Both the Receiver and the Beneficial Owners determined that the carryback made
6 this offer unacceptable.

7 10. On or about January 12, 2018, the Receiver received an offer from MM
8 Investments 2, LLC (“Buyer”) to purchase the Property for \$300,000.00, which provided for
9 a short inspection period and a cash payment of the purchase price at closing. The Receiver
10 responded with a counter offer accepting the purchase price but modifying several other
11 terms of the contract, including a provision requiring the approval of the Receivership Court.
12 On January 16, 2018, the Buyer accepted the terms of the Receiver’s counter offer and on
13 February 6, 2018, the twenty (20) day inspection period expired.

14 11. The principals of the Buyer are Keith and Cory Mishkin (“Mishkins”). The
15 Mishkins are also principals of Cambridge, the listing broker for this Property at the time the
16 offer from the Buyer was received. The Receiver is informed that the Mishkins are also
17 nephews of Steve Gubin, one of the Beneficial Owners of this Property. The Receiver does
18 not believe that these relationships prevent the sale proposed herein but has provided this
19 information in the interest of full disclosure to the Court and the interested parties.
20
21

1 12. In accordance with this Court’s *Order Re: Petition No. 2*, the Receiver:

2 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
3 Hearing, to all persons on the Master Service List and other interested persons as
4 indicated in the Proof of Mailing filed herewith;

5 b. Intends to publish notice of this sale in a newspaper of general
6 circulation within Maricopa County, which is the county where this action is pending
7 and the Property is located.

8 13. The Receiver recommends that the Court confirm the sale of the Property under
9 the terms set forth in the Purchase Agreement attached as Exhibit “2”, which the Receiver
10 believes are in the best interests of the receivership estate.

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

12 1. Confirming the sale as set forth in the Purchase Agreement attached as Exhibit
13 “2” to this Petition of the Property legally described in Exhibit “1”;

14 2. Authorizing Thomas Giallanza, as Deputy Receiver to execute all necessary
15 documents in connection with the sale of the Property confirmed by the Court;

16 3. Directing TBM to execute a deed to the Receiver conveying TBM’s 16.064%
17 fee title interest in the Property for the purpose of consummating the sale approved herein and
18 deposit same in escrow for recording only upon the closing of the sale approved herein; and

19 4. Providing that in the event the sale of the Property is confirmed but does not
20 close, the escrow agent holding the Earnest Money shall upon demand by the Receiver,
21 deliver the Earnest Money to the Receiver and the Receiver shall hold the \$25,000 Earnest

