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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10
11 IN AND FOR THE COUNTY OF MARICOPA

12 STATE OF ARIZONA ex rel. ROBERT)
13 D. CHARLTON, Superintendent of the)
14 Arizona Department of Financial)
15 Institutions,)
16 Plaintiff,)
17 v.)
18 LANDMARC CAPITAL &)
19 INVESTMENT COMPANY,)
20 Defendant.)

Cause No. CV2009-020595

PETITION NO. 106

PETITION FOR APPROVAL OF THE
SALE OF THE RECEIVER'S INTEREST
IN THE SECURED LOAN TO YOUTH
PAD, INC.

(Assigned to the Honorable Daniel Martin)

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

- 24 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*
25 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial
26 Institutions as Receiver of Landmarc Capital & Investment Company ("Landmarc"). On July
27 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On
28 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 **Background on the Property and Loans**

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

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

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

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

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 participants and therefore the Receiver began the process of marketing the Property for sale.

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

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¹ 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.

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

4 8. The Receiver renewed his efforts to market and sell the Property. On April 15,
5 2014, this Court entered *Order Re: Petition No. 81*, which approved a *Lease with Option to*
6 *Purchase Agreement* between the Receiver and The Youth Pad, Inc., an Oklahoma non-profit
7 corporation (“Youth Pad”). The lease for the property was for twenty-four months (24)
8 beginning February 1, 2014 and expiring on the 29th day of February, 2016 subject to Youth
9 Pad’s option to purchase the Property. This agreement provided for the payment of amounts
10 designated as rent and a final purchase price of \$250,000.

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

16 10. However, when Youth Pad applied to the County for exempt status for the
17 Property it learned that tax exempt status would not be granted unless Youth Pad held fee
18 title. Accordingly, the Receiver and Youth Pad entered into a new agreement that provided
19 for the transfer of title to the Property to Youth Pad with the Receiver holding a deed of trust
20 for the unpaid purchase price. On September 18, 2014, the Court entered its *Order Re:*
21 *Petition No. 86* approving the sale of the Property to Youth Pad for \$375,000 plus certain

1 specified repairs. Youth Pad received a credit of \$5,000 for the amounts previously paid
2 under the lease agreement and gave the Receiver a promissory note for the balance of
3 \$370,000 (“Note”), which was secured by a deed of trust on the Property.

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

10 12. Having no other good options, the Receiver negotiated a modification to the
11 loan agreement with Youth Pad dated May 23, 2018 (“Loan Modification”). The Loan
12 Modification was approved by this Court by its *Order Re: Petition No. 104* entered on June
13 28, 2018.

14 13. The value of the Property, which is the security for the Note, is greatly
15 diminished by the existence of approximately \$450,278.65 in accrued and unpaid real
16 property taxes which constitute a lien on 5 of the 7 parcels. Youth Pad hopes to convince the
17 taxing authorities to reduce or eliminate this tax liability but in the absence of such a
18 reduction, the value of the Property is greatly diminished. Given Youth Pad’s limited
19 financial resources and the limited value of the security, the Receiver’s interest in the Loan is
20 of limited value in the short term. Because the Receiver intends to terminate this receivership
21

1 in 2019, the Receiver will not be able to hold the Note until the value of the Receiver's
2 interest has recovered.

3 14. Attached as **Exhibit "2"** to this Petition is the Receiver's accounting of the loan
4 account regarding the Property and the payments received on loans secured by the Property
5 and the expenses incurred by the Receiver as part of the Receiver's efforts to preserve and
6 protect the interests of the Participants. As reflected in this accounting, as of December 3,
7 2018:

8 a. The Receiver holds \$33,527.95 in trust in connection with the loans
9 secured by the Property, including payments made by Youth Pad and expects to
10 receive an additional \$1,000 by the time the sale closes; and

11 b. The Receiver has incurred \$63,841.73 in Loan Charges in connection
12 with the Property.

13 15. The Receiver is in the process of liquidating the remaining receivership assets
14 and disposing of remaining loan servicing responsibilities in order to permit the closing of
15 this receivership in 2019. As part of that effort the Receiver has negotiated an agreement
16 with the Participants whereby those owners holding the 66.7% of beneficial interest in the
17 Youth Pad Loan have agreed to purchase the Receiver's 33.3% beneficial interest in the
18 Youth Pad Loan ("Receiver's Participation Interest") for the sum of \$8,667.00. The Sale
19 Agreement is attached hereto as **Exhibit "3"** and in addition to providing for the sale of the
20 Receiver's Participation Interest, it provides for certain agreements concerning the
21 application of funds held in trust by the Receiver toward reimbursement of Loan Charges and

1 the release of the Buyers from any further responsibility for such Loan Charges that are not
2 paid in full. Finally the Sale Agreement is conditioned on approval of the Receivership
3 Court.

4 16. In accordance with this Court's *Order Re: Petition No. 2*, the Receiver:

5 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
6 Hearing, to all persons on the Master Service List and other interested persons as
7 indicated in the Proof of Mailing filed herewith;

8 b. Intends to publish notice of this sale in the Arizona Business Gazette, a
9 newspaper of general circulation within Arizona; and

10 c. Intends to publish notice of this sale in the Sierra Vista Herald, or
11 another newspaper of general circulation within Cochise County, the county in which
12 the Property is located.

13 17. The Receiver believes that the sale of the Receiver's Participation Interest as set
14 forth in the Sale Agreement attached as **Exhibit "3"** is in the best interests of the receivership
15 estate. Accordingly, the Receiver recommends that the Court approve the sale of the
16 Receiver's Participation Interest under the terms set forth in the Sale Agreement attached as
17 **Exhibit "3"**, or for any higher and better offer that might be submitted to the Court prior to
18 the hearing on this Petition.

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

20 1. Approving the Sale Agreement attached hereto as **Exhibit "3"**; and
21

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.

LC050509-Harter (Youth Pad)

As of: 12/31/2018

Date	Pay/Name	Reference	Memo	Total Of Amount	BROKER	LANDMARC	LC050509	Receiver	33.300%	FRIEDMAN	11.100%	HUMPHRYES	2.800%	D WOLFSWINKEL	33.300%	P WOLFSWINKEL	19.500%	Total BO's
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	Balance Fwd			\$			\$ 10,000.00											100.0000%
02/29/12	Melvin Harter	NATC-1298	Borrower Payment	(277.80)			(277.80)											
03/01/12	Edward J. Humphries	2687	Check	(1,111.10)			(1,111.10)											
03/01/12	Harvey B. & Francis A.	2688	Check	(3,333.30)			(3,333.30)											
03/01/12	David L. Wolfswinkel Trust	2689	Check	(1,944.40)			(1,944.40)											
03/01/12	Penny Wolfswinkel Jenkins	2690	Check	(3,333.40)			(3,333.40)											
03/01/12	Landmarc Capital &	2691	Check	20,000.00			20,000.00											
06/26/12	North American Title	NATA-16104	Escrow Deposit	(3,533.07)			(3,533.07)											
01/29/13	RP Ryan Insurance	1730	Prop Insurance	(9,366.39)			(9,366.39)											
03/19/13	Cochise County Treasurer	2948	Check	(1,171.60)			(1,171.60)											
04/15/13	IPFS Corporat on	1763	Prop Insurance	(1,171.60)			(1,171.60)											
04/16/13	IPFS Corporat on	1764	Prop Insurance	(1,171.60)			(1,171.60)											
05/20/13	IPFS Corporat on	1779	Prop Insurance	(1,171.60)			(1,171.60)											
06/17/13	IPFS Corporat on	1792	Prop Insurance	(1,171.60)			(1,171.60)											
06/24/13	Thomas Giallanza	1797	Prop Inspection Exp's	(274.59)			(274.59)											
07/10/13	IPFS Corporat on	1805	Prop Insurance	(1,230.18)			(1,230.18)											
02/28/14	Youth Pad, LLC	M-CC5125	Rent	5,000.00			5,000.00											
02/25/14	CDS Insurance Company	1914	Prop Insurance	(4,435.01)			(4,435.01)											
03/25/14	First Insurance Funding	1921	Prop Insurance	(1,350.53)			(1,350.53)											
12/18/14	Luis Bettancourt	CC-357	Rent	30,000.00			30,000.00											
10/08/15	Cochise County Treasurer	3205	Taxes	(3,385.13)			(3,385.13)											
02/03/16	TSG Fidelity Nat Title	3215	TSG	(1,156.00)			(1,156.00)											
03/08/16	Burch and Cracchiolo	2092	Legal Inv 268496	(1,824.40)			(1,824.40)											
04/15/16	Burch Youth Pad	2099	From Chrges to Imp'ds	(1,097.50)			(1,097.50)											
06/14/16	Burch and Cracchiolo	3226	Inv 271562	(625.75)			(625.75)											
08/30/16	Burch and Cracchiolo	3236	Youth Pad Foreclosure	(516.25)			(516.25)											
09/20/16	Deposit from Youth Pad	Wire in	See Note	9,600.00			9,600.00											
10/06/16	Burch and Cracchiolo	3258	Inv 274874	(142.50)			(142.50)											
11/29/16	Burch and Cracchiolo	2145	Legal Inv 276774	(142.50)			(142.50)											
11/29/16	MK Consultants -Notice	2146	Pub Fees	(635.85)			(635.85)											
04/14/17	Burch Youth Pad	2172	Legal Inv 279666	(285.00)			(285.00)											
08/08/17	Burch and Cracchiolo	2196	Legal Inv 283145	(55.00)			(55.00)											
11/07/17	Burch and Cracchiolo	2215	Legal Inv 286064	(55.00)			(55.00)											
02/09/18	Burch and Cracchiolo	2230	Legal Inv 288458	(55.00)			(55.00)											
05/24/18	Youth Pad Payments	2022	3 Payments DP5/24/18	1,500.00			1,500.00											
08/17/18	Youth Pad Payment	MG-8171	DP8/17/18	500.00			500.00											
09/07/18	Youth Pad Payment	MG-9545	GDP 9/7/18	500.00			500.00											
07/25/18	Burch and Cracchiolo	2271	Legal Inv 293042	(110.00)			(110.00)											
10/30/18	Burch and Cracchiolo	2289	Legal Inv 296067	(110.00)			(110.00)											
10/17/18	Youth Pad Payments	5310	Oct Pmt	500.00			500.00											
11/20/18	Youth Pad Payments	4693	Nov Pmt	500.00			500.00											
12/03/18	Youth Pad Payments	3621	Dec Pmt	500.00			500.00											
	Receiver		Subtotals	33,527.95	0.00	0.00	33,527.95	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
			Reimburse Loan Charges	(33,527.95)			(33,527.95)											
			Final payment on loan charges	500.00			500.00											
			Projected Ending Trust Balances	(1,000.00)			(1,000.00)											

Projected Activity from 12/31/18 through closing

01/03/19	Youth Pad Payments			500.00			500.00											
02/03/19	Youth Pad Payments			500.00			500.00											
	Receiver			(1,000.00)			(1,000.00)											
			Projected Ending Trust Balances	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

LC050509-Harter (Youth Pad)

LOAN CHARGES				
ChargeDate	Description	Owed To Acct	Description	Amount
02/25/10	RP Ryan Ins - down pymt on	LANDMARC	Prop Insurance	4,175.26
02/25/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
03/23/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
04/21/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
05/20/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
06/21/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
07/19/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
08/23/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
09/21/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
10/21/10	Ins Premium Installment Std	LANDMARC	Prop Insurance	1,292.74
11/19/10	RP Ryan Ins - downpayment	LANDMARC	Prop Insurance	3,128.28
02/16/11	Tucson Real Estate Appraisal	LANDMARC	Appraisal	5,000.00
02/25/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,245.19
03/11/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,245.19
04/18/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,245.19
05/20/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,245.19
06/09/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,307.45
08/01/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,245.19
08/15/11	Standard Funding Corp - inst	LANDMARC	Prop Insurance	1,245.19
09/15/11	Standard Funding	LANDMARC	Prop Insurance	1,245.19
10/17/11	Standard Funding	LANDMARC	Prop Insurance	1,245.19
11/18/11	North American Title	LANDMARC	Title Report	850.00
11/30/11	Standard Funding Corp	LANDMARC	Prop Insurance	1,245.19
12/12/11	Burns & Wilcox-Ins	LANDMARC	Prop Insurance	13,682.26
08/13/13	IPFS Corporat on	1820	Prop Insurance	1,230.18
09/25/13	IPFS Corporat on	1850	Prop Insurance	1,054.44
11/12/13	IPFS Corporat on	1882	Prop Insurance	2,284.62
12/16/13	IPFS Corporat on	1892	Prop Insurance	117.16
04/23/14	First Insurance Funding	1923	Prop Insurance	1,350.53
06/10/14	First Insurance Funding	1946	Prop Insurance	1,350.53
06/23/14	First Insurance Funding	1953	Prop Insurance	1,418.06
07/15/14	First Insurance Funding	1964	Prop Insurance	1,350.53
10/23/14	First Insurance Funding	1995	Prop Insurance	1,350.53
11/19/14	First Insurance Funding	2002	Prop Insurance	1,350.53

Subtotal of Unpaid Loan Charges \$ 63,841.73

Reimbursement Payment from trust funds as of 12/3/18 (33,527.95)

Projected Final Reimbursement Payment (1,000.00)

Balance of Unreimbursed loan charges \$ 29,313.78

AGREEMENT FOR SALE OF CERTAIN LOAN INTERESTS

This Agreement for Sale ("Agreement"), is entered into as of the 14th day of December 2018, by and between the court appointed Receiver ("Receiver") of Landmarc Capital & Investment Company and Desert Trails Insurance Co. ("Seller"), and David L. Wolfswinkel Trust, Penny Wolfswinkel Jenkins Trust, Edward J. Humphryes and Harvey B. Friedman & Francine A. Friedman Family Trust ("Buyers").

Recitals

Whereas on or about May 9, 2005, Landmarc Capital & Investment Company ("Landmarc") loaned \$900,000.00 to Melvin Harter Ministries, Inc. ("MHMI") ("Loan No. LC050509"), which loan was evidenced by a Promissory Note in the principal amount of \$900,000.00 and was secured by a deed of trust on certain real property located at 9224 East Highway 92, Hereford, Arizona ("Property");

Whereas Landmarc subsequently sold participation interests in Loan No. LC050509 to Desert Trails Insurance Co. and the Buyers;

Whereas Landmarc foreclosed Loan No. LC050509 and the Trustee issued a Trustee's Deed Upon Sale vesting title to the Property in Landmarc, which was recorded with the Cochise County Recorder on October 14, 2008 as Document No. 08-27283;

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

Whereas the Receivership Court, pursuant to its *Order Deferring Resolution of the Claimed First Out Rights and Claimed Interests in the Presidio 197 Loan and Approving Remaining Recommendations of the Receiver, Re: Petition No. 54* entered on May 21, 2012, has confirmed the following participation interests in the Property (collectively referred to hereafter as the "Participants"):

David L. Wolfswinkel Trust dated 6/11/04 (33.3%)

Desert Trails Insurance Co., in receivership (33.3%)

Penny Wolfswinkel Jenkins Trust (19.5%)

Edward J. Humphryes (2.8%)

Harvey B. Friedman & Francine A. Friedman Family Trust (11.1%);

Whereas following unsuccessful efforts to market and sell the Property, on August 2, 2011, the Receivership Court entered *Order Re: Petition No. 46*, which approved a Settlement Agreement between the Receiver and MHMI and Melvin E. Harter ("Harter"). Under the

Settlement Agreement, MHMI was given the opportunity to acquire the Property by paying \$450,000 on or before October 31, 2011. MHMI did not exercise its right to acquire the Property;

Whereas on December 20, 2011, the Receivership Court entered *Order Re: Petition No. 58*, which approved the sale of the Property to Snow Music Corp. for \$600,000. Snow Music Corp., however, failed to close on the purchase of the Property;

Whereas on April 15, 2014, the Receivership Court entered *Order Re: Petition No. 81*, which approved a *Lease with Option to Purchase Agreement* between the Receiver and The Youth Pad, Inc., an Oklahoma non-profit corporation ("Youth Pad"). The lease for the property was for twenty-four months (24) beginning February 1, 2014 and expiring on the 29th day of February, 2016 subject to Youth Pad's option to purchase the Property. This agreement provided for the payment of amounts designated as rent and a final purchase price of \$250,000;

Whereas when Youth Pad as a tenant was unable to obtain an exemption from real property taxes from Cochise County, the Receiver and Youth Pad entered into a new agreement that provided for the transfer of title to the Property to Youth Pad with the Receiver holding a deed of trust for the unpaid purchase price. On September 18, 2014, the Receivership Court entered its *Order Re: Petition No. 86* approving the sale of the Property to Youth Pad for \$375,000 plus certain specified repairs. Youth Pad received a credit of \$5,000 for the amounts previously paid under the lease agreement and gave the Receiver a promissory note for the balance of \$370,000 ("Note"), which was secured by a deed of trust on the Property recorded with the Cochise County Recorder on July 31, 2014 as Document No. 2014-13373 ("Deed of Trust");

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

Whereas having no other good options, the Receiver negotiated a modification to the loan agreement with Youth Pad. Attached hereto as Exhibit "1" is a copy of the Loan Modification Agreement dated May 23, 2018 ("Loan Modification"). The Loan Modification was conditioned upon approval of the Receivership Court and once approved the loan to Youth Pad would be deemed reinstated with a reduced stated interest rate of 1.75% per annum as long as minimum monthly payments of \$500 per month are paid by Youth Pad. The Loan Modification also clarifies that Youth Pad is solely responsible for any real property taxes that accrued prior to the sale to Youth Pad and that the remaining Default Interest will be waived if Youth Pad timely pays eighteen (18) of the minimum monthly payments;

Whereas on June 28, 2018, the Receivership Court entered its *Order Re Petition No 104*, which approved the Loan Modification;

Whereas all of the interests of Landmarc and Desert Trails Insurance Co. in the Note, Deed of Trust and Loan Modification are referred to hereafter as the Seller's Loan Interests;

Whereas the Receiver is preparing to close the receivership of the Receivership Entities and desires to dispose of the Seller's Loan Interests, however there is very little market for such

interests. Accordingly, the Receiver and the Buyers desire to enter into an agreement to sell the Seller's Loan Interests to the Buyers under the terms set forth below.

Terms

In consideration of the terms and conditions of this Agreement, Seller hereby sells the Seller's Loan Interests and Buyer hereby buys the Seller's Loan Interests under the terms and conditions set forth below.

1. Purchase Price: The Buyers agree to pay \$8,667.00 for Seller's Loan Interests ("Purchase Price"), which payment shall consist of (i) a payment of \$500.00 delivered to the Seller at the time of the execution of this Agreement and which shall be held by Seller in trust pending approval of this Agreement as required under paragraph 3 below and (ii) the balance of the Purchase Price due from Buyers five (5) days prior to Closing ("final balance"). The final balance of the Purchase Price may be paid with certified funds, a bank check or cashier's check from the Buyers.

2. Sold "As Is". The Seller's Loan Interests are being sold "As Is" and the Seller is not providing any warranties, express or implied. Buyers expressly acknowledge that there may be defenses to the recovery of the Seller's Loan Interests and that one or more of the borrowers may default and that the security under the Loans may be insufficient to satisfy the Seller's Loan Interests. Buyers further acknowledge that Buyers have not relied on any warranties, promises, projections, calculations, understandings or representations, express or implied, of Seller or of any agent or representative of Seller, relating to the Seller's Loan Interests. Buyers further acknowledge that any information of any type which Buyers have received or may receive from Seller or Seller's agents is furnished on the express condition that Buyers shall make an independent verification of the accuracy of such information, all such information being furnished without any warranty or liability whatsoever.

3. Receivership Court Approval. The Buyers understand and acknowledge that the Seller was duly appointed the Receiver of Landmarc by the Receivership Court; that the Seller's Loan Interests and this transaction are under the exclusive jurisdiction of the Receivership Court; and that the Buyer has received, read, and understands the orders of the Receivership Court appointing the Receiver. The parties further understand and acknowledge that this Agreement is contingent on the approval of the Receivership Court and that the Receivership Court could decline to approve the Agreement for various reasons, including without limitation that the sale price is not fair or that a higher and better offer for the Seller's Loan Interests has been presented to the Receiver or the Receivership Court.

4. Cancellation. In the event Seller is unable, within one hundred twenty (120) days of the date of this Agreement, to obtain the approval of the Receivership Court, the Buyers or the Seller may elect in writing to cancel this Agreement. Upon a cancellation in accordance with the provisions of this Paragraph, all funds delivered to Seller by Buyers shall be returned to the Buyers and this Agreement shall terminate.

5. Release and Indemnity. Upon Closing, all funds held in trust as reflected in the Receiver's accounting, shall be applied to the accumulated loan charges reflected in the Receiver's Accounting and Seller shall be released from all further responsibility and liability regarding the Loan Modification or the condition or valuation of the Seller's Loan Interests. Upon Closing Buyers shall be (i) released from any obligation to pay Seller any amounts shown

on the accounting as due Receiver beyond the Purchase Price and (ii) agree that Buyers will not attempt to assert any claims of liability against Seller for furnishing such information, and Buyers agree to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. This indemnity shall survive the Closing.

6. Assignment and Nomination. Buyers may not assign or otherwise transfer Buyers' rights under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion; however, if the Buyers form an Arizona limited liability company which reflects the same ownership interests as approved by the Receivership Court in Petition No. 54, Seller shall consent to an assignment of this agreement to such entity. Any such assignee shall accept in writing the terms and conditions of this Agreement and of any supplements or Escrow Instructions that may have been entered into as of the time of the assignment. In no event shall any assignment extend the Close of Escrow.

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

8. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. For example, Seller will as part of the Closing provide Buyers with (i) a recordable Assignment of Receiver's 33.3% beneficial interest in the Promissory Note, as modified by the Loan Modification along with (ii) an allonge for the Promissory Note and (iii) the original Promissory Note.

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

10. Closing. The sale shall close within ten (10) days of entry of a final order of the Receivership Court approving this Agreement. All amounts that have accrued and been collected by the Receiver as of the date of closing under this Agreement shall be paid to the Seller and all amounts thereafter collected by the Receiver or its successor shall be paid to the Buyers.

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

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

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

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

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

To Buyers as follows:

Edward J. Humphryes, Esq,
3850 E. Baseline Road, Suite 123
Mesa, AZ 85206

To Seller as follows:

The Receiver
Attn.: Thomas J. Giallanza
c/o Arizona Department of Financial Institutions
100 N. 15th Avenue, Suite 261
Phoenix, AZ 85007
Phone: 602-791-7456
Fax: 602-892-8890

with a copy to:

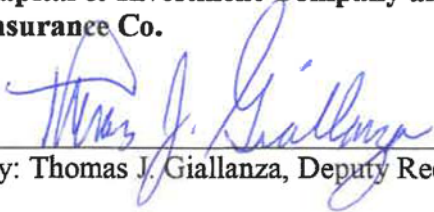
Patrick M. Murphy, Esq.
Guttilla Murphy Anderson
5415 E. High St., Suite 200
Phoenix, AZ 85054
Phone: 480-304-8300
Fax: 480-304-8301

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

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

SELLER

**Robert D. Charlton, as Receiver of Landmarc
Capital & Investment Company and Desert Trails
Insurance Co.**


By: Thomas J. Giallanza, Deputy Receiver

BUYERS:

David L. Wolfswinkel Trust U/T/A dated 6/11/04


By: David L. Wolfswinkel, Trustee

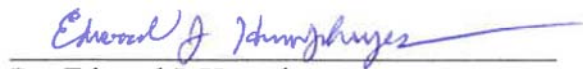
Penny Wolfswinkel Jenkins Trust U/T/A dated 3/18/05


By: Penny L. Wolfswinkel, Trustee

Harvey B. Friedman & Francine A. Friedman Family Trust

By: Harvey Friedman, Trustee

Edward J. Humphries


By: Edward J. Humphries

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BUYERS:

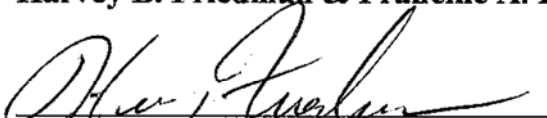
David L. Wolfswinkel Trust U/T/A dated 6/11/04

By: David L. Wolfswinkel, Trustee

Penny Wolfswinkel Jenkins Trust U/T/A dated 3/18/05

By: Penny L. Wolfswinkel, Trustee

Harvey B. Friedman & Francine A. Friedman Family Trust



By: Harvey B. Friedman, Trustee

Edward J. Humphryes

By: Edward J. Humphryes

1157-007 (341465)