

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
11 IN AND FOR MARICOPA COUNTY

12	STATE OF ARIZONA ex rel. Keith A. Schraad, Superintendent of the Arizona Department of Financial Institutions,	)	Cause No. CV2009-020595
13	Plaintiff,)	
14	v.	)	PETITION NO. 110
15	LANDMARC CAPITAL & INVESTMENT COMPANY,	)	PETITION FOR FINAL ORDER
16	Defendant.	)	ADJUDICATING CLAIMS,
17		)	DECLARING PRIORITY OF DFI
18		)	CLAIM, AUTHORIZING
19		)	ABANDONMENT OF CERTAIN
20		)	INTERESTS, AND AUTHORIZING THE
21		)	TRANSFER OF REMAINING ASSETS
		)	TO DFI
		)	(Assigned to the Honorable Daniel
		)	Martin)

22 Keith A. Schraad, Superintendent of the Arizona Department of Financial Institutions
23 (“DFI”), as the court appointed Receiver, respectfully petitions the Court as follows:

24 1. On June 24, 2009 (“Receivership Date”), this Court entered its *Order*
25 *Appointing Receiver and Order to Show Cause*, which appointed the Superintendent of the
26 Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment
27 Company (“Landmarc”). On July 10, 2009, this Court entered its *Order Appointing*
28 *Permanent Receiver and Injunction* making the appointment of the Receiver permanent. 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* and its *Order*
3 *Placing Hayden Insurance, LTD and Desert Trails Insurance Co. in Receivership*. On May
4 12, 2010, the Court entered its *Amended Order Appointing Permanent Receiver and*
5 *Injunction* (collectively “Receivership Order”).

6 **Claims Process**

7 2. On August 6, 2010, this Court entered its *Order Establishing Procedures for*
8 *the Adjudication of Claims, Re: Petition No. 27* (“Order No. 27”), which established
9 procedures for the Receiver to solicit and adjudicate claims by the creditors of Landmarc and
10 the other receivership entities.

11 3. *Order No. 27* set the following deadlines for filing claims with the Receiver
12 (“Claims Bar Date”):

13 a. September 24, 2010, as the Claims Bar Date for all claims other than
14 non-loan participation claims by Landmarc Capital Partners, LLC (“LC Partners”);

15 b. March 1, 2011, as the Claims Bar Date for all claims by LC Partners, to
16 file a claim for anything other than a loan participation claim.

17 4. The receiver received 188 claims, which are categorized as follows:

<u>Claim Type</u>	<u>Number</u>
WCF Claims	11
Loan Participation Claims	86
Borrower claims	55
Homeowners Association claims	6

1	Taxing authority claims	5
2	Claims to investments in LC Partners	4
3	Claims by trade creditors and other unsecured creditors	21

4 5. To date, the Court has entered the following orders adjudicating most but not all
the claims filed with the Receiver:

5 a. On January 31, 2011, the Court entered its *Order Re: Petition No 40*,
6 which among other things denied the claim filed by Vicki Thompson.

7 b. On July 11, 2011, the Court entered its *Order Approving Receiver's*
8 *Recommendations Regarding Warehouse Credit Facility Claims, Re: Petition No. 43*,
9 which adjudicated the secured claims filed by Warehouse Lenders.

10 c. On October 19, 2011, the Court entered its *Order Re: Petition No. 52*,
11 which denied the claims filed by 30 borrowers.

12 d. On December 13, 2011, the Court entered its *Order No. 52 Denying*
13 *Claim by Cynthia Fera Re: Petition No. 52*, which denied the claim filed by another
14 borrower.

15 e. On May 21, 2012, the Court entered its *Order Deferring Resolution of*
16 *the Claimed First Out Rights and Claimed Interests in the Presidio 197 Loan and*
17 *Approving Remaining Recommendations of the Receiver, Re: Petition No. 54*, which
18 adjudicated nearly all of the 86 Loan Participation Claims.

19 f. On January 8, 2014, the Court entered its *Order Confirming Interests in*
20 *the Presidio West 197 Loan Re: Petition No. 54*, and on May 22, 2014, the Court
21

1 entered its *Stipulated Order Concerning Priority of Claims for Payment of Real*
2 *Property Taxes*, which adjudicated claims filed with respect to the Presidio 197 Loan.

3 g. On September 21, 2015, the Court entered its *Amended Stipulated Order*
4 *Denying Claim Filed by Carey Arp, Re: Petition No 55*, which denied the claim filed
5 by Carey Arp.

6 h. On June 8, 2017, the Court entered its *Order Re: Petition No. 54*, which
7 resolved all the claimed first out rights that had been deferred in the Court's order
8 entered on May 21, 2012. This order resolved all remaining issues with respect to the
9 Loan Participation Claims.

10 6. With the exception of *Order Re: Petition No 40*, all of the above orders were
11 final orders from which no appeals were taken. Vicki Thompson appealed from *Order Re:*
12 *Petition No 40*. On January 31, 2012, the Arizona Court of Appeals entered its *Memorandum*
13 *Decision* affirming the order of this Court denying the claim filed by Vicki Thompson.

14 **Claims Not Fully Adjudicated**

15 7. Following the above adjudications, there remain 57 claims that have not been
16 fully adjudicated by the Court. Attached hereto as **Exhibit A** are schedules of the claims that
17 have not been fully adjudicated and they include the following:

18 a. Five (5) claims for unpaid real estate taxes as set forth in the attached
19 **Exhibit A-1** ("Tax Claims");

20 b. Six (6) claims filed by homeowner associations for unpaid assessments
21 as set forth in the attached **Exhibit A-2** ("HOA Claims");

1 c. Twenty-Two (22) claims filed by borrowers as set forth in the attached
2 **Exhibit A-3** (“Borrower Claims”);

3 d. Four (4) claims filed by investors in LC Partners as set forth in the
4 attached **Exhibit A-4** (“LCP Investor Claims”);

5 e. Twenty (20) other general unsecured claims as set forth in the attached
6 **Exhibit A-5** (“General Unsecured Claims”).

7 8. The Tax Claims set forth in **Exhibit A-1** are all claims for unpaid real property
8 taxes secured by various properties that Landmarc acquired title to either through foreclosure
9 or otherwise, and all these Tax Claims have been paid in full, typically from the proceeds of
10 the sale of the properties. Accordingly, the Receiver recommends that the Tax Claims set
11 forth in **Exhibit A-1** be denied as moot.

12 9. The HOA Claims set forth in **Exhibit A-2** are all claims for assessments and
13 related charges purportedly secured by various properties that Landmarc acquired title to
14 either through foreclosure or otherwise. All the HOA Claims have been resolved by
15 compromise or paid in full, usually from the proceeds of the sale of the properties.
16 Accordingly, the Receiver recommends that the HOA Claims set forth in **Exhibit A-2** be
17 denied as moot.

18 10. The Borrower Claims set forth in **Exhibit A-3** are claims by persons who
19 borrowed money from Landmarc and generally consist of claims that they were misled or
20 defrauded by Landmarc. The documents and other information filed with these claims do not
21 establish that the claims have merit. However, for the reasons set forth below, the Receiver

1 has not investigated these claims further. Due to the lack of documentation establishing the
2 merit of the claims and the lack of funds to pay any of these claims as set forth below, the
3 Receiver recommends that the Borrower Claims set forth in **Exhibit A-3** be denied.

4 11. The LCP Investor Claims set forth in **Exhibit A-4** are claims by persons who
5 were limited partner investors in LC Partners. These claims are actually for the claimants'
6 partnership interests in LC Partners and are not claims against Landmarc. These claimants
7 were entitled to a distribution of funds from LC Partners and are not entitled to a claim
8 against or distribution from Landmarc. Due to the lack of merit to these claims and the lack
9 of funds to pay any of these claims as set forth below, the Receiver recommends that the LCP
10 Investor Claims set forth in **Exhibit A-4** be denied.

11 12. The General Creditor Claims set forth in **Exhibit A-5** are claims by persons
12 who performed services for Landmarc prior to the receivership or are non-borrowers who
13 claim to have been damaged by Landmarc through their dealings with the company. The
14 documents and other information filed with these claims do not in all cases show that the
15 claims have merit. However, for the reasons set forth below, the Receiver has not
16 investigated these claims further. Due to the lack of funds to pay any of these claims as set
17 forth below, and to the lack of any merit to some of the claims, the Receiver recommends that
18 the General Creditor Claims set forth in **Exhibit A-5** be denied.

19 **Unsecured Claims of Warehouse Lenders**

20 13. In the Court's *Order Approving Receiver's Recommendations Regarding*
21 *Warehouse Credit Facility Claims, Re: Petition No. 43*, the Court adjudicated the claims filed

1 by Warehouse Lenders. The Court approved the total amounts owed to each claimant by
2 Landmarc under their respective Warehouse Credit Facility Agreement as set forth in the
3 attached **Exhibit B** under the column entitled “Court Approved Amount.” In addition, the
4 Court approved the transfer of certain loan participation interests to each claimant as
5 recommended by the Receiver, which interests represented the secured portion of the claim.
6 Finally, the Court authorized the Receiver to ascertain the unsecured portion of each claim by
7 making the following adjustments to the approved claim amount:

- 8 a. Deduct the value of the loan participation interest transferred to the
9 claimant pursuant to the procedures set forth by the Court;
- 10 b. Add the amount of loan charges paid to the Receiver by the claimant in
11 connection with the transferred interests; and
- 12 c. Deduct the amount of trust funds regarding each transferred asset that the
13 claimant received from the Receiver.

14 14. The attached **Exhibit B** sets forth the estimated adjustment amounts set forth in
15 the Receiver’s Petition No. 43 and supplemental filings by the Receiver which were approved
16 by the Court, and the resulting estimated unsecured claim amount. The Receiver has not
17 determined the precise amounts of the adjustments set forth above because there are no
18 available funds to pay the unsecured claim of the Warehouse Lenders since they are
19 subordinate to the reimbursement claim of DFI as discussed below. Accordingly, the
20 Receiver recommends that the unsecured claims of the Warehouse Lenders be approved in
21 the amounts set forth in the attached **Exhibit B** under the column entitled “Estimated

1 Unsecured Claim” each of which is subordinated to the claims of DFI for reimbursement
2 under A.R.S. §6-131.01(B).

3 **Unpaid Priority Reimbursement Claim of the Department of Financial Institutions**

4 15. Pursuant to A.R.S. §6-131.01, the Arizona Department of Financial Institutions
5 (“DFI”) is authorized to fund the operations of a receivership in which the Superintendent is
6 the receiver and to be reimbursed for those expenditures upon order of the receivership Court.

7 16. Specifically, A.R.S. §6-131.01 provides as follows:

8 A. The superintendent may be appointed as a receiver of a financial
9 institution or enterprise under his supervision. No bond is required of the
superintendent for acting as a receiver.

10 B. All reasonable expenses of the department relating or apportioned to
11 a receivership, including receiver fees and attorney fees, costs of preliminary or
12 other examinations of the person placed into receivership and expenses relating
13 to the management of any office or other asset of the person placed in
14 receivership, shall be awarded by the court for payment to the department out of
the assets of the receivership. The department shall assess those expenses
against the receivership quarterly and shall deposit those amounts in the
department receivership revolving fund, as provided in section 6-135.01. Those
assessments have priority over the other creditors of the receivership.

15 Notwithstanding the other provisions of this subsection, on request by the
16 superintendent, the court may award personal property of the receivership to the
department as partial compensation for the services rendered during the
administration of the receivership. [Emphasis added]

17 C. The superintendent shall maintain a complete accounting of each
18 receivership in which he is appointed as receiver.

19 17. A.R.S. §6-135.01, which establishes DFI’s Receivership Revolving Fund,
provides as follows:

20 A. A department receivership revolving fund is established to be
21 administered by the superintendent. The fund shall consist of monies from the
following sources:

1 1. Monies awarded and received as fees and costs in receiverships in
2 which the superintendent was the receiver, as provided in section 6-131.01.

3 2. Monies received from the department revolving fund, as provided in
4 section 6-135, subsection B.

5 B. Monies in the fund may be used to pay any costs incurred by the
6 department arising out of the administration of a receivership in which the
7 superintendent is the receiver.

8 C. The superintendent shall submit to the legislature with the
9 department's annual budget request a full and complete account of the
10 department receivership revolving fund through the end of its most recent fiscal
11 year.

12 18. On August 26, 2009, the Court entered its *Order Re: Petition No. 2, Order*
13 *Governing the Administration of the Receivership* (“Order No. 2”), which provides in
14 pertinent part as follows:

15 9. Petitions for Payment of Fees. Pursuant to A.R.S. § 6-131.01(B),
16 and notwithstanding the Receivership Order, the Receiver may seek an award
17 from the Court for all reasonable expenses of the Department of Financial
18 Institutions relating or apportioned to this receivership, including the fees of the
19 Special Deputy Receiver, attorneys and accountants, costs of preliminary or
20 other examinations of the person or persons in receivership and expenses
21 related to the management of offices or assets of the person or persons in
 receivership by filing a petition, which petition shall not be required to include
 as exhibits the itemized statements of services rendered to, and costs incurred or
 expended on behalf of, the Receivership, provided that the petition includes a
 statement that anyone desiring additional information concerning the services
 and costs to be paid under the pay petition may obtain redacted information
 from the Receiver by delivering to the Receiver and the Receiver’s general
 counsel, Guttilla Murphy Anderson, P.C., a written request specifying the
 additional information requested at least three days prior to the date set for
 hearing on the pay petition. Upon request of the Court, the Receiver shall make
 available for in camera review by the Court, the itemized statements and
 supporting documentation for the services and costs to be paid under the pay
 petition.

1 19. The attached **Exhibit C** sets forth the reimbursement petitions filed by the
2 Receiver pursuant to A.R.S. §6-131.01. As shown in **Exhibit C** the Court approved the
3 reimbursement of expenses incurred by DFI through September 30, 2013 totaling \$5,118,355.
4 Of this approved reimbursement amount, DFI has been paid \$4,628,610 leaving a balance of
5 \$489,745 owed to DFI under the previous orders of the Court. It should be noted that DFI
6 has incurred substantial expenses subsequent to September 30, 2013, which expenses have
7 not been submitted to the Court for approval for the reason that there are not sufficient funds
8 to pay the expenses already approved and incurring further expenses to account for and obtain
9 approval of such fees would have been unjustified.

10 **Lack of Funds to Pay Remaining Claims**

11 20. Once the foregoing claims have been finally adjudicated, the Receiver will be
12 in a position to file a petition to close this receivership and distribute the remaining assets to
13 DFI in partial repayment of its statutory priority right to reimbursement for expenses incurred
14 in operating this receivership. Attached as **Exhibit D** is an accounting of receivership assets
15 as of September 30, 2019. This accounting demonstrates that as of the date indicated the
16 Receiver held cash, loans and other interests worth approximately \$92,878.¹ These interests
17 include the loans to be transferred to DFI set forth in **Exhibit D-1** and the interests to be
18 abandoned by the Receiver set forth in **Exhibit D-2**. The Receiver has determined for the

19 _____
20 ¹ From time to time the Receiver will incur and pay some operating expenses directly from
21 the assets of the receivership estate that are not reflected in the valuation contained in **Exhibit**
D, but which will reduce the amount available for distribution to DFI as requested in this
petition.

1 reasons stated in Exhibit D-2 that the interests of the Receiver, if any, arising out of the loans
2 listed in Exhibit D-2 are of no value to the receivership estate. The Receiver is requesting
3 authority to abandon any remaining interests of the Receiver in these loans in order to avoid
4 this Court or DFI having to address issues that might arise following the termination of this
5 receivership regarding whether the Receiver or any of the receivership entities retain some
6 interest in the loan or the security for the loan.

7 21. As noted above, the reimbursement obligation to DFI previously approved by
8 the Court has a balance remaining unpaid of \$489,754. Since the DFI reimbursement
9 obligation has a statutory priority over all other claims and the value of the remaining assets
10 is far less than the remaining amount due DFI, the Receiver recommends that the Court
11 authorize the Receiver to abandon any remaining interests of the Receiver arising out of the
12 loans set forth in Exhibit D-2, and authorizing the Receiver to transfer to DFI the remaining
13 receivership assets, including the loans set forth in Exhibit D-1.

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

- 15 1. Denying as moot the Tax Claims set forth in Exhibit A-1;
- 16 2. Denying as moot the HOA Claims set forth in Exhibit A-2;
- 17 3. Denying the Borrower Claims set forth in Exhibit A-3;
- 18 4. Denying, the LCP Investor Claims set forth in Exhibit A-4;
- 19 5. Denying the General Creditor Claims set forth in Exhibit A-5;
- 20 6. Approving the Unsecured Claim Amounts of the Warehouse Lenders Claims as
21 set forth in Exhibit B;

