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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. LAUREN )  
13 KINGRY, Superintendent of the Arizona )  
14 Department of Financial Institutions, )  
15  
16 Plaintiff, )  
17  
18 v. )  
19 LANDMARC CAPITAL & )  
20 INVESTMENT COMPANY, )  
21 Defendant. )

Cause No. CV2009-020595

PETITION NO. 84

PETITION FOR ORDER APPROVING  
THE SALE OF REAL PROPERTY  
LOCATED AT 1484 EAST FLORENCE  
BOULEVARD, CASA GRANDE,  
ARIZONA

(Assigned to the Honorable Lisa Flores)

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

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 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,

1 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*  
2 (collectively “Receivership Order”). The Receivership Order appointed Thomas J. Giallanza  
3 as Deputy Receiver and authorized the Receiver to engage and employ Special Deputy  
4 Receivers to carry on the day to day business of Landmarc.

5 2. In accordance with the Receivership Order, the Receiver has located and taken  
6 possession of certain real property located at 1484 East Florence Boulevard, Casa Grande,  
7 Arizona 85122 (“Property”). This Property is legally described in Exhibit “1” attached hereto  
8 and was acquired by and is currently held in the name of the beneficiaries under the  
9 assignments of the deed of trust<sup>1</sup> pursuant to a *Trustee’s Deed Upon Sale* recorded with the  
10 Pinal County Recorder on October 14, 2011 as Document Number 2011-083373.

11 3. The Property is commercial property and is not encumbered by any  
12 indebtedness, other than obligations for real estate taxes and assessments.

13 4. The continued holding of the Property is not necessary or appropriate to protect  
14 the interests of any persons interested in this receivership. Accordingly, the Receiver  
15 commenced efforts to market and sell the Property.

16 5. Pursuant to this Court’s *Order Approving Receiver’s Recommendations*  
17 *Regarding Warehouse Credit Facility Claims, Re: Petition No. 43* and *Order Deferring*  
18 *Resolution of the Claimed First Out Rights and Claimed Interests in the Presidio 197 Loan*  
19 *and Approving Remaining Recommendations of the Receiver, Re: Petition No. 54*, the

20 \_\_\_\_\_  
21 <sup>1</sup> Title is vested as follows: Urquieta Smythe Family Trust (17.142%), Michael Macken IRA  
(14.286%), Karen Chopra Living Trust (8.571%), Bennett H. Grimm Jr & Susan V. Grimm  
(14.286%), Stephen L. Hooker, IRA (5.714%), Landmarc Capital Partners, LLC (20.788%), Russell  
Investments, LP (17.142%), and Landmarc Capital & Investment Company (2.071%).

1 Receiver is authorized to market and sell the Property and distribute the net sale proceeds,  
2 after payment of accrued real property taxes and reimbursement of Landmarc's loan charges,  
3 to the following beneficial owners in the percentages indicated:

<u>Beneficial Owner</u>	<u>Approved %</u>
Receiver (successor to Landmarc)	0.68%
Urquieta Smythe Family Trust	17.10%
Russell Investments, LP	17.10%
Michael Macken IRA	14.30%
Bennett H. Grimm Jr & Susan V. Grimm	14.30%
Karen Lamb Living Trust	8.60%
Stephen L. Hooker, IRA	5.70%
Landmarc Capital Partners, LLC	20.80%
Wesley A. & Marlene White Trust	0.09%
Gubin Family Trust	<u>1.33%</u>
	100.00%

6. The Property was appraised by Dennis L. Lopez, Certified General Real Estate  
Appraiser – State of Arizona Certificate No. 30189 on July 19, 2010 which indicated a fair  
market value for the Property to be \$1,350,000. The Receiver paid this appraiser a fee of  
\$3,500.00 for this appraisal and the appraiser has no known interest in any of the parties or in  
the sale of the Property.

7. In addition, in January, 2014, the Receiver agreed to pay Strategic Retail Group  
a 4% sales commission, subject to the approval of this Court.

8. On April 7, 2014 the Receiver received an offer from AF/FO Holdings, LLC, a  
Delaware limited liability company to purchase the Property under terms that were acceptable  
to the Receiver. This document constitutes the Purchase Agreement and is attached hereto as  
Exhibit "2". The Purchase Agreement provides for the sale of the Property for \$2,090,000.00  
in cash and is conditioned upon approval by this Court.



**EXHIBIT A**

**(LEGAL DESCRIPTION)**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CASA GRANDE, COUNTY OF PINAL, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

THE EAST 330 FEET OF THE SOUTH 710 FEET OF THE EAST 710 FEET OF THE EAST HALF OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21;

THENCE NORTH 00 DEGREES 10 MINUTES 38 SECONDS WEST, A DISTANCE OF 50 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, A DISTANCE OF 33 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 10 MINUTES 38 SECONDS WEST, A DISTANCE OF 659.93 FEET;

THENCE SOUTH 89 DEGREES 49 MINUTES 22 SECONDS WEST, A DISTANCE OF 17.00 FEET;

THENCE SOUTHERLY, ALONG THE ARC OF A CURVE TO THE RIGHT WITH A TANGENT BEARING SOUTH 00 DEGREES 10 MINUTES 38 SECONDS EAST, AND HAVING A RADIUS OF 1528.20 FEET AND A CENTRAL ANGLE OF 12 DEGREES 01 MINUTES 00 SECONDS FOR A ARC DISTANCE OF 321.84 FEET TO A POINT OF REVERSE CURVATURE OF A TANGENT LINE CONCAVE TO THE EAST;

THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 1628.20 FEET AND A CENTRAL ANGLE OF 12 DEGREES 03 MINUTES 46 SECONDS FOR A ARC DISTANCE OF 292.79 FEET, TO A POINT OF REVERSE CURVATURE;

THE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 50 FEET AND A CENTRAL ANGLE OF 88 DEGREES 24 MINUTES 45 SECONDS FOR A ARC DISTANCE OF 77.15 FEET, TO A POINT OF TANGENCY ALONG THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 287;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS EAST, A DISTANCE OF 136.74 FEET TO THE TRUE POINT OF BEGINNING.

**PARCEL 2:**

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21;

THENCE SOUTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, A DISTANCE OF 330 FEET;

THENCE NORTH 00 DEGREES 10 MINUTES 39 SECONDS WEST, A DISTANCE OF 50 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUE NORTH 00 DEGREES 10 MINUTES 39 SECONDS WEST, A DISTANCE OF 610 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, A DISTANCE OF 80 FEET;

THENCE SOUTH 00 DEGREES 10 MINUTES 39 SECONDS EAST, A DISTANCE OF 610 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS EAST, A DISTANCE OF 80 FEET TO THE TRUE POINT OF BEGINNING.

## **AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY**

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made by and between (A) AG/FO HOLDINGS LLC, a Delaware limited liability company ("Purchaser"), and (B) THOMAS J. GIALLANZA, AS DEPUTY RECEIVER, AND/OR LAUREN KINGRY, AS RECEIVER, FOR LANDMARC CAPITAL AND INVESTMENT COMPANY, AND THE INTERESTS OF THE FOLLOWING BENEFICIAL OWNERS: URQUIETA A. SMYTHE FAMILY TRUST, as to an undivided 17.142% interest in the Property (as defined below) ("Smythe Trust"), MICHAEL MACKEN IRA, as to an undivided 14.286% interest in the Property ("Macken IRA"), KAREN CHOPRA LIVING TRUST, as to an undivided 8.571% interest in the Property ("Chopra Trust"), BENNETT H. GRIMM JR & SUSAN V. GRIMM, WITH RIGHTS OF SURVIVORSHIP, as to an undivided 14.286% interest in the Property ("Grimm"), STEPHEN L. HOOKER IRA, as to an undivided 5.714% interest in the Property ("Hooker IRA"), LANDMARC CAPITAL PARTNERS, LLC, as to an undivided 20.788% interest in the Property ("Landmarc LLC"), RUSSELL INVESTMENTS, LP, as to an undivided 17.142% interest in the Property ("Russell"), and LANDMARC CAPITAL & INVESTMENT COMPANY, as to an undivided 2.071% interest in the Property ("Landmarc Company"). The Smythe Trust, the Macken IRA, the Chopra Trust, Grimm, the Hooker IRA, Landmarc LLC, Russell and the Landmarc Company are referred to herein collectively (and jointly and severally) as the "Seller" and/or the "Beneficial Owners".

1. **SALE AND PURCHASE.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, that certain improved real property located in Pinal County, Arizona, containing approximately 4.76 acres, being legally described on **Exhibit A** attached hereto and incorporated herein by this reference ("Real Property") (provided, however, if no such legal description is attached hereto as **Exhibit A**, then the legal description of the Real Property shall be as set forth in the Commitment [as defined in **Paragraph 6** hereof]), together with any and all buildings and other improvements located thereupon (including, without limitation, that certain building located on the Real Property), minerals and mineral rights, oil and gas and oil and gas rights, crops, rights of way, easements, improvements, personal property and other property rights appurtenant thereto and/or owned or used by Seller in connection therewith, and any right, title and interest of Seller in any adjoining or adjacent streets, roads or rights-of-way, development rights, air rights, and all water and water rights, including, but not limited to, underground water and water rights, storage rights, ditch and ditch rights, well rights and reservoir rights, used in connection with, benefiting or appurtenant to the Real Property and owned by Seller (collectively, the "Property"). Seller and Purchaser agree that the Property address is **1484 E. Florence Boulevard, Casa Grande, Arizona 85122** and the Property APN is 505-16-001B-9.

2. **PURCHASE PRICE.** The "Purchase Price" for the Property is Two Million Ninety Thousand Dollars (\$2,090,000.00). The Purchase Price shall be paid on the Closing Date (as defined below). The Purchase Price shall not be adjusted by any overage or shortage in area of the structure located upon the Property or the Property itself. The Purchase Price, less any closing costs and other prorations expressly provided for in this Agreement, shall be disbursed to Seller at Closing.

3. **CLOSING DATE.** Unless Seller and Purchaser agree in writing on an earlier or later date, the "Closing" or "Closing Date" shall be the later of (i) the thirtieth (30<sup>th</sup>) day after the last day of the Feasibility Period (as defined below) or (ii) the tenth (10<sup>th</sup>) day after the satisfaction of the Receivership Court Condition (hereinafter defined).

4. **PLACE OF CLOSING.** The Closing shall be held at the offices of North American Title Insurance Company, Attention: Connie Castor – Senior Escrow Officer, 3200 E. Camelback Road, #150, Phoenix, Arizona 85018, (602) 294-2200 (Phone) (866) 488-1907 (fax) ("Escrow Agent").

5. DEPOSIT. On or before the third (3<sup>rd</sup>) business day after the Effective Date (as defined below), Purchaser shall deliver to Escrow Agent the sum of Two Hundred Thousand Dollars (\$200,000.00) cash earnest money ("Deposit"), to be deposited in an interest bearing escrow account. The entire Deposit shall apply to and be credited against the Purchase Price should this transaction close. In the event this transaction does not close, the Deposit shall be distributed to Seller or Purchaser according to the remaining terms and provisions of this Agreement. Notwithstanding anything to the contrary contained herein, the parties agree that Eight Thousand Dollars (\$8,000.00) of the Deposit shall be non-refundable to Purchaser (but applicable to the Purchase Price at Closing should this transaction close), in the event the Receivership Court Condition is satisfied, but Purchaser fails to deliver a Continuation Notice (as hereinafter defined) pursuant to Paragraph 9 of this Agreement.

6. TITLE COMMITMENT AND POLICIES. Within seven (7) business days of the Effective Date, the Title Company shall deliver to Purchaser a title commitment ("Commitment") for title insurance covering the Property, issued by North American Title Insurance Company ("Title Company"), together with copies of all recorded documents referenced therein. The Commitment shall include an obligation of the Title Company to issue to Purchaser, upon recording the deed for the Property, a standard owner's ALTA policy in the amount of the Purchase Price, without exception for any matters other than current taxes and assessments, easements, rights of way, covenants, conditions, restrictions, reservations, agreements and other matters of record, as shown in the Commitment. Purchaser shall have until the expiration of the Feasibility Period to satisfy itself with the Commitment, and the status of title to the Property. Purchaser shall work directly with the Title Company to resolve any title issues. Seller and Purchaser agree that all matters shown in the Commitment which are not objected to in a written notice to Seller prior to the expiration of the Feasibility Period shall be deemed "Permitted Exceptions." All other matters which may be caused by Purchaser or agreed to by Purchaser shall also be Permitted Exceptions. Seller shall have no obligation to cure any title objection, other than to cause the satisfaction and release of any mortgage, deed of trust or other monetary liens filed of record against the Property. Purchaser may, in Purchaser's sole and absolute discretion elect to receive an extended Owner's ALTA Form B title insurance policy in lieu of the standard owner's policy referenced above. In such event, Purchaser shall be responsible to pay the incremental premium incident to such upgraded policy, it being understood and agreed that Seller shall be responsible for the payment of the base premium for a standard owner's policy of title insurance in the amount of the Purchase Price. Seller shall not be permitted to further encumber the Property with any additional liens, encumbrances, restrictions or other exceptions to title at any time after the Effective Date of this Agreement without Purchaser's prior written consent, which consent may be granted or withheld, in Purchaser's sole and absolute discretion.

7. INTENTIONALLY OMITTED.

8. CLOSING PROCEDURES. On the Closing Date, Seller and Purchaser shall complete the sale and acquisition of the Property in accordance with the following: (a) fee simple title to the Property shall be conveyed by Seller to Purchaser by a Special Warranty Deed ("Deed"), subject only to real estate taxes and assessments not delinquent, all matters that a current, updated ALTA survey of the Property would disclose, and the Permitted Exceptions; (b) the title insurance policy shall be issued by the Title Company on the Closing Date (and the premium for the standard ALTA owner's policy shall be paid by Seller); (c) the cost of any applicable document fees and/or transfer fees shall be borne by Seller; (d) the cost of recording the Deed shall be borne by the Purchaser; and (e) real estate taxes and assessments for the Property for the year within which the Closing occurs shall be prorated at and as of Closing (and if real estate taxes are not known for the current year, the most recent available year shall be used to calculate the prorated portions, and such estimate shall be final), and, in addition to Seller's year of Closing proration obligations, Seller shall be solely responsible for the payment in full (or granting of Purchaser a credit therefor at Closing) of any unpaid taxes relating to periods of time prior to the year within which

the Closing occurs. Seller shall deliver possession of the Property to Purchaser upon the completion of Closing.

9. **FEASIBILITY STUDIES AND LICENSE TO ENTER.** This Agreement is expressly contingent on Purchaser's approval and acceptance, in its sole discretion and at Purchaser's sole cost, of the feasibility of this transaction. Purchaser shall have from the Effective Date until 5 pm (PST) on the date that is forty (40) days after the later to occur of (i) the Effective Date and (ii) satisfaction of the Receivership Court Condition ("Feasibility Period") to deliver to Seller written notice of its approval of the feasibility of this transaction ("Continuation Notice"). If Seller has not received the Continuation Notice prior to the expiration of the Feasibility Period, Purchaser shall be deemed to have disapproved the feasibility of this transaction, in which event the Deposit shall be promptly returned to Purchaser (less \$50.00 which shall be retained by Seller as good, valuable and sufficient consideration for Purchaser's right to disapprove the feasibility of this transaction) and this Agreement shall be deemed terminated and shall be of no further force or effect except as set forth in the last sentence of this paragraph; provided, however, notwithstanding anything to the contrary contained herein, the parties agree that Eight Thousand Dollars (\$8,000.00) of the Deposit shall be non-refundable to Purchaser (but applicable to the Purchase Price at Closing should this transaction close), in the event the Receivership Court Condition is satisfied, but Purchaser fails to deliver a Continuation Notice pursuant to this Paragraph 9 of this Agreement

If Purchaser delivers the Continuation Notice to Seller prior to the expiration of the Feasibility Period, the Deposit shall be nonrefundable to Purchaser (except in the event of a Seller default under this Agreement or the failure to occur of a condition precedent to Purchaser's obligations under this Agreement [including, without limitation, the Receivership Court Condition], and except as provided in Paragraph 25 of this Agreement), and the Parties shall proceed to Closing. Seller hereby grants Purchaser, from the Effective Date until Closing, or earlier termination of this Agreement, the right, license, permission and consent for Purchaser and Purchaser's agents or independent contractors to enter upon the Property for the purposes of performing tests, studies and analyses thereon. Any and all inspections performed by Purchaser shall be performed and paid for by Purchaser at Purchaser's sole cost and expense. It is expressly understood, acknowledged and agreed that Purchaser shall indemnify and hold Seller harmless from and against any damages that may be incurred by Seller as a result of (a) such actions by Purchaser, its employees, agents and independent contractors; provided, however, such indemnity shall not apply to any previously existing conditions discovered by Purchaser or the acts or omissions of Seller, or Seller's agents, employees or contractors and (b) a breach by Purchaser of Purchaser's representations and warranties set forth in Paragraph 12 of this Agreement which is not cured by Purchaser prior to the expiration of the notice and cure period set forth in Paragraph 10 of this Agreement. Purchaser agrees to repair any damage to the Property as a result of its activities. Purchaser will permit no lien to attach to Property as a result of the activities. Seller hereby covenants and agrees (but only upon Receivership Court approval and with reasonable compensation to the Receivership) to reasonably cooperate with Purchaser in connection with Purchaser pursuing and obtaining any and all necessary rezoning, special use permits, variances, P.U.D. approvals, site plan approvals, plat approvals, permits, easements and licenses for Purchaser's proposed use of the Property. The parties agree that Purchaser may at its sole expense and sole responsibility have any utilities turned on, solely for inspection requirements, if any, at the Property, during the Feasibility Period.

10. **PURCHASER'S DEFAULT.** Notwithstanding anything to the contrary contained in this Agreement, Purchaser shall be in default hereunder if Purchaser fails to cure any material breach of any obligation of Purchaser under this Agreement which is set forth in a written notice within ten (10) days following receipt of such written notice. In such event, this Agreement shall automatically terminate, and notwithstanding anything to the contrary contained in this Agreement, Ten Thousand Dollars (\$10,000.00) of the Deposit (the "Liquidated Deposit Sum") shall be retained by Seller (as Seller's sole remedy) [with the remainder of the Deposit to be disbursed to Purchaser], and both parties shall be



relieved of all obligations under this Agreement except for those which expressly survive the expiration or termination of this Agreement. The parties agree and stipulate that the exact amount of damages for holding the Property off the market would be extremely difficult to ascertain and that the Liquidated Deposit Sum constitutes a reasonable and fair approximation of such damages and is not a penalty.

11. **SELLER'S DEFAULT.** Notwithstanding anything to the contrary contained in this Agreement, Seller shall be in default hereunder and Purchaser shall be entitled to exercise any and all of its remedies hereunder if Seller (i) has knowledge that any representation or warranty made by Seller herein is or becomes false in any material respect; or (ii) fails to cure its breach of a material covenant or obligation made or undertaken by Seller hereunder within thirty (30) days of Seller's receipt of a reasonably detailed notice specifying such breach; or (iii) refuses to convey title to any Property in accordance herewith, within five (5) business days of Seller's receipt of notice of such breach. Any Closing shall automatically be extended to allow Seller to effect the above referenced cures (or seek an Order from the Receivership Court directing Seller's further action). After the expiration of the cure period provided above, if Seller shall not have cured Seller's default, Purchaser shall give Seller written notice of Purchaser's election of one of the following remedies: (a) to seek specific performance of Seller's obligations hereunder (pursuant to the rules of the Receivership Court and a lawful order of the Receivership Court), or (b) to terminate this Agreement, in which event Escrow Agent shall promptly return the Deposit to Purchaser. **Notwithstanding anything to the contrary contained in this Agreement, subject to Seller using commercially reasonable good faith efforts to cause the satisfaction of the Receivership Court Condition as soon after the Effective Date as is reasonably practicable, it is expressly understood, acknowledged and agreed that the failure of the Receivership Court or the Beneficial Owners to approve this transaction shall not constitute a default by Seller under this Agreement.** In addition, if, prior to the Closing, Purchaser obtains knowledge that any of Seller's representations and/or warranties is false in any material respect and Purchaser (in Purchaser's reasonable discretion) believes the same would have an adverse impact on Purchaser's ownership of the Property, Purchaser may terminate this Agreement, in which event Escrow Agent shall promptly return the Deposit to Purchaser. Without waiving Purchaser's right to seek specific performance of Seller's obligations hereunder to the extent expressly permitted hereunder, Purchaser agrees that no receivers, directors, officers, employees or agents of Seller have any personal obligation hereunder, and that Purchaser shall not seek to assert any claim or enforce any rights against such receivers, directors, officers, employees or agents of Seller.

12. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.** Purchaser hereby represents and warrants to Seller that (a) Purchaser has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby, (b) all requisite action has been taken by Purchaser in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby (and no consent of any other person or entity is required), (c) the individual(s) executing this Agreement and the instruments referenced herein on behalf of Purchaser has or have the legal power, right, and actual authority to bind Purchaser to the terms and conditions hereof and thereof, (d) this Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms, and (e) neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Purchaser is a party. No representation, warranty or statement of Purchaser in this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements or facts contained therein

not misleading. Purchaser's representations and warranties made in this Paragraph 12 shall be continuing and shall be true and correct as of the Closing with the same force and effect as if remade by Purchaser in a separate certificate at that time. The truth and accuracy of Purchaser's representations and warranties made herein shall constitute a condition for the benefit of Seller to the Closing and shall survive, and shall not merge into, the Closing and the recording of the Deed.

13. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby represents and warrants to Purchaser that (a) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby, (b) all requisite action has been taken by Seller in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby, (c) the individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof, (d) this Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, (e) neither the execution and delivery of this Agreement and documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which Seller is a party or affecting the Property, (f) no attachments, execution proceedings, assignments for the benefit of creditors, bankruptcy or reorganization proceedings are pending against Seller, (g) to the best of Seller's knowledge and belief, there is not any plan, study or effort of any governmental authorities which in any way would materially affect the use of the Property for its intended uses or any intended public improvements which will result in any charge being levied against, or any lien assessed upon, the Property, (h) to the best of Seller's knowledge and belief, there is not any existing, proposed or contemplated plan to widen, modify or realign any street or highway contiguous to the Property, (i) other than the amounts disclosed by the tax information delivered to Purchaser by the Title Company, no other real property taxes have been or, to the best of Seller's knowledge and belief, will be assessed against the Property for the current tax year, (j) Seller is (or Seller and the Beneficial Owners at the time of Closing will be) the legal fee simple titleholder(s) of the Property and has good, marketable and insurable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments or other matters, except as disclosed by the underlying title commitment, (k) Seller has not received any notices from any insurance company of any defects or inadequacies in the Property, (l) Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal or options to purchase the Property, nor, to the best of Seller's knowledge and belief, does any person or entity claim any rights in and to the Property or to purchase the Property, and there are no outstanding leases or options to lease all or any portion of the Property, (m) to the best of Seller's knowledge and belief, the Property is in all material respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether accidental or intentional) of any toxic or hazardous substances, materials or wastes, (n) Seller has not entered into any service contract relating to the Property that would survive closing or which is not terminable without penalty or fee by the owner of the Property upon 30 days or less prior written notice to the counter party, and (o) Seller is currently in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto. No representation, warranty or

statement of Seller in this Agreement or in any document, certificate or schedule furnished or to be furnished to Purchaser pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading. Seller's representations and warranties made in this Paragraph 13 shall be continuing and shall be true and correct as of the Closing with the same force and effect as if remade by Seller in a separate certificate at that time. The truth and accuracy of Seller's representations and warranties made herein shall constitute a condition for the benefit of Purchaser to the Closing (as elsewhere provided herein) and shall survive, and shall not merge into, the Closing and the recording of the Deed.

14. ENTIRE AGREEMENT. The parties hereby expressly agree that this Agreement, including any Exhibits attached hereto and incorporated herein by this reference, contains the entire Agreement between Seller and Purchaser and all other representations, negotiations and agreements, written and oral, including any letters of intent which pre-date the Effective Date hereof, with respect to the Property or any portion thereof, are superseded by this Agreement and are of no force and effect. This Agreement may be amended and modified only by instrument, in writing, executed by all parties hereto.

15. ASSIGNMENT. Purchaser shall have the right, without Seller's consent, to assign its rights and obligations under this Agreement in Purchaser's discretion to an entity controlled by Purchaser (or Purchaser's principals), controlling Purchaser (or Purchaser's principals), or under common control with Purchaser (or Purchaser's principals), by providing Seller with at least ten (10) business days prior written notice of the same, provided, however, that (i) no such assignment shall relieve Purchaser of its obligations hereunder, (ii) any such assignee shall expressly assume in writing the obligations of Purchaser under this Agreement accruing from and after the effective date of such assignment and (iii) no such assignment shall extend the Closing. Any other proposed assignment of Purchaser's rights under this Agreement shall require Seller's prior written consent, such consent to not be unreasonably withheld, conditioned or delayed, provided, however, that (i) no such assignment shall relieve Purchaser of its obligations hereunder, (ii) any such assignee shall expressly assume in writing the obligations of Purchaser under this Agreement accruing from and after the effective date of such assignment and (iii) no such assignment shall extend the Closing. Purchaser hereby represents that Purchaser, or any entity to whom Purchaser may assign this Agreement, has sufficient financial capacity to close the transaction contemplated by this Agreement. Seller may not assign its rights and/or obligations under this Agreement without authorization from the Receivership Court and the Beneficial Owners, and then only on the condition that Seller's assignee expressly assumes in writing all of the obligations of Seller under this Agreement, and that such assignee acquires all lawful right, power and authority to convey the Property to Purchaser pursuant to the terms and conditions of this Agreement.

16. PARTIES BOUND. This Agreement shall be binding upon the parties, their successors and assigns.

17. APPLICABLE LAW. This Agreement shall be construed by and controlled under the laws of the State of Arizona.

18. PARTIAL INVALIDITY. In the event that any paragraph or portion of the Agreement is determined to be unconstitutional, unenforceable or invalid, such paragraph or portion of this Agreement shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute this entire Agreement.

19. CONSTRUCTION OF AGREEMENT. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party hereto based upon authorship.

20. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute at least one original of this Agreement and to provide such originals to the Seller.

21. PARTIES. The rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto, their heirs successors, administrators, and assigns (where assignment is permitted). The use of any gender shall be deemed to refer to the appropriate gender, whether masculine, feminine or neuter, and the singular shall be deemed to refer to the plural where appropriate, and vice versa.

22. TIME. Time is of the essence of this Agreement. The parties hereby expressly acknowledge and agree that neither party shall have any obligation or liability under this Agreement unless and until this Agreement is fully executed and delivered by both Seller and Purchaser.

23. NOTICES. Notices hereunder shall be given to the parties set forth below and shall be made only by hand delivery or overnight delivery. Notice shall be considered given when personally delivered. Notices sent via recognized overnight courier shall be considered given on the date delivered by such courier and receipted therefor. Notices shall be addressed as follows:

If to Seller: Landmarc Capital & Investment Co.  
c/o Arizona Department of Financial Institutions  
2910 N. 44<sup>th</sup> Street, Suite 310  
Phoenix, AZ 85018  
Attention: Thomas J. Giallanza, Deputy Receiver

With a copy to:

Guttilla Murphy Anderson  
City North  
5415 E. High Street, Suite 200  
Phoenix, AZ 85054  
Attention: Patrick M. Murphy, Esq.

If to Purchaser: AG/FO Holdings LLC  
11301 West Olympic Blvd., Suite 507  
Los Angeles, CA 90064  
Attention: Hilary Lottenberg

With a copy to:

Chaiken Legal Group, P.C.  
5001 LBJ Freeway, Suite 925  
Dallas, TX 75244  
Attention: Michael J. Chaiken

24. ATTORNEY'S FEES. In the event litigation is required by either party to enforce the terms of this Agreement, the prevailing party of such action or proceeding, shall, in addition to all other relief granted or awarded by the court, recover its reasonable attorneys' fees incurred by reason of such action or proceeding and all costs of suit and those incurred in preparation thereof at both the trial and appellate levels. The parties agree that the Receivership Court shall have exclusive jurisdiction to resolve any disputes arising under this Agreement.

25. RISK OF LOSS AND CONDEMNATION. Seller shall bear risk of loss until the recordation of the Deed. In the event of any damage, casualty, condemnation, eminent domain or taking of any portion of the Property prior to Closing, Purchaser shall be entitled to terminate this Agreement. If prior to Closing all or any part of the Property is condemned or appropriated by public authority or any party exercising the right of eminent domain, or is threatened thereby, or if the building improvements located upon the Property shall be damaged or destroyed by fire or other casualty, Seller will give Purchaser immediate written notice thereof and Purchaser may, at its option, terminate this Agreement and Purchaser shall be entitled to the return of the Deposit and all additional deposits in escrow and the parties shall be released from further liability. Seller shall be obligated from and after the Effective Date of this Agreement and continuing up through the Closing, to keep the Property and the improvements located thereupon in their present condition.

26. WAIVER OF BREACH. The failure of any party hereto to enforce any provision of this Agreement shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Agreement or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

27. BROKER'S COMMISSIONS. Seller and Purchaser warrants and represent to each other that that no real estate brokers other than Strategic Retail Group ("Broker") are entitled to receive any fees or commissions in connection with this transaction. Seller shall be responsible to pay a commission equal to four percent (4%) of the Purchase Price to the Broker at the Closing. Seller shall indemnify Purchaser against any claim of any broker claiming by, through or under Seller. Purchaser shall indemnify Seller against any claim of any broker other than the Broker, claiming by, through or under Purchaser. These warranties and representations shall survive delivery of the Deed and closing of this transaction.

28. DISCLAIMER OF WARRANTIES; RELEASE. The parties to this Agreement hereby expressly acknowledge and agree that except as expressly set forth in this Agreement, Seller (and Seller's agents, employees and contractors) have not made and do not make any warranties, promises, projections, calculations, understandings or representations (whether express, implied or otherwise) as to the merchantability, quality, physical condition or operation of the Property. Neither party is relying on any statement or representations made by the other not embodied herein. Purchaser

acknowledges that the provisions of this Agreement for inspection and investigation of the Property are adequate to enable Purchaser to make Purchaser's own determination with respect to merchantability, quality, physical condition or operation of the Property. Purchaser further acknowledges that prior to the expiration of the Feasibility Period, it will have inspected the Property and will be thoroughly familiar and satisfied therewith, and agrees to take the Property in its physical condition, "AS IS" as of the date of Closing, with all defects, latent or apparent, subject to the express conditions of this Agreement. Purchaser hereby releases Seller from all responsibility and liability regarding the condition (including, without limitation, the presence of environmental hazards or substances) or valuation or utility of the Property. Purchaser agrees that Purchaser will not attempt to assert any claims of liability against Seller for furnishing such information, nor shall Purchaser assert any claims of liability against Seller for the existence of or damages arising out of the existence of asbestos, mold or other environmental hazards. Purchaser expressly acknowledges that there may be present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect Purchaser's decision to purchase the Property. Purchaser further acknowledges that any information of any type which Purchaser has received or may receive from Seller or Seller's agents is furnished on the express condition that Purchaser shall make an independent verification of the accuracy (including, without limitation, calculations) of such information, all such information being furnished without any warranty or liability whatsoever. Purchaser acknowledges its understanding that the Seller has acquired possession of the Property pursuant to Court order and has not occupied the Property; therefore, Seller cannot and will not provide any Seller Disclosure Statements.

29. WRITTEN AFFIDAVIT OF EXEMPTION FROM FEDERAL FOREIGN WITHHOLDING REQUIREMENT AND OTHER AFFIDAVITS. On the Closing Date, Seller shall execute and deliver to Title Company a duly executed affidavit reasonably satisfactory to Title Company for the purpose of satisfying Title Company that the transaction is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended. At Closing, but only if required by the Title Company, Seller shall execute and deliver to Title Company, a customary affidavit as to debts, liens and parties in possession in such form as shall enable the Title Company to insure title free from any general or specific exception as to the same, and Seller shall otherwise execute and deliver such other affidavits and statements as may customarily be required by the Title Company and/or the Escrow Agent in order to close this transaction. Each party agrees in good faith to execute such further or additional documents as may be reasonably necessary or appropriate to fully carry out the intent and purpose of this Agreement.

30. ESCROW AGENT. Escrow Agent shall hold the Deposit in escrow in a federally insured interest-bearing trust account in accordance with the provisions of this Agreement. The Deposit shall be released by Escrow Agent on the earlier to occur of (i) the Closing, at which time the Deposit is to be applied against the Purchase Price, (ii) election by Purchaser or Seller to terminate this Agreement by reason of an express right of termination granted in this Agreement, the occurrence of an event under this Agreement which expressly requires that such Deposit be delivered to either of the parties hereto. The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of either of the parties for any act or omission on his part unless taken or suffered in bad faith in willful disregard of this Agreement or involving gross negligence. The parties shall deliver to Escrow Agent an executed copy of this Agreement, which shall constitute instructions to Escrow Agent.

31. NONBUSINESS DAY. If the Closing Date is to occur on a holiday or other nonbusiness day, or if any period of time set forth in this Agreement expires on a holiday or other nonbusiness day, then such Closing Date or expiration date shall be on the next business day.

32. EFFECTIVE DATE. The "Effective Date" or the "date hereof" shall be the later of (i) the date on which this Agreement is executed by Seller or (ii) the date on which this Agreement is executed by Purchaser.

33. COURT RECEIVERSHIP; CANCELLATION. Purchaser understands and acknowledges that Seller was duly appointed by the Receiver in the Receivership entitled *State of Arizona v. Landmarc Capital and Investment Company*, et al in case CV2009-020595 ("Receivership Court"), and that the Property and this transaction are under the jurisdiction of the Receivership Court. The parties further understand and acknowledge that this Agreement, and the transaction contemplated by this Agreement, is contingent on the approval of the Receivership Court **and** the Beneficial Owners (such approval of the Receivership Court and the Beneficial Owners, being referred to herein as the "Receivership Court Condition"), 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 sale of the Property is not in the best interests of the Receivership estate, or the Beneficial Owners of the Property have successfully petitioned the Receivership Court to decline to approve this transaction. Seller agrees to use commercially reasonable good faith efforts to cause the satisfaction of the Receivership Court Condition (and provide Purchaser with reasonable evidence thereof) as soon after the Effective Date as is reasonably practicable, and to keep Purchaser reasonably informed as to the status of those efforts, and provide Purchaser with reasonable evidence thereof upon satisfaction. **Notwithstanding anything to the contrary contained herein, in the event Seller is unable, within one hundred (100) days of the Effective Date, to obtain the approval of the Receivership Court and the Beneficial Owners, the Purchaser or the Seller may elect in writing to cancel this Agreement and Escrow at any time following the end of such one hundred (100) day period, but prior to the date the Agreement has been approved by the Receivership Court.** If this Agreement is terminated pursuant to the provisions of this Paragraph 33, the parties expressly agree that Escrow Holder shall immediately refund the entire Deposit to Purchaser. Upon a cancellation in accordance with the provisions of this Paragraph, all documents deposited in Escrow by Seller and Purchaser shall be returned to the party depositing the document and this Agreement shall terminate.

34. CLOSING CAPACITY OF PURCHASER. If required by the Receivership Court as a condition to the Receivership Court approving the sale of the Property to Purchaser pursuant to this Agreement, Purchaser agrees to provide to such Receivership Court for in camera viewing by such Receivership Court, evidence of Purchaser's financial capacity to close this transaction, it being understood and agreed that such evidence shall be kept strictly confidential.

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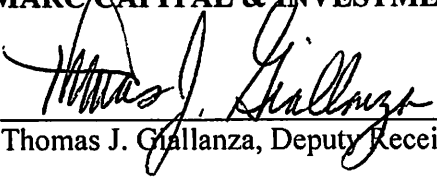
**ALL SIGNATURES ARE ON THE NEXT PAGE**

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals, as of the later of the date of execution hereof by Seller or the date of execution hereof by Purchaser, as shown below.

**SELLER:**

**THOMAS J. GIALLANZA**, in his capacity as Deputy Receiver, as appointed by the Superior Court of Arizona, in the action entitled State of Arizona v. Landmarc Capital, et al CV2009-020595 on behalf of the following Beneficial Owners:

**URQUIETA A. SMYTHE FAMILY TRUST**, as to an undivided 17.142% interest in the Property,  
**MICHAEL MACKEN IRA**, as to an undivided 14.286% interest in the Property,  
**KAREN CHOPRA LIVING TRUST**, as to an undivided 8.571% interest in the Property,  
**BENNETT H. GRIMM JR & SUSAN V. GRIMM, WITH RIGHTS OF SURVIVORSHIP**, as to an undivided 14.286% interest in the Property,  
**STEPHEN L. HOOKER IRA**, as to an undivided 5.714% interest in the Property,  
**LANDMARC CAPITAL PARTNERS, LLC**, as to an undivided 20.788% interest in the Property,  
**RUSSELL INVESTMENTS, LP**, as to an undivided 17.142% interest in the Property, and  
**LANDMARC CAPITAL & INVESTMENT CO.**, as to an undivided 2.071% interest in the Property

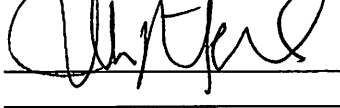
By:   
Thomas J. Giallanza, Deputy Receiver

Dated: April 9, 2014

Seller's Taxpayer ID Number is as follow: **86-0959744**

**PURCHASER:**

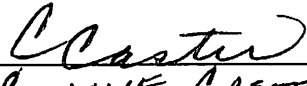
**AG/FO HOLDINGS LLC**, a Delaware limited liability company

By:   
Name: \_\_\_\_\_  
Title: **Allan Mutchnik**  
**Authorized Signatory**

Dated: April 7, 2014

**ESCROW AGENT:**

**NORTH AMERICAN TITLE INSURANCE COMPANY**

By:   
Name: CONNIE CASTER  
Title: SR. E.O.

Dated: April 9, 2014



**EXHIBIT A**

**(LEGAL DESCRIPTION)**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CASA GRANDE, COUNTY OF PINAL, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

THE EAST 330 FEET OF THE SOUTH 710 FEET OF THE EAST 710 FEET OF THE EAST HALF OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21;

THENCE NORTH 00 DEGREES 10 MINUTES 38 SECONDS WEST, A DISTANCE OF 50 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, A DISTANCE OF 33 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 10 MINUTES 38 SECONDS WEST, A DISTANCE OF 659.93 FEET;

THENCE SOUTH 89 DEGREES 49 MINUTES 22 SECONDS WEST, A DISTANCE OF 17.00 FEET;

THENCE SOUTHERLY, ALONG THE ARC OF A CURVE TO THE RIGHT WITH A TANGENT BEARING SOUTH 00 DEGREES 10 MINUTES 38 SECONDS EAST, AND HAVING A RADIUS OF 1528.20 FEET AND A CENTRAL ANGLE OF 12 DEGREES 01 MINUTES 00 SECONDS FOR A ARC DISTANCE OF 321.84 FEET TO A POINT OF REVERSE CURVATURE OF A TANGENT LINE CONCAVE TO THE EAST;

THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 1628.20 FEET AND A CENTRAL ANGLE OF 12 DEGREES 03 MINUTES 46 SECONDS FOR A ARC DISTANCE OF 292.79 FEET, TO A POINT OF REVERSE CURVATURE;

THE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 50 FEET AND A CENTRAL ANGLE OF 88 DEGREES 24 MINUTES 45 SECONDS FOR A ARC DISTANCE OF 77.15 FEET, TO A POINT OF TANGENCY ALONG THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 287;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS EAST, A DISTANCE OF 136.74 FEET TO THE TRUE POINT OF BEGINNING.

**PARCEL 2:**

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21;

THENCE SOUTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, A DISTANCE OF 330 FEET;

THENCE NORTH 00 DEGREES 10 MINUTES 39 SECONDS WEST, A DISTANCE OF 50 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUE NORTH 00 DEGREES 10 MINUTES 39 SECONDS WEST, A DISTANCE OF 610 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 01 SECONDS WEST, A DISTANCE OF 80 FEET;

THENCE SOUTH 00 DEGREES 10 MINUTES 39 SECONDS EAST, A DISTANCE OF 610 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 01 SECONDS EAST, A DISTANCE OF 80 FEET TO THE TRUE POINT OF BEGINNING.