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8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF ARIZONA

11 STATE OF ARIZONA ex rel. ROBERT
12 D. CHARLTON, Superintendent of the
13 Arizona Department of Financial
14 Institutions,

15 Plaintiff,

16 v.

17 LANDMARC CAPITAL &
18 INVESTMENT COMPANY,

19 Defendant.

Cause No. CV2009-020595

PETITION NO. 99

PETITION TO CONFIRM SALE OF
REAL PROPERTY LOCATED AT 987
NORTH 3RD STREET, COOLIDGE,
ARIZONA

(Assigned to the Honorable Daniel Martin)

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

23 1. On June 24, 2009, this 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 Capital & Investment Company
("Landmarc"). On July 10, 2009, this Court entered its *Order Appointing Permanent
Receiver and Injunction*. On February 27, 2010, the Court entered its *Order placing
Hayden Investments, LLC, Desert Trails Holdings, LLC and Arizona Valuation*

1 *Company, LLC in Receivership.* On February 27, 2010, the Court entered its *Order*
2 *placing Hayden Insurance Ltd. and Desert Trails Insurance Co. in Receivership.* On
3 May 12, 2010, the Court entered its *Amended Order Appointing Permanent Receiver and*
4 *Injunction.* The above orders are referred to hereafter collectively the “Receivership
5 Order”. The Receivership Order appointed Thomas Giallanza as the Deputy Receiver to
6 carry on the day to day business of the receivership.

7 2. In accordance with the Receivership Order, the Receiver has taken
8 possession of certain real property located at 987 North 3rd Street, Coolidge, Arizona
9 85128(“Property”). This Property consists of one lot with a single family residence on it
10 (lot 12) and an adjacent lot directly to the east that is vacant (lot 11). The Property is
11 legally described in Exhibit “1” attached hereto.

12 3. The Property had originally been the security for a \$42,000.00 loan made
13 by Landmarc Capital & Investment Company (“Landmarc”) in 2007 to David Rich (Loan
14 No. 07121860) (“Loan”). Landmarc subsequently sold a 100% participation interest in
15 the Loan to Lazy E, LLC (“Lacy E”). Thereafter the borrower defaulted and Landmarc
16 foreclosed on the Loan and acquired title to the Property pursuant to a *Trustee’s Deed*
17 *Upon Sale* recorded on February 3, 2009, with the Pinal County Recorder as Document
18 Number 2009-010552. Landmarc then conveyed its interest in the Property to Lacy E
19 and undertook the management responsibilities for the Property, by among other things
20 entering into a lease of the Property to Anna Gurulee (“Gurulee”). Although Gurulee has
21 frequently defaulted on her obligations under her lease, she has remained in possession of
22 the Property since early 2009.

23

1 4. As part of a settlement between the Receiver and Lazy E and certain of its
2 affiliated entities, Lazy E executed a *Quit Claim Deed* conveying all right, title and
3 interest of Lazy E in the Property to the Receiver, which was recorded on November 1,
4 2010, with the Pinal County Recorder as Document Number 2010-102472. Title to the
5 Property is currently held by the Receiver free and clear of all claimed interests or liens,
6 other than for obligations for real estate taxes and assessments.

7 5. The Deputy Receiver has determined that the Property is in very poor
8 condition and that is not worth more than \$26,000.00 in its present condition. In the
9 Receiver’s judgment continued efforts to market the Property for sale at any higher price
10 will be unsuccessful. Accordingly the Receiver negotiated a sale of the Property to
11 Gurulee and her husband for \$25,000.00. This sale price does not require the payment of
12 a real estate commission and is therefore a fair and reasonable price for the Property.
13 Anna and her husband, Alex Gurulee (“Buyers”), have agreed to pay the sum of
14 \$25,000.00 by making a non-refundable cash deposit of \$8,000.00 and giving the
15 Receiver a promissory note for the balance of \$17,000.00 (“Note”). Attached as Exhibit
16 “2” is a copy of the Agreement for Sale executed by the parties, which is conditioned
17 upon an order of this Court approving such sale after notice and a hearing. The non-
18 refundable deposit of \$8,000.00 has been paid to the Receiver by the Buyers. Under the
19 Agreement for Sale and Note, the Buyers are obligated to pay to the Receiver the sum of
20 \$112.19 per month together with one twelfth (1/12) of the estimated real estate taxes
21 (estimated initially to be \$8.33 per month) until the principal balance of the Note has
22 been paid in full. The Note will be secured by a Deed of Trust on the Property.

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6. The Receiver:
- a. Has mailed a copy of this Petition, the proposed order, and the Notice of Hearing, to all persons on the Master Service List as indicated in the Proof of Mailing filed herewith; and
 - b. Intends to publish notice of this sale one time in a newspaper of general circulation within the State of Arizona at least seven (7) days before the date set for hearing on this Petition.

7. The Receiver recommends that the Property be sold for the price and under the terms set forth in the Agreement for Sale attached as Exhibit “2”, which the Receiver believes are in the best interests of the receivership estate.

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

- 1. Approving the sale as set forth in the Agreement for Sale attached as Exhibit “2” to this Petition of the Property legally described in Exhibit “1”.
- 2. Authorizing the Receiver, or Thomas J. Giallanza, Deputy Receiver, to execute all necessary documents in connection with the sale of the Property confirmed by the Court.

Respectfully submitted this 2nd day of February, 2017.

GUTTILLA MURPHY ANDERSON, P.C.

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

1157-001 (273828)

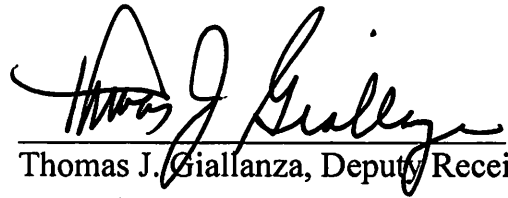
Verification

I, Thomas J. Giallanza, do hereby declare as follows:

I am the court appointed Deputy Receiver of Landmarc Capital & Investment Company; that I have read the foregoing *Petition No. 99, Petition to Confirm Sale of Real Property Located at 987 North 3rd Street, Coolidge, Arizona*, and know the contents thereof; that the matters and things contained therein are true in substance and in fact, to the best of my information, knowledge and belief, except as to those matter and things alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of January 2017, in Phoenix, Arizona.


Thomas J. Giallanza, Deputy Receiver

Guttilla Murphy Anderson, P.C.
5415 E. High Street, Suite 200
Phoenix, Arizona 85054
(480) 304-8300

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Legal Description

Lots 11 and 12, Block 23, of NORTH COOLIDGE, AN ADDITION TO COOLIDGE TOWNSITE, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Book 3 of Maps, Page 34.

Parcel Numbers: 205-03-355 and 205-03-356.

AGREEMENT FOR SALE

(TJS) AG
JANUARY
(TJS) AG

2017 This Agreement for Sale ("Agreement"), is entered into as of the 6TH day of November, 2016, by and between the court appointed Receiver of Landmarc Capital & Investment Company ("Landmarc") on behalf of itself as to an undivided 100% interest in 987 North 3rd Street, Coolidge, Arizona, 85228 (hereinafter "Seller"), and Alex Gurulee and Anna Gurulee, husband and wife, as joint tenants with right of survivorship ("Buyer").

Recitals

Whereas on or about December 28, 2007, Landmarc Capital & Investment Company ("Landmarc") loaned \$42,000.00 to David Rich, an unmarried man ("Loan No. 07121860"), which loan was evidenced by a Promissory Note in the principal amount of \$42,000.00 and was secured by a deed of trust on certain real property and improvements located at 987 North 3rd Street, Coolidge, Arizona, 85228 and legally described as set forth in Exhibit "A" of the title report hereafter referenced below ("Property");

Whereas Landmarc subsequently sold a participation interest in Loan No. 07121860 to Lazy E, LLC as to an undivided 100% interest (the "Beneficial Owner");

Whereas Landmarc foreclosed Loan No. 07121860 and the Trustee issued a *Trustee's Deed Upon Sale* vesting title to the Property in Landmarc, which was recorded with the Pinal County Recorder on February 3, 2009 as Document No. 2009-010552;

Whereas on June 24, 2009, the Arizona Superior Court for Maricopa County entered its *Order Appointing Receiver*, which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc in Cause No. CV2009-020595 ("Receivership Court"), and on February 27, 2010 entered its *Order placing Hayden Investments, LLC Desert Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership and Order Placing Hayden Insurance, LTD and Desert Trails Insurance Co In Receivership* (Landmarc, Hayden Investments, LLC, Desert Trails Holdings, LLC, Arizona Valuation Company, LLC, Hayden Insurance, Ltd., and Desert Trails Insurance Co. are referred to hereafter collectively as the "Receivership Entities");

Whereas on November 9, 2010 pursuant to Petition No. 35, the Receivership Court entered an Order approving the Settlement Agreement between Receiver and the Stoneman Entities which authorized, among other things, the transfer from the Stoneman Entities by conveyance of all right, title and interest from the Stoneman Entity known as Lazy E, LLC of the entire beneficial ownership of Loan No. 07121860 to Receiver;

Whereas the Receivership is now the full legal and equitable owner of the Property; and

Whereas the Seller desires to sell the Property to Buyer for \$25,000 and the Buyer desires to enter into an agreement to acquire the Property from Seller under the terms set forth below:

Terms

In consideration of the terms and conditions of this Agreement for Sale, Seller hereby sells the Property to Buyer and Buyer hereby buys the Property from Seller under the terms and conditions set forth below:

1. **Purchase Price:** The Purchase Price which the Buyer agrees to pay for the Property is **\$25,000.00**. The Purchase Price shall not be adjusted by any overage or shortage in the area of the Property. The Purchase Price shall be paid as follows:

- a. Buyer has prior to this date deposited \$8,000 which is non-refundable with the Receiver.
- b. **Upon execution of this agreement**, Buyer shall make an initial monthly payment of \$112.19 plus \$8.33 for estimated real estate taxes,
- c. Buyer shall make additional monthly payments of \$112.19 plus estimated real estate taxes until the entire Principal balance is paid in full;
- d. A Promissory Note shall be executed by Buyer in the amount of \$17,000.00 secured by a Deed of Trust and Assignment of Rents on the Property and payable monthly as follows: the sum of \$112.19 plus estimated real estate taxes **on or before the first day of each month** paid to **Landmarc Capital and Investment Company** or its designee.

2. **Deed.** Seller shall convey title to the Property to Buyer by Special Warranty Deed (the "Deed"), subject to taxes and assessments delinquent and not delinquent, reservations in patents, all easements, rights-of-way, covenants, conditions, restrictions, declarations, all matters that an accurate survey or a physical inspection of the Property would disclose and all matters to which Buyer has agreed.

3. **Disbursements.** Upon the Close of Escrow, the full amount of the Purchase Price, less any closing costs which the Seller has expressly agreed to pay, shall be disbursed to Seller.

4. **Property Sold "As Is".** The Property is being sold "AS IS" and the Seller is not providing any warranties. Buyer expressly acknowledges that there may be present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect the Buyers decision to purchase the Property. Buyer further acknowledges that Buyer has not relied on any warranties, promises, projections, calculations, understandings or representations, express or implied, of Seller or of any agent or representative of Seller, relating to the Property, and, Buyer is acquiring the Property in its present condition and state of repair, "AS IS", with all defects, latent or apparent. Buyer further acknowledges that any information of any type which Buyer has received or may receive from Seller or Seller's agents is furnished on the express condition that Buyer shall make an independent verification of the accuracy (including without limitation calculations) of such information, all such information being furnished without any warranty or liability whatsoever. The Seller has acquired possession of the Property pursuant to Court order and has not occupied the Property and therefore Seller cannot and will not provide any seller disclosure statements.

5. **Repairs to the Property.** As part of the Purchase Price the Buyer agrees to make all necessary repairs to the Property.

6. **Payment of Real Estate Taxes and Insurance.** The Buyer agrees that Buyer will maintain adequate insurance against loss or damage to the Property in an amount not less than \$25,000 ("Insurance Policy") and as may be needed to reconstruct the improvements in the event of damage to the Property during the term of this loan. Buyer also agrees to keep all real estate taxes levied against the Property paid and current. Buyer shall provide Landmarc with a

Certificate of Insurance showing that Seller has been made an additional insured under the Insurance Policy. Buyer further agrees that if Buyer is unable to obtain such insurance Seller may do so at Buyer's expense.

7. **Receivership Court.** The Buyer understands and acknowledges that the Seller was duly appointed the Receiver of the Property by the Receivership Court; that the Property and this transaction is under the exclusive jurisdiction of the Receivership Court; and that the Buyer has received, read, and understands the orders of the Receivership Court appointing the Receiver. The parties further understand and acknowledge that this Agreement is contingent on the approval of the Receivership Court and that the Receivership Court could decline to approve the Agreement for various reasons, including without limitation that the sale price is not fair or that a sale of the Property is not in the best interests of the estate.

8. **Cancellation.** In the event Seller is unable, within sixty (60) days of the date of this Agreement, to obtain the approval of the Receivership Court, the Buyer or the Seller may elect in writing to cancel this Agreement. **The initial payment of \$112.19 plus \$8.33 is not refundable to the Buyer under any circumstances.** Upon a cancellation in accordance with the provisions of this Paragraph, all other funds and documents deposited in Escrow by Seller and Buyer shall be returned to the party depositing the other funds or documents, and this Agreement shall terminate.

9. **Inspection.** Buyer waives the opportunity to inspect the Property since Buyer has occupied the Property for several years and hereby accepts the condition of the Property.

10. **Condition of Title and Title Insurance.** The condition of title and issuance of title insurance on the Property shall be governed by this Paragraph:

a. Seller delivered to Buyer a preliminary title report for insurance on the Property ("Title Report"). Buyer had the right to approve or disapprove the condition of title within ten days following receipt of the Title Report, which disapproval must have been itemized in writing and provided to the Seller, the Seller's agent and the Escrow Agent.

b. If the Title Insurer issues a supplemental or amended title report on or before the Close of Escrow ("Amended Title Report") showing additional title exceptions or requirements not caused or to be satisfied by Buyer, Buyer shall have a period of time equal to three business days from the date of receipt of any Amended Title Report within which to give Seller and Escrow Agent specific written disapproval as to any additional exceptions or requirements.

c. If Buyer disapproves of any title exception in the Title Report or disapproves of any new exception to title or requirement as shown in an Amended Title Report in accordance with this Paragraph, Seller shall have until the Close of Escrow to eliminate the disapproved matter(s) from the Title Report or the Amended Title Report, or obtain title insurance endorsements against such matter(s). Notwithstanding the foregoing, it is understood and agreed that Seller shall have no duty whatsoever to eliminate, or to secure a title endorsement against any matter disapproved by Buyer pursuant to this Paragraph. If Seller does not eliminate the disapproved matters or if Seller does not obtain title insurance endorsements against such matters on or before the Close of Escrow, Seller shall so notify Buyer that it

does not intend or has failed to eliminate such disapproved matters, whereupon Buyer's sole and exclusive remedy shall be to either waive Buyer's objection with respect to such disapproved matters (in which event Close of Escrow shall occur and Buyer shall take title to the Property subject to such matters) or to cancel this Agreement by giving written notice of cancellation to Seller and Escrow Agent on or before the Close of Escrow. Upon a cancellation in accordance with the provisions of this Sub-Paragraph, all documents deposited in Escrow by Seller and Buyer shall be returned to the party depositing the document, and this Agreement shall terminate.

d. Since Buyer did not object to any exceptions to title or requirements as disclosed by the Title Report or an Amended Title Report within the applicable time period, such exceptions or requirements are deemed by this Agreement to have been approved by Buyer.

e. At or before the Close of Escrow, Seller shall provide to Buyer, at Seller's cost, a standard coverage owner's policy of Title Insurance (or an unconditional commitment of the Title Insurer to issue such policy) issued by a licensed Title Insurer, in the full amount of the Purchase Price of the Property, effective as of the Close of Escrow, insuring Buyer that fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, to the matters shown on the Title Report or any Amended Title Report approved or deemed approved by Buyer as provided in this Paragraph.

f. The policy of Title Insurance required to be provided by Seller shall be a standard coverage owner's policy, and Seller shall only pay the premium for a standard coverage owner's policy. If Buyer elects to obtain extended coverage title insurance, such election shall not be a condition to Buyer's obligations hereunder. Seller and Buyer agree that Buyer shall be responsible for satisfying, at its sole cost and expense, all of Title Insurer's requirements for extended coverage before the Close of Escrow and Buyer shall pay the difference between the premium for such a policy and the premium for a standard coverage owner's policy. Further, Buyer shall be responsible for any endorsements required by Buyer. In no event shall the Close of Escrow be conditional upon or extended because of Buyer obtaining extended coverage or because of the issuance of any endorsements requested by Buyer.

11. Release and Indemnity. Seller is hereby released from all responsibility and liability regarding the condition (including, without limitation, the presence of asbestos or environmental hazards or substances) or valuation or utility of the Property. Buyer agrees that Buyer will not attempt to assert any claims of liability against Seller for furnishing such information, nor shall Buyer assert any claims of liability against Seller for the existence of or damages arising out of the existence of asbestos, and Buyer agrees to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. Buyer agrees to indemnify Seller and hold Seller harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to Buyer's prior possession of the Property or to the breach by Buyer of any obligation hereunder or the inaccuracy of any representation or warranty made by Buyer or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the Closing.

12. Assignment and Nomination. Buyer may not assign or otherwise transfer Buyer's rights under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any such assignee shall accept in writing the terms and conditions of this Agreement and of any supplements or Escrow Instructions that may have been entered into as of the time of the assignment. In no event shall any assignment extend the Close of Escrow.

13. No Liability. Buyer agrees that no receivers, directors, officers, employees or agents of Seller have any personal obligation hereunder, and that such party shall not seek to assert any claim or enforce any rights against such receivers, directors, officers, employees or agents.

14. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

15. Exclusive Jurisdiction of the Receivership Court. The Receivership Court shall have exclusive jurisdiction to resolve any dispute arising under this Agreement.

16. Closing Costs. Seller agrees to pay all usual and customary fees paid by a seller, including certain costs of title insurance which are provided above, not to exceed \$2,000.00 in any event. All other Escrow fees, title fees, inspection fees, and all other closing costs arising out of Buyer's purchase of the Property, shall be paid by Seller, not to exceed \$2,000.

17. Close of Escrow. The sale shall close upon the direction of the Deputy Receiver. The Deputy Receiver and Buyer agree that in the event of entry of a final order of the Receivership Court disapproving this Agreement, then the Deputy Receiver may direct the recording of a reconveyance Deed to the Receiver within ten (10) days.

18. Time is of the Essence. Time is of the essence under this Agreement and each and every provision hereof.

19. Signed Original. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute one or more counterparts of this Agreement and all other contract documents and to provide at least one such original to the Seller.

20. Attorneys' Fees. In the event that either party is required to employ an attorney to enforce the terms and conditions of this Agreement or the Promissory Note or Deed of Trust, the prevailing party in any action shall receive from the other party its reasonable attorneys' fee and costs.

21. Waiver. The failure of either party to enforce any term hereof shall not be deemed to be a waiver of the right to enforce such term, unless such party agrees in writing to such waiver.

22. Notices. Any notice which either party may or is required to give hereunder, shall be given by hand-delivering such notice or, in the alternative, mailing such notice by certified mail, return receipt requested, postage prepaid:

To Buyer as follows:

Alex and Anna Gurulee
987 North 3rd Street
Coolidge, Arizona, 85128

To Seller as follows:

Landmarc Capital & Investment Company,
in Receivership – Attn.: Thomas J. Giallanza
c/o Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Fax: 602-381-1225

with a copy to:

Patrick M. Murphy, Esq.
Guttilla Murphy Anderson
5415 E. High St., Suite 200
Phoenix, AZ 85054

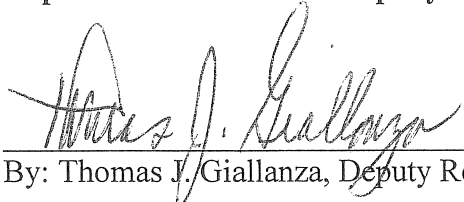
Fax (480) 304-8301

or at such other place(s) as may be designated by the parties from time to time. Any such notice shall be deemed to have been made and given when actually received, if such notice is hand-delivered, and forty-eight (48) hours after depositing same in the United States mail, if such notice is mailed.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date set forth above.

Seller:

**Robert D. Charlton, as Receiver of Landmarc
Capital & Investment Company**


By: Thomas J. Giallanza, Deputy Receiver

Date: 1/6/17

Buyer:

Alex Gurulee

Alex Gurulee

Date: 12-31-16

Anna Gurulee

Anna Gurulee

Date: 12-31-16

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PINAL, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Lots 11 and 12, Block 23, of NORTH COOLIDGE, AN ADDITION TO COOLIDGE TOWNSITE, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Book 3 of Maps, Page 34.