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8 Attorneys for the Receiver

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

12 STATE OF ARIZONA ex rel. LAUREN) Cause No. CV2009-020595
13 KINGRY, Superintendent of the Arizona)
14 Department of Financial Institutions,)
15 Plaintiff,)
16 v.) PETITION NO. 90
17 LANDMARC CAPITAL &) RECEIVER'S PETITION FOR ORDER
18 INVESTMENT COMPANY,) APPROVING SETTLEMENT WITH
19) NORTH AMERICAN TITLE COMPANY
20 Defendant.) RE: PROPERTY LOCATED AT 350 E.
21) CYPRESS STREET
) (Assigned to the Honorable Patricia Starr)

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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, 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*

1 (collectively "Receivership Order"). The Receivership Order appointed Thomas J. Giallanza
2 as Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
3 Receivers to carry on the day to day business of Landmarc.

4 2. On or about June 6, 2006, Landmarc loaned Steven and Karen Horning
5 ("Borrowers") \$640,000.00 ("Loan") secured by their residence located at 350 E. Cypress
6 Street, in Chandler Arizona ("Property") under that certain Deed of Trust recorded with the
7 Maricopa County Recorder on June 6, 2006 at Document number 2006-0764212.

8 3. Fidelity National Title Insurance Company ("Fidelity") issued a Loan Policy of
9 Title Insurance to Landmarc insuring Landmarc's interest in the Property (Fidelity Policy").

10 4. Landmarc subsequently sold participation interests in the Loan, which interests
11 have been confirmed by this Court by its *Order Deferring Resolution of the Claimed First*
12 *Out Rights and Claimed Interests in the Presidio 197 Loan and Approving Remaining*
13 *Recommendations of the Receiver, Re: Petition No. 54*, as provided below in the persons
14 indicated (collectively referred to hereafter as the "Beneficial Owners"):

Receiver	58.54%
Robert & Kathleen Russo Living Trust	14.10%
William A. Craigo	11.10%
The Madelene Kepes Revocable Living Trust	11.56%
Jimmie R. & Ofelia Sneed	4.70%

18 5. Unbeknownst to Landmarc, at the time Landmarc funded the Loan there existed
19 a lien for unpaid real property taxes on the Property for the year 2000 in the amount of
20 \$5,713.67 plus accrued interest ("2000 Taxes") that had been sold to a certificate holder on
21 February 16, 2005 ("Tax Certificate").

1 6. Neither the preliminary title report nor the final Fidelity Policy identified the
2 2000 Taxes or the Tax Certificate and even though Fidelity paid some of the real property
3 taxes owed on the Property it did not pay the 2000 Taxes or redeem the Tax Certificate.

4 7. The Borrowers subsequently defaulted and Landmarc foreclosed and acquired
5 title to the Property under a *Trustee's Deed Upon Sale* recorded on July 12, 2007, with the
6 Maricopa County Recorder as document number 2007-0795568.

7 8. On or about September 26, 2014, Landmarc by and through the Receiver, sold
8 the Property to Dinkum Funding and Investments, LLC for \$437,500 ("Buyer") and North
9 American Title Company ("NAT") issued to the Buyer a title insurance policy insuring the
10 Buyer's title to the Property free and clear of any lien for the 2000 Taxes or the Tax
11 Certificate.

12 9. On June 10, 2015, NAT paid \$11,992.60 to the holder of the Tax Certificate in
13 order to clear the title to the Property.

14 10. NAT has made claim on the Receiver for the payment of the 2000 Taxes and
15 Tax Certificate but the Receiver denies that Landmarc is liable for the 2000 Taxes or the Tax
16 Certificate.

17 11. The Receiver has made claim on Fidelity for the 2000 Taxes but Fidelity has
18 denied the claim arguing that because Landmarc was able to sell the Property without paying
19 the 2000 Taxes and incorrectly claiming that Landmarc had not incurred any damage from
20 the lien for the 2000 Taxes.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between, Lauren W. Kingry, the Superintendent of the Arizona Department of Financial Institutions, in his capacity as Receiver of Landmarc Capital & Investment Company ("Receiver"), Robert V. & Kathleen A. Russo Living Trust dated February 28, 1997 ("Russo"), William A. Craig ("Craig"), The Madelene Kepes Revocable Living Trust, dated May 22, 1984 ("Kepes"), Jimmie R. & Ofelia Sneed ("Sneed"), and North American Title Company ("NAT").

Recitals

Whereas on June 24, 2009, the Maricopa County Superior Court appointed the Superintendent of the Arizona Department of Financial Institutions, as Receiver of Landmarc Capital & Investment Company ("Landmarc") in an action entitled, *State of Arizona ex rel. v. Landmarc Capital & Investment Company*, Maricopa County Superior Court Cause No. CV 2009-020595 ("Receivership Action");

Whereas on or about June 6, 2006, Landmarc loaned Steven and Karen Horning ("Borrowers") \$640,000.00 ("Loan") secured by their residence located at 350 East Cypress Street, in Chandler Arizona ("Property") under that certain Deed of Trust recorded with the Maricopa County Recorder on June 6, 2006 at Document number 2006-0764212;

Whereas on or about June 6, 2006, Fidelity National Title Insurance Company ("Fidelity") issued a Loan Policy of Title Insurance to Landmarc insuring Landmarc's interest in the Property (Fidelity Policy);

Whereas Landmarc subsequently sold participation interests in the Loan, which interests have been confirmed by the Court in the Receivership Action by its *Order Deferring Resolution of the Claimed First Out Rights and Claimed Interests in the Presidio 197 Loan and Approving Remaining Recommendations of the Receiver, Re: Petition No. 54*, as provided below in the persons indicated (collectively referred to hereafter as the "Beneficial Owners"):

Receiver (58.54%)

Robert V. & Kathleen A. Russo Living Trust, dated February 28, 1997 (14.10%)

William A. Craig (11.10%)

The Madelene Kepes Revocable Living Trust, dated May 22, 1984 (11.56%)

Jimmie R. & Ofelia Sneed (4.70%)

Whereas unbeknownst to Landmarc, at the time Landmarc funded the Loan there existed a lien for unpaid real property taxes on the Property for the year 2000 in the amount of \$5,713.67 plus accrued interest ("2000 Taxes") that had been sold to a certificate holder on February 16, 2005 ("Tax Certificate");

Whereas neither the preliminary title report nor the final Fidelity Policy identified the 2000 Taxes or the Tax Certificate and even though Fidelity paid some of the real property taxes owed on the Property it did not pay the 2000 Taxes or redeem the Tax Certificate;

Whereas the Borrowers subsequently defaulted and Landmarc foreclosed and acquired title to the Property under a *Trustee's Deed Upon Sale* recorded on July 12, 2007, with the Maricopa County Recorder as document number 2007-0795568;

Whereas on or about September 26, 2014, Landmarc by and through the Receiver, sold the Property to Dinkum Funding and Investments, LLC for \$437,500 ("Buyer") and NAT issued to the Buyer a title insurance policy insuring the Buyer's title to the Property free and clear of any lien for the 2000 Taxes or the Tax Certificate;

Whereas on June 10, 2015, NAT paid \$11,992.60 to the holder of the Tax Certificate in order to clear the title to the Property;

Whereas NAT has made claim on the Receiver for the payment of the 2000 Taxes and Tax Certificate but the Receiver denies that Landmarc is liable for the 2000 Taxes or the Tax Certificate;

Whereas the Receiver has made claim on Fidelity for the 2000 Taxes but Fidelity has denied the claim arguing that because Landmarc was able to sell the Property without paying the taxes that Landmarc had not incurred any damage from the lien for the 2000 Taxes; and

Whereas, the Receiver, NAT, and the Beneficial Owners wish to resolve the claim asserted by NAT arising from its payment of the 2000 Taxes and Tax Certificate as provided herein.

Terms

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. The Receiver shall cause Landmarc to pay to NAT the sum of \$7,000.00 from funds of the Beneficial Owners presently held by the Receiver. Immediately following the payment to NAT, the Receiver shall disburse to the Beneficial Owners the balance of funds held by the Receiver for their benefit.
2. NAT hereby assigns to the Receiver any and all claim or causes of action NAT may have against Fidelity for NAT's payment of the 2000 Taxes and accrued interest and shall execute any and all documents as may be reasonable necessary to effectuate such assignment and shall cooperate fully with the Receiver or his assigns in the pursuit of any claim against Fidelity arising under the Loan or the Fidelity Policy. NAT warrants that the 2000 Taxes and the Tax Certificate have been paid in full and NAT indemnifies the Receiver and the Beneficial Owners from any liability that may arise from the 2000 Taxes or the Tax Certificate.
3. NAT, on its own behalf and on behalf of its attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Receiver, Landmarc and the Beneficial Owners, and their respective attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of the sale of the Property to the Buyers or the payment of the 2000 Taxes and accrued interest by NAT; and
4. The Receiver, Landmarc and the Beneficial Owners, on their own behalf and on behalf of their respective attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges NAT and their attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out

of the sale of the Property to the Buyers or the payment of the 2000 Taxes and accrued interest by NAT.

5. The Receiver shall file a petition in the Receivership Action seeking the approval of this Agreement and the provisions contained herein are conditioned upon the approval of the Agreement by the Court in the Receivership Action and the Agreement shall not become effective until and unless so approved.

6. The parties hereto acknowledge that this Agreement is being made by each party of its own free choice, without any inducement offered in any way other than the express agreements contained in this Agreement. The parties further state that in entering into this Agreement, each party has had the opportunity to consult with an attorney of that party's own choice regarding the benefits and detriments of entering into this Agreement.

7. This Agreement contains the full and complete agreement of the parties hereto, and all prior negotiations and agreements pertaining to the subject matter hereof are merged into this Agreement. No amendment, waiver, or discharge in any provision of all or any part of the Agreement shall be valid unless such amendment, waiver or discharge is in writing and duly executed by all parties to this Agreement, or their authorized agents.

8. This Agreement may not be amended or modified except in writing, signed by the parties to be bound thereby, or signed by their respective attorneys or representatives, which writing has been approved by the Court in the Receivership Action.

9. NAT hereby warrants and represents that it has not sold, assigned, granted, or otherwise transferred to anyone, any right, privilege, or cause of action, or any part thereof, arising out of or otherwise connected with the subject matter or terms of this Agreement.

10. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

11. This Agreement is entered into in the State of Arizona, and shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Arizona. Any dispute concerning the interpretation of this Agreement shall be submitted to and decided exclusively in the Receivership Action.

12. The person signing this Agreement on behalf of any party to this Agreement, hereby warrants and represents that the person is authorized to sign this Agreement and make the promises and grant the releases contained herein on behalf of the respective entity and that such person has the power to bind the respective entity.

13. This Agreement may be executed in counterparts by one or more of the undersigned, and all such counterparts so executed shall together be deemed to constitute one final Agreement, as if one document had been signed by all parties hereto. Each such counterpart shall be deemed to be an original, binding the parties subscribed thereto, and multiple signature pages affixed to a single copy of the Agreement shall be deemed to be a fully executed original Agreement.

14. In the event of any future litigation between the parties to this Agreement in which the enforcement of this Agreement is sought, the prevailing party or parties with respect to issues relating to the Agreement shall be entitled to recover their reasonable attorneys' fees and costs from the other party or parties.

15. All parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.

Landmarc Capital & Investment Company,
in receivership

By Thomas J. Giallanza
Thomas J. Giallanza, Deputy Receiver

Dated: 8/24/15

North American Title Company

By _____
John K. Graham, Mountain Region Legal Counsel

Dated: _____

Lauren W. Kingry, Receiver
Beneficial Owner (58.54%).

By Thomas J. Giallanza
Thomas J. Giallanza, Deputy Receiver

Dated: 8/24/15

Robert V. & Kathleen A. Russo Living Trust,
dated February 28, 1997
Beneficial Owner (14.10%)

By _____
Robert V. Russo, Trustee

Dated: _____

William A. Craig
Beneficial Owner (11.10%)

William A. Craig

Dated: _____


15. All parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.

Landmarc Capital & Investment Company,
in receivership

By _____
Thomas J. Giallanza, Deputy Receiver

Dated: _____

North American Title Company

By 
John K. Graham, Mountain Region Legal Counsel

Dated: August 21, 2015

Lauren W. Kingry, Receiver
Beneficial Owner (58.54%)

By _____
Thomas J. Giallanza, Deputy Receiver

Dated: _____

Robert V. & Kathleen A. Russo Living Trust,
dated February 28, 1997
Beneficial Owner (14.10%)

By _____
Robert V. Russo, Trustee

Dated: _____

William A. Craigo
Beneficial Owner (11.10%)

William A. Craigo

Dated: _____

15. All parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.

Landmarc Capital & Investment Company,
in receivership

By _____
Thomas J. Giallanza, Deputy Receiver

Dated: _____

North American Title Company

By _____
John K. Graham, Mountain Region Legal Counsel

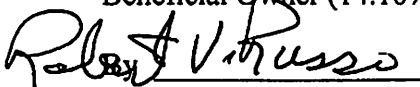
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Lauren W. Kingry, Receiver
Beneficial Owner (58.54%)

By _____
Thomas J. Giallanza, Deputy Receiver

Dated: _____

Robert V. & Kathleen A. Russo Living Trust,
dated February 28, 1997
Beneficial Owner (14.10%)



Robert V. Russo, Trustee

Dated: 8/19/15

William A. Craigo
Beneficial Owner (11.10%)

William A. Craigo

Dated: _____

15. All parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.

Landmarc Capital & Investment Company,
in receivership

By _____
Thomas J. Giallanza, Deputy Receiver

Dated: _____

North American Title Company

By _____
John K. Graham, Mountain Region Legal Counsel

Dated: _____

Lauren W. Kingry, Receiver
Beneficial Owner (58.54%)

By _____
Thomas J. Giallanza, Deputy Receiver

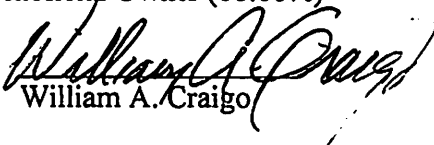
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Robert V. & Kathleen A. Russo Living Trust,
dated February 28, 1997
Beneficial Owner (14.10%)

By _____
Robert V. Russo, Trustee

Dated: _____

William A. Craig
Beneficial Owner (11.10%)


William A. Craig

Dated: 25 Aug 2015

The Madelene Kepes Revocable Living Trust,
dated May 22, 1984

Beneficial Owner (11.56%)

By Madelene Kepes
Madelene Kepes, Trustee

Dated: 8-18-2015

Jimmie R. & Ofelia Sneed
Beneficial Owner (4.70%)

Jimmie R. Sneed

Dated: _____

Ofelia Sneed

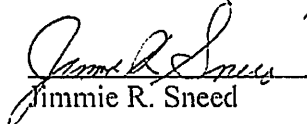
Dated: _____

The Madelene Kepes Revocable Living Trust,
dated May 22, 1984
Beneficial Owner (11.56%)

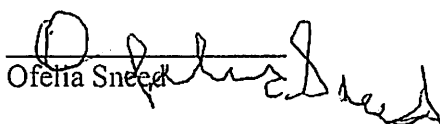
By _____
Madelene Kepes, Trustee

Dated: _____

Jimmie R. & Ofelia Sneed
Beneficial Owner (4.70%)


Jimmie R. Sneed

Dated: 8-21-15


Ofelia Sneed

Dated: 8-21-15