

COPY

1 Guttilla Murphy Anderson  
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  
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6  
7 IN AND 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. )  
13 )  
14 )

Cause No. CV2009-020595

ORDER APPROVING RECEIVER'S  
RECOMMENDATIONS REGARDING  
WAREHOUSE CREDIT FACILITY  
CLAIMS

RE: PETITION NO. 43

15 The Receiver having filed *Petition No. 43, Receiver's Claims Report on the*  
16 *Warehouse Credit Facility Claims*, and served it on the persons appearing on the Master  
17 Service List and other interested persons, and the Receiver having filed the *Receiver's Report*  
18 *on Objections to the Receiver's Claims Report on the Warehouse Credit Facility Claims, Re:*  
19 *Petition No. 43*, and the Court having considered same, and it appearing to the Court that the  
20 matters requested by *Petition No. 43* are reasonable, just and appropriate:  
21

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

1 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

2 1. Approving the Receiver's recommendations set forth in the Receiver's *Petition*  
3 *No. 43, Receiver's Claims Report on the Warehouse Credit Facility Claims* as modified by  
4 the stipulation attached as Exhibit "B" to the *Receiver's Report on Objections to the*  
5 *Receiver's Claims Report on the Warehouse Credit Facility Claims, Re: Petition No. 43* and  
6 by the *Receiver's Correction to Recommendation on WCF Claim of the Wesley and Marlene*  
7 *White Trust* ("Final WCF Claims Report");

8 2. Approving the following amounts due to the WCF Claimant under its  
9 respective WCF Agreements:

10 a. The sum of \$403,433 for the Lydia Ball Revocable Trust (Claim No.  
11 8546);

12 b. The sum of \$5,124,035 for the Gubin Family Trust dated May 27, 1992,  
13 as amended and the Helen and Stephen Gubin Charitable Remainder Trust (Claim No.  
14 7338);

15 c. The sum of \$1,950,282 for the Madelene Kepes Revocable Living Trust  
16 (Claim No. 7431);

17 d. The sum of \$767,912 for the Receiver as assignee of Lazy E, LLC  
18 (Claim No. 7471);

19 e. The sum of \$4,166,086 for Litchfield Funding, LLC (Claim No. 8003);

20 f. The sum of \$250,524 for Bruce Murray (Claim No. 8089);

21

1           g.     The sum of \$1,548,483 for The Eugene and Lenora Schupak Family  
2 Trust (Claim No. 8210);

3           h.     The sum of \$623,825 for the Receiver as assignee of Stoneman  
4 Properties LLC Defined Benefit Plan (Claim No. 8297);

5           i.     The sum of \$10,084,060 for TBM Associates, LLC (Claim No. 8325);  
6 and

7           j.     The sum of \$1,172,261 for the Wesley A. & Marlene White Trust  
8 (Claim No. 8381).

9           3.     Where the Receiver has recommended in the Final WCF Claims Report that an  
10 interest in a promissory note and deed of trust be transferred at this time to a new servicing  
11 agent:

12           a.     Where Landmarc has no interest in the note and deed of trust (other than  
13 for unpaid loan charges or trust shortage), the Receiver shall disburse the WCF  
14 Claimant's share of any accumulated payments under the loan held in Landmarc's  
15 trust account and upon receipt of the agreement described in paragraph 6 below,  
16 deliver the Loan Documents to (a) a sole Beneficial Owner for servicing by that  
17 owner, (b) to an entity unanimously designated by all Beneficial Owners to which  
18 beneficial ownership and servicing is transferred, or (c) to a new servicing agent  
19 unanimously designated by all Beneficial Owners, which servicing agent shall be a  
20 person licensed as an escrow agent under A.R.S. §6-801 *et seq* or an attorney licensed  
21

1 to practice law in Arizona and exempt from licensing as an escrow agent under A.R.S.  
2 §6-811(1).

3 b. Where Landmarc has an interest in the note and deed of trust, including  
4 but not limited to an interest to a portion of the interest payments or a fractional  
5 participation interest in the loan, the Receiver shall, upon receipt of the agreement  
6 described in paragraph 6 below, obtain new escrow instructions executed by all  
7 Beneficial Owners and deliver those instructions and all Loan Documents to a new  
8 servicing agent unanimously designated by all Beneficial Owners, which servicing  
9 agent shall be a person licensed as an escrow agent under A.R.S. §6-801 *et seq* or an  
10 attorney licensed to practice law in Arizona and exempt from licensing as an escrow  
11 agent under A.R.S. §6-811(1).

12 4. Where the Receiver has recommended in the Final WCF Claims Report that an  
13 interest in real property resulting from the foreclosure of the lien be transferred at this time,  
14 upon receipt of the transfer agreement described in paragraph 6 below, the Receiver shall  
15 deliver the Transfer Documents to the Transferee designated by all of the Beneficial Owners  
16 and disburse any accumulated payments arising from the Property or the underlying loan held  
17 in Landmarc's trust account to the Transferee or Beneficial Owners as they may agree.

18 5. Where the Receiver has recommended in the Final WCF Claims Report that  
19 any other interest be distributed at this time, such as loan payoff proceeds or the proceeds  
20 from the sale of real property, upon receipt of the transfer agreement described in paragraph 6  
21 below, the Receiver shall disburse the WCF Claimant's approved interest.

1           6.       Before effectuating the transfer of an interest as provided in paragraphs 3  
2 through 5 above, the Transferee and all Beneficial Owners shall execute a joint agreement in  
3 a form acceptable to the Receiver that contains the information deemed necessary by the  
4 Receiver including (a) an identification of the Transferee, (b) if a loan is being transferred,  
5 the servicing instructions to the new servicing agent, (c) the repayment to the Receiver of any  
6 trust shortage and all unpaid loan charges incurred by Landmarc in connection with the  
7 Property or underlying loan consistent with the Final WCF Claims Report, (d) a release of the  
8 Receiver and his agents from any liability to the Transferee and Beneficial Owners arising  
9 from the loan or other interest being transferred, (e) an acknowledgement that any claim  
10 against Landmarc by the Transferee or Beneficial Owners shall be filed as provided by the  
11 orders of this court, and (f) an indemnification and hold harmless of the Receiver and his  
12 agents and the estate of Landmarc from any liability arising from the transfer of the loan or  
13 other interest being transferred.

14           7.       Claimed interests in real property that resulted from the foreclosure of the deed  
15 of trust prior to the Receivership Date where the interest was not conveyed to the WCF  
16 Claimant under the trustee's deed, shall be determined by the Court pursuant to a subsequent  
17 petition.

18           8.       Once all of the interests claimed by the WCF Claimants have been finally  
19 adjudicated by the Court and distributed, the Receiver shall adjust the claim amount set forth  
20 in paragraph 2 above, to determine the final amount of the general unsecured claim of each  
21 WCF Claimant as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

a. The claim amount shall be reduced by the valuation of the interest set forth in the Receiver's recommendations, however, if the security interest has been liquidated at the time of distribution to the claimant, as the result of a sale or other disposition, then without further order of the Court the valuation of the security will be adjusted upward or downward to equal the amount of funds actually received by the WCF Lender from the liquidation of the security and the valuations of the approved interests adjusted likewise.

b. The claim amount shall be increased by the amount actually paid by the WCF Claimant at the time the interest is transferred for loan charges or to restore a negative trust balance.

c. The claim amount shall be decreased by the amount received by the Claimant from the Receiver as the Claimant's share of trust funds or loan payoff or sale proceeds.

DATED this 11 day of July, 2011.

HON. MARIA D. VERDIN  
\_\_\_\_\_  
Judge of the Superior Court

1157-027 (106901)