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8 Attorneys for the Receiver

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

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

Cause No. CV 2009-020595

PETITION NO. 88

PETITION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT RE: THE  
PRESIDIO LOAN LITIGATION

(Assigned to the Honorable Patricia  
Starr)

21 *In Re: The Presidio West Loans*

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

23 1. Landmarc Capital & Investment Company (“Landmarc”) made a series of loans  
24 secured by approximately 244 acres of land located west of Flagstaff Arizona (“Presidio  
25 Property”). One of those loans was Loan No. 07030964 for \$14.2 Million made in April  
26 2007 (“\$14.2 Million Loan”) which was secured by the Presidio Property (the deed of trust  
27 securing this loan is referred to hereafter as the “\$14.2 Million DOT”). Subsequently, the

1 \$14.2 Million Loan was replaced by two new loans: Loan #07121853 for \$14.5 Million  
2 (“Presidio 197 Loan”) secured by 197 acres of the Presidio Property (“197 Acres”) and Loan  
3 #07121849 for \$3.8 Million (“Presidio 37 Loan”) secured by 37 acres of the Presidio  
4 Property (“37 Acres”). Because a release of the \$14.2 Million DOT was never recorded  
5 when Landmarc made the Presidio 197 Loan and the Presidio 37 Loan and because Landmarc  
6 did not record assignments reflecting all of the participation interests in the Presidio 197 Loan  
7 and the Presidio 37 Loan, substantial disputes arose among the interested parties regarding  
8 these loans.

9           2.       This Petition No. 88 seeks the Court’s approval of a settlement agreement  
10 (“Settlement Agreement”) between the Receiver and Monterey Capital Co., LLC  
11 (“Monterey”), Private Lenders Funding Group, LLC, as assignee of LDM Acceptance  
12 Company Pension Plan and L.D.M. Acceptance Company, and for itself (“PLFG”), TBM  
13 Associates, LLC (“TBM”), Landmarc Capital Partners, LLC (“Partners”), DVH Management  
14 Corporation (“DVH”), Victoria Cohen, the Gubin Family Trust dated May 27, 1992, as  
15 amended, and the Helen and Stephen Gubin Charitable Remainder Trust (“Gubin”), Manny  
16 Daskal (“Manny”), and Barry Wiss (“Wiss”) regarding various disputes among the parties  
17 concerning the Presidio Loans and the Presidio Property.<sup>1</sup> The Settlement Agreement is  
18 attached hereto as Exhibit “A”.

19  
20 \_\_\_\_\_  
21 <sup>1</sup> The disputes pending before this court concerning the Presidio Loans include but are not limited to  
issues raised in the *Petition for Order Directing Reimbursement of Property Preservation Expenses*  
and the *Petition for Order Compelling Receiver to Execute and Record Releases Clearing Title to*  
*Real Property* both filed by Monterey on July 21, 2011; and issues raised by objections to the

1           3. Pursuant to the agreement of the Parties to the Settlement Agreement and the  
2 prior orders of this Court<sup>2</sup>, the parties hold the following interests in the Presidio 197 Loan  
3 and the 197 Acres:

4	Monterey .....	50.00%
5	TBM .....	11.16%
6	Gubin.....	1.38%
7	Partners.....	16.36%
8	PLFG (as assignee of LDM Pension) ....	9.61%
9	PLFG (as assignee of LDM Co.) .....	2.22%
10	Cohen .....	3.66%
11	DVH .....	3.45%
12	Receiver.....	2.16%

13           4. On February 6, 2013, Monterey filed Chapter 11 bankruptcy in the United  
14 States Bankruptcy Court for the District of Arizona, case no. 2:13-bk-01664-MCW  
15 (“Monterey Bankruptcy”). The Receiver, TBM and Partners filed claims in the Monterey  
16 Bankruptcy relating to the Presidio Loans and the Presidio Property.

17           5. On August 2, 2013, Monterey filed an adversary proceeding with the U.S.  
18 Bankruptcy Court for the District of Arizona, case number 2:13-ap-00893 (“DOT

19 Receiver’s recommendations regarding the Presidio 197 Loan and the Presidio 37 Loan contained in  
20 the Receiver’s *Petition No. 54, Receiver’s Claims Report on the Loan Participant Lender Claims and*  
21 *the Deferred WCF Lender Claim* filed on March 30, 2012, and the *Receiver’s Report on Objections*  
*to the Receiver’s Claims Report on the Loan Participant Lenders Claims and Deferred WCF Claims*  
*Re: Petition No. 54* filed on May 9, 2012.

<sup>2</sup> On July 12, 2011, this Court entered its *Order Approving Receiver’s Recommendations Regarding*  
*Warehouse Credit Facility Claims, Re: Petition No. 43* which among other things confirmed the  
interests of TBM and Gubin in the Presidio 197 Loan and 197 Acres. On January 8, 2014, this Court  
entered its *Order Confirming Interests in the Presidio West 197 Loan*, which confirmed the interests  
of the remaining participants other than Monterey in the Presidio 197 Loan and 197 Acres.

1 Adversary”), which sought to determine the priority of liens regarding the Presidio 197  
2 Acres and a declaration that the \$14.2 Million DOT was invalid. On February 11, 2014, the  
3 Bankruptcy Court entered judgment in favor of Monterey in the DOT Adversary and Partners  
4 and TBM appealed to the United States District Court for the District of Arizona, cause  
5 number CIV 14-00365 and CIV 14-00366 (“DOT Appeal”).

6           6. On August 2, 2013, Monterey filed a second adversary proceeding with the  
7 U.S. Bankruptcy Court for the District of Arizona, case number 2:13-ap-01067 (“Sale  
8 Adversary”), which sought to sell the Presidio 197 Acres free and clear of all liens and  
9 encumbrances. The parties to the Sale Adversary eventually agreed to the sale by auction of  
10 the Presidio 197 Acres free and clear of all liens after a prescribed marketing effort. The  
11 Presidio 197 Acres were subsequently marketed and sold at auction for \$5,700,000. After  
12 payment of accrued and unpaid taxes and the sale commission, the sale of the Presidio 197  
13 Acres resulted in net sale proceeds of \$5,288,016. From those proceeds Monterey and PLFG  
14 were reimbursed for their share of real property taxes paid by them for the benefit of  
15 Landmarc and the other beneficial owners in the amount of \$54,816.94.<sup>3</sup>

Auction Sale Price	\$5,700,000
Less unpaid taxes	(\$69,984)
Less Commission	(\$342,000)
<hr/> Net Sale Proceeds	<hr/> \$5,288,016
Tax reimbursement	(\$54,817)

20 <sup>3</sup> The reimbursement of real property taxes paid by Monterey was approved by the Receivership  
21 Court on May 22, 2014 pursuant to *Stipulation Concerning Priority of Claims for Payment of Real  
Property Taxes* filed with this Court.

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Deposited in Escrow                      \$5,233,200

7. Pursuant to the agreement of the parties, on August 18, 2014, the sum of \$5,233,199.53 was deposited into an interest bearing account at Alliance Bank (“Escrow Account”). The funds in this account, including all accrued interest and less all bank charges, are referred to here and in the Settlement Agreement as the Escrowed Funds. Through the end of November, 2014 the Escrow Account had earned interest totaling \$3,781.76 and incurred bank charges of \$10.00 resulting in a balance as of November 28, 2014 of \$5,236,971.29. Pursuant to the Settlement Agreement the parties have agreed to a distribution of the Escrowed Funds as indicated below as well as a distribution of all interest accruing after November 28, 2014, less bank charges, in the same ratios as provided below:

Landmarc Capital Partners, LLC .....	\$847,846
Monterey Capital Co., LLC .....	\$2,645,914
TBM Associates, LLC .....	\$578,169
PLFG (as assignee of LDM Pension) ..	\$498,209
Victoria Cohen .....	\$189,406
DVH Management Corporation .....	\$178,679
PLFG (as assignee of LDM Co.).....	\$114,784
Receiver.....	\$112,504
Gubin Family Trust .....	<u>\$71,461</u>
<b>Total.....</b>	<b>\$5,236,971</b>

1           8. Pursuant to the agreement of the Parties to the Settlement Agreement and the  
2 prior orders of this Court<sup>4</sup>, the following claimants hold the specified interests in the Presidio  
3 37 Loan and the 37 Acres:

4	TBM .....	53.46%
5	Gubin.....	9.11%
6	Receiver.....	27.01%
7	Wiss.....	7.92%
	Manny .....	2.50%

8           9. On April 15, 2014, this Court entered its *Order Approving the Sale of*  
9 *Approximately 37 Acres of Land Located at the Southwest Corner of Woody Mountain Road*  
10 *and Route 66 Near Flagstaff, Arizona, Re: Petition No. 80*, which approved the sale of the 37  
11 Acres. Through various amendments approved by the Court this sale was to have closed in  
12 December 2014, however, the Buyer failed to close on the sale and the Receiver has renewed  
13 his efforts to market and sell the 37 Acres for sale.

14           10. In summary the Settlement Agreement will result in the dismissal of the DOT  
15 Adversary, the DOT Appeal, and the Sale Adversary, and the distribution of the Escrowed  
16 Funds to the approved claimants in the Presidio 197 Loan as provided in the agreement.  
17 Various waivers and releases will be granted by certain parties as set forth in the Settlement  
18 Agreement.

19 \_\_\_\_\_  
20 <sup>4</sup> On May 21, 2012, this Court entered its *Order Deferring Resolution of The Claimed First Out*  
21 *Rights and Claimed Interests in the Presidio 197 Loan and Approving Remaining Recommendations*  
*of the Receiver, Re: Petition No. 54*, which among other things confirmed the various interests in the  
Presidio 37 Loan and the 37 Acres.

1           11.    The Receiver believes that the Settlement Agreement in in the best interests of  
2 this receivership estate and recommends that it be approved by the Court.

3           12.    This Settlement Agreement does not resolve the following:

- 4                   a. Any future sale of the 37 Acres;
- 5                   b. The final distribution of net proceeds from the sale of the 37 Acres  
6 including the reimbursement of any loan charges incurred by the  
7 Receiver in connection with the Presidio 37 Acres; or
- 8                   c. The appeals docketed as 1 CA-CV 14-0022 and 1 CA-CV 14-0516 in  
9 Division One of the Arizona Court of Appeals or the underlying so-  
10 called "First Out Litigation" before this Court.

11           Wherefore the Receiver respectfully requests that the Court enter an order:

- 12                   1.    Approving the Settlement Agreement attached as Exhibit "A" to this Petition;
- 13                   2.    Authorizing the Receiver to disburse the Escrowed Funds in accordance with  
14 the Settlement Agreement;
- 15                   3.    Directing the signors on the Escrow Account at Alliance Bank to execute such  
16 instructions to Alliance bank as are necessary to distribute the Escrow Funds in accordance  
17 with this Order.

18           Respectfully submitted this 9<sup>th</sup> day of January, 2015.

19                                   GUTTILLA MURPHY ANDERSON, P.C.  
20                                   Patrick M. Murphy  
21                                   Patrick M. Murphy  
                                      Attorneys for the Receiver

## **Settlement Agreement for the Presidio Litigation**

This Settlement Agreement is made pursuant to the "Settlement Term Sheet – Presidio Litigation" signed by the Parties (defined below).

### **Definitions:**

- A. The "**Parties**" refer collectively to:
1. Monterey Capital Co., LLC ("**Monterey**");
  2. Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment Company, Desert Trail Holdings, LLC and Desert Trails Insurance Company (collectively, the "**Receiver**");
  3. TBM Associates, LLC ("**TBM**");
  4. Landmarc Capital Partners, LLC ("**Partners**");
  5. DVH Management Corporation ("**DVH**");
  6. Private Lenders Funding Group, LLC ("**PLFG**"), as assignee of LDM Acceptance Company Pension Plan (aka the LDM Money Purchase Plan) ("**LDM Pension**"), and as assignee of L.D.M. Acceptance Company ("**LDM Co.**"), and for itself;
  7. Victoria Cohen ("**Cohen**");
  8. Gubin Family trust dated May 27, 1992, as amended, and the Helen and Stephen Gubin Charitable Remainder Trust ("**Gubin**");
  9. Manny Daskal ("**Daskal**"); and
  10. Barry Wiss and Deborah Wiss (collectively "**Wiss**").
- B. The "**Presidio 37 Parcel**" is a parcel of real property of approximately 37 acres of land located at the Southwest Corner of Woody Mountain Road and Route 66 near Flagstaff, Arizona, more accurately described in Exhibit 1 to the March 13, 2014 Petition No. 80 filed in the Receivership Action.
- C. The "**Presidio 197 Parcel**" is a parcel of real property of approximately 197 acres of land located adjacent to the Presidio 37 Parcel, more accurately described in Exhibit A to the Stipulated Judgment entered on May 1, 2014 in the Sale Adversary (defined below).
- D. The "**Presidio 244 Parcel**" is a parcel of real property comprised of (a) the Presidio 37 Parcel; (b) the Presidio 197 Parcel; and (c) an additional approximately ten acres. The Presidio 244 Parcel is more accurately described in the legal description attached to the \$14.2 Million DOT.
- E. "**Presidio Matters**" consist of:
1. Loan Number 07121853, made by Landmarc Capital & Investment Company to Presidio West 197, LLC in the original principal amount of \$14,500,000 ("**Presidio 197 Loan**");



2. The sale proceeds from the sale of the Presidio 197 Parcel (“**Presidio 197 Proceeds**”);
3. The Deed of Trust encumbering the Presidio 244 Parcel in the amount of \$14,200,000 dated March 29, 2007 and recorded with the Coconino County Recorder on April 17, 2011 at 3434726 and underlying promissory note (“**\$14.2 Million DOT**”);
4. Any claims against Landmarc’s Loan No. 07121849 to Presidio West 37, LLC (“**Presidio 37 Loan**”) and the security thereto consisting of the Presidio 37 Parcel;
5. Any claims to any ownership or other rights in the Presidio 197 Parcel or in the Presidio 37 Parcel; and
6. The proceeds from the sale of the Presidio 37 Parcel whether those proceeds are derived from the pending sale approved pursuant to *the Order Approving the Sale of Approximately 37 Acres of Land located at the Southwest Corner of Woody Mountain Road and Route 66 near Flagstaff, Arizona re Petition 80* entered on April 15, 2014, Maricopa County Superior Court, CV2009-020595, or any subsequent sale (“**Presidio 37 Proceeds**”).

F. The “**Actions**” include:

1. *In re Monterey Capital Company, LLC*, case no. 2:14-bk-01664 (Bankr. D. Ariz.) (“**Monterey Bankruptcy Case**”).
2. The two adversary proceedings in the Monterey Bankruptcy Case:
  - i. *Monterey Capital Company, LLC v. Landmarc Capital & Investment Company*, adversary case no. 2:13-ap-00893-MCW (“**DOT Adversary**”); and
  - ii. *Monterey Capital Company, LLC v. Landmarc Capital & Investment Company*, adversary case no. 2:13-ap-01067-MCW (“**Sale Adversary**”).
3. *TBM Associates, LLC v. Monterey Capital Company, LLC*, case nos. CIV 14-00365 & CIV 14-00366 (D. Ariz.) (“**DOT Appeal**”).
4. *In re Landmarc Capital & Investment Company*, case no. CV2009-020595 (“**Receivership Action**”). But the Presidio Actions do not include the appeals docketed as 1 CA-CV 14-0022 and 1 CA-CV 14-0516 in Division One of the Arizona Court of Appeals nor the underlying so-called “**First Out Litigation**” in the trial court. Neither these appeals nor the underlying First Out Litigation are affected by this Agreement.

The definition of “**Actions**” is not intended to define the scope of Claims released, which are defined below as (a) the “**Presidio Claims**” except for the (b) “**Preserved Claims**.” Many Claims in the Actions are not affected by this Agreement.

G. The term “**Claims**” has the broadest possible meaning in this Agreement. Claims include all claims of any nature, including claims that are liquidated, unliquidated, contingent,

matured, and unmatured, as well as claims based on any legal theory. Claims also include claims for reimbursement of costs or expenses, attorneys’ fees, taxable and nontaxable costs, interest, and all types of direct, indirect, consequential, punitive, or exemplary damages.

- H. **“Presidio Claims”** are all Claims related in any way to the Presidio Matters.
- I. The **“Presidio 37 Claimants”** include only those Parties who have existing claims to the Presidio 37 Proceeds under the Presidio 37 Loan. These Parties are listed on pages 3 to 4 of Petition 80 filed on March 13, 2014 in the Receivership Action, and are: (1) the Receiver; (2) TBM; (3) Gubin; (4) Wiss; and (5) Daskal. The listing of the Presidio 37 Claimants is not intended to preclude claims (*e.g.*, for payment of property taxes) to the Presidio 37 Proceeds *other than* claims by Parties who are not Presidio 37 Claimants.
- J. The term **“Release”** when used to release Claims means the complete and final release, acquittal, waiver and relinquishment of Claims. This term also includes a covenant not to sue on any Claims.
- K. **“Related Non-Parties”** refer collectively to each Party’s respective members, managers, trustees, agents and attorneys, and anyone else acting on behalf of a Party with respect to any Presidio Matters. But Related Non-Parties do *not* include any of the Party’s title insurance companies.
- L. **“Escrowed Funds”** are the funds held in escrow by Alliance Bank pursuant to the *Order Approving the Sale of Real Property* entered in the Monterey Bankruptcy Case on August 11, 2014, including all accrued interest through the date the funds are distributed as provided in this Agreement.
- M. **“Pro-Rata Distributions”** are distributions of the principal and all interest accrued, less bank charges, through November 28, 2014 in following amounts from the Escrowed Funds to the identified Parties:

Landmarc Capital Partners, LLC .....	\$847,846
Monterey Capital Co., LLC .....	\$2,645,914
TBM Associates, LLC .....	\$578,169
PLFG (as assignee of LDM Pension) .....	\$498,209
Victoria Cohen .....	\$189,406
DVH Management Corporation.....	\$178,679
PLFG (as assignee of LDM Co.) .....	\$114,784
Receiver .....	\$112,504
Gubin Family Trust .....	\$71,461
<b>Total .....</b>	<b>\$5,236,971</b>

Pro-Rata Distributions also include distributions of any interest accruing after November 28, 2014, less bank charges, to the identified parties in the same ratio as the above-listed amounts

(**“Interest Amounts”**). No disputes concerning Interest Amounts will prevent or delay distribution the other Pro-Rata Distribution amounts.

**Agreement:**

1. The Parties release each other and the Related Non-Parties from all Presidio Claims, except for the following “Preserved Claims”:
  - a. The Parties’ rights granted under this Agreement, including without limitation rights to their respective Pro-Rata Distributions;
  - b. The Presidio 37 Claimants claims to the Presidio 37 Parcel, the Presidio 37 Loan, and the Presidio 37 Proceeds (including any expense reimbursement claims;
  - c. The Parties’ Claims against any title company; and
  - d. The following Claims listed as Preserved Claims for clarity, with no implication that they may in fact be Presidio Claims:
    - i. The Claims in the appeals docketed as 1 CA-CV 14-0022 and 1 CA-CV 14-0516 in Division One of the Arizona Court of Appeals; and
    - ii. The Claims in the underlying “First Out Litigation” from which the above-referenced appeals were taken.

Each Party bears its own attorneys’ fees relating to the Claims that are released hereby.

2. Within fourteen calendar days of execution of this Agreement by all parties:
  - a. Monterey will move in the Monterey Bankruptcy Case for approval of this Agreement;
  - b. Monterey will move in the Monterey Bankruptcy Case for approval of distribution of the Pro-Rata Distributions pursuant to this Agreement; and
  - c. The Receiver will move for approval of this Agreement in the Receivership Action.
3. Within fourteen calendar days of obtaining the last approval required in paragraph 2 above, the Parties will file:
  - a. A Stipulation for Dismissal With Prejudice of the DOT Appeal and the DOT Adversary, with each Party thereto to bear its own fees and costs;
  - b. A Stipulation in the Sale Adversary that each Party waives (i) any right to appeal, set aside or otherwise challenge the final judgment entered in that action on May 1, 2014 as adversary docket no. 76 and (ii) any right to seek any other relief in the action, including but not limited to any claim for attorneys’ fees, costs, or reimbursement for any other expenses;

- c. A Stipulation in the Monterey Bankruptcy Case that all proofs of claim by LDM Pension and LDM Co. (both later assigned to PLFG), the Receiver, TBM and Partners, Daskal, and Wisk are irrevocably withdrawn; and
- d. A Stipulation in the Receivership Action reciting that:
  - i. Monterey irrevocably waives any claim (and irrevocably withdraws any pending claim) against any other Party and against any Related Non-Parties for reimbursement of any fees, costs or other expenses relating to any of the Presidio Matters;
  - ii. The Receiver irrevocably waives any claim (and irrevocably withdraws any pending claim) against Monterey, TBM, Partners, Cohen or Gubin for reimbursement of loan preservation expenses associated with the Presidio 197 Loan, the Presidio 197 Parcel, or the Presidio 197 Proceeds;
  - iii. Each Party waives any claim to any other Party's Pro-Rata Distributions; and,
  - iv. The Party's waivers do not affect any claims they may have relating to any Receivership assets or proceedings other than those relating to the Presidio Matters.

4. The distribution of the Presidio 37 Proceeds will be limited to the Presidio 37 Claimants and will be governed by the orders entered in the Receivership Action. The following Parties are not Presidio 37 Claimants and waive any claim to the Presidio 37 Proceeds: Monterey, Partners, LDM Pension, Cohen, DVH, and LDM Co.

5. The Parties will execute recordable releases to the \$14.2 Million DOT in a form reasonably acceptable to the Receiver and to Monterey.

6. This Agreement is binding on the Parties and their successors in interest unless rejected by the court in the Monterey Bankruptcy Case or in the Receivership Action.

7. Nothing in this Agreement may be read to release any Claims by any Party against Fidelity National Title Insurance Company.

8. Any notice required or permitted to be given must be sent to the Parties at the following addresses by certified mail, return receipt requested *and* by email:

<b>Monterey (send to both counsel)</b>		<b>The Receiver</b>
Julie Rystad Gallagher & Kennedy, PA 2575 East Camelback Road, Suite 1100 Phoenix, Arizona 85016-9225 602.530.8070 julie.rystad@gknet.com	Richard Q. Nye Nye Ltd Attorneys 9141 East Hidden Spur Trail, Suite 105 Scottsdale, AZ 85255-6325 602.712.9900 nye@hgla.com	Patrick M. Murphy Guttilla Murphy Anderson, P.C. 5415 East High Street, Suite 200 Phoenix, Arizona 85054-5454 480.304.8300 pmurphy@gamlaw.com

<b>TBM</b>	<b>Partners &amp; DVH</b>
<p>Timothy C. Dietz Ryan, Rapp &amp; Underwood, P.L.C. 3200 North Central Avenue, Suite 1600 Phoenix, Arizona 85012 Direct Phone 602.707.1488 Direct Fax 602.385.6709 tdietz@rrulaw.com</p>	<p>George H. King William G. Klain Lang &amp; Klain, P.C. 8767 East Via de Ventura Scottsdale, Arizona 85258 (480) 947-1911 Fax: (480) 970-5034 <a href="mailto:FilingKAL@lang-klain.com">FilingKAL@lang-klain.com</a></p>
<b>PLFG, LDM Pension &amp; LDM Co.</b>	<b>Cohen</b>
<p>James E. Cross Cross Law Firm, P.L.C. 1850 North Central Avenue, Suite 1150 Phoenix, Arizona 85004-4512 602.412.4422 <a href="mailto:cross@crossbcs.com">cross@crossbcs.com</a></p>	<p>Victoria Cohen c/o David Cohen P.O. Box 2151 Farmington Hills, Michigan 48333 248.553.3407 <a href="mailto:vi2k@hotmail.com">vi2k@hotmail.com</a></p>
<b>Gubin</b>	<b>Daskal &amp; Wiss</b>
<p>Steve Gubin, Trustee 2211 East Camelback Road, Suite 906 Phoenix, Arizona 85016 602.692.1222 steve@gubin.net</p>	<p>Jamie C. Eisenfeld Buchalter Nemer PLC 16435 North Scottsdale Road, Suite 440 Scottsdale, AZ 85254-1754 480.383.1800 <a href="mailto:jeisenfeld@buchalter.com">jeisenfeld@buchalter.com</a></p>

9. *General provisions:*

- a. Arizona substantive law governs this Agreement. Parties waive all objections to venue and jurisdiction for any suit related to the Presidio Matters filed in a court located in Maricopa County, Arizona, which is the only location where suit may be filed.
- b. The prevailing party (as determined under A.R.S. § 12-341.01) in any dispute relating to the interpretation or enforcement of this Agreement is entitled to full recovery of all of its reasonable attorneys' fees together with all of its reasonable related costs, whether or not such costs are recoverable as "taxable costs" in court proceedings.
- c. This is intended to be a fully integrated agreement, representing the final and complete agreement among the Parties relating to the Presidio Matters. It may only be modified by a writing signed by the party to be charged with the modification.
- d. This Agreement may be executed in counterparts and with electronic or facsimile signatures.

- e. This Agreement creates no rights for anyone except Parties and Related Non-Parties.
- f. No Party is relying on any other Party for legal or tax advice relating to this Agreement. Each Party has had the opportunity to obtain its own advice on these subjects.
- g. No Party may avoid the obligations of this Agreement based on the claimed breach of any other Party without first giving the Party claimed to be in breach written notice of the exact nature of the breach and seven calendar days to cure such breach.
- h. If any provision of this Agreement is found to be invalid or unenforceable, this Agreement is severable only to the extent that severance does not materially affect the exchange of consideration for each Party. But a Party's whose exchange of consideration is materially affected by severance may elect in a signed writing to reaffirm its consent to the Agreement.
- i. Each Party must reasonably cooperate with every other Party to execute all necessary documents to carry out this Agreement.

*Agreed to by:*

**Gallagher & Kennedy, PA**

\_\_\_\_\_  
Julie Rystad  
Attorneys for Monterey Capital Co., LLC

**Ryan Rapp & Underwood, P.L.C.**

\_\_\_\_\_  
Tim Dietz  
Attorneys for TBM Associates, LLC

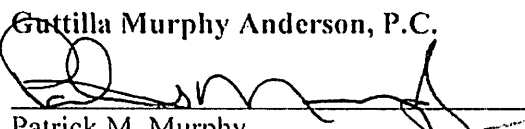
**Cross Law Firm, P.L.C.**

\_\_\_\_\_  
James E. Cross  
Attorneys for Private Lenders Funding  
Group, LLC

**Lang & Klain, PC**

\_\_\_\_\_  
George King  
Attorneys for Landmarc Capital Partners,  
LLC and for DVH Management Corporation

**Guttilla Murphy Anderson, P.C.**

  
\_\_\_\_\_  
Patrick M. Murphy  
Attorneys for the Receiver

**Hennelly & Grossfeld, LLP**

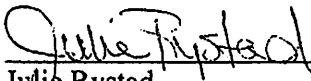
\_\_\_\_\_  
Richard Q. Nye  
Attorneys for Monterey Capital Co., LLC

\_\_\_\_\_  
**Victoria Cohen**

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Tim Dietz  
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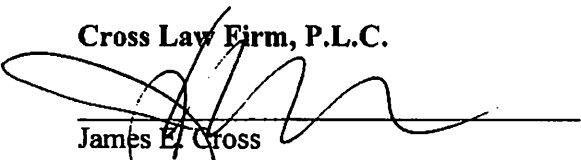
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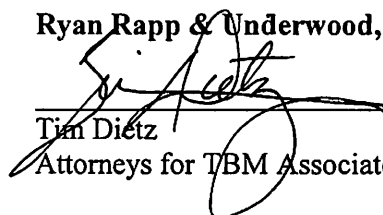
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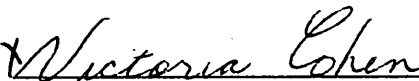
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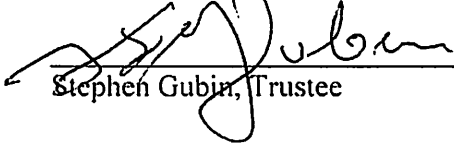
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Stephen Gubin, Trustee

**Buchalter Nemer PLC**

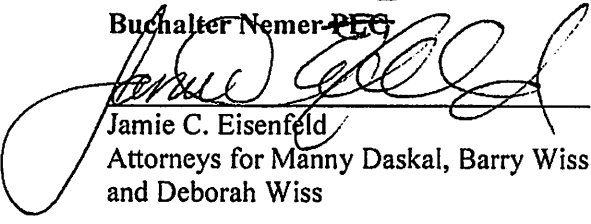
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