

1 **Guttilla Murphy Anderson, P.C.**
Ariz. Firm No. 00133300
2 **Patrick M. Murphy** (Ariz. No. 002964)
City North
5415 E. High St., Suite 200
3 Phoenix, Arizona 85054
Email: pmurphy@gamlaw.com
4 Phone: (480) 304-8300
Fax: (480) 304-8301

5 Attorneys for the Receiver

6
7 THE SUPERIOR COURT OF ARIZONA FOR MARICOPA COUNTY

8 STATE OF ARIZONA ex rel. LAUREN)
KINGRY, Superintendent of the Arizona)
Department of Financial Institutions,)

9 Plaintiff,)

10 v.)

11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

12 Defendant.)

Cause No. CV2009-020595

PETITION NO. 71

PETITION FOR ORDER APPROVING
THE SALE OF REAL PROPERTY
LOCATED AT 10149 E. CAVEDALE
DRIVE, SCOTTSDALE, ARIZONA
85262

(Assigned to the Honorable Lisa Flores)

13)
14)
15)
16 _____
17 Lauren W. Kingry, as the court appointed Receiver, respectfully petitions the Court as
18 follows:

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

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

7 2. In accordance with the Receivership Order, the Receiver has identified and
8 taken possession of certain real property located at 10149 E. Cavedale Drive, Scottsdale,
9 Arizona 85262 (“Property”). This Property is legally described in Exhibit “1” attached hereto
10 and was acquired by Trustee’s Deed Upon Sale on February 1, 2011, which vested fee title in
11 Landmarc Capital & Investment Company (25.234%), Landmarc Capital Partners, LLC
12 (28.037%), First Trust Company of Onaga, Custodian FBO Rhonda K. Solheim, IRA
13 (46.729%). The beneficial ownership as determined by the Court is held as follows:
14 KepesWare (18.69%); GubinWare (6.5%); Landmarc Capital Partners, LLC (“Partners”)
15 (28.04%); and SolheimR (46.73%) (collectively the “Beneficial Owners”). One of the
16 Beneficial Owners (Solheim) asserts a right to priority distribution of the net sale proceeds,
17 accordingly, the net sale proceeds will be held in trust until the claims of these Beneficial
18 Owners are resolved by the Court.

19 3. The Property is vacant land and is not occupied and is not encumbered by any
20 indebtedness, other than obligations for real estate taxes and assessments.

1 4. The continued holding of the Property is not necessary or appropriate to protect
2 the interests of any persons interested in this receivership. Accordingly, the Receiver
3 commenced efforts to market and sell the property.

4 5. The sale contemplated under Exhibit “2” is conditioned upon, and will not take
5 place in the absence of, an order of this Court approving such sale after notice and a hearing.

6 6. The Receiver has obtained the following information concerning the fair market
7 value of the Property:

8 a. On March 20, 2013 a Comparable Market Analysis provided by City to
9 City Commercial shows that Lot 251 which abuts Lot 267 has (as of March 20, 2013)
10 been listed for 35 days at \$645,000 . City to City Commercial is a licensed real estate
11 brokerage and has been issued license number LC507884000 by the Arizona
12 Department of Real Estate.

13 b. On June 14, 2012, Michael Turner of Appraisal Technology, Inc.,
14 submitted an appraisal of the Property which indicated a fair market value for the
15 Property of \$429,000. Mr. Turner has been issued Appraiser No. 30420 by the State
16 of Arizona as a Certified General Real Estate Appraiser. The appraiser has no known
17 interest in any of the parties or in the sale of the Property.

18 c. On May 16, 2012, a Broker’s Opinion of Value was performed on the
19 Property by City to City Commercial. It was determined that the current market value
20 of the Property was between \$440,000 and \$450,000.

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1 7. The Receiver was approached by Daniel Wolski of Russ Lyon/Sotheby's
2 International Realty, The O'Keefe Group, with a prospective buyer. The Receiver entered
3 into an agreement with Daniel Wolski of Russ Lyon/Sotheby's International Realty, The
4 O'Keefe Group to market the Property, under which the Receiver agreed, subject to approval
5 of this Court, to pay to Russ Lyon/Sotheby's International Realty, The O'Keefe Group an 8%
6 sales commission if the sale to the prospective buyer closed.

7 8. On January 26, 2013, the Receiver received an offer from Mark Johnsrud to
8 purchase the Property for \$525,000 under terms that were not acceptable to the Receiver.
9 The Receiver thereafter submitted to Buyer a counter offer which has been accepted. These
10 documents constitute the Purchase Agreement and are attached hereto as Exhibit "2". The
11 Purchase Agreement provides for the sale of the Property for \$655,000 in cash and is
12 conditioned upon approval by this Court and all of the Beneficial Owners.

13 9. In accordance with this Court's Order Re: Petition Number 2, the Receiver:

14 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
15 Hearing, to all persons indicated in the Proof of Mailing filed herewith, which includes
16 each of the Beneficial Owners and the homeowners association which asserts a
17 secured claim against the Property;

18 b. Intends to publish notice of this sale in a newspaper of general
19 circulation within the county in which this action is pending and the Property is
20 located.

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