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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 STATE OF ARIZONA ex rel. LAUREN)
12 KINGRY, Superintendent of the Arizona)
13 Department of Financial Institutions,)

14 Plaintiff,)

15 v.)

16 LANDMARC CAPITAL &)
17 INVESTMENT COMPANY,)

18 Defendant.)

Cause No. CV2009-020595

PETITION NO. 83

PETITION FOR ORDER APPROVING
THE SALE OF REAL PROPERTY
LOCATED 350 EAST CYPRESS
STREET, GILBERT, ARIZONA a/k/a 317
EAST JASPER COURT, GILBERT,
ARIZONA

(Assigned to the Honorable Lisa Flores)

19 Lauren W. Kingry, as the court appointed Receiver, respectfully petitions the Court as
20 follows:

21 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment Company ("Landmarc"). On July 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 J. Giallanza
5 as Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
6 Receivers to carry on the day to day business of Landmarc.

7 2. In accordance with the Receivership Order, the Receiver has located and taken
8 possession of a single family residence located at 350 E. Cypress Street, Gilbert, Arizona
9 (also known as 317 E. Jasper Court) ("Property"). This Property is legally described in
10 Exhibit "1" attached hereto and was acquired by and is currently held in the name of the
11 Landmarc Capital & Investment Company ("Landmarc") pursuant to a *Trustee's Deed Upon*
12 *Sale* recorded with the Maricopa County Recorder on July 12, 2007 as Document Number
13 2007-0795568. Prior to the appointment of the Receiver, Landmarc entered into an *Option*
14 *Agreement* dated October 31, 2008, with Brandon and Barbara Farrow ("Farrows") which
15 provided for the lease of the Property to the Farrows for \$2,125.00 per month and granted the
16 Farrows the option to purchase the Property for \$415,000.00 on or before November 1, 2010
17 ("Option Agreement").

18 3. The Option Agreement was extended by the Receiver on several occasions and
19 is presently scheduled to expire on April 30, 2014. The Receiver and the Farrows have
20 recently negotiated an *Amendment to Option Agreement* which is attached hereto as Exhibit
21 "2". The *Amendment to Option Agreement* provides for the payment of interim payments of

1 \$1,800 per month and an option price for the purchase of the Property of \$437,500.00. Under
 2 the *Amendment to Option Agreement* the option to purchase must be exercised by July 30,
 3 2014, and the sale must close within 60 days thereafter.

4 4. The Property is not encumbered by any indebtedness, other than obligations for
 5 real estate taxes and assessments.

6 5. Pursuant to this Court's *Order Approving Receiver's Recommendations*
 7 *Regarding Warehouse Credit Facility Claims, Re: Petition No. 43* and *Order Deferring*
 8 *Resolution of the Claimed First Out Rights and Claimed Interests in the Presidio 197 Loan*
 9 *and Approving Remaining Recommendations of the Receiver, Re: Petition No. 54*, the
 10 Receiver is authorized to market and sell the Property and distribute the net sale proceeds,
 11 after payment of accrued real property taxes and reimbursement of Landmarc's loan charges,
 12 to the following beneficial owners in the percentages indicated:

<u>Beneficial Owner</u>	<u>Approved %</u>
Receiver (successor to Stoneman Properties)	58.54%
Craigo, William	11.10%
Madelene Kepes Revocable Living Trust	11.56%
Russo, Robert	14.10%
Sneed, Jimmie	4.70%
	<u>100.00%</u>

17 6. The sale contemplated under Exhibit "2" is conditioned upon, and will not take
 18 place in the absence of, an order of this Court approving such sale after notice and a hearing.

19 7. Because the Option Agreement was entered into prior to the appointment of the
 20 Receiver and the Receiver has negotiated the extensions and the *Amendment to Option*
 21

1 *Agreement*, there was no need to engage a real estate broker and no broker commissions are
2 payable at the time of the sale of the Property under the *Amendment to Option Agreement*.

3 8. In accordance with this Court's Order Re: Petition Number 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 to each of the claimants with an
6 approved beneficial interest in the Property as indicated in the Proof of Mailing filed
7 herewith;

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

11 9. The Receiver recommends that the Court approve the *Amendment to Option*
12 *Agreement* attached hereto as Exhibit "2" and approve the sale provided for therein subject to
13 the terms and conditions therein.

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

15 1. Approving the *Amendment to Option Agreement* attached as Exhibit "2" to this
16 Petition;

17 2. Approving without further order of this Court the sale of the Property legally
18 described in Exhibit "1" under the terms and conditions set forth in the *Amendment to Option*
19 *Agreement* attached as Exhibit "2" to this Petition; and
20
21

1 3. Authorizing Thomas J. Giallanza, Deputy Receiver, to execute all necessary
2 documents in connection with the sale of the Property under the terms and conditions set
3 forth in the *Amendment to Option Agreement* attached as Exhibit "2" to this Petition.

4 Respectfully submitted this 16th day of April, 2014.

5 GUTTILLA MURPHY ANDERSON, P.C.

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

9 1157-001(177101)

Gutilla Murphy Anderson, P.C.
City North
5415 E. High Street, Suite 200
Phoenix, AZ 85054
(480) 304-8300

A portion of the Southwest quarter of Section 19, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the West quarter corner of said Section 19;

Thence South 89 degrees 57 minutes 02 seconds East (an assumed bearing), along the latitudinal midsection line of said Section 19, for a distance of 2038.13 feet to the Northwest corner of the East 464.82 feet of the Northeast quarter of the Southwest quarter of said Section 19, said point being the POINT OF BEGINNING;

Thence continuing South 89 degrees 57 minutes 02 seconds East along said midsection line, a distance of 144.76 feet;

Thence South 00 degrees 14 minutes 45 seconds West a distance of 182.29 feet;

Thence South 22 degrees 30 minutes 00 seconds West a distance of 41.61 feet;

Thence South 58 degrees 46 minutes 39 seconds West a distance of 52.24 feet;

Thence North 89 degrees 45 minutes 15 seconds West a distance of 67.62 feet;

Thence South 00 degrees 58 minutes 53 seconds West a distance of 160.91 feet;

Thence South 89 degrees 45 minutes 15 seconds East a distance of 24.82 feet;

Thence South 00 degrees 14 minutes 35 seconds West a distance of 35.00 feet to a point on the North right-of-way line of Cypress Street, said line being parallel with and 17.00 feet North of the center line of Cypress Street as shown on the plat of SETTLER'S MEADOW, recorded in Book 380 of Maps, Page 34, records of Maricopa County recorders office;

Thence along said North right-of-way line, North 89 degrees 45 minutes 15 seconds West a distance of 45.21 feet to a point on the West line of the East 464.82 feet of the Northeast quarter of the Southwest quarter of said Section 19, said point also being the East line of SETTLER'S POINT SOUTH, as recorded in Book 391 of Maps, Page 28, records of Maricopa County recorders office;

Thence along said line North 00 degrees 58 minutes 53 seconds East a distance of 443.51 feet to the POINT OF BEGINNING.

APN: 30424011C

AMENDMENT TO OPTION AGREEMENT

This Amendment to Option Agreement ("Amended Agreement") entered into effective the 30th day of April 2014, by and between Landmarc Capital & Investment Company by and through its Court appointed Receiver ("Landmarc"), and Brandon K. Farrow and Barbara L. Farrow, husband and wife ("Optionee").

Recitals

A. On October 31, 2008, Landmarc and Optionee entered into that certain *Option Agreement*, which among other things granted Optionee the right to purchase from Landmarc on or before November 1, 2010, certain real property and improvements located at 350 E. Cypress, Gilbert, Arizona, Parcel Number 304-24-011C, also known as 317 E. Jasper Court, Gilbert, and legally described as set forth in the attached Exhibit "1" (hereafter referred to as the "Property"), for a purchase price of \$415,000.00.

B. On June 24, 2009, the Arizona Superior Court for Maricopa County appointed the Superintendent of the Arizona Department of Financial Institutions as the Receiver of Landmarc in the case entitled *State of Arizona v. Landmarc Capital & Investment Company*, cause number CV2009-020595 ("Receivership Court").

C. Effective August 1, 2010, Landmarc and Optionee entered into that certain *Option and Extension Agreement*, which among other things extended the option date to April 31, 2012.

D. Effective April 1, 2012, Landmarc and Optionee entered into that certain *Option and Extension Agreement*, which among other things extended the option date to April 31, 2014.

E. Optionee has requested a 90 day extension of the option date and Landmarc is willing to grant the extension for the additional consideration and under the conditions set forth in this Amended Agreement.

Terms

1. Grant of Option. For value received, the adequacy and receipt whereof are hereby acknowledged, Landmarc hereby extends to Optionee the exclusive option to purchase the Property as provided and subject to the terms and conditions set forth in this Amended Agreement. The Property subject to the option created hereby shall include all contract rights and other intangible rights which are owned by Landmarc and which are pertinent to the Property or the improvements.

2. Term. This option shall expire at midnight on July 30, 2014 ("Option Date").

3. Notice of Exercise and Payment of Deposit. Written notice of the election by Optionee to purchase the Property under the terms of this Amended Agreement shall be delivered to Landmarc prior to the Option Date. On or before April 15, 2014, Optionee shall pay to Landmarc the sum of ~~\$2,500.00~~, which shall constitute the Optionee's earnest money deposit ("Deposit").

4. Purchase Price. The total purchase price for the option shall be FOUR HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100ths DOLLARS (\$437,500.00).

\$2,500.00

TJF

5. Reimbursement of Costs for Preparation of the Amended Agreement. In addition to the purchase price set forth in paragraph 4 above, the Optionee shall pay to Landmarc at closing the sum of ONE THOUSAND TWO HUNDRED AND NO/100ths DOLLARS (\$1,200) as reimbursement for the legal fees and costs incurred by Landmarc in the preparation of this Amended Agreement.

6. Receivership Court Approval. Optionee understands and acknowledges that Landmarc is under the exclusive jurisdiction of the Receivership Court and that this Amended Agreement is contingent upon the approval of the Receivership Court and that the Receivership Court could decline to approve this Amended Agreement for various reasons, including without limitation that the sale price is not fair or that a sale of the Property is not in the best interests of the estate or the Beneficial Owners of the Property. The obligations of Landmarc and Optionee to close this Amended Agreement are hereby expressly made subject to Landmarc's receipt of approval from the Receivership Court to consummate the transaction contemplated by this Amended Agreement, including an order approving the sale contemplated by this Amended Agreement upon the terms contained in this Amended Agreement. Landmarc shall commence diligent pursuit of the Receivership Court's approval of this Amended Agreement immediately after execution of this Amended Agreement by the Optionee, and if Landmarc is unable to obtain the Receivership Court's approval on or prior to May 15, 2014, despite diligent efforts by Landmarc, this Amended Agreement shall terminate. Upon any termination pursuant to this paragraph the Deposit shall be returned to Optionee.

7. Closing. The closing shall be held at the offices of North American Title Company or such other escrow agent designated by Landmarc, and shall occur within sixty (60) calendar days following the expiration date of this option as set forth above. Failure of the purchase of the Property to close within the period prescribed herein shall result in the termination of this option and the forfeiture of the Deposit required herein, provided however, the Deposit shall not be forfeited to Landmarc if the failure to close is the result of Landmarc's failure to obtain approval of the purchase from the Receivership Court.

8. Right of Inspection. During the term of this Amended Agreement, Landmarc shall have the right to inspect the Property at least every 30-45 days to determine whether the Property is being properly maintained by the Optionee.

9. Condition of Title. At closing, Landmarc shall assign, grant, convey and transfer to Optionee by special warranty deed, good and marketable fee simple title to the Property, subject to only such liens, encumbrances, easements, reservations, restrictions, and title exceptions as are disclosed in Schedule B of the Preliminary Title Report and approved by Optionee.

10. Condition of Property. Optionee acknowledges that Landmarc is selling the Property in an "AS IS" and "WHERE IS" condition with no warranty as to habitability, use, condition, or fitness for a particular purpose. Optionee shall have no claims against Landmarc or its agents or assigns with respect to any issues pertaining to the condition of the Property. Optionee shall not during the term of this Amended Agreement allow any liens, encumbrances, or do any action which would cause a cloud to appear on the title to the Property.

11. Closing Documents. Optionee and Landmarc will provide all documents reasonably necessary to perform and carry out the covenants and obligations to be performed pursuant to the exercise of this option.

12. Previous Option Payments. All prior amounts previously paid by Optionee to Landmarc in connection with this option are the property of Landmarc and all such payments are non-refundable to the Optionee. In the event that Optionee is not in default under the terms of this Amended Agreement and if the Optionee completes the purchase of the Property pursuant to the terms of this Amended Agreement, the initial option fee of \$25,000.00 previously paid by Optionee and the Deposit paid by the Optionee shall be applied as a credit to the Purchase Price. No other payments paid by Optionee shall be a credit to the Purchase Price.

13. Interim Payments. Optionee shall pay Landmarc the sum of \$1,800.00 per month during the extended term of this option ("Interim Payment"). Each Interim Payment shall be due and payable to Landmarc, c/o Arizona Department of Financial Institutions, 2910 N. 44th Street, Suite 310, Phoenix, Arizona 85018, on the 1st day of each month by 4:00PM, commencing on May 1, 2014. If any Interim Payment is not made on or before the deadline this option shall terminate immediately without further notice or action by Landmarc. If the 1st day of any month falls on a Saturday, Sunday or legal holiday, the Interim Payment shall be paid on or before the first business day immediately following the 1st day of the month. No Interim Payment shall be applied toward the Purchase Price nor be refundable. All payments due under this Amended Agreement shall be made by certified funds.

14. Failure to Exercise Option. If Optionee fails to exercise this option within the period provided therefore or if after the exercise of this option, Optionee rejects the title to the Property as defective, then this Option Agreement shall terminate and shall be of no further force or effect.

15. Assignment. This option and all rights hereunder shall be assignable, upon the prior written consent of Landmarc, which consent shall not be unreasonably withheld. If assigned by Optionee, any and all acts performable by it hereunder shall be performed by such assignee, whether such assignment is made before or after the exercise of this option. In addition, this Amended Agreement shall be binding upon and inure to the benefit of each if the parties hereto and their respective heirs, executors, administrators, assigns and successors. Optionee shall not be permitted to use the Property or this Option Agreement as collateral for any financing, nor allow any liens to be placed upon the Property at any time prior to Optionee's purchase of the Property.

16. Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Amended Agreement shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered; or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, or deposited with Federal Express or another national overnight courier service with recognized reliability, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at such address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received

shall also constitute receipt. Any such notice, election demand, request or response, if given to Purchaser, shall be addressed as follows:

To Landmarc:

Thomas J. Giallanza, Deputy Receiver
c/o Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, Arizona 85018

with a copy to:

Patrick M. Murphy
Guttilla Murphy Anderson, PC
5415 E. High Street, Suite 200
Phoenix, Arizona 85054

To Optionee:

Brandon Farrow or Barbara Farrow
350 E. Cypress, Gilbert, Arizona 85296

17. Entire Agreement. As of the effective date, this Amended Agreement sets forth the entire agreement among the parties as to the subject matter of this Amended Agreement, and this Amended Agreement may not be modified except by an instrument in writing signed by all of the parties.

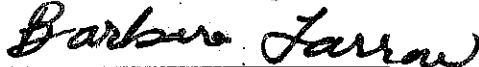
18. Resolution of Disputes. The Receivership Court for the Landmarc receivership shall have exclusive jurisdiction to resolve any issues concerning this Amended Agreement. In the event that a dispute arises among the parties under this Amended Agreement which the parties are unable to resolve between themselves, either party may file a petition with the Receivership Court seeking a resolution of the dispute.

IN WITNESS WHEREOF, Landmarc and Optionee have executed this Amended Agreement effective as of the date first above written.

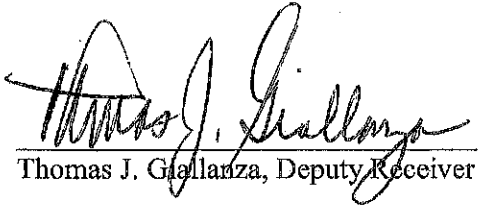
Brandon K. Farrow, Optionee



Barbara L. Farrow, Optionee



Landmarc Capital & Investment Company,
in Receivership


Thomas J. Gallanza, Deputy Receiver

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