

AMENDED AND RESTATED  
OPERATING AGREEMENT OF  
LANDMARC CAPITAL PARTNERS, LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT (the "Agreement") is deemed entered into as of 20th day of January, 2007, 2011 (the "Effective Date"), by and among the persons listed in Schedule 3.1.2 and executing this Agreement as Members and the Manager- Managers.

SECTION 1  
DEFINITIONS

1.1 ~~1.1~~ Defined Terms. Unless otherwise stated, the terms used in this Agreement have the usual and customary meanings associated with their use, and shall be interpreted in the context of this Agreement. Certain capitalized terms that are used in this Agreement shall have the meanings given in Schedule 1.1, Definitions.

SECTION 2  
FORMATION; PURPOSE

2.1 ~~2.1~~ Organization. The Members ~~have formed the Company~~ has been formed as a limited liability company effective with the filing of the Articles with the Arizona Corporation Commission. The Company has been formed pursuant to the provisions of the Act and upon the terms and conditions set forth in the Articles and in this Agreement.

2.2 ~~2.2~~ Term. The term of the Company commenced on the date the Articles were filed as described in Section 2.1 and shall continue until the winding up and liquidation of the Company upon the occurrence of a Liquidating Event as provided in Section 10 of this Agreement.

2.3 ~~2.3~~ Name. The business of the Company shall be carried on under the name "LANDMARC CAPITAL PARTNERS L1C,LLC."

2.4 ~~2.4~~ Purpose. The purpose of the Company is to ~~make or acquire~~ modify and sell all or portions of secured real estate loans (the "Loans") made to persons, corporations, limited liability companies, partnerships and other entities ("Borrowers") by certain lenders (the "Lenders"). As a result of ~~making or acquiring~~ modifying and/or selling such loans, the Company will collect principal and interest payments due under the Loans; or, to the extent not received, pursue collection or realize on any collateral for such loan, including the ownership ~~and~~ operation and sale of any such collateral. ~~From and after the Effective Date, except as stated in Sections 6.6 and 6.7, the Company will make no new loans.~~ The Company shall have authority to do all things necessary or appropriate to effect the foregoing. The Company shall have no authority to engage in any other business.

2.5 ~~2.5~~ Known Place of Business; Agent. The Company's ~~registered office~~ known place of business shall be located at 4140 ~~3200~~ North Scottsdale Road ~~Central Avenue~~, Suite 330 ~~2000~~, Phoenix, Arizona 85250-85012. The Company may have other or additional places of business within or without the State of Arizona. The name and address of the agent for service of process is ZG Law Agent Services LIC, 2425 East Camelback Road, Suite 600, Neal H. Bookspan, whose address is 3200 North Central Avenue, Suite 2000, Phoenix, Arizona 85046-85012.

2.6 ~~2.6~~ Nature of Members' Interests. The interests of the Members in the Company are personal property for all purposes. All property owned by the Company, whether real or personal, tangible or intangible, shall be owned by the Company as an entity, and no Member shall have any direct ownership of such property or any right to use such property for any

purpose other than a purpose of the Company.

~~SECTION 3~~ SECTION 3  
CONTRIBUTIONS; CAPITAL ACCOUNTS

3.1        ~~3.1~~ — Capital Accounts.

3.1.1    ~~3.1.1~~ A separate capital account (the "Capital Account") shall be maintained for each Member. Each such Capital Account of a Member shall (i) be increased by his Capital Contributions to the Company and by the share of Profits allocated to the Member under this Agreement, and (ii) decreased by any distributions of cash or other property to the Member and by the share of Losses of the Company allocated to the Member under this Agreement. This Section and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation §1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations.

3.1.2    ~~3.1.2~~—The names, addresses and Interests are set forth on Schedule 3.1.2, Members; Addresses and Percentage Interests. Each Member's Interest has been and will continue to be calculated by the ManagerManagers monthly based upon a fraction, the numerator of which is the balance in such Member's Capital Account and the denominator of which is the aggregate balancesbalance of all Members' Capital Accounts.

3.2        ~~3.2~~ — Initial Capital Contributions. ~~Concurrently with the execution of this Agreement, each~~ Each of the Members shall ~~contribute~~ has contributed cash to the capital of the Company, which amounts shall ~~be have been~~ credited to their respective Capital Accounts.

3.3        ~~3.3~~ — Additional Capital Contributions. No additional Capital Contributions shall be required except to the extent necessary to conduct the business of the Company and then only upon the mutual agreement of ~~all of the Members. Members holding seventy-five percent (75%) or more of the Participation Percentages.~~ If the Members agree to make such additional Capital Contributions, they shall be payable by each Member ProRata at the Company's principalknown place of business. If anyone or more Members cannot thereafter make such additional Capital Contribution, such failure shall not be default hereunder and all amounts received from ~~Member~~ Members shall be deemed loans from Members in accordance with Section 3.4 below.

3.4        ~~3.4~~ — Member Loans. Without implying any obligation to do so, any Member may, with the approval of the ManagerManagers, lend or advance money to the Company. If a Member makes any loan or loans to the Company or advances money on its behalf, the amount of the loan or advance shall not be treated as a Capital Contribution to the Company but shall be an indebtedness of the Company payable to the Member. The amount of the loan or advance shall be repayable out of the Company's cash and shall (i) be repaid to the Member on a priority basis, (ii) bear interest at the Stated Rate of Interest during the period the loan is outstanding, and may (iii) may, with the approval of the Managers, be secured by a lien on Company Property.

3.5        ~~3.5~~ — Other Loans. Subject to any restrictions contained in Section 6 of this Agreement, if additional capital is required to conduct the Company's business ~~or for purposes of borrowing additional funds to make additional Loans, the Manager, the Managers~~ shall determine whether it is possible or advisable to obtain a loanloan for the required amount

C:\Documents and Sellings\imalecial\Local Settings\Temporary Internet Files\OLK15\Landmarc \$100M Pool Operating Agreement\LDQC3 from a Member, a commercial lender or any other third party. Any such loanloan shall be upon such terms as the ~~Manager agrees~~ Managers agree and may be secured by Company Property.

3.6 ——— ~~3.6~~ ——— Return of Contributions: Withdrawal.

3.6.1 ~~3.6.1~~ Except as specifically provided in this Agreement, or as otherwise provided by law, no Member has the right to demand or receive a return of his ~~capital~~ Capital Contribution without the consent of all Members. If the return of any Capital Contribution is permitted or required, no Member shall have the right to receive property other than cash unless specifically provided in this Agreement.

3.6.2 ~~3.6.2~~ Notwithstanding any ~~provision~~ provision of the Act, each Member recognizes that the Members have entered into this Agreement based on the ~~mutual~~ mutual expectation that all Members will continue as Members and carry out their duties and obligations under this Agreement and that, except as expressly required or permitted under this Agreement, each Member covenants and agrees not to (a) take any action to file a certificate of dissolution or its equivalent with respect to itself, (b) take any action that would cause a voluntary bankruptcy of such Member, (c) voluntarily withdraw or attempt to withdraw from the Company, (d) exercise any power under the Act to dissolve the Company, (e) petition for judicial dissolution of the Company, or (f) demand a return of such Member's contributions or profits without the unanimous consent of the Members.

3.7 ——— ~~3.7~~ ——— Other Matters.

3.7.1 ~~3.7.1~~ No Member shall receive any interest, salary or draw with respect to his Capital Contributions or his Capital Account or for services rendered on behalf of the Company or otherwise in his capacity as a Member, except as specifically provided in this Agreement.

3.7.2 ~~3.7.2~~ Except as otherwise provided by this Agreement or by separate agreement with third party creditors, no Member shall be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as otherwise provided by this Agreement or any other agreements among the Members, a Member shall not be required to ~~lend~~ lend any funds to the Company or to make any ~~additional~~ additional contributions to the Company.

3.7.3 ~~3.7.3~~ None of the provisions of this Agreement, whether in regard to contributions or otherwise, is intended for the benefit of, nor shall such provisions be enforceable by, creditors of the Company.

SECTION 4 ~~SECTION 4~~  
DISTRIBUTIONS

4.1 ——— ~~4.1~~ ——— Cash Available for Distribution.

4.1.1 ~~4.1.1~~ Except as otherwise provided in Sections 10 and 4.1.2 and 4.1.3 hereof, ~~Cash Available~~ Available for Distribution, if any, shall be available for distribution to the ~~Members~~ Members on a Pro Rata basis, at such times as the ~~Manager~~ Managers may determine, ~~but not less than once each~~.

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month, ProRata.

4.1.2 ~~4.1.2~~ The Company shall make no distribution to the Members unless the assets of the Company following such distribution will exceed the total liabilities of the Company, excluding liabilities to Members based on their contributions.

SECTION 5 ~~SECTION 5~~  
ALLOCATIONS

~~5.1~~ ~~5.1~~ 5.1 ~~Allocation of Profits and Losses.~~ Subject to the special allocations set forth in Sections 5.2 and 5.3, and the provisions of Section 5.1.1, all Profits, Losses, and any other items of income, gain, deduction and credit during each fiscal year of the Company shall be allocated to the Members ProRata.

~~5.1.1~~ ~~5.1.1~~ 5.1.1 ~~Notwithstanding the provisions of Section 5.1, the Losses and deduction items allocated to a Member pursuant to Section 5.1 shall not exceed the maximum amount of Losses or deduction items that can be so allocated without causing the Member to have a deficit balance in its Capital Account at the end of any fiscal year. If a Member would have a deficit balance in its Capital Account at the end of a fiscal year as a consequence of an allocation of Losses or deduction items pursuant to Section 5.1, the excess Losses or deduction items shall be charged to the Capital Accounts of any Members who ~~would~~ would not have Capital Account deficits as a result of the allocation (such allocation shall be ProRata among such Members). If no such Member(s) exist, then the excess Losses and deduction items shall be allocated to all Members Pro Rata.~~

~~5.2~~ ~~5.2~~ 5.2 ~~Special Allocations.~~ The special allocations set forth in this Section 5.2 shall, if necessary, be made in the following order:

~~5.2.1~~ ~~5.2.1~~ 5.2.1 ~~Qualified Income Offset.~~ If any Member unexpectedly receives any adjustment, allocation, or distribution described in Sections ~~1.704-1(b)(2)(ii)(d)(4) through 1.704-1(b)(2)(ii)(d)(6)~~ ~~1.704-1(b)(2)(ii)(d)(4) through 1.704-1(b)(2)(ii)(d)(6)~~ of the Regulations which causes or increases a deficit in the Member's Capital Account as of the end of the tax year to which the adjustment, allocation or distribution relates, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Capital Account deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 5.2.1 shall be made if and ~~only~~ only to the extent that the Member would have a Capital Account deficit after all other allocations provided for in Section 5 have been tentatively made as if this Section 5.2.1 were not in ~~the~~ this Agreement.

~~5.2.2~~ ~~5.2.2~~ 5.2.2 ~~Company Minimum Gain Chargeback.~~ Notwithstanding any other provision of Section 5, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain for the year (and, if necessary, subsequent years) in an amount equal to the portion of the Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-2(f) of the Regulations. The items to be so allocated shall be determined in accordance with Sections 1.704-2(1)(6) and 1.704-2(j)(2) of the Regulations. This Section 5.2.2 is intended to comply with the minimum gain

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chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

~~5.2.3~~ ~~5.2.3~~ 5.2.3 ~~Member Minimum Gain Chargeback.~~ Notwithstanding any other provision of Section 5, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Person who has a share of the Member Nonrecourse Debt Minimum Gain attributable to the Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for the fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to the Person's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to the Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective ~~amounts~~ amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 5.2.3 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

~~5.2.4~~ 5.2.4 Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated to the Members ProRata.

~~5.2.5~~ 5.2.5 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the Member who bears the economic risk of Joss with respect to the Member Nonrecourse Debt to which the Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

~~5.2.6~~ 5.2.6 Section 754 Adjustments~~Adjustments.~~ To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of his Interest in the Company, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis) and the gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

~~5.3~~ 5.3 Curative~~E3.Curative~~ Allocations. The allocations set forth in Section 5.2 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 5.3. Therefore, notwithstanding any other provision of Section 5 (other than the Regulatory Allocations), the ~~Manager~~Managers shall make the offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after the offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to what it would have been if the Regulatory Allocations were not part of ~~the~~this Agreement and all Company items were allocated pursuant to Section 5.1.

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~~5.4~~ 5.4 Other Allocation Rules.

~~5.3.1~~ 5.4.1 For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the ~~Manager~~Managers using any permissible method under Code Section 706 and the Regulations thereunder.

~~5.3.2~~ 5.4.2 The Members are aware of the income tax consequences of the allocations made by this Section 5 and hereby agree to be bound by the provisions of this Section 5 in reporting their shares of Company income and loss for income tax purposes.

~~5.3.3~~ 5.4.3 Except as otherwise provided in this Agreement, all allocations of income, gain, loss, deduction and any other allocations not otherwise ~~provided~~provided for shall be divided among the Members in the same proportions as they share Profits or Losses, as the case may be, for the year.

SECTION 6~~SECTION 6~~  
MANAGEMENT

~~6.1~~ 6.1 Delegation~~Delegation~~ of Manaagement~~Management~~ Powers. The management and operating responsibilities of the Company shall be delegated to the ~~Manager~~Managers. The ~~Manager~~Managers shall have complete control of and shall be responsible for the management of the Company business, with all rights and powers generally conferred by this Agreement, by law, or as necessary, advisable or consistent with the proper management of Company affairs, subject only to the limitations set forth in Section 6.2, below. ~~The Manager~~ Any of the

Managers may execute, acknowledge and deliver all documents and instruments and/or take or effectuate any actions that have been authorized by the ~~Manager~~Managers on behalf of the Company. In this regard, third parties shall be entitled to rely upon the signature of ~~the~~ Managers as set forth above as having been duly authorized to bind the Company.

~~6.2~~ 6.2 Limitations. The Manager shall not, without the affirmative vote of a Majority-in-Interest of the Members: (i) amend this Agreement except as set forth in Section 12.4.2 below; (ii) change the Lending Policies;

## 6.2 Actions of the Managers.

6.2.1 Required Vote. Matters upon which the Managers may or are required to vote or authorize, and the approval or taking of any action by the Managers, shall require the consent or vote of a majority of the Managers in order to pass and become effective.

6.2.2 Meeting of Managers. Meetings of the Managers, or a vote of the Managers without a meeting, may be called by any Manager. The call shall state the nature of the business to be transacted, or, if no meeting is to be held, the matter to be voted on and the day that the votes shall be counted. Notice of any such meeting shall be given to all Managers not less than three (3) days or more than thirty (30) days prior to the date of the meeting, unless a Manager not receiving such advance notice waives such requirement. Whenever the vote or consent of Managers is permitted or required under the Agreement, such vote or consent may be given at a meeting of Managers or may be given in accordance with the procedure prescribed in Section 6.2.3.

6.2.3 Method of Voting. A Manager may vote in person at a meeting, by written proxy or by a signed writing directing the manner in which the Manager desires its vote to be cast, which writing must be received by the Company prior to the date on which votes are to be counted. The proxy of a Manager may authorize any Person or Persons to act for him on all matters in which a Manager is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Manager or his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Manager executing it.

6.2.4 Conduct of Meetings. Each meeting of Managers shall be conducted by the Managers or such Persons as the Managers may appoint pursuant to such rules for the conduct of the meeting as the Managers deem appropriate.

~~6.3~~ 6.3 Operations; Administrative Matters. For purposes of convenience and efficiency, the ~~Manager~~Managers may assign ~~responsibility~~responsibility for performing administrative functions in connection with the day-to-day operation of the Company to a single ~~Member~~Manager, to a group of Managers or to a third party (including a Member or an Affiliate of a Member or ~~the~~ Manager) retained by the Company for such purpose.

~~6.4~~ 6.4 Selection of Manager. The Manager shall consist of one (1) Person. The

6.4 Selection of Managers. There shall be five (5) Managers, or such other odd number as the Managers may determine. The Managers need ~~not~~ be Members of the Company. Except in the case of a vacancy, the Managers shall be elected by a Majority-in-Interest of the Members. In the case of a vacancy, the other Managers shall select a Manager to fill the vacancy. The Managers shall be elected for a two-year term, except (a) if a Manager is elected to fill a vacancy, in which case that Manager shall finish the term of the Manager he succeeded, and (b) two (2) of the Managers elected following the amendment of this Agreement, as determined by the Managers, shall serve for three years.

6.5 Manager need not be a Member of the Company. The initial Manager is Landmark Capital & Investment Co. In the event of a vacancy of the Manager, the vacancy shall be filled by the

~~cumulative vote of all of the Members. In addition, Members holding seventy five percent (75%) of the Participation Percentages (but not including the Manager or its Affiliates to the extent also a Member such that the required vote will be 75% of 100% less the Participation Percentage held by the Manager or its Affiliates) may call for a new election to replace them.~~ Members holding sixty percent (60%) or more of the Participation Percentages may call a meeting to remove a Manager for "causeCause" at any time upon fifteen (15) days' written notice to the ManagerManagers and the other Members. Such Manager shall be removed upon the vote of Members holding sixty percent (60%) or more of the Participation Percentages. "Cause" shall be the materially negligent act or omission to act or the willful misconduct of the Manager in its

~~C:\Documents and Sellings\malecia\Local Settings\Temporary Internet Files\OLK15\Landmarc-\$100M Pool Operating Agreement.DOC3 performance of prescribed duties hereunder. In voting upon a proposed replacement Manager or in a new election of the Manager, each Member shall have the number of votes equal to its Participation Percentage (1 vote per 1% of Participation Percentage) and may cast the entire number of votes for anyone Manager or distribute them among two or more Managers as the voting Member may prefer. In each case, the position(s) available shall be filled by the Person receiving the greatest number of votes.~~ its obligations hereunder.

~~6.6~~ 6.5 ~~Specific Rights and Powers.~~ Specific Rights and Powers. In addition to any other rights and powers which the ~~Manager~~Managers may possess, but subject to the ~~limitations~~limitations of Section ~~6.6.7~~ and the remaining provisions of this Agreement, the ~~Manager~~Managers shall have all specific rights and powers required for or appropriate to ~~its~~their management of the Company's business, which by way of illustration but not by way of limitation shall include the following rights and powers:

~~6.6.1~~ 6.5.1 ~~Make or have made for the Company such research reports, economic and statistical data, evaluations, appraisals, analyses, opinions and recommendations as it may deem necessary or desirable with respect to the acquisition, sale, disposition, financing, operation or management of the Company's Property and business;~~

~~6.6.2~~ 6.5.2 ~~Investigate and make determinations with respect to selection and employment of and relations with attorneys, accountants, consultants, borrowers, lenders, agents, employees, managers and other persons acting in any other capacity in connection with the Company's assets and the Company's business, and to pay fees, expenseexpenses, salaries, wages and other compensation to such persons;~~

~~6.6.3~~ 6.5.3 ~~Expend the capital and revenues of the Company in furtherance of the Company's business;~~

~~6.6.4~~ 6.5.4 ~~Manage, hold and improve the Company's assets and operate the Company business and to enter into agreements with others, including Affiliates, with respect to the Company assets containing such terms, provisions and conditions as the ~~Manager approves~~Managers may approve (provided that any agreements with Affiliates must be on terms and for amounts no less beneficial to the Company than if the agreements had been entered into with independent third parties);~~

~~6.6.5~~ 6.5.5 ~~Enter into and execute all agreements, leases, documents, certificates and other instruments deemed by the ~~Manager~~Managers to be necessary or appropriate to the proper operation of the Company's business or to perform effectively and properly ~~its~~their duties or exercise ~~its~~their powers hereunder;~~

~~6.6.6~~ 6.5.6 ~~Acquire, sell, lease, exchange, grant options with respect to or otherwise dispose of real, personal or intangible property, all or any portion of the Company Property or business or grant licenses, sublicenses or distributorships to Persons with respect to the Company business, upon such terms and conditions and for such consideration as the ~~Manager deems~~Managers deem appropriate;~~

6.6.7 ~~6.5.7~~ Accept loans from Members as provided in Section 3.4;

6.6.8 ~~6.5.8~~ Invest Company assets in bank savings accounts, savings and loan associations, commercial paper, government securities, certificates of deposit, bankers' acceptances and other short-term interest-bearing obligations and deposit, withdraw, pay, retain and distribute the Company funds in any manner consistent with the provisions of this Agreement; and loan the Company funds on such terms and conditions as the Manager may deem desirable in connection with the conduct of the Company business;

6.6.9 ~~6.5.9~~ Enter into agreements and contracts with third parties and give receipts, releases and discharges, with respect to all of the foregoing and any matters incident thereto as the Manager may deem advisable or appropriate; modify, adjust, submit to arbitration, prosecute, defend or compromise, upon such terms as the Manager may determine and upon such evidence as they may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes either in favor of or against the Company;

6.6.10 ~~6.5.10~~ Purchase, at the expense of the Company, liability and other insurance to protect the Property and business of the Company and bring and defend actions at law or in equity;

6.6.11 ~~6.5.11~~ Delegate all or any of its powers, rights and obligations under this Agreement, and may appoint (as attorney-in-fact or otherwise), employ, contract or otherwise deal with any Person for the transaction of the business of the Company, which Persons may, under the supervision of the Manager, determine and, perform any acts or services for the Company as the Manager may approve;

6.6.12 ~~6.5.12~~ Perform any and all other acts or activities customary or incident to the acquisition, ownership, management, marketing and disposition of Company Property and the Company's business;

6.6.13 ~~6.5.13~~ Make such elections under the tax laws of the United States, the State of Arizona and other relevant jurisdictions as to the treatment of items of Company income, gain, loss, deduction and credit, fiscal year, accounting method and as to all other matters arising under the tax laws as the Manager believes necessary or desirable;

6.6.14 ~~6.5.14~~ Cause the Company to serve as a general or limited partner in one or more partnerships or as a member in other limited liability companies, or to acquire an equity ownership in one or more corporations or other business entities of every kind;

~~6.5.15 Offer, sell and issue or cause to be offered, sold and issued the Interests in the Company;~~

6.6.15 ~~6.5.16~~ Borrow money on such terms and conditions as the Manager may determine from banks, other lending institutions and other lenders for any Company purpose and to pledge the assets of the Company to secure repayment of the borrowed sums executing in connection therewith on behalf of the Company any notes, deeds of trust or other loan documents required by any lender in connection therewith; and no bank, other lending institution or other lender to which application is made for a loan by the Manager shall be required to inquire as to the purposes for which the loan is sought; and, as between this Company and such bank, other lending institution or other lender, it shall be conclusively presumed that the proceeds of the loan are to be and will be used

for the purposes authorized under this Agreement (with the members acknowledging that among all other things, the Manager is authorized to borrow additional funds on behalf of the Company for purposes of making additional Loans and pledging all or some of the then existing Loans as collateral for such



third-party borrowing, but in no event will the Manager be authorized to have more than one outstanding third-party borrowing facility at anyone time); and

~~6.6.16~~ ~~6.5.17~~ Obtain replacements of any ~~encumbrance or~~ encumbrance related in any way to the Company's assets and/or the Company business and to prepay in whole or in part, refinance, recast, increase, modify, consolidate or extend any encumbrance affecting the properties and/or the Company business; and

~~6.6.17~~ Make new loans that are exempt under A.R.S. 6-902, 6-942 or 6-972.

~~6.7~~ ~~6.6~~ Additional Limitations. Without the consent of ~~all a~~ Majority-in-Interest of the Members, neither the ~~Manager~~ Managers nor any other Member shall have authority to:

~~6.7.1~~ ~~6.6.1~~ Do any act in contravention of this Agreement;

~~6.7.2~~ ~~6.6.2~~ Do any act which would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement;

~~6.7.3~~ ~~6.6.3~~ Confess a judgment against the Company;

~~6.7.4~~ Amend this Agreement;

~~6.7.5~~ ~~6.6.4~~ Possess Company Property, or assign rights in specific Company Property, for other than a Company purpose; ~~or~~

~~6.7.6~~ Approve of a merger or consolidation of the Company or the sale of all, or substantially all, of the Company Property;

~~6.7.7~~ Extend the term of the Company;

~~6.7.8~~ Except as contemplated by Section 6.10, authorize the payment of any compensation to any Manager; provided however, that the indemnification of a Manager and the reimbursement of expenses incurred by a Manager on behalf of the Company shall not be deemed to be compensation; or

~~6.7.9~~ ~~6.6.5~~ Permit the Company to engage in any activities inconsistent with or in addition to the stated purposes of the Company.

~~6.7.10~~ Make new loans that are not exempt under A.R.S. 6-902, 6-942 or 6-972 unless or until the Company becomes licensed to make such loans by the Arizona Department of Financial Institutions or its successor, if any.

~~6.8~~ ~~6.7~~ Duties and Obligations of Manager.

~~6.8.1~~ ~~6.7.1~~ The ~~Manager~~ Managers shall take all actions which may be necessary or appropriate (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Arizona and (ii) for the accomplishment of the Company's purposes, including the maintenance, preservation, and operation of the Company Property in accordance with the provisions of this Agreement and applicable laws and regulations.

~~6.8.2~~ ~~6.7.2~~ The ~~Manager~~ Managers shall devote to the Company such time as may be necessary for the proper performance of all duties hereunder, consistent with Section 6.5.11, but the ~~Manager shall~~ Managers shall not be required to devote full time to the performance of such duties.

~~6.7.3 The Manager or its Affiliates may provide services to the Company and be compensated therefor so long as the fees paid are no greater than the Company would incur to third parties providing such services in Maricopa County, Arizona at the time such services are provided. In particular, certain services to be provided by the Manager and the related compensation are set forth in the Memorandum.~~

~~6.7.4 The Manager will pay all legal fees, printing costs and other expenses relating to this Offering.~~

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~~6.8 Indemnification of ManagerManagers.~~

~~6.8.3 6.8.1~~ The Company, its receiver, or its trustee (in the case of its receiver or trustee, to the extent of Company Property) shall indemnify, save harmless, and pay all judgments and claims against the ~~ManagerManagers~~ relating to any liability or damage incurred by reason of any act performed or omitted ~~to be performed by the ManagerManagers~~ in connection with the business of the Company, including attorneys' fees incurred in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred.

~~6.8.4 6.8.2~~ In the event of any action by a Member against ~~thea~~ Manager, including a derivative suit, the Company shall indemnify, save harmless, and pay all expenses of the Member, including attorneys' fees incurred in the defense of the action, if the Member is successful in the action.

~~6.8.5 6.8.3~~ The ~~ManagerManagers~~ shall have authority to cause the Company to acquire and maintain the equivalent of director's and officer's insurance coverage insuring the actions of the ~~ManagerManagers~~ in such amounts as they may determine appropriate and customary for a business of the type conducted by the Company.

~~6.8.6 6.8.4~~ Notwithstanding the provisions of Sections ~~6.8.4~~~~6.9.1~~ and ~~6.8.2~~~~6.9.2~~ above, the ~~ManagerManagers~~ shall not be indemnified from any liability for fraud, bad faith, willful misconduct, or gross negligence.

~~6.8.7 6.8.5~~ Notwithstanding anything to the contrary above, if any provision in this Section is determined to be invalid in whole or in part, the remainder of such Section shall be enforced to the maximum extent permitted by law.

~~6.9 Compensation to the Manager.~~ The Manager will provide management and other services to the Company and will receive certain compensation from the Company in exchange. The Manager or its Affiliates shall receive additional compensation from other parties, including, without limitation, from the borrowers on the loans made by the Company, as described in the Memorandum.

~~6.9.1~~ The Manager will render annual ongoing management services in connection with the Loans. For such services the Company will pay the Manager an "Interest Rate Spread" equal to all Cash Available for Distribution in excess of an equivalent return of 12% per annum on the unreturned Capital Contributions of Members, payable monthly but calculated on a quarterly basis such that any underpayments or overpayments during any calendar quarter shall be paid by and to the appropriate party within 15 days after the end of an applicable calendar quarter.

~~6.9.2~~ The Manager, in its capacity as a licensed mortgage banker in the State of Arizona, will receive "points" from Borrowers out of the proceeds of a Loan

6.8.8 Compensation Payable to, and Reimbursement of Expenses of, Manager. The Company may pay to the Managers an amount determined by the Managers from time-to-time, but not to exceed \$1,000.00 per Manager per month, for their services as Managers.

6.9.3 In addition, the Manager6.10 Compensation Payable to, and Reimbursement of Expenses of, Manager. The Company may pay to the Managers an amount determined by the Managers from time-to-time, but not to exceed \$1,000.00 per Manager per month, for their services as Managers. The Managers shall be entitled to payment of, or reimbursement for, all bona fide business expenses incurred in connection with operating Company Property and conducting Company business, upon presentation of satisfactory documentation as to time, place, amount, nature and purpose of the expense. All of the expenses of the Company shall be paid from Company funds or, if the Manager advances itsManagers advance their own funds to pay any such expenses of the Company, and

C:\Documents and Settings\malecia\Local Settings\Temp\Internet Files\OLK15\Landnarc \$100M Pool Operating Agreement.DOC3 the requirements for reimbursement are satisfied, the Company shall reimburse the Manager for all such advances plus interest at the Stated Rate of Interest from the date the expense is submitted to the Company for reimbursement until it is paid. All expenses incurred by the Manager in connection with operating Company Property or conducting Company business that are not reimbursed by the Company for any reason shall be the sole responsibility of the Manager.Managers for all such advances.

6.9.4 The Manager or its Affiliates may receive other fees for services provided to the Company performed in lieu of outside, third-party contractors (including servicing fees), so long as such services are competently performed and at costs that are not greater than the Company would otherwise pay for such services from unrelated parties.

6.9.5 Lending6.11 Lending and Operational Policies. The ManagerManagers shall manage all Loans acquired by the Company, in its solethe Managers' discretion and determination, but subject to the limitations (i) described in the section of the Company's Private Offering Memorandum entitled "Business Plan and Investment and Operating Policies" - "Specific Loan Criteria Required to be Met for All Loans" (collectively the "Loan Criteria"); and (ii) Section 6.7.

## SECTION 7SECTION 7 MEETINGS; VOTING

7.1 ~~7.1~~ RightRight to Vote. Members shall have the right to vote only upon the following matters affecting the basic structure of the Company:

~~"cause";~~

~~7.1.1 Election of a replacement Manager or removal of the Manager for~~

~~7.1.2 Termination and dissolution of the Company;~~

~~7.1.3 Amendment of this Agreement;~~

~~7.1.4 Approval of a plan of merger or consolidation;~~

~~7.1.5 The extension of the term of the Company; and 7.1.6 Those matters listed in Section 6.6 and other matters set forth elsewhere in this Agreement which provide for the vote of the Members.~~

7.2 ~~7.2~~ Required Vote. Except as specifically provided in the Section authorizing such vote or elsewhere in this Agreement, matters upon which the Members may vote shall require the

consent or vote of a Majority-In-Interest of the Members in order to pass and become effective. ~~Neither Manager nor any of its Affiliates holding an Interest may vote on the matter set forth in Section 7.1.1.~~

~~7.3~~ ~~7.3~~ ~~Meetings~~ Meetings of the Members. Meetings of the Members, or a vote of the Members without a meeting, may be called by the ~~Manager~~ Managers and shall be called upon the written request of anyone or more of the Members holding ten percent (10%) or more of the Participation Percentages in the Company. The call shall state the nature of the business to be transacted or, if no meeting is to be held, the matter to be voted on and the day that the votes shall be counted. Notice of any such meeting shall be given to all

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~~Members not less than ten (10) business days or more than thirty (30) days prior to the date of the meeting. Whenever the vote or consent of Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of Members or may be given in accordance with the procedure prescribed in Section 7.5.~~

~~7.4~~ ~~7.4~~ Record Date. For the purpose of determining the Members entitled to vote on a matter, or to vote at any meeting of the Members or any adjournment thereof, the ~~Manager~~Managers may fix, in advance, a date as the record date for any such determination. The date shall not be more than thirty (30) days nor less than ten (10) business days before any such meeting.

~~7.5~~ ~~7.5~~ Method of Voting. Each Member may cast the number of votes equal to the Member's ~~Participation Percentages~~Percentage. A Member may vote in person at a meeting, by written proxy or by a signed writing directing the manner in which the Member desires its vote to be cast, which writing must be received by the ~~Manager~~Managers at the Company's ~~office~~ 's known place of business prior to the date on which votes are to be counted. The proxy of a Member may authorize any Person or Persons to act for him on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

~~7.6~~ ~~7.6~~ Conduct of Meetings. Each meeting of Members shall be conducted by the ~~Manager~~Managers or such ~~Person~~Persons as the ~~Manager~~Managers may appoint pursuant to such rules for the conduct of the meeting as the ~~Manager~~Managers deem appropriate.

SECTION 8  
BOOKS AND RECORDS

~~8.1~~ ~~8.1~~ Books and Records. The Company shall keep adequate books and records at its ~~principal~~principal place of business, setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Member or its designated representative shall have the right, at any reasonable time, to have access to and inspect and copy, at such Member's expense, the contents of the books and records. The Company shall pay for all costs of tax and accounting services for the Company. To the ~~extent~~extent that a Manager pays such costs, then the Company shall reimburse the Manager pursuant to subsection ~~6.9.4.6.9~~6.9, above.

~~8.2~~ ~~8.2~~ Tax Information. The ~~Manager~~Managers shall deliver necessary tax information to each Member after the end of each fiscal year of the Company. Every effort shall be made to furnish the information within seventy-five (75) days after the end of each fiscal year. In addition, Landmarc Capital & Investment Co., an Arizona Corporation, is specifically authorized to represent the Member and act as the "the Managers shall select from among them a "Tax Matters Partner", as that term is used under the Code and in any ~~Similar capacity~~similar capacity under state or local law, to represent the Members.

SECTION 9

## TRANSFER OF INTERESTS

8.3 ~~9.1~~ Transfer of an Interest. Except as otherwise expressly provided in this Agreement, no Member may voluntarily withdraw from the Company and no Interest in the Company may be transferred without the consent of the Manager.

8.4 ~~9.2~~ Permitted Transfers. Subject to the conditions and restrictions set forth in Section 9.3 hereof, a Member may at any time Transfer all or any portion of his interest in the Company to (i) any other Member, (ii) any member of the transferor's Family, (iii) any Affiliate of the transferor, or (iv) the transferor's executor, administrator, trustee, or personal representative to whom the interest is transferred at death or involuntarily by operation of law (any such Transfer being referred to in this Agreement as a "Permitted Transfer"). For purposes hereof, a Member's Family shall include only the Member's spouse, natural or adoptive lineal ancestors or descendants, and trusts for his or their exclusive benefit.

8.5 ~~9.3~~ Conditions to Permitted Transfers. A Transfer shall not be treated as a Permitted Transfer under Section 9.2 hereof (a) if such Transfer will result in a step-up or step-down in basis under Section 743 or Section 754 of the Code and (b) unless and until the following conditions are satisfied:

Deleted: \*\*\*

8.5.1 ~~9.3.1~~ Except in the case of a Transfer of an Interest at death or involuntarily by operation of law, the transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyances as may be necessary or appropriate in the opinion of counsel to the Company to effect the Transfer and to confirm the agreement of the transferee to be bound by the ~~provisions~~ provisions of this Agreement, including without limitation Section 9. In any case not described in the preceding sentence, the Transfer shall be confirmed by presentation to the Company of legal evidence of the Transfer, in form and substance satisfactory to the Managers and to counsel to the Company. In all cases, the transferor and/or transferee shall reimburse the Company for all costs and expenses that it reasonably incurs in connection with the Transfer.

8.5.2 ~~9.3.2~~ Except in the case of a Transfer at death or involuntarily by operation of law, the transferor shall furnish the Company an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Company, that (a) the Transfer will not cause the Company to terminate for federal income tax purposes, (b) the Transfer is exempt from all applicable securities registration requirements, and (c) that the Transfer will not violate any applicable laws regulating the Transfer of securities.

8.5.3 ~~9.3.3~~ The transferor and transferee shall furnish the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the interest transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns.

8.5.4 The Company will not permit "step up basis" or "step down basis" elections under Section 743 or Section 754 of the Internal Revenue Code.

8.6 ~~9.4~~ Prohibited Transfers.

8.6.1 ~~9.4.1~~ Any purported Transfer of an Interest that is not a Permitted Transfer shall be null and void and of no effect whatever; provided, however, that if the Company is required by law to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the Interest transferred shall be strictly limited to the transferor's rights to

~~C:\Documents and Settings\malecia\Local Settings\Temp\6Y-Internet-Files\OLK15\Landmark-\$100M-Pool-Operating-Agreemen\DOC3 allocations and distributions as provided by this Agreement with respect to the transferred Interest, which~~

allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of the interest may have to the Company.

~~8.6.2~~ ~~9.4.2~~ In the case of a Transfer or attempted Transfer of an Interest that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers fees and expenses) as a result of the Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

~~8.7~~ ~~9.5~~ ~~Rights Of~~ Rights of Unadmitted Assignees. A Person who acquires an Interest, but who is not admitted as a Substituted Member pursuant to Section 9.6 hereof, shall be entitled only to allocations and distributions with respect to the Interest in accordance with this Agreement, but shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

~~8.8~~ ~~9.6~~ Admission of Transferees as Members. Subject to the other ~~provisions~~ provisions of this Section 9, a transferee of an Interest may be admitted to the Company as a Substituted Member only if each of the following conditions is satisfied:

~~8.8.1~~ ~~9.6.1~~ The Manager consents Managers consent to the admission;

~~8.8.2~~ ~~9.6.2~~ The transferee becomes a party to this Agreement and executes such documents and instruments as the Company may reasonably request to confirm the transferee as a Member and the transferee's agreement to be bound by the terms and conditions hereof;

~~8.8.3~~ ~~9.6.3~~ The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the transferred interest; and

~~8.8.4~~ ~~9.6.4~~ The transferee executes a statement that he is acquiring the Interest in the Company interest for investment and not for resale.

~~8.9~~ ~~9.7~~ Distributions and Allocations in Respect to Transferred Interests. If any Interest is Transferred during any accounting period in compliance with the provisions of this Section 9, all Profits, Losses, each item thereof, and all other items attributable to the Transferred Interest for the period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any convention permitted by law and selected by the ~~Manager~~ Managers. All distributions on or before the date of the Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee.

SECTION 10

SECTION 9  
DISSOLUTION AND LIQUIDATION OF THE COMPANY

9.1 ~~10.1~~ Liquidating ~~Liquidating~~ Events. The Company shall commence dissolution, winding up and liquidating upon the first to occur of any of the following ("Liquidating Event" or "Liquidating Events"):

9.1.1 ~~10.1.1~~ January 20, 2017 ~~19, 2021~~;

9.1.2 ~~10.1.2~~ The payoff of all Loans and the sale of all real estate owned (REO) by the Company;

9.1.3 ~~10.1.3~~ The vote of Members holding no less than seventy-five percent (75%) of the outstanding Percentage Interests of all a Majority-in-Interest of the Members to dissolve, wind up, and liquidate the Company and the concurrent consent of the Manager;

9.1.4 ~~10.1.4~~ The happening of any other event that makes it unlawful or impossible to carry on the business of the Company;

9.1.5 ~~10.1.5~~ The Manager ~~Managers~~, in ~~its~~ their sole and unreviewable discretion, ~~determines~~ determine that dissolution and termination will be in the best ~~interest~~ interests of the Company;

9.1.6 ~~10.1.6~~ The withdrawal, resignation, expulsion, bankruptcy, dissolution or legal determination of incompetency of the Manager ~~last of the Managers~~, provided that any such event shall not constitute a Liquidating Event if a Majority-In-Interest of the Members elect to continue the Company in accordance with the provisions set forth below in this Section ~~10.1, below~~ 10.1; or

9.1.7 ~~10.1.7~~ The entry of a judgment of dissolution under §29-785 of the Act.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a liquidating ~~Liquidating~~ Event. Furthermore, if an event specified in ~~Section 10.1.6 hereof~~ Sections occurs, the remaining Members may, within sixty (60) days of the date the event Liquidating Event occurs, elect to continue the Company's business by the affirmative vote of the ~~Manager and Members holding a Majority -in -Interest of the Members~~, in which case the Company shall not dissolve and shall continue to operate.

9.2 ~~10.2~~ Notice of Dissolution. As soon as possible following the occurrence of a liquidating ~~Liquidating~~ Event, a written notice of dissolution signed on behalf of the Company shall be filed with the Arizona Corporation Commission giving notice of the dissolution of the Company and the commencement of the winding up of its business affairs.

9.3 ~~10.3~~ Winding Up ~~Winding Up~~. Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of ~~its~~ its creditors and Members. No Manager ~~or~~ Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The ~~Manager~~ Managers shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and Company Property and the Company Property shall be liquidated as ~~promptly~~ promptly as is consistent



with obtaining the fair value thereof, and the proceeds from the liquidation, to the extent sufficient, shall be applied and distributed in the following order:

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~~10.3.1~~ First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members;

~~10.3.2~~ 9.3.1 Second, to the payment and discharge of all of the Company's debts and liabilities to Members; then

~~10.3.3~~ 9.3.2 The balance, if any, to the Members in accordance with their Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods.

~~10.4~~ 9.4 ~~Distributions Held in Trust: Reserves.~~ In the discretion of the ~~Manager~~Managers, a ~~pro rata~~Pro Rata share of the distributions that would otherwise be made to the Members pursuant to Section 10.3 may be:

~~10.4.1~~ 9.4.1 Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the ~~Manager~~Managers, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; or

~~10.4.2~~ 9.4.2 Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

~~10.5~~ 9.5 ~~Deemed Distribution and Recontribution.~~ Notwithstanding any other provision of this Section 10, if the Company is liquidated within the meaning of Regulations Section 1.704-1 (b)(2)(ii)(i) but no Liquidating Event has occurred, the Company Property shall not be liquidated, the Company's liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, the Company shall be deemed to have distributed the Company Property in kind to the Members, who shall be deemed to have assumed and taken subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the Company Property in kind to the Company, which shall be deemed to have assumed and taken subject to all such liabilities.

~~10.6~~ 9.6 ~~Articles of Termination.~~ At such time as all of the debts, liabilities and obligations of the Company have been paid, discharged or otherwise provided for, the ~~Manager~~Managers shall file written Articles of Termination signed on behalf of the Company with the Arizona Corporation Commission in accordance with §29-783 of the Act.

#### ~~SECTION 10~~ SECTION 11 REMEDIES

~~11.1~~ 10.1 ~~Default.~~ If a Member (the "Defaulting Member") fails to timely perform any duty or obligation required under the terms of this Agreement, the ~~Manager~~Managers shall have the right to pursue such legal remedies as are available under the Act and the laws of the State of Arizona in the manner and to the extent deemed to be in the best ~~interest~~

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interests of the Company under the prevailing facts and circumstances, including, but not limited to, the institution of legal proceedings to specifically enforce the obligation of the Defaulting Member in accordance with this Agreement; provided, however, that before pursuing such remedies the Defaulting Member shall be given written notice of the default and a period of ten (10) days after the notice is given in which to cure the default. A Defaulting Member shall have no further power to act for or bind the Company, and the Defaulting Member shall be liable in damages to the Company, without requirement of a prior accounting, for all costs and liabilities that the Company or any Member may incur as a result of the breach. In addition:

10.1.1 ~~11.1.1~~—The Company shall treat the Defaulting Member as if he were an unadmitted assignee of the Interest of the Defaulting Member and shall make distributions to the Defaulting Member only of those amounts otherwise payable with respect to the Interest under this Agreement;

10.1.2 ~~11.1.2~~—The Company may apply any distributions otherwise payable with respect to the Interest to satisfy any claims it may have against the Defaulting Member; and

10.1.3 ~~11.1.3~~—The Defaulting Member shall continue to be liable to the Company for any unpaid Capital Contributions required hereunder with respect to the Interest.

10.2 ~~11.2~~—Suspension of Rights. Subsequent to the default by the Defaulting Member and until such time as the default has been cured, the Defaulting Member shall have no right to vote or otherwise participate in the management of Company affairs.

#### SECTION 11 ~~SECTION 12~~ MISCELLANEOUS

11.1 ~~12.1~~—Notices. Any notice, payment demand or other communication (collectively a "Notice") required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally or by courier service, or sent by registered or certified mail, postage and charges prepaid, return receipt requested. If sent to a Member, the Notice shall be sent to the Person or to an officer of the Person to whom the same is directed, to the address opposite the name of the Person on the execution page or to such other address as the Person may from time to time specify by notice to the Company and the Members. If a Notice is sent to a Manager or to the Company, it shall be sent to the Company's principal known place of business. A Notice shall be deemed given and received for all purposes as of (i) the date delivered if delivered personally or by courier, or (ii) three (3) days after mailing if sent by registered or certified mail.

11.2 ~~12.2~~—Severability ~~Severability~~. Every provision ~~provision~~ of this Agreement is intended to be severable. If any portion of this Agreement is determined to be illegal or invalid for any reason, the determination shall not affect the validity or legality of the remainder of this Agreement.

11.3 ~~12.3~~—Governing ~~Governing~~ Law. Successors. This Agreement will be governed by and construed according to the laws of the State of Arizona, and will bind and inure to the benefit of the heirs, personal representatives, successors and assigns of the Members.

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12.4 ~~Amendment~~.

~~11.4~~ ~~12.4.1~~ Amendment. A proposed amendment to this Agreement shall be adopted and effective as an amendment if it receives the affirmative vote of a Majority-In-Interest of the Members ~~eligible~~ eligible to vote and the agreement of the Manager.

~~12.4.2~~ Notwithstanding the preceding, a proposed amendment to a provision of this Agreement involving a right or power which may be exercised only upon the vote of Members holding more than the number of votes set forth in Section ~~12.4.1~~ shall be adopted and effective as an amendment only if it receives the affirmative vote of not less than the same percentage as that set forth in the provision sought to be amended. In addition, no provision of this Agreement shall be amended without the consent of each Member adversely affected if the amendment would alter the interest of a Member in Profits, Losses, other such items, or any Company distributions.

~~11.5~~ ~~12.5~~ Waiver of Lis Pendens and Partition. The Members recognize that no Member has any direct right in the Company Property but only an interest in the Company that is deemed to be personal property. ~~Nevertheless~~ Nevertheless, because the Company may suffer irreparable financial injury if a lis pendens or an action for partition were filed with respect to the Company Property in connection with a Company dispute, each Member agrees to waive any such right to file a lis pendens against the Company Property or an action for partition thereof.

~~11.6~~ ~~12.6~~ Execution in Counterpart. This Agreement may be executed in one or more counterparts, each of which ~~shall~~ shall be deemed an original, but all of which together shall constitute one and the same instrument. The Members may authorize the Managers, or any Manager or other individual, to execute this Agreement, or an amendment of this Agreement, on their behalf.

~~11.7~~ ~~12.7~~ Incorporation by Reference. Every exhibit, ~~schedules~~ schedule and other appendix attached to this Agreement referred to herein is deemed incorporated in this Agreement by reference.

~~11.8~~ ~~12.8~~ Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act, date of notice, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday in the State of Arizona, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or such ~~legal~~ legal holiday.

~~11.9~~ ~~12.9~~ Construction. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, ~~singular~~ singular or plural as the identity of the person or Persons may require. All section titles or captions contained in this Agreement are for convenience only and are not deemed part of the context hereof.

~~11.10~~ ~~12.10~~ Entire Agreement. This Agreement contains the entire understanding between or among the Members, and supersedes any prior understandings and agreements between them representing the subject matter contained herein.

IN WITNESS WHEREOF, the Members, ~~by separate counterpart signature page and Manager, below and the Managers,~~ or are deemed to have executed, this Agreement as of the date first set forth above.

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MANAGER

**Landmarc Capital & Investment Co., an**

IP

S. David Grntz

Its: President  
ADDRESS

4110 North Scottsdale Road, Suite 330 Scottsdale, Arizona 85250

MANAGERS:

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

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[Name]

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## SCHEDULE 1.1

### Definitions

"~~66~~GA Act" means the Arizona Limited Liability Company Act, as set forth in Arizona Revised Statutes §§29-601, *et seq.*, as amended from time to time (or any corresponding provisions of succeeding law).

"Affiliate" means, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ~~ten~~ more than fifty percent (~~40~~ 50%) or more of the outstanding voting securities of such Person, (~~iii~~) any officer, director, manager or general partner of such Person, or (iv) any Person who is an officer, director, manager, general partner, trustee or holder of ~~ten~~ more than fifty percent (~~40~~ 50%) or more of the voting securities of any Person described in clauses (i) ~~through~~ and (~~iii~~) of this sentence.

"Articles" means the Articles of Organization of the Company as adopted and amended from time to time by the Members and filed with the Arizona Corporation Commission.

"Capital Account" means the individual accounts established and maintained pursuant to Section 3.1 of this Agreement.

"Capital Contribution" means, with respect to any Member, the amount of money and the fair market value (as agreed by the contributing Member and the Manager) of any property contributed to the Company with respect to the Interest in the Company held by the Member, including both Initial Capital Contributions and Additional Capital Contributions.

"Cash Available for Distribution" means, for any fiscal year or part thereof, the excess, if any, of (a) all income from operations and other funds received by the Company over (b) the sum of (i) all cash expenditures of the Company (including capital expenditures and payments with respect to indebtedness and other short and long term obligations (which shall include without limitation any fees payable to the Manager as set forth in this Agreement or the Company's Private Offering Memorandum)), plus (~~iii~~) the establishment of reasonable, prudent reserves.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

"Company" means the limited liability company formed pursuant to this Agreement and the limited liability company continuing the business of this Company in the event of dissolution as herein provided.

~~Company~~ "Company Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and ~~1.704-2(d)~~ 1.704-2(d) of the Regulations.

~~Depreciation~~ "Depreciation" means, for each fiscal year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for the fiscal year, except that if the fair market value of an asset differs from its adjusted basis for ~~the~~ federal income tax purposes at the beginning of the fiscal year, Depreciation shall be an

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amount which bears the same ratio to the beginning fair market value as the federal income tax depreciation, amortization, or other cost ~~recovery~~ recovery deduction for the fiscal year bears to the beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of the fiscal year is zero, Depreciation shall be determined with reference to the beginning fair market value using any reasonable method selected by the ~~Manager~~ Managers.

"Interest" means the entire ownership interest of a Member in the Company at any particular time, including the right of the Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of the Member to comply with all of the terms and provisions of this Agreement.

~~"Majority In Interest"~~ "Majority-in-Interest" means Member's holding more than fifty percent (50%) of the aggregate Participation Percentages in the Company. If a greater percentage of the Members is required pursuant to this Agreement, the percentage of Members shall be based upon their Participation Percentages in the Company.

"Member" means any Person (i) who executes this Agreement as a Member or who has been admitted as an additional or Substituted Member pursuant to the terms of this Agreement, and (ii) who is the owner of an Interest in the Company. ~~"Members" means all such Persons. All references in this Agreement to a majority in interest or a specified percentage of the Members means Members holding more than 50% or the specified percentage, respectively, of the unreturned Capital Contributions of all Members as of such date shall be understood to mean all such Persons.~~

"Member Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

~~"Member Nonrecourse Debt Minimum Gain"~~ "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

~~"Member Nonrecourse Deductions"~~ "Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

~~"Nonrecourse Deductions"~~ "Nonrecourse Deductions" has the meaning set forth in, and shall be determined in accordance with Regulations Section 1.704-2(b)(1) and shall be computed in accordance with Regulations Section 1.704-2(c).

~~"Nonrecourse Liability"~~ "Nonrecourse Liability" has the meaning set forth in Regulations Section 1.704-2(b)(3).

"Participation Percentage" is the proportion that a Member's Member Capital Account bears to the aggregate of all Member Capital Accounts at any given time.

"Person" means any individual, partnership, corporation, trust, limited liability company or other entity.

"Profits" and "Losses" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for the fiscal year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be

C:\Documents and Settings\alocal\Local Settings\Temp\2\TY-Internet Files\OLK45\Landmark \$100M Pool Operating Agreement.DOC3 included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in Computing Profits or Losses pursuant to this Section shall be added to the taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(8) or treated as Code Section 705(a)(2)(8) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(f), and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be subtracted from the taxable income or loss;

(c) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the fair market value of the property disposed of, notwithstanding that the adjusted tax basis of the property differs from its fair market value;

(d) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing the taxable income or loss, there shall be taken into account Depreciation for the Fiscal Year, calculated in the manner described in the definition of Depreciation stated above;

(e) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Interest, the amount of the adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(f) Notwithstanding any other provision of this Section, any items that are specially allocated pursuant to Section 5.2 or Section 5.3 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 5.2 and 5.3 hereof shall be determined by applying rules analogous to those set forth above.

"Pro Rata" means to the Members in accordance with their respective Participation Percentages. The above definition of Pro Rata is qualified in one instance. Even when admitted as a Member, an investor will not begin to receive a Pro Rata portion of the Company's Distributions, Profits and Losses until that Member's funds are actually used by the Company in making a Loan, but in no event more than 30 days after becoming a Member (the "Holding Period"). An investor's funds will be used by the Company to make a Loan on a "first come, first served" basis relative to any other new Members. During the Holding Period, each applicable investor will have its funds invested in short term, highly liquid, interest bearing investments and will receive the earnings thereon

"Property" or "Company Property" means all property or property rights, both tangible and intangible, owned by the Company, including without limitation, the right to use, lease, license, or otherwise exploit the Company's intellectual property, including patents, trademarks, trade secrets, and other confidential information.



Member

SCHEDULE 3.1.3 ~~Percentage~~3.1.2  
Members, Addresses and Percentage Interests

Percentage Interest

<u>Name and Address of Member</u>	<u>Percentage Interest</u>
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