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

12 STATE OF ARIZONA ex rel. KEVIN A.)
13 SCHRAAD, 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. 107

PETITION TO CONFIRM SALE OF
REAL PROPERTY LOCATED ON
193RD AVENUE IN GOODYEAR,
ARIZONA

(Assigned to the Honorable Daniel Martin)

21 Kevin A. Schraad, as the Superintendent of the Arizona Department of Financial
22 Institutions and the court appointed Receiver in this matter, respectfully petitions the Court as
23 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

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 to carry on the day to day business of Landmarc.

6 2. In accordance with the Receivership Order, the Receiver located and took
7 possession of 2.5 acres of land located on South 193rd Avenue in Goodyear, Arizona
8 (“Property”). This Property is legally described in Exhibit “1” attached hereto.

9 3. In 2008, Landmarc loaned \$17,000 (Loan No. 08061942) to Heriberto Loyola-
10 Sauza (“Borrower”), which was secured by a Deed of Trust on the Property. At the time of
11 the loan Landmarc obtained an appraisal indicating that the Property had a fair market value
12 of \$135,000, even though the Property had no public utilities or water. As with other
13 appraisals obtained by Landmarc, the Receiver believes that this appraisal was highly
14 inflated. Landmarc subsequently sold a 100% participation interest in the Property to its
15 affiliated entity, Hayden Investments, LLC. When the Borrower defaulted the Receiver
16 commenced a foreclosure action which resulted in title to the Property being acquired by the
17 Receiver as receiver of Hayden Investments, LLC, pursuant to that certain Trustee’s Deed
18 Upon Sale recorded with the Maricopa County Recorder on February 1, 2010, as Document
19 No. 2010-0081385.

1 4. Hayden Investments, LLC filed a claim asserting a 100% beneficial interest in
2 the Property. In addition, Maricopa County filed a secured claim for unpaid taxes.¹ The
3 Receiver has determined that the Receiver holds equitable and legal title to the Property
4 subject to the tax liens. In addition, Property is the subject of a tax lien foreclosure suit
5 pending in Maricopa County Superior Court, entitled *Beor Fund I, LLC vs. Hayden*
6 *Investments, LLC, et al*, Cause No. CV 2019-052225.

7 5. Due to the significant tax obligations and the resulting limited value of the
8 Receiver's interest in the Property the Receiver did not pay the unpaid taxes and did not pay
9 for a new appraisal on the Property. In 2014, when the Receiver first received notice of intent
10 to file a foreclosure action on the unpaid taxes the Receiver offered to sell the Property to the
11 holder of the tax certificate for \$3,000 but the offer was never accepted or pursued.

12 6. In 2019, the Receiver was approached by Daniel Cain about the prospects of
13 purchasing the Property and after full disclosure of the unpaid taxes and the tax foreclosure
14 action, the Receiver and Daniel Cain ("Buyer") entered into an Agreement for Sale under
15 which the Buyer agreed to purchase the interest of Hayden Investments, LLC in the Property
16 for \$5,000. The Buyer will be responsible for payment of the tax and related obligations. A
17 copy of the Agreement for Sale is attached hereto as Exhibit 2. The Receiver has received
18 from the Buyer the \$5,000 purchase price and is holding the funds pending approval of the
19 sale.

20 _____
21 ¹ On September 24, 2010, Maricopa County filed a claim for taxes on the Property in the
amount of \$3,315.88. That tax obligation has increased to over \$13,000 as of the date of this
Petition. In addition, the Plaintiff in the tax foreclosure action asserts a claim for \$2,918.99.

1 7. Subsequent to execution of the Agreement for Sale, the Buyer indicated a desire
2 to take title in the name of a limited liability company that he owns.

3 8. In accordance with this Court’s *Order Re: Petition No. 2*, the Receiver:

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

7 b. Intends to publish notice of this sale in a newspaper of general
8 circulation within Maricopa County, which is the county where this action is pending
9 and the Property is located.

10 9. The Receiver recommends that the Court confirm the sale of the Property under
11 the terms set forth in the Agreement for Sale attached as Exhibit “2”, which the Receiver
12 believes are in the best interests of the receivership estate.

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

14 1. Confirming the sale as set forth in the Agreement for Sale attached as Exhibit
15 “2” to this Petition of the Property legally described in Exhibit “1”;

16 2. Authorizing Thomas Giallanza, as Deputy Receiver to execute all necessary

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1 documents in connection with the sale of the Property confirmed by the Court, including
2 documents conveying title to the Property to the Buyer or his designee;

3 Respectfully submitted this 10th day of July, 2019.

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5 GUTTILLA MURPHY ANDERSON, P.C.

6 /s/Patrick M. Murphy
7 Patrick M. Murphy
8 Attorneys for the Receiver

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11 1157-013 (370524)