

SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Agreement**”) is made and entered into as of June 25, 2018 by and between Thomas J. Giallanza, Deputy Receiver for Landmarc Capital & Investment Company (“**Landmarc**”), JPMorgan Chase Bank (“**Chase**”) and Fidelity National Insurance Co. (“**Fidelity**”). Landmarc, Chase and Fidelity are each a “**Party**” and collectively referred to as the “**Parties**”.

RECITALS

A. On October 24, 2017, Kristian Delucas Lehman (“**Kristian Lehman**” or “**Debtor**”) filed a voluntary petition in the United States Bankruptcy Court for the District of Arizona seeking relief under chapter 13 of the United States Bankruptcy Code which was assigned Case No. 2:17-bk-12583-BKM (the “**Kristian Lehman Bankruptcy Case**”).

B. On or about July 12, 2007, Landmarc made a loan to Philip Lehman and his wife Kristian Delucas Lehman (the “**Lehmans**”) in the amount of \$317,000.00 evidenced by that certain Fixed Rate Note dated July 12, 2007, in the original principal amount of \$317,000 (the “**Landmarc Note**”). The Landmarc Note is secured by that certain Deed of Trust recorded July 20, 2007 as Instrument No. 200828155, official records of Maricopa County, Arizona (the “**Landmarc Deed of Trust**”) constituting a valid and proper lien upon residential real property located at 8002 N. 5th Ave., Phoenix, AZ 85021 (“**Property**”).

C. On or about August 29, 2008, Premium Capital Funding, LLC, d.b.a. Topdot Mortgage (“**Premium Capital**”) made a loan to the Lehmans in the principal amount of \$351,443.00. The Premium Capital loan was secured by a deed of trust encumbering the Property recorded September 17, 2008 as Instrument No. 2008803922, official records of Maricopa County, Arizona (the “**Premium Capital Deed of Trust**”).

D. On June 24, 2009, Felicia Rotellini, then Superintendent of the Arizona Department of Financial Institutions (“**ADFI**”) was appointed as the receiver (the “**Receiver**”) for Landmarc by the Arizona Superior Court (the “**Receivership Court**”) in the case of State of Arizona v. Landmarc Capital & Investment Company, Case No. CV2009-020595 (the “**Receivership Action**”).¹ Thomas J. Giallanza is the Deputy Receiver with the same authority as the Receiver.

E. The Premium Capital loan and the Premium Capital Deed of Trust were assigned to Chase pursuant to an Assignment of Deed of Trust recorded April 5, 2012 as Instrument No. 20120284776, official records of Maricopa County, Arizona. The lien of the Premium Capital Deed of Trust is insured by Fidelity.

F. On or about March 9, 2018, Chase through Fidelity filed an adversary complaint (Adversary No. 2:18-ap-00073-BKM) (the “**Chase Complaint**”) against the Lehmans and Landmarc seeking, among other things, a declaration that the Landmarc Deed of Trust is junior to the Premium Capital Deed of Trust (the “**Lien Priority Dispute**”). Both the Lehmans and Landmarc filed answers to the Chase Complaint. Landmarc has contested the relief sought by

1. Robert Charlton is the current Superintendent of ADFI and statutorily becomes the current Receiver.

Chase in the Chase Complaint and the Lehmans took no position as to which lienholder is in first lien position and which is in second lien position.

G. The Parties have mediated the Lien Priority Dispute before the Honorable Paul Sala on June 25, 2018 and have settled their disputes as reflected in the record. Subject to the conditions and obligations contained herein, the parties wish to fully, finally, and forever settle the Lien Priority Dispute pursuant to the terms, conditions and provisions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, the representations, warranties, covenants and agreements contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. This Agreement shall be subject to the approval of the Receivership Court. It shall become effective upon its execution by each of the Parties and upon the required approval of the Receivership Court. The Parties shall seek relief from the automatic stay of 11 U.S.C. §362(a) in the Kristian Lehman Bankruptcy Case for the limited purpose of obtaining the required approval of the Receivership Court.

2. Within ten (10) days following the approval of this Agreement by the Receivership Court, Chase through its title insurer Fidelity agrees to pay Landmarc the sum of Thirty-One Thousand Dollars (\$31,000).

3. Concurrently with the payment referenced in paragraph 2 above, Landmarc shall assign to Fidelity or its nominee all of Landmarc's right, title and interest in and to the Landmarc Note and Landmarc Deed of Trust. The assignment shall be prepared by Fidelity and subject to approval by Landmarc. The assignment shall be made "as is" "where is" without any representations or warranties of any kind whatsoever, expressed or implied, including without limitation, any representation or warranty regarding the lien priority of the Landmarc Deed of Trust. Nothing in this Agreement shall in any way impair, release, subordinate, impact, or otherwise affect the lien priority of the Landmarc Deed of Trust or the indebtedness secured by the Landmarc Deed of Trust.

4. Upon the satisfaction of the conditions set forth in paragraphs 1-3 above, the Chase Complaint shall be dismissed with prejudice, with each of the parties to the litigation responsible for their own attorneys' fees and costs. The Parties shall take any and all actions necessary to obtain any required approval of the Bankruptcy Court in the Kristian Lehman Bankruptcy Case to the dismissal of the Chase Complaint.

5. Effective upon the satisfaction of the conditions set forth in paragraphs 1-3 above, Landmarc, Chase and Fidelity, for themselves and all persons or entities claiming by, through or under them including their agents, representatives, successors, assigns and attorneys, agree to release and forever discharge each other, and each party's respective officers, directors, shareholders, members, representatives, agents, insurers, attorneys successors and assigns from any and all liability, claims, suits, demands, liens, actions, and causes of action, damages, injuries, losses, contributions, indemnities, costs, attorney's fees, and expenses of any kind or nature whatsoever, whether known or unknown, fixed or contingent, whether in law or equity, whether

asserted or unasserted, relating to, in connection with, or on account of the Lien Avoidance Dispute. The foregoing release does not in way release, waive or satisfy the indebtedness secured by the Landmarc Deed of Trust.

6. The Parties shall execute any additional documents and perform any additional acts which may become necessary in order to effectuate and carry out the purposes of this Agreement.

7. The Parties acknowledge that this Agreement is a compromise of disputed claims and rights, and do not admit to any liability with respect to any of the allegations set forth in the Chase Complaint.

8. The Parties shall bear their own costs and attorneys' fees incurred in the negotiations for and in the preparation and execution of this Agreement. However, in the event that any Party is required to bring legal action to enforce the provisions of this Agreement, the successful party shall be entitled to recover from any unsuccessful party all costs and reasonable attorneys' fees.

9. This Agreement shall be interpreted under and construed in accordance with the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of Arizona, without regard to Arizona's rules regarding conflict of laws. The Parties acknowledge that all Parties are represented by counsel and have participated in the drafting of this Agreement, and that therefore this Agreement shall not be construed against any Party as the drafter.

10. Should any provision hereof be declared unenforceable by a court of competent jurisdiction, the remaining provisions shall be enforceable as if this Agreement does not contain the unenforceable provision.

11. This Agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument. Facsimile and scanned signatures shall be valid and effective as original signatures.

12. The agreements made herein shall survive the effective date of the Agreement.

13. This Agreement and the covenants herein shall be binding upon, and inure to the benefit of, the predecessors, successors, and assigns of each of the Parties and any other person, firm, or corporation, now, previously, or hereafter, successor or predecessor in any manner to the parties.

14. This Agreement may be modified only by an agreement in writing signed by all of the Parties hereto.

15. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subjects of this Agreement. This Agreement supersedes and terminates all prior agreements and understandings, whether written or oral, between or among the Parties with respect to such transactions. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

16. Each person executing the Agreement hereby represents and warrants that he is duly authorized and is fully and legally empowered to execute and deliver this document both individually and on behalf of the entity for whom such party is executing this Agreement.

LANDMARC CAPITAL & INVESTMENT
COMPANY

By: _____
Thomas J. Giallanza, Deputy Receiver
Date: _____

JPMORGAN CHASE BANK

By: _____
Its: _____
Date: _____

FIDELITY NATIONAL INSURANCE CO.

By: _____
Its: _____
Date: _____

APPROVED TO FORM:

BURCH & CRACCHIOLO, P.A.

By /s/ Alan A. Meda (#009213) _____
Alan A. Meda
*Attorneys for Deputy Receiver for Landmarc
Capital & Investment Company*

FIDELITY NATIONAL LAW GROUP

By: /s/ S. Matt Collins (#012095) _____
S. Matt Collins
*Attorneys for JPMorgan Chase Bank and
Fidelity National Insurance Co.*