

Guttilla Murphy Anderson, P.C.  
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4 Attorneys for the Receiver

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6 IN AND FOR THE COUNTY OF MARICOPA

7 STATE OF ARIZONA ex rel. ROBERT )  
8 D. CHARLTON, Superintendent of the )  
Arizona Department of Financial )  
9 Institutions, )  
Plaintiff, )  
10 v. )  
11 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )  
12 Defendant. )

Cause No. CV2009-020595

PETITION NO. 104

PETITION FOR APPROVAL OF LOAN  
MODIFICATION AGREEMENT WITH  
THE YOUTH PAD, INC.

(Assigned to the Honorable Daniel Martin)

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

- 17 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
18 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial  
19 Institutions as Receiver of Landmarc Capital & Investment Company ("Landmarc"). On July  
20 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On  
21 February 27, 2010, the Court entered its *Order Placing Hayden Investments, LLC, Desert*

1 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership.* On May 12,  
2 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*  
3 (collectively "Receivership Order"). The Receivership Order appointed Thomas Giallanza as  
4 Deputy Receiver to carry on the day to day business of Landmarc.

5       2. In accordance with the Receivership Order, the Receiver located and took  
6 possession of certain real property, located at 9224 East Highway 92, Hereford, Arizona  
7 ("Property"). This Property is legally described in Exhibit "1" attached hereto and was  
8 acquired in October 2008 by Landmarc Capital & Investment Company ("Landmarc")  
9 through foreclosure of Loan No. LC050509.

10       3. The Receivership Court has previously confirmed the following participation  
11 interests in the Property (collectively referred to hereafter as the Participants"):

- 12           David L. Wolfswinkel Trust (33.3%)
- 13           Desert Trails Insurance Co., in receivership (33.3%)
- 14           Penny Wolfswinkel Jenkins Trust (19.5%)
- Edward J. Humphreys (2.8%)
- Harvey B. Friedman & Francine A. Friedman Family Trust (11.1%).

15       4. Following unsuccessful efforts to market and sell the Property, on August 2,  
16 2011, this Court entered *Order Re: Petition No. 46*, which approved a Settlement Agreement  
17 between the Receiver and Melvin Harter Ministries, Inc. ("MHMI") and Melvin E. Harter  
18 ("Harter"). Under the Settlement Agreement, MHMI was given the opportunity to acquire  
19 the Property by paying \$450,000 on or before October 31, 2011. MHMI did not exercise its  
20 right to acquire the Property.

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1           5.       Because the Property contains structures that necessitate the expenditure of time  
2 and funds to provide security and insurance, the Receiver determined early in the case that the  
3 continued holding of the Property was not in the interests of the receivership estate or the  
4 beneficial owners and therefore the Receiver began the process of marketing the Property for  
5 sale.

6           6.       On January 4, 2011, Jeffrey C. Patch of Tucson Real Estate Appraisal  
7 submitted to the Receiver a Restricted Use Appraisal Report on the Property ("Report").  
8 Jeffrey C. Patch has been issued Certificate Number 30263 by the State of Arizona as a  
9 Certified General Real Estate Appraiser. The Report indicated that the Property consists of  
10 62.31 acres with ten buildings totaling 90,334 square feet. The Report indicates that the  
11 market value of the land assuming no improvements is \$250,000 and that the improvements  
12 have a total depreciated replacement cost of \$1,000,000. The Report goes on to note that "the  
13 reliability of the Cost Approach is greatly reduced due to the excessive amount of physical  
14 curable, physical incurable, functional obsolescence, and external obsolescence." The Report  
15 indicates that the highest and best use of the Property would be for a religious or social  
16 service use employing the existing improvement. Combining the value of the land as if  
17 vacant, to the depreciated replacement cost of the improvements totals \$1,250,000 as the  
18 opinion of value in use. The Report also notes that \$1,250,000 sets the upper limit of value  
19 and that any serious offers in excess of \$250,000 should be seriously considered.<sup>1</sup>

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<sup>1</sup> Separately in the Report the appraiser states, without explanation or justification, that the "value in use" is \$2,250,000. This statement is directly contradicted by the narrative discussion in the Report.

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1           7.     The Receiver engaged the services of Henry K. Zipf and Henry Zipf Realty Co.,  
2 to market the Property, under which the Receiver agreed to pay a 6% sales commission,  
3 subject to the approval of this Court. Mr. Zipf held the listing for a little over three years,  
4 between March 2011 and June 2014.

5           8.     On December 20, 2011, this Court entered *Order Re: Petition No. 58*, which  
6 approved the sale of the Property to Snow Music Corp. for \$600,000. Snow Music Corp.,  
7 however, failed to close on the purchase of the Property.

8           9.     The Receiver renewed his efforts to market and sell the Property. On April 15,  
9 2014, this Court entered *Order Re: Petition No. 81*, which approved a *Lease with Option to*  
10 *Purchase Agreement* between the Receiver and The Youth Pad, Inc., an Oklahoma non-profit  
11 corporation ("Youth Pad"). The lease for the property was for twenty-four months (24)  
12 beginning February 1, 2014 and expiring on the 29<sup>th</sup> day of February, 2016 subject to Youth  
13 Pad's option to purchase the Property. This agreement provided for the payment of amounts  
14 designated as rent and a final purchase price of \$250,000.

15          10.    The advantage of the lease to Youth Pad was that as a tax exempt organization,  
16 it was anticipated that Youth Pad would be able to obtain an exemption for the Property from  
17 further real estate taxes as long as it was in possession of the Property and used it for exempt  
18 purposes. The real estate taxes on the Property were in excess of \$40,000 per year so the  
19 exemption from taxes would eliminate a substantial impairment to the value of the Property.

20          11.    However, when Youth Pad applied to the County for exempt status for the  
21 Property it learned that tax exempt status would not be granted unless Youth Pad held fee

1 title. Accordingly, the Receiver and Youth Pad entered into a new agreement that provided  
2 for the transfer of title to the Property to Youth Pad with the Receiver holding a deed of trust  
3 for the unpaid purchase price. On September 18, 2014, the Court entered its *Order Re:*  
4 *Petition No. 86* approving the sale of the Property to Youth Pad for \$375,000 plus certain  
5 specified repairs. Youth Pad received a credit of \$5,000 for the amounts previously paid  
6 under the lease agreement and gave the Receiver a promissory note for the balance of  
7 \$370,000 ("Note"), which was secured by a deed of trust on the Property.

8 12. Youth Pad made some payments under the Note whereby the principal balance  
9 was reduced to \$330,400. However, Youth Pad subsequently defaulted under the loan  
10 agreement and in addition to the unpaid principal, as of April 30, 2018 owed default interest  
11 in the amount of \$98,279.94 ("Default Interest"). Rather than proceed immediately to  
12 foreclosure the Receiver renewed efforts to find a ready and willing buyer for the Property  
13 but that effort was unsuccessful.

14 13. Having no other good options, the Receiver negotiated a modification to the  
15 loan agreement with Youth Pad. Attached hereto as Exhibit "2" is a copy of the *Loan*  
16 *Modification Agreement* dated May 23, 2018 ("Loan Modification"). The Loan Modification  
17 is conditioned upon approval of this Court and if approved the loan to Youth Pad will be  
18 deemed reinstated with a reduced stated interest rate of 1.75% per annum as long as minimum  
19 monthly payments of \$500 per month are paid by Youth Pad. The Loan Modification also  
20 clarifies that Youth Pad is solely responsible for any real property taxes that accrued prior to  
21

1 the sale to Youth Pad and that the remaining Default Interest will be waived if Youth Pad  
2 timely pays eighteen (18) of the minimum monthly payments.

3 14. The Receiver recommends that the Court approve the Loan Modification under  
4 the terms set forth in Exhibit "2" attached hereto, which the Receiver believes are in the best  
5 interests of the receivership estate and the Participants.

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

7 1. Approving the Loan Modification Agreement attached hereto as Exhibit "2";

8 and

9 2. Granting such other relief as the Court deems appropriate.

10 Respectfully submitted this 8<sup>th</sup> day of June, 2018.

11 GUTTILLA MURPHY ANDERSON, P.C.

12 /s/Patrick M. Murphy

13 Patrick M. Murphy

14 Attorneys for the Receiver

15 1157-001(324687)

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**Parcel I:**

**A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:**

**COMMENCING at Northwest corner of said Section 6;  
THENCE North 89 degrees 52 minutes 11 seconds West, a distance of 709.09 feet;  
THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 378.88 feet;  
THENCE North 89 degrees 22 minutes 47 seconds East, a distance of 558.22 feet;  
THENCE South 00 degrees 02 minutes 54 seconds East, a distance of 191.42 feet;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 509.87 feet to the POINT OF BEGINNING;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 530.00 feet;  
THENCE South 00 degrees 07 minutes 26 seconds East, a distance of 230.00 feet;  
THENCE South 89 degrees 52 minutes 26 seconds West, a distance of 530.00 feet;  
THENCE North 00 degrees 07 minutes 26 seconds West, a distance of 230.00 feet to the POINT OF BEGINNING.**

**Parcel II:**

**A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona. and a portion of the Northeast quarter Section 1, Township 24 South, Range 21 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:**

**COMMENCING at the Northeast corner of said Section 1:  
THENCE North 89 degrees 52 minutes 11 seconds West, a distance of 709.09 feet;  
THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 378.88 feet to the POINT OF BEGINNING;  
THENCE North 89 degrees 22 minutes 47 seconds East, a distance of 558.22 feet;  
THENCE South 00 degrees 02 minutes 54 seconds East, a distance of 191.42 feet;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 509.87 feet;  
THENCE South 00 degrees 07 minutes 26 seconds East, a distance of 230.00 feet;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 50.00 feet;  
THENCE South 00 degrees 07 minutes 34 seconds East, a distance of 71.64 feet;  
THENCE South 44 degrees 55 minutes 58 seconds West, a distance of 215.20 feet;  
THENCE North 90 degrees 00 minutes 00 seconds West, a distance of 261.28 feet;  
THENCE North 00 degrees 07 minutes 13 seconds West, a distance of 70.81 feet;  
THENCE South 89 degrees 51 minutes 56 seconds West, a distance of 699.29 feet;  
THENCE North 00 degrees 37 minutes 13 seconds West, a distance of 568.99 feet to the POINT OF BEGINNING.**



**PARCEL III:**

**A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:**

**COMMENCING at the Northwest corner of said Section 6:  
THENCE North 89 degrees 52 minutes 11 seconds West, a distance of 709.09 feet;  
THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 947.87 feet;  
THENCE North 89 degrees 51 minutes 56 seconds East, a distance of 699.29 feet;  
THENCE South 00 degrees 07 minutes 13 seconds East, a distance of 70.81 feet to the POINT OF BEGINNING;  
THENCE South 90 degrees 00 minutes 00 seconds East, a distance of 261.28 feet;  
THENCE North 44 degrees 55 minutes 58 seconds East, a distance of 215.20 feet;  
THENCE North 00 degrees 07 minutes 34 seconds West, a distance of 71.64 feet;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 270.00 feet;  
THENCE South 00 degrees 07 minutes 34 seconds East, a distance of 170.00 feet;  
THENCE South 69 degrees 05 minutes 46 seconds West, a distance of 302.25 feet;  
THENCE South 44 degrees 37 minutes 08 seconds West, a distance of 384.62 feet;  
THENCE South 89 degrees 52 minutes 45 seconds West, a distance of 130.29 feet;  
THENCE North 00 degrees 07 minutes 13 seconds West, a distance of 327.31 feet to the POINT OF BEGINNING.**

**PARCEL IV:**

**A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:**

**COMMENCING at Northwest corner of said Section 6;  
THENCE North 89 degrees 52 minutes 11 seconds West, a distance of 709.09 feet;  
THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 378.88 feet;  
THENCE North 89 degrees 22 minutes 47 seconds East, a distance of 558.22 feet;  
THENCE South 00 degrees 02 minutes 54 seconds East, a distance of 191.42 feet;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 1039.87 feet;  
THENCE South 00 degrees 07 minutes 26 seconds East, a distance of 230.00 feet to the POINT OF BEGINNING;  
THENCE South 00 degrees 07 minutes 26 seconds East, a distance of 1,188.83 feet;  
THENCE South 89 degrees 53 minutes 41 seconds West, a distance of 405.27 feet;  
THENCE North 01 degrees 55 minutes 51 seconds East, a distance of 958.25 feet;  
THENCE North 69 degrees 05 minutes 46 seconds East, a distance of 172.11 feet;  
THENCE North 00 degrees 07 minutes 34 seconds West, a distance of 170.00 feet;  
THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 210.00 feet to the POINT OF BEGINNING.**

**PARCEL V:**

**That portion of Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:**

**COMMENCING at Northwest corner of said Section 6:  
THENCE North 89 degrees 52 minutes 11 seconds West, a distance of 709.09 feet;  
THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 1,345.84 feet;  
THENCE North 89 degrees 52 minutes 45 seconds East, a distance of 695.82 feet to the POINT OF BEGINNING;  
THENCE North 89 degrees 52 minutes 45 seconds East, a distance of 130.29 feet;  
THENCE North 44 degrees 37 minutes 08 seconds East, a distance of 384.62 feet;  
THENCE North 69 degrees 05 minutes 46 seconds East, a distance of 130.14 feet;  
THENCE South 01 degrees 55 minutes 51 seconds West, a distance of 958.25 feet;  
THENCE South 89 degrees 53 minutes 42 seconds West, a distance of 488.39 feet;  
THENCE North 00 degrees 07 minutes 13 seconds West, a distance of 638.12 feet to the POINT OF BEGINNING.**

**PARCEL VI:**

**That portion of the Northeast quarter of Section 1, Township 24 South, Range 21 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, and a portion of Lot 1 of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:**

**BEGINNING at the North corner common to said Section 1 and**

**Section 6:**

**THENCE North 89 degrees 52 minutes 11 seconds West, coincident with the North line of said Section 1, a distance of 709.09 feet;**

**THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 378.88 feet;**

**THENCE North 89 degrees 22 minutes 47 seconds East, a distance of 558.22 feet;**

**THENCE South 00 degrees 02 minutes 54 seconds East, a distance of 191.42 feet;**

**THENCE North 89 degrees 52 minutes 26 seconds East, a distance of 1039.87 feet;**

**THENCE North 00 degrees 07 minutes 26 seconds East, a distance of 560.34 feet; to a point on the North line of said Section 6;**

**THENCE North 90 degrees 00 minutes 00 seconds West, coincident with said North line of Section 6, a distance of 892.02 feet to the POINT OF BEGINNING**

**PARCEL VII:**

**That portion of the Northeast quarter of Section 1, Township 24 South, Range 21 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:**

**COMMENCING at the Northeast corner of said Section 1;**

**THENCE North 89 degrees 52 minutes 11 seconds West, coincident with the North line of said Section 1, a distance of 709.09 feet;**

**THENCE South 00 degrees 37 minutes 13 seconds East, a distance of 947.87 feet to the POINT OF BEGINNING**

**THENCE North 89 degrees 51 minutes 56 seconds East, a distance of 699.29 feet;**

**THENCE South 00 degrees 07 minutes 13 seconds East, a distance of 398.12 feet;**

**THENCE South 89 degrees 52 minutes 45 seconds West, a distance of 695.82 feet;**

**THENCE North 00 degrees 37 minutes 13 seconds West, a distance of 397.97 feet to the POINT OF BEGINNING.**

## LOAN MODIFICATION AGREEMENT

DATE: May 23 2018

### PARTIES:

Borrower: The Youth Pad, Inc., a non-profit corporation organized under the laws of Oklahoma

Address: 500 Court Street  
Muskogee, OK 74401

Lender: Landmarc Capital & Investment, Company, an Arizona corporation in receivership

Address: **Until May 31, 2018:**  
c/o Arizona Department of Financial Institutions  
2910 N. 44<sup>th</sup> Street, Suite 310  
Phoenix, AZ 85018

**As and after June 1, 2018:**

c/o Arizona Department of Financial Institutions  
100 N. 15th Avenue, Suite 261  
Phoenix, AZ 85007

### RECITALS:

A Robert D. Charlton, Superintendent of the Arizona Department of Financial Institutions, is the Court appointed receiver of the Lender pursuant to the orders entered by the Arizona Superior Court for Maricopa County in the action entitled *State of Arizona v. Landmarc Capital & Investment Company*, Cause No. CV2009-020595 ("Receivership Court"). Thomas J. Giallanza is the court appointed Deputy Receiver of the Lender and is authorized to act on behalf of the Receiver and on behalf of the Lender. The Receivership Court has also entered orders placing Desert Trails Insurance Co. in receivership and the Lender is the successor in interest to Desert Trails Insurance Co.

B Lender has extended to Borrower a loan (the "Loan") in the original principal amount of \$370,000.00 pursuant to that certain *Agreement for Sale* dated July 30, 2014 (the "Sale Agreement"), and evidenced by that certain *Promissory Note* dated July 30, 2014 (the "Note"). As of April 30, 2018, the unpaid principal balance of the Loan was \$330,400.00 and the accrued and unpaid default interest on the Loan was \$98,279.94 (the "Pre-Agreement Default Interest"). In addition, the Borrower has a credit of \$829.87 held by Lender in impound for the purpose of paying expenses incurred by Lender in the enforcement of the Note and Sale Agreement (the "Impound").

C The Loan is secured by, among other things, that certain *Deed of Trust and Assignment of Rents* dated July 30, 2014 (the "Deed of Trust"), by Borrower, as Trustor, for the benefit of Lender, as Beneficiary, recorded on July 31, 2014, as Document No. 2014-13373, Official Records of Cochise County, Arizona (the Sale Agreement, Note, and Deed of Trust are referred to collectively as the "Loan Documents"). The Deed of Trust secures the Loan with real property located in Cochise County as legally described in the Deed of Trust and currently identified by the Cochise County Assessor as parcels 104-68-013B, 104-68-013D, 104-68-013F, 104-68-013G, 104-68-013H, 104-68-012, and 104-68-016 (the "Property").

D As a result of the principal payment of \$30,000 paid by the Borrower on or about December 18, 2014, the *Guarantee by Luis Bettencourt and Sylvia Bettencourt* dated July 30, 2014, has been released and is deemed satisfied.

E The Receivership Court has confirmed the following participation interests in the Loan (collectively referred to hereafter as the "Participants"):

David L. Wolfswinkel Trust (33.3%); Desert Trails Insurance Co., in receivership (33.3%); Penny Wolfswinkel Jenkins Trust (19.5%); Edward J. Humphreys (2.8%); and the Harvey B. Friedman & Francine A. Friedman Family Trust (11.1%).

F Borrower has defaulted under the Note and Deed of Trust and has requested that Lender modify the Loan and the Loan Documents as provided herein. Lender is willing to so modify the Loan and the Loan Documents, subject to the terms and conditions of this Loan Modification Agreement (the "Agreement"). Except as otherwise provided in this Agreement, all terms defined in the Loan Documents shall have the same meaning when used in this Agreement.

#### **AGREEMENT:**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

#### **1. ACCURACY OF RECITALS**

1.1 Borrower acknowledges the accuracy of the Recitals.

#### **2. MODIFICATION OF LOAN DOCUMENTS**

2.1 The Loan Documents are modified as follows:

2.1.1 Loan Amount. The Borrower and Lender hereby acknowledge and agree that the outstanding principal balance of the Loan has been reduced from \$370,000.00 to \$330,400.00.

2.1.2 Interest Rate. From and after the date hereof the unpaid principal balance due under the Loan shall accrue interest at the rate of 1.75% per annum so long as the Minimum Monthly Payments as defined below are timely made..

2.1.3 Default Interest Rate. The default interest rate shall remain at the rate of 12% per annum.

2.1.4 Maturity Date. The entire principal balance and all accrued and unpaid interest and default interest shall be paid in full on or before April 30, 2023.

2.1.5 Monthly Payments. The Borrower shall make monthly payments of not less than \$500.00 per month commencing on or before May 10, 2018 and continuing thereafter on or before the 10<sup>th</sup> day of each month (the "Minimum Monthly Payments"), which shall be applied to the Pre-Agreement Default Interest and will not apply to current interest computed and accrued under Section 2.1.2..

2.1.6 Waiver of Pre-Agreement Default Interest. If and only if the Borrower makes on a timely basis the first eighteen (18) Minimum Monthly Payments, the Lender shall be deemed to have waived the Pre-Agreement Default Interest.

2.1.7 Participations. Lender has previously assigned participation interests in the Loan to various assignees which assignments have been approved by the Receivership Court. Lender and the Participants hold a participation interest in the Loan and shall have the right at any time to sell, assign, transfer, negotiate or grant participations in all or any part of their respective interests in the Loan or the Note to one or more assignees or participants. Borrower hereby acknowledges and agrees that such dispositions will give rise to a direct obligation of Borrower to each such assignee and participant. Lender and Participants may disseminate any information they now have or hereafter obtain pertaining to the Loan, including any security for the Loan and credit or other information on the Borrower, or any of Borrower's principals, to any actual or prospective assignee or participant, to the Receivership Court and to any other parties as necessary or appropriate in the reasonable judgment of the Lender or the Participants.

2.1.8 Property Taxes. Borrower shall be solely responsible for the payment of any accrued and unpaid real property taxes, including all taxes that accrued prior to the Loan, and any future real property taxes applicable to the Property.

2.1.9 Impound. Borrower agrees that the Impound shall be paid to Lender as partial consideration for this Agreement.

2.2 Each of the Loan Documents is modified to provide that it shall be a default or an event of default thereunder if Borrower shall fail to comply with any of the covenants of Borrower herein or if any representation or warranty by Borrower herein is materially incomplete, incorrect, or misleading as of the date hereof.

2.3 Each reference in the Loan Documents to any of the Loan Documents shall be a reference to such document as modified herein.

### 3. RATIFICATION OF LOAN DOCUMENTS

The Loan Documents are ratified and affirmed by Borrower and shall remain in full force and effect as modified herein. Any property or rights to or interests in property granted as



security in the Loan Documents shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

#### **4. BORROWER REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Lender as follows:

4.1 Borrower is a religious organization and continues to conduct regular religious activities on the Property so as to qualify for an exemption from real estate taxes applicable to the Property.

4.2 There has been no material adverse change in the financial condition of Borrower or any other person whose financial statement has been delivered to Lender in connection with the Loan from the most recent financial statement received by Lender.

4.3 Each and all representations and warranties of Borrower in the Loan Documents are accurate on the date hereof.

4.4 The Borrower has completed the repairs to the Property in an amount not less than \$50,000 as required under Paragraph 6 of the Sale Agreement.

4.5 Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

4.6 The Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms.

4.7 Borrower is a validly existing corporation under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

4.8 Borrower understands and acknowledges that the Lender is in receivership and that the Property and this transaction are under the jurisdiction of the Receivership Court; and that the Borrower has received, read, and understands the order of the Receivership Court appointing the Receiver. The Buyer further understands and acknowledges that this Agreement is conditioned on the approval of the Receivership Court.

#### **5. BORROWER'S AFFIRMATIVE COVENANTS**

5.1 Borrower shall take all steps necessary to maintain with Cochise County an exemption from real property taxes applicable to the Property on the basis of the Borrower being a religious organization.

5.2 Borrower shall execute, deliver, and provide to Lender such additional agreements, documents, and instruments as reasonably required by Lender to effectuate the intent of this Agreement. Without limiting the foregoing, contemporaneously with the execution

and delivery of this Agreement, Borrower shall have executed and delivered to Lender the following documents, all in form and substance satisfactory to Lender, as determined by Lender in its sole discretion, an Amendment to the Deed of Trust.

5.3 Borrower fully, finally, and forever release and discharge Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, that each such party has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents and (ii) arising from events occurring prior to the date of this Agreement.

#### 6. RECEIVERSHIP COURT APPROVAL

This Agreement is conditioned upon approval by the Receivership Court.

#### 7. ENTIRE AGREEMENT

The Loan Documents as modified herein contain the entire understanding and agreement of Borrower and Lender in respect of the Loan and supersede all prior representations, warranties, agreements, arrangements, and understandings. No provision of the Loan Documents as modified herein may be changed, discharged, supplemented, terminated, or Waived except in a writing signed by Lender and Borrower.

#### 8. BINDING EFFECT

The Loan Documents as modified herein shall be binding upon, and inure to the benefit of, Borrower and Lender and their respective successors and assigns.

#### 9. CHOICE OF LAW AND FORUM

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to conflicts of law principles. Any proceeding to enforce or resolve a dispute under this Agreement shall be brought before the Receivership Court until such time as the receivership of the Lender has been terminated.

#### 10. COUNTERPART EXECUTION

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

DATED as of the date first above stated.

**BORROWER:**

The Youth Pad, Inc.

  
\_\_\_\_\_  
Luis Bettencourt, Vice-President

**LENDER:**

Landmarc Capital & Investment Co, in receivership

  
\_\_\_\_\_  
Thomas J. Giannanza, Deputy Receiver

1157-021 (318396)