

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

8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11	STATE OF ARIZONA ex rel. KEITH A.)	Cause No. CV2009-020595
12	SCHRAAD, Superintendent of the)	
13	Arizona Department of Financial)	
14	Institutions,)	PETITION NO. 109
15	Plaintiff,)	RECEIVER'S PETITION TO APPROVE
16	v.)	SALE OF RECEIVER'S INTERESTS IN
17	LANDMARC CAPITAL &)	TWO LOANS AND AN INTEREST IN A
18	INVESTMENT COMPANY,)	LIMITED LIABILITY COMPANY
19	Defendant.)	(Assigned to the Honorable Daniel
20)	Martin)
21)	

21 Keith 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
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 February
2 27, 2010, the Court also entered its *Order placing Hayden Insurance, LTD and Desert Trails*
3 *Insurance Co. in Receivership*. On May 12, 2010, the Court entered its *Amended Order*
4 *Appointing Permanent Receiver and Injunction* (collectively “Receivership Order”). The
5 Receivership Order appointed Thomas Giallanza as Deputy Receiver to carry on the day to
6 day business of Landmarc. Landmarc, Hayden Investments, LLC, Desert Trails Holdings,
7 LLC, Arizona Valuation Company, LLC, Hayden Insurance, LTD and Desert Trails
8 Insurance Co. are referred to hereafter as the “Receivership Entities.”

9 2. The Receiver has located a buyer for three assets that the Receiver had planned
10 to transfer to the Arizona Department of Financial Institutions (“DFI”) as partial
11 reimbursement for expenses incurred by the DFI in support of this receivership. Previously
12 the Receiver’s efforts to sell these assets had been unsuccessful. However, Daniel Cain, who
13 had previously purchased another asset from the Receiver, has agreed to purchase the
14 following two loans and an interest in a limited liability company for a total purchase price of
15 \$18,000.00 under the terms set forth in the *Agreement for Sale* attached hereto as **Exhibit**
16 **“1”**:

17 3. The interests to be sold under the Agreement for Sale attached as **Exhibit “1”**
18 are described below:

19 a. Gurulee Note. A promissory note dated April 24, 2017, from
20 Alex and Anna Gurulee in the original principal amount of \$17,000.00, with
21 interest at the rate of 5% per annum (“Gurulee Note”). The Gurulee Note was

1 acquired pursuant to that certain Agreement for Sale dated January 6, 2017,
2 between the Receiver and Alex and Anna Gurulee, husband and wife under
3 which Alex and Anna Gurulee purchased certain real property and
4 improvements located in Pinal County.¹ The Gurulee Note is secured by the
5 real property and improvements pursuant to a Deed of Trust recorded with the
6 Pinal County Recorder on April 24, 2017 as Document No. 2017-028488.
7 Although the Gurulee Loan is not current the borrower is making payments
8 from time to time.

9 b. Cotton Note. A promissory note dated June 9, 2008, from Ralph
10 and Melissa Cotton (“Cotton”) in the original principal amount of \$45,000.00
11 with interest at the rate of 9.99% per annum (“Cotton Note”). The Cotton Note
12 was acquired as part of a loan to Cotton on June 9, 2008, and is subject to loan
13 modifications dated May 3, 2011 and November 1, 2013. The Cotton Note is
14 secured by a first position Deed of Trust dated June 9, 2008 on a mobile home
15 lot and was recorded with the Maricopa County Recorder as Document No.
16 2008-0522738. The borrower is making payments and has been no more than
17 60 days delinquent over the past several years. The Receiver, however, is
18 concerned that the security for this loan is of limited value and if the loan is
19

20 1

21 The sale of property to Alex and Anna Gurulee was approved by this Court’s *Order Re: Petition No. 99* entered on March 29, 2017.

1 transferred to DFI it would require the agency to service the loan or monitor the
2 servicing of the loan until the loan matures in 2028.

3 c. Membership Interest in Route 69, LLC. A membership interest in
4 Route 69 Loan, LLC, an Arizona limited liability company (“Route 69”) of
5 1.963%. Route 69 is governed by the Articles of Organization filed with the
6 Arizona Corporation Commission on December 22, 2017 and that certain
7 Operating Agreement dated October 31, 2017. The sole asset of Route 69
8 consists of title to certain real property located in Yavapai County at 141 S.
9 State Route 69, Prescott Valley (“Property”), pursuant to that certain Special
10 Warranty Deed recorded with the Yavapai County Recorder on January 5,
11 2018, as Document Number 2018-0000816. The Receiver holds the 1.963%
12 interest in Route 69 as Receiver of Desert Trails Holdings, LLC and Hayden
13 Investments, LLC. For many years the Receiver and later the manager of Route
14 69 tried unsuccessfully to sell the Property owned by Route 69. Prior to the
15 Receiver transferring control of the Property to Route 69 in January 2018, the
16 best offer that the Receiver had received was a cash offer for \$250,000 which
17 was rejected by the beneficial owners. Recently the manager of Route 69
18 entered into a contract to sell the Property for a purchase price of
19 \$1,500,000.00, which contract has been placed in escrow with a closing date of
20 May 15, 2020. Assuming that the sale closes and that the net proceeds
21 available for distribution to the members of Route 69 is \$1,350,000.00 after

1 payments of the costs of the sale and of winding up of Route 69, the holder of
2 the Receiver's interest in Route 69 could possibly receive as much as
3 \$26,500.00. The present value of this interest to the receivership, however, is
4 not that great because the Receiver intends to wind up the receivership long
5 before the closing date and the sale is subject to cancellation by the buyer
6 without penalty at any time during the due diligence period which does not
7 expire until May 4, 2020.

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

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

12 b. Intends to publish notice of this sale in a newspaper of general
13 circulation within Maricopa, Pinal and Yavapai Counties, which are the counties
14 where the properties are located.

15 5. The Receiver is of the opinion that the sale set forth in the attached
16 **Exhibit "1"** is in the best interest of the receivership estate and will enable the
17 Receiver to wind up this receivership in a timely manner.

18 WHEREFORE, the Receiver respectfully requests that the Court enter an order

19 1. Confirming the sale as set forth in the *Agreement for Sale* attached as **Exhibit**
20 **"1"** to this Petition No. 109 of the interests described therein;

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

2. Authorizing Thomas J. Giallanza, the Deputy Receiver, to execute such documents as are necessary to effectuate the sale approved herein; and
3. Granting such further relief as the Court deems appropriate.

Respectfully submitted this 19th day of November, 2019.

GUTTILLA MURPHY ANDERSON, P.C.

/s/Patrick M. Murphy
Patrick M. Murphy
Attorneys for the Receiver

1157-001 (379091)

AGREEMENT FOR SALE

This Agreement for Sale ("Agreement"), is entered into as of the 24th day of October 2019, by and between the court appointed Receiver of Landmarc Capital & Investment Company and affiliated entities ("Seller"), and Daniel Cain ("Buyer").

Recitals

Whereas the Seller, as Receiver, owns the interests in loans and an interest in a limited liability company as described in **Exhibit "A"** to this Agreement (Seller's Interests");

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 Order Placing Hayden Insurance, LTD and Desert Trails Insurance Co In Receivership*; and

Whereas the Seller and the Buyer desire to enter into an agreement to sell the Seller's Interests to the Buyer under the terms set forth below.

Terms

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

1. Purchase Price: The Buyer agrees to pay \$18,000.00 for Seller's Interests, which payment shall be delivered to the Seller within ten (10) days 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.

2. Sold "As Is". The Seller's Interests are being sold "As Is" and the Seller is not providing any warranties, express or implied. Buyer expressly acknowledges that there may be liens, assessments or other issues that could significantly impair the value of the Seller's Interests. Buyer further acknowledges that Buyer has 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 Interests. Buyer further acknowledges that any information of any type which Buyer has received or may receive from Seller or Seller's agents is furnished on the express condition that Buyer 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 Buyer understands and acknowledges that the Seller was duly appointed the Receiver of Landmarc by the Receivership Court; that the Seller's 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 Buyer further understands and acknowledges 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 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 Buyer 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 Buyer shall be returned to the Buyer and this Agreement shall terminate.

5. Release and Indemnity. Seller is hereby released from all responsibility and liability regarding the condition or valuation of the Seller's Interests. Buyer agrees that Buyer will not attempt to assert any claims of liability against Seller for furnishing such information, and Buyer agrees 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. Buyer may designate one or more entities of his choosing to take title to the Seller's interests at the Close of Escrow. Buyer shall not otherwise assign or transfer Buyer's rights under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld. 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. Buyer agrees 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.

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 the entry of a final order of the Receivership Court approving this Agreement ("Close of Escrow"). Upon the Close of Escrow, the Buyer shall assume all responsibility for servicing the Gurulee Note and Cotton Note. All amounts constituting Seller's Interests that have accrued and been collected by the Receiver for the Gurulee Note and the Cotton Note, as of the date of closing under this Agreement shall be paid to the Seller, and all amounts, if any, thereafter collected by the Receiver or any successor servicing agent shall be paid to the Buyer.

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.

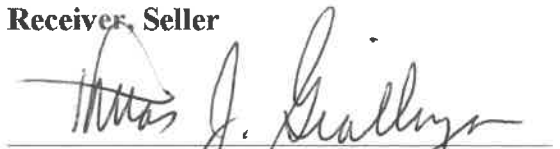
13. Attorneys' Fees. In the event that either party is required to employ an attorney to enforce the terms and conditions of this Agreement or the Promissory Note or

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.

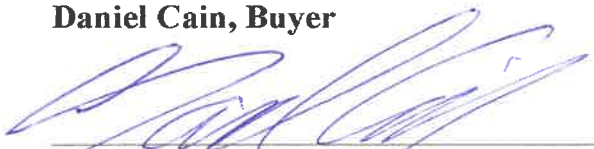
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date set forth above.

Receiver, Seller



By: Thomas J. Giallanza, Deputy Receiver

Daniel Cain, Buyer



By: Daniel Cain

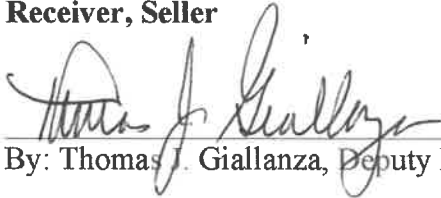
1157-050 (378582)

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.

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

Receiver, Seller



By: Thomas J. Giallanza, Deputy Receiver

Daniel Cain, Buyer



By: Daniel Cain

1157-050 (378582)

EXHIBIT "A"

Seller's Interests Subject to the Agreement for Sale

1. Gurulee Note. That certain promissory note dated April 24, 2017, from Alex and Anna Gurulee in the original principal amount of \$17,000.00, with interest at the rate of 5% per annum ("Gurulee Note"). The Gurulee Note was acquired pursuant to that certain Agreement for Sale dated January 6, 2017, between the Receiver and Alex and Anna Gurulee, husband and wife under which Alex and Anna Gurulee purchased the real property and improvements described below. The Gurulee Note is secured by the real property and improvements described below, pursuant to a Deed of Trust recorded with the Pinal County Recorder on April 24, 2017 as Document No. 2017-028488.

Lots 11 and 12, Block 23, of NORTH COOLIDGE, AN ADDITION TO COOLIDGE TOWNSITE, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Book 3 of Maps, Page 34.

Street address: 987 N. 3rd Street, Coolidge, Arizona 85228

APN: 205-03-355 and 205-03-356.

2. Cotton Note. That certain promissory note dated June 9, 2008, from Ralph and Melissa Cotton ("Cotton") in the original principal amount of \$45,000.00 with interest at the rate of 9.99% per annum ("Cotton Note"). The Cotton Note was acquired as part of a loan to Cotton on June 9, 2008, and is subject to loan modifications dated May 3, 2011 and November 1, 2013. The Cotton Note is secured by a first position Deed of Trust dated June 9, 2008 on the following described mobile home lot and recorded with the Maricopa County Recorder as Document No. 2008-0522738.

Lot 15, Cave Creek Estates, Unit 2A, according to the records of the County Recorder of Maricopa County, Arizona recorded in Book 180 of Maps, Page 28.

Street address: 1824 E. Libby St. Phoenix, Arizona 85022.

APN: 214-10-127.

3. Membership Interest in Route 69 Loan, LLC. A membership interest in Route 69 Loan, LLC, an Arizona limited liability company ("Route 69") of 1.963%. Route 69 is governed by the Articles of Organization filed with the Arizona Corporation Commission on December 22, 2017 and that certain Operating Agreement dated October 31, 2017. Route 69 holds title to certain real property located in Yavapai County at 141 S. State Route 69, Prescott Valley, Arizona pursuant to that certain Special Warranty Deed recorded with the Yavapai County Recorder on January 5, 2018, as Document Number 2018-0000816. The Receiver holds the 1.963% interest in Route 69 as Receiver of Desert Trails Holdings, LLC and Hayden Investments, LLC.