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STATE OF ARIZONA ex rel. ROBERT D. CHARLTON, Superintendent of the Arizona Department of Financial Institutions,  
Plaintiff,  
v.  
LANDMARC CAPITAL & INVESTMENT COMPANY,  
Defendant.

Cause No. CV2009-020595

PETITION NO. 96

PETITION FOR 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

(Assigned to the Honorable Daniel Martin)

Robert D. Charlton, 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

1 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*  
2 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,  
3 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*  
4 (collectively “Receivership Order”). The Receivership Order appointed Thomas J. Giallanza  
5 as Deputy Receiver.

6 **The Presidio 37 Loan**

7 2. Beginning in 2006, Landmarc made a progression of loans to a group of  
8 developers (“Presidio West Borrowers”) secured by approximately 244 acres of land located  
9 just west of Flagstaff, Arizona between Interstate 40 and U.S. Highway Route 66 in Coconino  
10 County (“Presidio West Tract”).

11 3. The \$9.5 Million Loan (No. 06100775). The first loan made by Landmarc was  
12 a loan of \$9.5 million on October 20, 2006, to a limited liability company created by the  
13 Presidio West Borrowers, Presidio West, LLC (“\$9.5 Million Loan”). The \$9.5 Million Loan  
14 was secured by the entire 244 acres of the Presidio West Tract under a deed of trust recorded  
15 on October 23, 2006 as Document No. 3408716 (“\$9.5 Million DOT”). According to  
16 Landmarc’s records, no less than 14 of Landmarc’s lenders acquired a portion of Landmarc’s  
17 interest in the \$9.5 Million Loan and \$9.5 Million DOT. The \$9.5 Million DOT was released  
18 by a Deed of Partial Release and Partial Reconveyance recorded on January 18, 2007.

19 4. \$14.2 Million Loan (No. 06100775). Approximately four months later,  
20 Landmarc replaced the \$9.5 Million Loan with a new loan for \$14.2 million to Presidio West,  
21 LLC (“\$14.2 Million Loan”). The \$14.2 Million Loan was also secured by the entire 244

1 acres of the Presidio West Tract under a deed of trust recorded on April 17, 2007 as  
2 Document No. 3434726.<sup>1</sup>

3 5. In December 2007, Landmarc replaced<sup>2</sup> the \$14.2 Million Loan with two new  
4 loans totaling \$17.3 million. These two loans are described below and were secured by  
5 approximately 37 and 197 acres respectively.<sup>3</sup>

6 a. Presidio 37 Loan (No. 07121849). On or about December 27, 2007,  
7 Landmarc loaned \$2,800,000 to Presidio West 37, LLC (“Presidio 37 Loan”), which  
8 was secured by approximately 36.94 acres of the Presidio West Tract located at the  
9 southwest corner of Woody Mountain Road and Route 66 in Flagstaff, Arizona  
10 (“Property”) under a Deed of Trust recorded with the Coconino County Recorder on  
11 December 31, 2007 as Document No. 3471152 (“Presidio 37 DOT”). The legal  
12 description of the Property is attached hereto as **Exhibit “1”**. According to  
13 Landmarc’s records, this loan was beneficially owned as of the Receivership Date by  
14 six lenders, two of which are now receivership entities.

15 b. Presidio 197 Loan (No. 07121853). On or about December 27, 2007,  
16 Landmarc loaned \$14,500,000 to Presidio West 197, LLC, which was secured by  
17 approximately 197 acres of the Presidio West Tract under a Deed of Trust recorded

18 \_\_\_\_\_  
19 <sup>1</sup> Although Landmarc failed to record a release of the \$14.2 Million DOT, the United States  
20 Bankruptcy Court in an adversary filed in the Monterey Bankruptcy, entered judgment on February  
21 11, 2014, which declared that the \$14.2 Million Loan had been satisfied.

<sup>2</sup> The records of Landmarc reflect that the \$14.2 Million Loan was paid off as a result of Landmarc  
making the Presidio 37 Loan and the Presidio 197 Loan.

<sup>3</sup> Ten of the original 244 acres, which served as the security for the \$9.5 Million Loan and the \$14.2  
Million Loan, were not included in the deeds of trust for the two new loans.

1 with the Coconino County Recorder on December 31, 2007 as Document No.  
2 3471146. According to Landmarc's records, this loan was beneficially owned as of  
3 the Receivership Date by nine lenders.

#### 4 **The Property and Beneficial Owners**

5 6. Following the borrower's default, the Receiver foreclosed on the Presidio 37  
6 DOT and acquired fee title to the Property pursuant to a *Trustee's Deed* recorded with the  
7 Coconino County Recorder on November 30, 2009 as Document Number 3546194.

8 7. The continued holding of the Property is not necessary or appropriate to protect  
9 the interests of any persons interested in this receivership. Moreover, since the Receiver  
10 holds a significant beneficial interest in the Property the liquidation of the Property is  
11 essential to the prompt resolution of this receivership and to pay for the administrative costs  
12 of the receivership. Accordingly, the Receiver commenced efforts to market and sell the  
13 Property.

14 8. The Court has previously approved the beneficial interests in the Presidio 37  
15 Loan and the Property as follows<sup>4</sup>:

<u>Beneficial Owner</u>	<u>Percentage</u>
TBM Associates, LLC <sup>5</sup>	53.5%
Receiver <sup>6</sup>	27.0%

19 <sup>4</sup> *Order Deferring Resolution of the Claimed First Out Rights and Claimed Interests in the Presidio*  
20 *197 Loan and Approving Remaining Recommendations of the Receiver, Re: Petition No. 54* entered  
on May 21, 2012.

21 <sup>5</sup> The interest of TBM Associates, LLC approved by the Court was 53.46%, but for purposes of this  
Petition and the final distribution, the interest has been rounded to 53.5% in order to insure that the  
total of all approved interests equals 100%.

1	Gubin Family Trust <sup>7</sup>	9.1%
2	Barry Wiss	7.9%
3	Manny Daskal	<u>2.5%</u>
		100.00%

4 **The Receiver’s Property Preservation Expenses & Trust Funds**

5 9. Landmarc and subsequently the Receiver incurred various expenses in  
6 connection with their efforts to enhance and protect the interests in the Presidio 37 Loan and  
7 the Property, including legal fees following the borrower’s default and the foreclosure of the  
8 deed of trust, real estate taxes and insurance premiums regarding the Property, and various  
9 other expenses (“Property Preservation Expenses”). An accounting of the Property  
10 Preservation Expenses, and the payments that the Receiver has received in partial  
11 reimbursement of these expenses, are set forth in **Exhibit “2”** attached hereto.

12 10. An accounting of the funds presently held in trust by the Receiver in connection  
13 with the Presidio 37 Loan and Property is attached as **Exhibit “3”**. The balance of trust funds  
14 in the amount of \$11,225.43 should be paid to the Receiver as partial reimbursement of the  
15 Property Preservation Expenses.

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18 <sup>6</sup> The Receiver’s interest in the Presidio 37 Loan and the Property is comprised of interests held by  
19 two receivership entities: Desert Trails and Hayden Investments. In its *Order Deferring Resolution*  
20 *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* entered on May 21, 2012, the  
21 Court confirmed Desert Trails’ interest of 13.4% and Hayden Investments’ interest of 13.6%.

<sup>7</sup> The interest of the Gubin Family Trust approved by the Court was 9.11%, but for purposes of this  
Petition and the final distribution the interest has been rounded to 9.1% in order to insure that the  
total of all approved interests equals 100%.

1 **Receiver's Efforts to Market and Sell the Property**

2 11. On September 27, 2010, Tim Niebling of Niebling Commercial Appraisers  
3 submitted to the Receiver an appraisal of the Property which indicates a fair market value for  
4 the Property of \$3,220,000 ("2010 Neibling Appraisal"). Mr. Niebling was issued Certificate  
5 No. 30732 by the State of Arizona as a Certified General Residential Real Estate Appraiser.  
6 The Receiver agreed to pay this appraiser a fee of \$8,000 for this appraisal and the appraiser  
7 has no known interest in any of the parties or in the sale of the Property.

8 12. In May 2013, the Receiver received an offer from York Breckenridge GP, LLC,  
9 a Texas limited liability company ("York") to purchase the Property for \$2,950,000. On June  
10 6, 2013, the Receiver filed his *Petition No. 76, Petition to Confirm Sale of Approximately 37*  
11 *Acres of the Presidio West Tract*, which sought an order approving the sale of the Property.  
12 A competing bid was received by the Receiver prior to approval of the sale, and accordingly  
13 York increased its offer to \$3,225,000 and agreed to shorten its due diligence period. On  
14 August 30, 2013 the Court entered its *Order Re: Petition No. 76* approving the sale of the  
15 Property. Due to York's inability to obtain a water study from the City of Flagstaff prior to  
16 the end of its due diligence period, on December 13, 2013, York elected to cancel the sale  
17 agreement approved by the Court.

18 13. On March 4, 2014, the Receiver received a new offer from York to purchase the  
19 Property for \$3,225,000 under terms that were acceptable to the Receiver. On May 20, 2014  
20 the Court entered its *Order Re: Petition No. 80* approving the sale of the Property to York.  
21 York's development plan for the Property contemplated the construction of student housing.

1 However, York was unable to obtain confirmation upon second reading of Flagstaff City  
2 Council approval of its development plan from the City of Flagstaff and thus failed to close  
3 and forfeited its earnest money deposit. A supermajority vote in favor of York's  
4 development plan was required from the Flagstaff City Council on second reading because  
5 adjoining landowners had filed an objection to the plan with the City Council. The Flagstaff  
6 City Council failed on second reading to approve York's development plan by the required  
7 supermajority vote. Given the neighbors opposition, it is likely that the only development  
8 plan that can successfully obtain City Council approval in the near future is a plan for single  
9 family residential development.

10 14. On June 15, 2016, the Receiver received an offer from Woody Mountain 37,  
11 LLC, to purchase the Property under terms that were acceptable to the Receiver. The  
12 Purchase Agreement is attached as **Exhibit "4"** and provides for the sale of the Property for  
13 \$1,650,000 in cash and is conditioned upon, among other things, upon the completion of a  
14 due diligence investigation by the Buyer and the approval by this Court. This Purchase  
15 Agreement provides for the sale to close on or before September 13, 2016. The principals  
16 that control the Buyer have a long history in Flagstaff as residential developers. The Buyer  
17 has completed its due diligence investigation and the only remaining contingency under the  
18 Purchase Agreement is the approval by this Court.

19 15. In accordance with this Court's *Order Re: Petition Number 2*, the Receiver:  
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1           a.       Has mailed a copy of this Petition, the proposed order, and the Notice of  
2           Hearing, to all persons on the Master Service List as indicated in the Proof of Mailing  
3           filed herewith;

4           b.       Intends to publish notice of this sale in a newspaper of general  
5           circulation within the county in which this action is pending; and

6           c.       Intends to publish notice of this sale in a newspaper of general  
7           circulation within Coconino County, the county in which the Property is located.

8           16.       Although the purchase price to be paid under the Purchase Agreement is less  
9           than the value set forth in the 2010 Neibling Appraisal and is less than the purchase price in  
10          the most recent sale agreements, the Receiver believes a more accurate indicator of the actual  
11          current value of the Property is provided by the price at which the adjoining 197 acres were  
12          sold. The purchase price under the Purchase Agreement equals \$44,595 per acre which is  
13          54% greater than the price obtained from the sale of the adjoining 197 acres<sup>8</sup>. Recently, the  
14          Receiver has received an offer from a party affiliated with TBM Associates, LLC to acquire  
15          the Receiver's interest in the Property for \$216,000.00, which represents a price of  
16          \$21,657.00 per acre. In addition, the sale price in the prior contracts was for a specialized use  
17          of the Property (student housing) which in light of the objections of the adjoining property  
18          owners is no longer a viable use of the Property. Finally, the Purchase Agreement now  
19          before the Court does not require the payment of real estate commissions, which was not the  
20          case in the prior contracts on the Property.

21          <sup>8</sup> The adjoining 197 acres sold at public auction conducted by the United States Bankruptcy Court in  
the Monterey Bankruptcy for \$5,700,000, or \$28,934 per acre.



1           17.     The Receiver recommends that the Property be sold for the price and under the  
2 terms set forth in the Purchase Agreement attached as **Exhibit “4”**, which the Receiver  
3 believes are in the best interests of the receivership estate.

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

5           1.     Approving the sale of the Property as set forth in the Purchase Agreement  
6 attached as **Exhibit “4”** to this Petition of the Property legally described in **Exhibit “1”**;

7           2.     Declaring that the sale of the Property is free and clear of all liens and  
8 encumbrances;

9           3.     Authorizing the Receiver to disburse \$15,225.43, from the funds held in trust  
10 for the Property to the receivership estate in partial satisfaction of the Property Preservation  
11 Expenses due to Landmarc;

12          4.     Authorizing the escrow agent to disburse the net sale proceeds as follows:

13           a.     First, the sum of \$41,420.79 to the Receiver as reimbursement of  
14 Property Preservation Expenses incurred by Landmarc; and

15           b.     Then the remaining funds to the beneficial owners in the following  
16 percentages:

TBM Associates, LLC	53.5%
Receiver	27.0%
Gubin Family Trust	9.1%
Barry Wiss	7.9%
Manny Daskal	2.5%



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**Verification**

I, THOMAS J. GIALLANZA, do hereby declare as follows:

I am the court appointed Deputy Receiver of Landmarc Capital & Investment Company Receivership in the above-entitled and numbered cause of action; that I have read the foregoing Petition, and know the contents thereof; that the matters and things contained therein are true in substance and in fact, to the best of my information, knowledge and belief, except as to those matter and things alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of September, 2016 in Phoenix, Arizona.

/s/Thomas J. Giallanza  
Thomas J. Giallanza, Deputy Receiver

1157-013.02 (247304)

A parcel of land being a portion of the "Presidio West Tract" as said Tract is described in that certain Warranty Deed (Deed) recorded as Instrument No. 3229602, records of Coconino County, Arizona, wherein said "Presidio West Tract" is comprised of Parcel Nos. 1D, 3, 4, 5B, 8 and 9, which are situated in the East half of Section 24, Township 21 North, Range 6 East and in Section 19, Township 21 North, Range 7 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, said parcel of land being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 24 as described in said Deed from which the North quarter corner of said Section 19, as described in said Deed, lies North 89° 31' 49" East, a distance of 2,634.20 feet;

Thence from said Northeast corner of Section 24, South 01° 56' 25" East, a distance of 1,718.05 feet along the line common to said Sections 24 and 19, to a point on the North boundary of said "Presidio West Tract" from which the West quarter corner of said Section 19, as described in said Deed, lies South 01° 54' 02" East, a distance of 916.63 feet;

Thence along said North boundary, South 72° 44' 49" East, a distance of 1,413.86 feet to the beginning of an offset spiral;

Thence along said North boundary, being a line curved to the left, that is offset 66.00 feet Southerly from the centerline of the right of way of said U.S. Highway 66, said centerline being a clothoid spiral defined by the elements  $\Theta = 3^\circ 00' 00''$ ,  $X_s = 299.92$  feet,  $Y_s = 5.23$  feet and  $L_s = 300.00$  feet, the long chord bearing and length of said curved line of the North boundary are South 73° 47' 13" East ~ 303.42 feet, and said curved line of the North boundary runs to an offset Point of Spiral to Curve;

Thence along said North boundary, being a simple curve to the left that is offset 66.00 feet Southerly from said centerline of the right of way of U.S. Highway 66, said simple curve having a radius of 2,930.79 feet, chord bearing and length of South 79° 01' 53" East ~ 332.31 feet and central angle of 6° 30' 00", an arc distance of 332.49 feet to an offset Point of Curve to Spiral;

Thence along said North boundary, being a line curved to the left that is offset 66.00 feet Southerly from said centerline of the right of way of U.S. Highway 66, said centerline being a clothoid spiral defined by the elements  $\Theta = 3^\circ 00' 00''$ ,  $X_s = 299.92$  feet,  $Y_s = 5.23$  feet and  $L_s = 300.00$  feet, the long chord bearing and length of said curved line of the North boundary are South 84° 16' 33" East ~ 303.42 feet, and said curved line of the North boundary runs to the end of said offset spiral;

Thence along said North boundary, South 85° 16' 49" East, a distance of 203.51 feet to a ½" rebar with plastic cap stamped "LS 14184" set at the POINT OF BEGINNING;

Thence departing said North boundary of the "Presidio West Tract", South 00° 42' 05" West, a distance of 1,107.36 feet to a ½" rebar with plastic cap stamped "LS 14184" (set);

Thence South 43° 42' 33" West, a distance of 785.53 feet to a ½" rebar with plastic cap stamped "LS 14184" (set);

Thence South 54° 55' 29" East, a distance of 708.84 feet to a ½" rebar with plastic cap stamped "LS 14184" set at the beginning of a nontangent curve on the West boundary of that certain parcel of land granted to the City of Flagstaff for public right of way per Instrument Number 3337514, records of Coconino County, Arizona;

Thence Northeasterly along said West boundary, being a nontangent curve to the right, having a radius of 93.00 feet, chord bearing and length of North 66° 57' 32" East ~ 98.24 feet and central angle of 63° 46' 00", an arc distance of 103.50 feet to a ½" rebar with plastic cap stamped "LS 14184" set on said East boundary of the "Presidio West Tract";

Thence Northeasterly along said East boundary, being a nontangent curve to the left, having a radius of 5,679.58 feet, chord bearing and length of North 40° 18' 29" East ~ 108.64 feet and central angle of 1° 05' 45", an arc distance of 108.64 feet to a Point of Tangency;

Thence along said East boundary, North 39° 45' 36" East, a distance of 350.46 feet;

Thence along said East boundary, South 50° 13' 40" East, a distance of 50.01 feet;

Thence along said East boundary, North 40° 18' 19" East, a distance of 261.46 feet to the beginning of a Point of Curvature;

Thence Northerly along said East boundary, being a tangent curve to the left, having a radius of 716.20 feet, chord bearing and length of North 19° 59' 01" East ~ 497.46 feet and central angle of 40° 38' 37", an arc distance of 508.05 feet to a Point of Tangency;

Thence along said East boundary, North 00° 20' 18" West, a distance of 992.42 feet to the Northeast corner of said "Presidio West Tract" per said Deed;

Thence along said North boundary of the "Presidio West Tract", North 85° 16' 49" West, a distance of 782.95 feet to the POINT OF BEGINNING.

EXCEPT all oil, gas and other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description, and except all materials which may be essential to the production of fissionable material as reserved in Arizona Revised Statutes.

## Presidio 37 Loan/Property Preservation Expenses Paid by Landmarc/Rece

Date	Payee/Payor	Description	Amount
03/18/08	Burch & Cracchiolo, PA	Attorney Fees & Costs	320.50
07/08/08	Burch & Cracchiolo, PA	Attorney Fees & Costs	1,929.46
08/11/08	Burch & Cracchiolo, PA	Attorney Fees & Costs	608.03
09/17/08	Burch & Cracchiolo, PA	Attorney Fees & Costs	225.05
11/03/08	Burch & Cracchiolo, PA	Foreclosure Fees & Costs	694.30
11/10/08	Burch & Cracchiolo, PA	Attorney Fees & Costs	788.59
11/30/08	Burch & Cracchiolo, PA	Attorney Fees & Costs	66.51
12/04/08	Stewart Title & Trust		2,826.00
01/12/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	258.31
02/12/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	320.88
04/10/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	390.00
04/30/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	737.71
04/30/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	321.56
05/31/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	227.50
06/30/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	501.71
07/31/09	Burch & Cracchiolo, PA	Attorney Fees & Costs	160.31
05/07/10	Lawyers Title		350.00
09/29/10	Niebling Appraisals	Appraisal	8,000.00
05/20/11	AFCO-GL Insurance	Insurance	1,397.00
06/27/11	Trust Account	Negative Trust Account	822.44
08/30/11	Security Title Agency		200.00
05/31/12	RP Ryan Insurance	Insurance	382.00
11/07/12	Coconino County Treasurer	Property taxes	44,575.59
07/11/13	Cushman & Wakefield	Insurance	2,500.00
08/15/13	Cushman & Wakefield	Insurance	2,500.00
08/23/13	Berkshire Hathaway	Insurance	383.00
08/26/13	CDS Liab. Ins.	Insurance	90.86
09/16/13	Thomas Giallanza		30.08
05/01/14	Berkshire Hathaway	Insurance	419.00
10/21/15	Coconino County Treasurer	Property taxes	7,592.87
09/30/15	RP Ryan Insurance	Insurance	214.00
			79,833.26
 <u>Reimbursements</u>			
12/17/12	Manny Daskal		(1,114.39)
12/21/12	Wiss		(3,532.17)
08/23/13	Gubin Family Trust		(10,947.61)
03/16/16	From Trust Account		(7,592.87)
		Net Unreimbursed Expenses	56,646.22

## Presidio 37 Loan/Property Trust Accounting

Loan No. 07121849

<b>Date</b>	<b>Payee/Payor</b>	<b>Description</b>	<b>Amount</b>
06/09/11	Lovitt & Touche' Inc.	Insurance	(822.44)
06/27/11	Landmarc Capital & Investment	Reimburse Negative Trust	822.44
01/09/14	North American Title	Forfeiture of Escrow Deposit	13,025.00
03/05/15	North American Title	Forfeiture of Escrow Deposit	120,000.00
03/12/15	Coconino County Treasurer	Property taxes	(102,513.93)
03/16/16	LCI	Reimburse for Prop Taxes	(7,592.87)
06/10/16	Coconino County Treasurer	Property taxes	(7,692.77)
		Trust Account Balance	15,225.43

VACANT LAND/LOT  
PURCHASE CONTRACT

Document updated:  
February 2013



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



If subdivided land or unsubdivided land is being sold by a subdivider, i.e., a person who owns 6 or more lots, a public report will generally be required and an Addendum regarding subdivided or unsubdivided land must be executed by the Seller and Buyer.

1. PROPERTY

- 1a. 1. BUYER: WOODY MOUNTAIN 37, LLC, an Arizona Limited Liability Company, in formation  
BUYER'S NAME(S)
- 2. SELLER: LANDMARC CAPITAL AND INVESTMENT COMPANY, in Receivership or  as identified in Section 9c.  
SELLER'S NAME(S)
- 3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
- 4. or incidental thereto, if any, plus the personal property described herein (collectively the "Property").
- 5. Property Address: 37 acres of undeveloped land: Woody Mountain Road off Route 66 Zoning: Rural Residential
- 6. Assessor's #(s): APN: 11201019
- 7. City: FLAGSTAFF County: COCONINO AZ, Zip Code: 85005
- 8. Legal Description: To Be Determined by Survey or  see attached legal description.
- 9. \$ \$1,650,000.00 Full Purchase Price, paid as outlined below
- 10. \$ \$20,000.00 Earnest money Deposited with Escrow Agent within two business days after contract acceptance
- 11. \$ \$1,630,000.00 ADDITIONAL CASH DUE at CLOSE OF ESCROW
- 12. \$ 1
- 13. \_\_\_\_\_
- 14. Incidental Improvements: Buyer is purchasing the Property as vacant land. Any improvements, fixtures and appurtenances
- 15. thereon or incidental thereto, are being transferred in their existing condition ("AS-IS") and Seller makes no warranty to Buyer,
- 16. expressed or implied, as to their condition except as provided for in section 5a.
- 17. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Property, and any existing personal property
- 18. specified herein, shall be included in this sale, including the following:
- 19. NONE
- 20. \_\_\_\_\_
- 21. Personal property included herein shall be transferred with no monetary value, and free and clear of all liens
- 22. or encumbrances.
- 23. Fixtures and leased items NOT included: NONE
- 24. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's
- 25. office. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow
- 26. Company all closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on
- 27. SEPTEMBER 13, 2016 ("COE Date"). If Escrow Company or recorder's office is closed on  
MONTH DAY YEAR
- 28. COE Date, COE shall occur on the next day that both are open for business.
- 29. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down
- 30. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds
- 31. to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.

SELLER

initials

BUYER BUYER

initials



**Vacant Land/Lot Purchase Contract >>**

- 1g. 32. **Possession:** Seller shall deliver access to keys and/or means to operate all locks, mailbox, and all common area facilities, subject to the 33. rights of tenants under existing leases, to Buyer at COE or  \_\_\_\_\_ . Broker(s) recommend that the parties seek appropriate 34. counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of the Property.
- 1h. 35. **Addenda Incorporated:**  Additional Clause  Assumption/Carryback  Buyer Contingency  Domestic Water Well 36.  H.O.A.  Market Conditions Advisory  On-site Wastewater Treatment Facility  Short Sale  Vacant Land/Lot 37. Purchase Contract Addendum Regarding Subdivided or Unsubdivided Land 38.  Other: NONE
- 1i. 39. **IF THIS IS AN ALL CASH SALE:** Buyer shall provide Seller, within five (5) days or 10 days after Contract acceptance, 40. either a Letter of Credit or a Source of Funds Letter from a financial institution documenting the availability of funds to 41. close escrow as agreed. Section 2 shall not apply, GO TO SECTION 3.

**2. FINANCING**

- 2a. 42. **Type of Financing:**  Conventional  FHA  VA  USDA  Assumption  Seller Carryback 43.  NONE 44. (If financing is to be other than new financing, see attached addendum.)
- 2b. 45. **Financing:** This sale  is  is not contingent upon Buyer obtaining a satisfactory financing commitment within 46. Due Diligence Period pursuant to Section 6a. (If sale is not contingent on a financing comitment, go to Section 2k.)
- 2c. 47. ~~Financing Commitment Contingency Period. If the sale is contingent upon Buyer obtaining a satisfactory financing commitment,~~ 48. Buyer shall have the Due Diligence Period to obtain a financing commitment, including appraised value, satisfactory to Buyer in Buyer's 49. sole discretion, for a loan to purchase the Property or Buyer may cancel this Contract and receive a refund of the Earnest Money. 50. **PRIOR TO THE EXPIRATION OF THE DUE DILIGENCE PERIOD, BUYER SHALL DELIVER TO SELLER AND ESCROW COMPANY 51. NOTICE THAT BUYER HAS NOT RECEIVED SUCH SATISFACTORY FINANCING COMMITMENT OR BUYER SHALL BE DEEMED 52. TO HAVE WAIVED THE FINANCING COMMITMENT CONTINGENCY AND ANY RIGHT TO CANCEL DUE TO FINANCING.**
- 2d. 53. **Pre-Qualification:** A completed AAR Pre-Qualification Form  is  is not attached hereto and incorporated herein 54. by reference.
- 2e. 55. **Loan Status Update:** Buyer shall deliver to Seller the Loan Status Update (LSU) with at a minimum lines 1-40 completed describing 56. the current status of the Buyer's proposed loan within five (5) days after Contract acceptance and instruct lender to provide an 57. updated LSU to Broker(s) and Seller upon request.
- 2f. 58. **Loan Processing During Escrow:** Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all 59. additional documentation required. Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.
- 2g. 60. **Loan Costs:** Buyer shall pay all costs of obtaining the loan, except as provided herein.
- 2h. 61. **VA Loan Costs:** In the event of a VA loan, Seller agrees to pay the escrow fee and up to \$ \_\_\_\_\_ of loan costs not 62. permitted to be paid by the Buyer in addition to the other costs Seller has agreed to pay herein, including Seller's Concessions.
- 2i. 63. **Changes:** Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the 64. Pre-Qualification Form if attached hereto or LSU provided within five (5) days after Contract acceptance and shall only make any 65. such changes without the prior written consent of Seller if such changes do not adversely affect Buyer's ability to obtain loan 66. approval without Prior to Document (PTD) conditions, increase Seller's closing costs, or delay COE.
- 2j. 67. **Appraisal Fee(s):** Appraisal Fee(s), when required by Lender, shall be paid by  Buyer  Seller 68.  Other 69. Appraisal Fee(s)  are  are not included in Seller Concessions, if applicable.
- 2k. 70. **Partial Release, if applicable:** Buyer and Seller agree that any partial releases will be addressed under Additional Terms 71. and Conditions or attached Addendum. Broker(s) recommend the parties seek appropriate counsel regarding the risks of 72. partial release.

  
SELLER

Vacant Land/Lot Purchase Contract - Updated: February 2013

Initials >   
BUYER BUYER

**Vacant Land/Lot Purchase Contract >>**

- 2l. ~~73. Subordination: If applicable, Seller carryback financing  is  is not to be subordinated to a construction loan. If Seller~~
- 74. agrees to subordination, such subordination shall only be allowed if the Seller Carryback financing is not in default and if the
- 75. Seller approves the terms and conditions of the construction loan to be recorded as a senior loan. Approval will not be
- 76. unreasonably withheld. **IF SELLER SUBORDINATES THE SELLER CARRYBACK FINANCING TO A SENIOR LOAN, THE**
- 77. **SELLER ACKNOWLEDGES THAT IN ORDER TO PROTECT THE SELLER CARRYBACK FINANCING, THE SELLER MAY**
- 78. **HAVE TO MAKE PAYMENTS ON THE SENIOR LOAN IF THE SENIOR LOAN IS IN DEFAULT.** Broker(s) recommend the
- 79. ~~parties seek appropriate counsel regarding the risks of subordination.~~

**3. TITLE AND ESCROW**

- 3a. 80. Escrow: This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the
- 81. terms of this Contract shall be:

82. North American Title Insurance Comp 602-294-2506  
"ESCROW/TITLE COMPANY" PHONE

83. 480-596-5031 dtownsend@NAT.com Deborah Townsend, Escrow Officer  
FAX EMAIL

84. 3200 E. CAMELBACK ROAD, SUITE 250, PHOENIX, AZ 85018  
ADDRESS

- 3b. 85. Title and Vesting: Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax
- 86. consequences. Buyer is advised to obtain legal and tax advice.


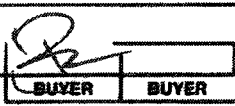
- 3c. 87. Title Commitment and Title Insurance: Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller directly,
- 88. addressed pursuant to 8s and 9c or as otherwise provided, a Commitment for Title Insurance together with complete and legible
- 89. copies of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title Commitment"), including but not ten
- 90. limited to Conditions, Covenants and Restrictions ("CC&Rs"); deed restrictions; and easements within ~~fifteen~~ 10 days after
- 91. Contract acceptance. Buyer shall have prior to the expiration of the Due Diligence Period to provide written notice of any items
- 92. disapproved. Buyer shall be provided, at Seller's expense, a Standard Owner's Title Insurance Policy showing the title vested in
- 93. Buyer. Buyer may acquire extended coverage(s) at Buyer's own additional expense. and all Buyer required endorsements
- 94. Seller shall convey title by warranty deed, subject to existing taxes, assessments, covenants, restrictions, rights of way, easements
- 95. and all other matters of record or  deed.

- 3d. 96. Additional Instructions: (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and address
- 97. of the Buyer to any homeowner's association in which the Property is located. (ii) If the Escrow Company is also acting as the
- 98. title agency but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the Buyer and Seller,
- 99. upon deposit of funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to
- 100. fraudulent acts or breach of escrow instructions by the Escrow Company. (iii) All documents necessary to close this transaction
- 101. shall be executed promptly by Seller and Buyer in the standard form used by Escrow Company. Escrow Company shall modify
- 102. such documents to the extent necessary to be consistent with this Contract. (iv) Escrow Company fees, unless otherwise stated
- 103. herein, shall be allocated equally between Seller and Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies
- 104. of all notices and communications directed to Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access
- 105. to escrowed materials and information regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall
- 106. record the Affidavit at COE.

- 3e. 107. Prorations, Expenses and Adjustments:
- 108. Taxes: Real property taxes payable by the Seller shall be prorated through COE, based upon the latest tax bill available. The
- 109. parties agree that any discrepancy between the latest tax bill available and the actual tax bill when received shall be handled
- 110. as a Post Closing Matter and Buyer or Seller may be responsible for additional tax payments to each other.
- 111. Rents, Interest and Expenses: Rents; interest on existing notes, if transferred; utilities; and operating expenses shall be prorated
- 112. through COE. The Parties agree to adjust any rents received after COE as a Post Closing Matter.
- 113. Deposits: ~~All deposits held by Seller pursuant to rent/lease agreement(s) shall be credited against the cash required of Buyer~~
- 114. ~~at COE or  paid to Buyer by Seller at COE.~~

- 3f. 115. Post Closing Matters: The parties shall promptly adjust any item to be prorated that is not determined or determinable at COE
- 116. as a Post Closing Matter by appropriate cash payment to the other party outside of the escrow when the amount due is
- 117. determined. Seller and Buyer agree that Escrow Company and Broker(s) are relieved of any responsibility for said adjustments.

Vacant Land/Lot Purchase Contract • Updated: February 2013

 Initials  Initials

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**Vacant Land/Lot Purchase Contract >>**


- 3g. 118. **Release of Earnest Money:** In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with 119. Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of 120. this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against 121. any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or 122. relating in any way to the release of Earnest Money.
- 3h. 123. **Assessment Liens:** The amount of any assessment, other than homeowner's association assessments, that is a lien as of the 124. COE shall be:  paid in full by Seller  prorated and assumed by Buyer  paid in full by Buyer. Any assessment that becomes 125. a lien after COE is the Buyer's responsibility.
- 3i. 126. **IRS and FIRPTA Reporting:** Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign, 127. and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the 128. Foreign Investment in Real Property Tax Act (FIRPTA). Buyer and Seller acknowledge that if the Seller is a foreign person, the Buyer 129. (or Escrow Company, as directed by Buyer) must withhold a tax equal to 10% of the purchase price, unless an exemption applies.
- 3j. 130. **Agricultural Foreign Investment Disclosure Act:** If applicable, Buyer and Seller shall comply with the Agricultural Foreign 131. Investment Disclosure Act and make the required disclosures to the U.S. Department of Agriculture.
- 3k. 132. ~~TAX-DEFERRED EXCHANGE. If Seller or Buyer intends to enter into a tax-deferred exchange pursuant to I.R.C. §1031 or 133. otherwise, all additional costs in connection with any such tax-deferred exchange shall be borne by the party requesting the 134. exchange. The non-requesting party agrees to cooperate in the tax-deferred exchange provided that the non-requesting party 135. incurs no additional costs and COE is not delayed. The parties are advised to consult a professional tax advisor regarding the 136. advisability of any such exchange. The non-requesting party and Broker(s) shall be indemnified and held harmless from any 137. liability that may arise from participation in the tax-deferred exchange.~~

**4. DISCLOSURES**

- 4a. 138. ~~Vacant Land/Lot Seller Property Disclosure Statement ("VLSPDS"). Seller shall deliver a completed AAR VLSPDS (per 139. the Buyer within five (5) days after Contract acceptance.~~
- 4b. 140. **Additional Seller Disclosures and Information:** Seller shall provide to Buyer the following disclosures and information pertinent 141. to the Property within five (5) days after the Contract acceptance: (i) any information known to Seller that may adversely affect 142. the Buyer's use of the Property, (ii) any known pending special assessments, association fees, claims, or litigation, (iii) articles of 143. incorporation; by-laws; other governing documents; and any other documents required by law, (iv) financial statements, current 144. rent rolls, lists of current deposits, personal property lists, leases, rental agreements, service contracts, (v) soils, Phase I, or other 145. environmental reports in Seller's possession, (vi) the most recent survey, if available, and (vii) any and all other agreements, 146. documents, studies, or reports relating to the Property in Seller's possession or control provided, however, that Seller shall not 147. be required to deliver any report or study if the written contract that Seller entered into with the consultant who prepared such 148. report or study specifically forbids the dissemination of the report to others. Escrow Company twelve (12)
- 4c. 149. **Road Maintenance Agreement:** Seller shall provide to Buyer, within five (5) days after the Contract acceptance, a copy 150. of any known road maintenance agreement affecting the Property.
- 4d. 151. **Seller's Obligations Regarding Wells:** ~~If a well is located on the Property, or if the Property is to be served by a 152. well, the AAR Domestic Water Well Addendum is attached hereto and incorporated by reference. At COE, if applicable, Seller 153. shall assign, transfer and convey to the Buyer all of the water rights, or claims to water rights, if any, held by Seller that are 154. associated with the Property.~~
- 4e. 155. **No Seller or Tenant Bankruptcy, Probate or Insolvency Proceedings:** Seller represents that Seller has no notice or knowledge 156. that any tenant on the Property is the subject of a bankruptcy, probate or insolvency proceeding. Further, Seller is not the 157. subject of a bankruptcy, insolvency or probate proceeding.
- 4f. 158. **Seller's Notice of Violations:** Seller represents that Seller has no knowledge of any notice of violations of City, County, State, or 159. Federal building, zoning, fire, or health laws, codes, statutes, ordinances, regulations, or rules filed or issued regarding the Property.
- 4g. 160. **Environmental Disclosure:** Seller has not knowingly caused or permitted the generation, storage, treatment, release or disposal 161. of any hazardous waste or regulated substances at the Property except as otherwise disclosed.
- 4h. 162. **Affidavit of Disclosure:** ~~If the Property is located in an unincorporated area of the county, and five or fewer parcels of property other 163. than subdivided land are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in the form required by law to the 164. Buyer within five (5) days after Contract Acceptance. Buyer shall provide notice of any Affidavit of Disclosure items disapproved within 165. five (5) days after receipt of the Affidavit of Disclosure.~~

  
SELLER

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- 4i. 166. **H.O.A. / Condominium / Planned Community:** The Property  is  is not located within a homeowners' association/  
167. condominium/planned community. ~~If yes, the HOA addendum is attached hereto and incorporated by reference.~~
- 4j. 168. **Changes During Escrow:** Seller shall immediately notify Buyer of any changes in the Property or disclosures made herein, ~~in the SPDS,~~  
169. or otherwise. ~~Such notice shall be considered an update of the SPDS.~~ Unless Seller is already obligated by Section 5a, or otherwise by  
170. this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer shall be allowed prior to the expiration of  
171. the Due Diligence Period or five (5) days after delivery of such notice, whichever is later, to provide notice of disapproval to Seller.

**5. WARRANTIES**

- 5a. 172. **Seller Warranties:** Seller warrants and shall maintain and repair the Property so that at the earlier of possession or COE the  
173. Property and any personal property included in the sale, will be in substantially the same condition as on the date of Contract  
174. acceptance; ~~and all personal property not included in the sale and all debris will be removed from the Property.~~
- 5b. 175. **Warranties that Survive Closing:** Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects and  
176. any information concerning the Property known to Seller, excluding opinions of value, which materially and adversely affect the  
177. consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for all labor,  
178. professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding the COE in  
179. connection with the construction, alteration, or repair of any structure on or improvement to the Property. ~~Seller warrants that~~  
180. ~~the information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic tank or~~  
181. ~~alternative system) is correct to the best of Seller's knowledge.~~
- 5c. 182. **Buyer Warranties:** Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect  
183. the Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Property or  
184. COE, Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the  
185. Property. **Buyer warrants that Buyer is not relying on any verbal representations concerning the Property**  
186. **except disclosed as follows: none**  
187. \_\_\_\_\_

**6. DUE DILIGENCE**

- 6a. 188. **Due Diligence Period:** Buyer's due diligence and inspection period shall be ~~thirty (30) days~~ or 60 days after the Contract acceptance  
189. ("Due Diligence Period"). During Due Diligence Period Buyer shall perform all inspections and investigations to satisfy Buyer with respect to  
190. the physical condition of the Property, financing, appraised value, the condition of title to the Property and as to the feasibility and suitability  
191. of the Property for Buyer's intended purpose. During the Due Diligence Period, Buyer, at Buyer's expense, shall: (i) conduct all desired physical,  
192. environmental, and other types of inspections and investigations to determine the value and condition of the Property; (ii) make inquiries and  
193. consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the feasibility and  
194. suitability of the Property and the surrounding area for the Buyer's intended purpose; (iii) investigate applicable building, zoning, fire, health,  
195. and safety codes including applicable swimming pool barrier regulations to determine any potential hazards, violations or defects in the  
196. Property; and (iv) verify any material multiple listing service ("MLS") information. If the presence of sex offenders in the vicinity or the occurrence  
197. of a disease, natural death, suicide, homicide or other crime on or in the vicinity is a material matter to the Buyer, it must be investigated by the  
198. Buyer during the Due Diligence Period. Buyer shall keep the Property free and clear of liens, shall indemnify and hold Seller harmless from all  
199. liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. Buyer shall provide Seller and  
200. Broker(s) upon receipt, at no cost, copies of all inspection reports concerning the Property obtained by Buyer. If Buyer cancels this Contract,  
201. Buyer shall return all documents provided by the Seller and provide Seller with copies of all reports or studies generated by Buyer, provided,  
202. however, that Buyer shall not be required to deliver any such report or study if the written contract that Buyer entered into with the consultant  
203. who prepared such report or study specifically forbids the dissemination of the report or study to others. Buyer is advised to consult the Arizona  
204. Department of Real Estate *Buyer Advisory* provided by AAR to assist in Buyer's due diligence inspections and investigations.
- 6b. 205. **Square Footage/Acreage:** **BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE/ACREAGE OF**  
206. **THE PROPERTY, BOTH THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON IS APPROXIMATE. IF**  
207. **SQUARE FOOTAGE/ACREAGE IS A MATERIAL MATTER TO THE BUYER; IT MUST BE INVESTIGATED DURING THE**  
208. **DUE DILIGENCE PERIOD.**
- 6c. 209. **Flood Hazard:** Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the Due Diligence  
210. Period. If the Property is situated in an area identified as having any special flood hazards by any governmental entity, the lender may  
211. require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to encumber or improve the Property.

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- 6m. 262. **Due Diligence Period Notice:** Prior to expiration of the Due Diligence Period, Buyer shall deliver to Seller a signed notice of any  
 263. items disapproved. AAR's Vacant Land/Lot Buyer's Due Diligence Notice and Seller's Response form is available for this purpose.  
 264. Buyer shall conduct all desired inspections and investigations prior to delivering such notice to Seller and all Due Diligence Period  
 265. items disapproved shall be provided in a single notice.
- 6n. 266. **Buyer Disapproval:** If Buyer, in Buyer's sole discretion, disapproves of any aspect of the Property, financing, title, or other matter,  
 267. Buyer shall deliver to Seller notice of the items disapproved and state in the notice that Buyer elects to either:  
 268. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or  
 269. (2) provide the Seller an opportunity to correct the items disapproved, in which case:  
 270. (a) Seller shall respond in writing within five (5) days or \_\_\_\_\_ days after delivery to Seller of Buyer's notice of  
 271. items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall  
 272. conclusively be deemed Seller's refusal to correct any of the items disapproved.  
 273. (b) If Seller agrees in writing to correct item(s) disapproved, Seller shall correct the items, complete any  
 274. repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs  
 275. to Buyer three (3) days or \_\_\_\_\_ days prior to COE Date.  
 276. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this Contract within five  
 277. (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first,  
 278. and all Earnest Money shall be released to Buyer. If Buyer does not cancel this Contract within the five (5) days as  
 279. provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.
280. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will  
 281. extend response times or cancellation rights.  
 282. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN THE  
 283. SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE  
 284. TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.
- 6o. 285. **Inspection(s):** Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct inspection(s) of the Property for  
 286. the purpose of satisfying Buyer that any corrections agreed to by the Seller have been completed and that the Property is in  
 287. substantially the same condition as on the date of Contract acceptance. If Buyer does not conduct such inspection(s), Buyer  
 288. releases Seller and Broker(s) from liability for any defects that could have been discovered.

**7. REMEDIES**

- 7a. 289. **Cure Period:** A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any  
 290. provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the  
 291. non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall  
 292. become a breach of Contract.
- 7b. 293. ~~**Breach:** In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the~~  
 294. ~~breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute~~  
 295. ~~Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event~~  
 296. ~~of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option,~~  
 297. ~~accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract. The parties~~  
 298. ~~expressly agree that the failure of any party to comply with the terms and conditions of Section 1f to allow COE to occur on the~~  
 299. ~~COE Date, if not cured after a cure notice is delivered pursuant to Section 7a, will constitute a material breach of this Contract,~~  
 300. ~~rendering the Contract subject to cancellation.~~
- 7c. 301. **Alternative Dispute Resolution ("ADR"):** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this  
 302. Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid  
 303. equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall  
 304. be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an  
 305. arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration  
 306. Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall  
 307. be final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.  
 308. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the mediation  
 309. conference by notice to the other and in such event either party shall have the right to resort to court action.
- 7d. 310. **Exclusions from ADR:** The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the Small  
 311. Claims Division of an Arizona Justice Court (up to \$2,500) so long as the matter is not thereafter transferred or removed from the small  
 312. claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or agreement  
 313. for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's lien; or (v) any matter that is within the  
 314. jurisdiction of a probate court. ~~Further, the filing of a judicial action to enable the recording of a notice of pending action ("lis pendens"),~~



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**Exhibit 4**

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~~315. as order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the  
316. obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.~~

**7e. 317. Attorneys Fees and Costs:** The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating to  
318. this Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney fees,  
319. expert witness fees, fees paid to investigators, and arbitration costs.

**8. ADDITIONAL TERMS AND CONDITIONS**

**8a. 320. A Vacant Land Seller's Property Disclosure will NOT be provided by seller in this**  
321. **transaction.**  
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**8b. 350. Risk of Loss:** If there is any loss or damage to the Property between the date of Contract acceptance and COE or possession,  
351. whichever is earlier, by reason of fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Seller, provided,  
352. however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the purchase price, either Seller or  
353. Buyer may elect to cancel the Contract.



~~8c. 354. Permission: Buyer and Seller grant Broker(s) permission to advise the public of this Contract.~~

**8d. 355. Arizona Law:** This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.

**8e. 356. Time is of the Essence:** The parties acknowledge that time is of the essence in the performance of the obligations  
357. described herein.

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- 8f. 358. **Compensation:** Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by 359. separate written agreement(s), which shall be delivered by Broker(s) to Escrow Company for payment at COE, if not previously paid. 360. If Seller is obligated to pay Broker(s), this Contract shall constitute an irrevocable assignment of Seller's proceeds at COE. If Buyer 361. is obligated to pay Broker(s), payment shall be collected from Buyer as a condition of COE. COMMISSIONS PAYABLE FOR THE 362. SALE, LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS®, OR 363. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.
- 8g. 364. **Copies and Counterparts:** A fully executed facsimile or electronic copy of the Contract shall be treated as an original Contract. 365. This Contract and any other documents required by this Contract may be executed by facsimile or other 366. electronic means and in any number of counterparts, which shall become effective upon delivery as provided for herein. 367. All counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.
- 8h. 368. **Days:** All references to days in this Contract shall be construed as calendar days and a day shall begin at 12:00 a.m. and 369. end at 11:59 p.m.
- 8i. 370. **Calculating Time Periods:** In computing any time period prescribed or allowed by this Contract, the day of the act or event from 371. which the time period begins to run is not included and the last day of the time period is included. Contract acceptance occurs 372. on the date that the signed Contract (and any incorporated counter offer) is delivered to and received by the appropriate Broker. 373. Acts that must be performed three days prior to the COE Date must be performed three full days prior (i.e., if COE Date is Friday 374. the act must be performed by 11:59 p.m. on Monday).
- 8j. 375. **Entire Agreement:** This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and 376. Buyer, shall supersede any other written or oral agreements between Seller and Buyer and can be modified only by a writing 377. signed by Seller and Buyer. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract.
- 8k. 378. **Subsequent Offers:** Buyer acknowledges that Seller has the right to accept subsequent offers until COE. Seller understands 379. that any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of this Contract.
- 8l. 380. **Cancellation:** A party who wishes to exercise the right of cancellation as allowed herein may cancel this Contract by 381. delivering notice stating the reason for cancellation to the other party or to the Escrow Company. Cancellation shall become 382. effective immediately upon delivery of the cancellation notice.
- 8m. 383. **Notice:** Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in writing 384. and deemed delivered and received when: (i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail, if 385. email addresses are provided herein; or (iv) sent by recognized overnight courier service, and addressed to Buyer as indicated 386. in Section 8q, to Seller as indicated in Section 9a and to the Escrow Company indicated in Section 3a.
- 8n. 387. **Earnest Money:** Earnest Money is in the form of:  Personal Check  Other [REDACTED] Bank check or wire transfer 388. If applicable, Earnest Money has been received by [REDACTED] 389. [REDACTED]:  Escrow Company  Broker's Trust Account. Buyer acknowledges that failure to pay the required closing funds 390. by the scheduled Close of Escrow, if not cured after a cure notice is delivered pursuant to Section 7a, shall be construed as a 391. material breach of this contract and all earnest money shall be subject to forfeiture.
- 8o. 392. [REDACTED] 393. [REDACTED] 394. [REDACTED] 395. [REDACTED] 396. [REDACTED] 397. [REDACTED] 398. [REDACTED]
- 8p. 399. **Terms of Acceptance:** This offer will become a binding Contract when acceptance is signed by Seller and 400. a signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8q 401. by           1                     JUNE 21          , 2016 at           1:00            a.m. /  p.m., Mountain Standard Time. Buyer 402. may withdraw this offer at any time prior to receipt of Seller's signed acceptance. If no signed acceptance is received by this date 403. and time, this offer shall be deemed withdrawn and the Buyer's Earnest Money shall be returned. 404. THIS CONTRACT CONTAINS TEN PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. ENSURE THAT YOU HAVE 405. RECEIVED AND READ ALL TEN PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.

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**8q. 406. Broker on behalf of Buyer:**

407. NONE  
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE


408. FIRM ADDRESS STATE ZIP CODE

409. PREFERRED TELEPHONE FAX EMAIL

**8r. 410. Agency Confirmation: The Broker named in Section 8q above is the agent of (check one):**

411.  the Buyer;  the Seller; or  both the Buyer and Seller

**8s. 412. The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of a copy hereof including the Buyer Attachment.**

414. <sup>Designated by:</sup>  AS OF JUNE 8, 2016  
BUYER'S SIGNATURE MO/DAY/YR BUYER'S SIGNATURE MO/DAY/YR

415. 3605 S. FLAGSTAFF RANCH ROAD ADDRESS

416. FLAGSTAFF, AZ 86005 CITY, STATE, ZIP CODE

**9. SELLER ACCEPTANCE**

**9a. 417. Broker on behalf of Seller:**

418. 1 PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE

419. 7 FIRM ADDRESS STATE ZIP CODE

420. PREFERRED TELEPHONE FAX EMAIL

**9b. 421. Agency Confirmation: The Broker named in Section 9a above is the agent of (check one):**

422.  the Seller; or  both the Buyer and Seller

**9c. 423. The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a copy hereof and grant permission to Broker named in Section 9a to deliver a copy to Buyer.**

425.  Counter Offer is attached and is incorporated herein by reference. Seller should sign both this offer and the Counter Offer.  
426.  If there is a conflict between this offer and the Counter Offer, the provisions of the Counter Offer shall be controlling.

427.  6/15/16  
SELLER'S SIGNATURE MO/DAY/YR SELLER'S SIGNATURE MO/DAY/YR

428. Owner of Record - LANDHALL CAPITAL & INVESTMENT COMPANY  
SELLER'S NAME PRINTED SELLER'S NAME PRINTED

429. THOMAS J. GIALLANZA, DEPUTY RECEIVER ADDRESS

430. c/o ARIZONA DEPT. OF FINANCIAL INSTITUTIONS 2910 N. 44TH STREET, SUITE 310, PHOENIX, AZ 85018  
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

431.  OFFER REJECTED BY SELLER: MONTH DAY YEAR (SELLER'S INITIALS)

**For Broker Use Only:**  
Brokerage File/Log No. \_\_\_\_\_ Manager's Initials \_\_\_\_\_ Broker's Initials \_\_\_\_\_ Date \_\_\_\_\_ MO/DAY/YR





## Counter Offer No. 1

This is a Counter Offer by the Seller, by **Thomas J. Giallanza**, in his capacity as **Deputy Receiver**, of **Landmarc Capital & Investment Company**, an Arizona Corporation, in Receivership, to the Vacant Land Purchase Contract dated as of June 6, 2016 to purchase by **Woody Mountain 37, LLC**, an Arizona limited liability company, in formation, the ("Buyer"), ("**Buyer's Offer**"). **In consideration of the mutual promises and covenants set forth in this Counter Offer, Seller agrees to sell and Buyer agrees to buy the Property described below on the terms and conditions set forth in this Counter Offer No.1 ("Counter Offer"), and to the extent not inconsistent herewith, the terms and conditions set forth in the Buyer's Offer as annotated and attached hereto:**

1. Property. The real property, which is the subject of this Counter Offer, consists of approximately 37 acres of undeveloped land located mostly in Flagstaff, Arizona and more fully described in Exhibit A attached hereto and made a part hereof. ("Property").

2. Seller. The Seller is **Thomas J. Giallanza**, in his capacity as **Deputy Receiver**, appointed by the Superior Court of Arizona in the action entitled State of Arizona v. Landmarc Capital, et al **CV2009-020595** ("Receivership Court"). The Taxpayer Identification Number for the Seller is **86-0959744**.

3. Buyer. The Buyer is **Woody Mountain 37, LLC**, an Arizona limited liability company, in formation.

4. Purchase Price. The Purchase Price, which Buyer agrees to pay for the Property is **\$1,650,000**. **The Purchase Price shall not be adjusted by any overage or shortage in area of the Property**. The Purchase Price shall be paid as follows:

(a) Buyer shall deposit with Escrow Agent **within two (2) days** of the Buyer's acceptance of the Buyer's Offer and this Counter Offer a total of **\$20,000.00** by bank check, wire transfer or cashier's check payable to Escrow Company (the "Earnest Money") which on the sixtieth day following the date of the opening of escrow shall become non-refundable, except as otherwise provided in Paragraphs 10 & 11, below.

(b) If Buyer does not so cancel this Agreement, and if Seller does not so cancel this Agreement, and, provided further, if Seller does not otherwise default hereunder, the Earnest Money shall be credited towards the Sales Price, if Buyer purchases the Property.

5. Deed. At the Close of Escrow, Seller shall convey title to the Property to Buyer by **Special Warranty Deed** (the "Deed"), subject to taxes and assessments, not delinquent, reservations in patents, all easements, rights-of-way, covenants, conditions, restrictions, declarations, all matters that an accurate survey or a physical inspection of the Property would disclose and all matters to which Buyer has agreed.

6. Disbursements. Upon the Close of Escrow, the full amount of the Purchase Price, less any closing costs that the Seller has expressly agreed to pay, shall be disbursed to Seller.

Buyer's Initials



Seller's Initials



7. Property Sold "As Is." The Property is being sold "AS IS" and **other than the representations and warranties contained in the Buyer's Offer, the Seller is not providing any warranties.** Buyer expressly acknowledges that there may be present on the Property conditions that might affect the Buyer's decision to purchase the Property. Buyer further acknowledges that Buyer has not relied on any warranties, promises, projections, calculations, understandings or representations, express or implied, of Seller or of any agent or representative of Seller, relating to the Property, and, Buyer is acquiring the Property in its present condition and state of repair, "AS IS", with all defects, latent or apparent. Buyer further acknowledges that any information of any type which Buyer has received or may receive from Seller or Seller's agents is furnished on the express condition that Buyer shall make an independent verification of the accuracy (including without limitation calculations) of such information, all such information, if any, being furnished without any warranty or liability whatsoever. **The Seller has acquired possession of the Property pursuant to Court order and has not occupied the Property and therefore Seller cannot and will not provide any Seller Disclosure Statements, Clue reports, loss claim history reports, VLSPDS; and public report, if any.**

8. Additional Terms.


(a) Buyer agrees to pay the cost of all inspections to be performed and for any Survey. Seller hereby provides, as Exhibit A hereto, a copy of a prior survey which Buyer may utilize to contact the surveyor and have updated and certified for its own use. Buyer may at its election decide to waive the necessity of a survey.

(b) Buyer agrees that during the last ten (10) days of the General Contingency Period, Buyer will provide Seller with a source of funds Letter from a Certified Public Accountant or the Buyer itself documenting the availability of funds from Buyer sufficient to provide **\$1,630,000.00** at close of escrow, as agreed, herein.

(c) The parties agree that the following lines shall be deleted from the Buyer's Offer:

1. Lines 35 through 38,
2. Lines 42 through 44,
3. Lines 47 through 79,
4. Lines 105 through 106,
5. Lines 132 through 137,
6. Lines 138 through 148,
7. Lines 151 through 157
8. Lines 162 through 165,
9. Lines 254 through 261,
10. Lines 293 through 316,
11. Line 354,
12. Lines 358 through 363; and

Buyer's Initials 

Seller's Initials 

13. Lines 392 through 398.

(d) The parties agrees that Buyer shall be deemed to have initialed the Buyer's Offer at the following lines:

Lines 221, 232 and 251.

(e) Title shall be conveyed to Buyer by a **Special Warranty Deed**.

(f) The Title Company and Escrow agent for this transaction shall be:

North American Title Company ("Escrow Agent" and "Insurer")

c/o Deborah Townsend, Escrow Officer Phone: 602-294-2506

Fax: 480-596-5031

Email: [dtownsend@NAI.com](mailto:dtownsend@NAI.com)

3200 E. Camelback Road, # 250, Phoenix, AZ 85018

(g) Seller agrees that within two days following receipt of the Buyer's escrow deposit by the Escrow Agent, Seller will provide Buyer with a digital copy of a Phase I Environmental Site Assessment for the Property prepared by Northland Research, Inc. for Aspen Heights, LLC dated October 23, 2014.

9. Court Receivership. The Buyer understands and acknowledges that the Seller was duly appointed the Receiver in the Receivership State of Arizona v. Landmarc Capital, et al **CV2009-020595** (the "Receivership Court") and that the Property and this transaction are under the exclusive jurisdiction of the Receivership Court. **The parties further understand and acknowledge that this Agreement is contingent on the approval of the Receivership Court. The Receivership Court could decline to approve the Agreement for various reasons; including without limitation, (i) that the sale price is not fair, (ii) that a sale of the Property is not in the best interests of the Receivership estate; (iii) that the Seller has received an offer with a better Purchase Price from a qualified Offeror on essentially the same terms and conditions; or (iv) that the sale is not approved by a majority of the beneficial owners.**

10. Cancellation. In the event Seller is unable, within 120 days of the Buyer's acceptance of this Counter Offer, to obtain the approval of the Receivership Court, the Buyer or the Seller may elect in writing to cancel this Agreement and any Escrow and receive a full refund of the Earnest Money. Upon a cancellation in accordance with the provisions of this Paragraph, all documents deposited in Escrow by Seller and Buyer shall be returned to the party depositing the document, and this Agreement shall terminate.

11. Inspection. Buyer shall have **sixty (60)** days from the date of the Buyer's Earnest Money payment to Escrow Agent to complete the Buyer's inspection of the Property, and Seller grants Buyer reasonable access to the Property for that purpose. If Buyer does not disapprove of the condition of the property within this period, Buyer shall be deemed to have accepted the condition of the Property. If Buyer timely disapproves of the condition of the Property in writing, then, upon notice to Seller of Buyer's objections, Seller shall have until Close of Escrow to eliminate the objectionable items; or, Seller may, within five (5) days from Buyer's notice, notify Buyer that Seller does not intend to eliminate the objectionable items, and Buyer's sole

Buyer's Initials



Seller's Initials



and exclusive remedy shall be to either waive his objection (in which case Close of Escrow shall occur subject to such matters) or to cancel this Agreement and receive a full refund of the Earnest Money.

12. Possession. Possession of the Property shall be delivered to Buyer at Close of Escrow.

13. Release and Indemnity. Seller is hereby released 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. Buyer agrees that Buyer will not attempt to assert any claims of liability against Seller for furnishing such information, nor shall Buyer 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, and Buyer agrees to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. Buyer agrees to indemnify Seller and hold Seller harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to Buyer's inspection of the Property or to the breach by Buyer of any obligation hereunder or the inaccuracy of any representation or warranty made by Buyer or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the Closing.

14. Assignment and Nomination. **Buyer may with Seller's written approval, assign Buyer's rights under this Agreement to an entity managed by the principals of the Buyer so long as the assignment is not inconsistent with the disclosure made to the Receivership Court and approved in writing by the Seller in Seller's sole discretion.** If Seller shall approve an Assignee in writing, any such assignee shall have accepted in writing the terms and conditions of this Agreement and of any supplements or Escrow Instructions that may have been entered into as of the time of the assignment. **In no event shall any assignment extend the Close of Escrow.**

15. No Liability. Buyer agrees that no receivers, directors, officers, employees or agents of Seller have any personal obligation hereunder, and that such party shall not seek to assert any claim or enforce any rights against such bankruptcy trustees, directors, officers, employees or agents.

16. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

17. Exclusive Jurisdiction of the Receivership Court. The Receivership Court shall have exclusive jurisdiction to resolve any dispute arising under this Agreement.

18. Close of Escrow. The sale shall close on September 13, 2016 or 10 business days after Court approval as set forth in **Paragraph 9**, above, whichever comes last.

19. Time of the Essence. Time is of the essence and unless the Buyer's acceptance of the Buyer's Offer and this Counter Offer is signed by the Buyer or an authorized representative and a signed copy of the Buyer's Offer and this Counter Offer is delivered in person, by mail, or by facsimile and received by **Thomas J. Giallanza, Deputy Receiver, on or before June 21,**

Buyer's Initials



Seller's Initials

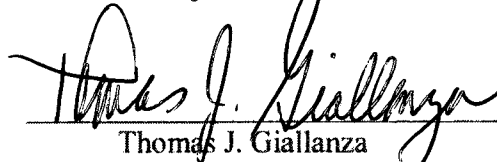


**2016 at 1:00 PM**, or unless the Buyer's Offer and this Counter Offer has been previously withdrawn by the Deputy Receiver or Receiver, the Buyer's Offer and this Counter Offer shall be considered withdrawn on the date and time set forth above in this Paragraph. Until the Buyer's Offer and this Counter Offer has been accepted as provided above, the Parties understand that the Property can be sold or leased to someone else or either Party may withdraw the offer to buy or sell the Property. The undersigned acknowledge receipt of a copy hereof.

20. Signed Original. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute at least one original of this Counter Offer and all other contract documents and to provide such originals to the Seller.

21. Entire Agreement. This agreement supersedes any other agreement, whether oral or in writing, between the parties regarding the subject of this agreement, and renders such other agreements between the parties null and void.

Landmarc Capital and Investment Company

  
Thomas J. Giallanza  
Deputy Receiver, SELLER

Dated: **June 15, 2016**

**Acceptance**

The Buyer accepts the above referenced Buyer's Offer and this Counter Offer and agrees to the modified or additional terms and conditions in the above referenced Buyer's Offer and this Counter Offer and acknowledges receipt of a copy hereof.


Woody Mountain 37, LLC, an Arizona limited liability company, in formation

Dated: 6/15/2016

By:   
BUYER MEMBER

Dated: \_\_\_\_\_

\_\_\_\_\_  
BUYER

Buyer's Initials 

Seller's Initials 