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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11	STATE OF ARIZONA ex rel. ROBERT)	Cause No. CV2009-020595
12	D. CHARLTON, Superintendent of the)	
13	Arizona Department of Financial)	PETITION NO. 97
14	Institutions,)	RECEIVER’S PETITION FOR ORDER
15	Plaintiff,)	AUTHORIZING THE RECEIVER TO
16	v.)	RECORD RELEASES OF DEEDS OF
17	LANDMARC CAPITAL &)	TRUST FOR CERTAIN PROPERTY
18	INVESTMENT COMPANY,)	AND DENY CLAIMS TO THOSE
19	Defendant.)	PROPERTIES
20)	(Assigned to the Honorable Daniel Martin)
21)	
22)	

23 Robert D. Charlton, the Superintendent of the Arizona Department of Financial
24 Institutions, as the court appointed Receiver, respectfully petitions the Court as follows:

25 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and*
26 *Order to Show Cause*, which appointed the Superintendent of the Arizona Department of
27 Financial Institutions as Receiver of Landmarc Capital & Investment Company
28 (“Landmarc”). On July 10, 2009, this Court entered its *Order Appointing Permanent*
29 *Receiver and Injunction*. On February 27, 2010, the Court entered its *Order placing*
30 *Hayden Investments, LLC, Desert Trails Holdings, LLC and Arizona Valuation*
31 *Company, LLC* in Receivership. On May 12, 2010, the Court entered its *Amended Order*

1 *Appointing Permanent Receiver and Injunction* (collectively “Receivership Order”). The
2 Receivership Order appointed Thomas J. Giallanza as Deputy Receiver.

3 **Unreleased Deeds of Trust**

4 2. The Receiver has identified hundreds of Deeds of Trust that were recorded
5 by Landmarc to secure the repayment of loans it made prior to the appointment of the
6 Receiver. In the case of 194 of these loans and Deeds of Trust (“Unreleased Deeds of
7 Trust”), the Receiver has determined that Landmarc apparently failed to execute and
8 record a deed of release and reconveyance even though from the records available to the
9 Receiver the loans appear to have been paid off. These Unreleased Deeds of Trust were
10 recorded in one of eleven different counties in Arizona and are identified in the schedules
11 attached hereto as part of **Exhibit A**. If the relief requested here is granted the Receiver
12 intends to record one or more deeds of release and reconveyance in each of the counties
13 shown in **Exhibit A** identifying the respective Unreleased Deeds of Trust in that county
14 to be released.

15 3. In the case of each of the Unreleased Deeds of Trust listed in the schedules
16 attached as **Exhibit A**, the Receiver has confirmed that none of the claims previously
17 filed with the Receiver assert an interest in the Deed of Trust or the loan, with the
18 possible exception of the following:

19 a. Potter Loan (LC050540) in which Landmarc loaned the borrower
20 \$25,750 secured by a deed of trust recorded with the Maricopa County Recorder
21 on June 9, 2005, as Document No. 2005-0777032 (“Potter DOT”). Landmarc
22 subsequently sold 77.67 % of the beneficial interest in this loan to LDM

1 Acceptance Company (“LDM Acceptance”) and recorded an assignment of that
2 interest to LDM Acceptance with the Maricopa County Recorder on November
3 10, 2008, as Document No. 2008-0964154. Kay Investments filed Claim No.
4 7421 as to 22.33% interest in this loan; the remaining 77.67% interest was claimed
5 by LDM Acceptance in its Claim No. 8401. However, both of these beneficial
6 owners were paid in full when the loan was paid by the borrower’s Chapter 13
7 bankruptcy trustee. In order to remove the cloud created by the recorded
8 assignment to it, LDM Acceptance executed and delivered to the Receiver a
9 reassignment to Landmarc of its beneficial interest in the Potter DOT, which was
10 recorded with the Maricopa County Recorder on March 31, 2016, as Document
11 No. 2016-0213728.

12 b. The Mando loan (LC050904) in which Landmarc loaned the
13 borrower \$175,000 secured by a deed of trust recorded with the Maricopa County
14 Recorder at 2005-1403951 (“Mando DOT”). Landmarc sold 100 % of the
15 beneficial interest in this loan to Kenmark Deeds, LLC (“Kenmark”) and
16 Landmarc recorded an assignment of that interest to Kenmark with the Maricopa
17 County Recorder on November 2, 2005, as Document No. 2005-1661778.
18 Kenmark’s interest in this loan was eventually sold by Landmarc to other
19 participation lenders, however, at the time of such sale Landmark failed to obtain a
20 reassignment back from Kenmark. At the request of the Receiver, Kenmark has
21 executed and delivered to the Receiver a reassignment to Landmarc of its
22 beneficial interest in the Mando DOT, which was recorded with the Maricopa

1 County Recorder on July 1, 2016, as Document No. 2016-0465814. Port Elgin
2 Profit Sharing Plan (“Port Elgin”) acquired a 28.286% participation interest in this
3 loan and filed Claim No. 8536 in which it asserts an unspecified claim with no
4 dollar amount. According to Landmarc’s records this loan was paid in full on July
5 6, 2006, and Port Elgin was paid for its participation interest. No recorded
6 assignment to Port Elgin has been located in the records of the Maricopa County
7 Recorder.

8 c. The Lujan loan (LC050111) in which Landmarc loaned the borrower
9 \$47,500 secured by a deed of trust recorded with the Mohave County Recorder on
10 January 26, 2005, as Document No. 2005-008714. Landmarc sold 100% of the
11 beneficial interest in this loan to LDM Acceptance and Landmarc recorded an
12 assignment of that interest to LDM Acceptance with the Mohave County Recorder
13 on December 19, 2007, as Document No. 2007-104751. Claim No. 8401 was filed
14 with the Receiver by LDM Acceptance in which it claimed a 100% interest in this
15 loan. According to Landmarc’s records this loan was paid in full on May 4, 2010
16 and LDM Acceptance received the funds from the payoff to which it was entitled.
17 On April 21, 2016, LDM Acceptance executed and delivered to the Receiver an
18 assignment of its interest in the Lujan DOT back to Landmarc, which was
19 recorded with the Mohave County Recorder on April 29, 2016, as Document
20 Number 2016-019031.

21 d. The Decausmaker loan (LC050632) in which Landmarc loaned the
22 borrower \$31,500 secured by a deed of trust recorded with the Pinal County

1 Recorder at 2005-078334 (“Decausmaker DOT”). On December 28, 2005,
2 Landmarc recorded an assignment of an unspecified participation interest in this
3 loan to Willowdale Investments, LLC (“Willowdale”). Landmarc’s records
4 indicate that Willowdale held a 100% interest in this loan. Claim No. 8538 filed
5 by Willowdale, asserts an unspecified claim with no dollar amount and with no
6 reference to this loan. According to Landmarc’s records this loan was paid in full
7 on March 1, 2006, and Willowdale was paid for its participation interest. At the
8 request of the Receiver, Willowdale executed and delivered to the Receiver a
9 reassignment to Landmarc of its beneficial interest in the Decausmaker DOT,
10 which was recorded with the Pinal County Recorder on July 27, 2016, as
11 Document No. 2016-049350.

12 4. Because the above four outstanding claims have not been formally
13 adjudicated by the Court and it is possible that they might be construed as a claimed
14 interest in the applicable deeds of trust for the properties, the Receiver requests an order
15 of this Court denying the claims prior to the Receiver recording a release of the deeds of
16 trust.

17 5. Each of the Unreleased Deeds of Trust and Loan identified in **Exhibit A**
18 include a code in the far right column which indicates the following:

19 a. Unreleased Deeds of Trust and Loans coded in **Exhibit A** with the
20 code “01” were recorded in the county indicated prior to the appointment of the
21 Receiver, however, since no claim has been filed with respect to the Deed of Trust
22 or the underlying Loan, the Receiver has concluded that the loan was previously

1 paid off or otherwise satisfied. Loans coded with the code “01” do not appear in
2 the computerized database which was in use by Landmarc at the time of the
3 Receiver’s appointment. From his investigation the Receiver determined that
4 sometime in late 2005, Landmarc changed computer systems to manage their loan
5 portfolio and when the data conversion took place Landmarc appears to have only
6 migrated open and active loans to the new system. Accordingly, no text or other
7 data for any loan that had been paid off or otherwise closed prior to the conversion
8 to the new software would appear in the database in use at the time of the
9 Receiver’s appointment in 2009.

10 b. Unreleased Deeds of Trust and Loans coded in **Exhibit A** with the
11 code “02” are located in the database available to the Receiver and that database
12 indicates that the loan was previously paid off. In addition, except as indicated in
13 paragraph 3 above, no claim to these loans has been filed with the Receiver.

14 c. Unreleased Deeds of Trust and Loans coded in **Exhibit A** with the
15 code “03” are in an original principal amount of \$1,000,000 or more. Because
16 certain remedies for these loans are not available to title insurers, future owners,
17 lenders or buyers, the Receiver has conducted a more thorough investigation of
18 these three loans and determined with reasonable certainty that these loans have
19 been paid off. A more detailed discussion of these three loans is set forth below.

20 6. A significant number of the Unreleased Deeds of Trust identified in
21 **Exhibit A** were assigned by Landmarc to one or more participant lenders by a recorded
22 assignment of beneficial interest. The Receiver attempted to contact each of the

1 assignees of the Unreleased Deeds of Trust and was successful in obtaining
2 reassignments back from nearly all of those assignees.

3 7. However, seven (7) of the assignees (representing nine unreleased deeds of
4 trust) either could not be located or did not respond to the Receiver's requests for a
5 reassignment back to Landmarc. Those Unreleased Deeds of Trust for which outstanding
6 assignments remains of record are identified in the attached **Exhibit B**. Although the
7 Receiver requests authority to record releases on these Unreleased Deeds of Trust, the
8 outstanding assignments may raise issues with respect to whether the cloud on title has
9 been removed. In the event that a future lender or buyer is faced with a cloud on title
10 because of the unreleased assignment, A.R.S. §33-707(E) provides a mechanism for the
11 title insurer to clear the title of the unreleased assignment. A.R.S. §33-707(E) provides as
12 follows:

13 E. If a full release or satisfaction of mortgage or deed of release and
14 reconveyance of deed of trust that, according to its terms, recites that it
15 secures an obligation having a stated indebtedness not greater than one
16 million dollars exclusive of interest, or a partial release or satisfaction of
17 mortgage or partial deed of release and reconveyance of deed of trust that,
18 according to its terms, recites that the payment required for the partial
19 satisfaction or release does not exceed one million dollars exclusive of
20 interest, or a release of mortgage or deed of release and reconveyance of
21 deed of trust by a mortgagee, trustee or person who has agreed in writing to
22 release the mortgage or deed of trust in exchange for receipt of an amount
less than full satisfaction of the mortgage or deed of trust and that,
according to its terms, recites that it secures an obligation having a stated
indebtedness not greater than one million dollars exclusive of interest, has
not been executed and recorded pursuant to subsection A or C of this
section within sixty days of full or partial satisfaction of the obligation
secured by such mortgage or deed of trust, or within sixty days of the
receipt by the mortgagee, trustee or other person of an amount less than full
satisfaction if agreed in writing, a title insurer as defined in section 20-1562
may prepare, execute and record a full or partial release or satisfaction of
mortgage or deed of full or partial release and reconveyance of deed of

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trust. No earlier than sixty days after full or partial satisfaction and at least thirty days prior to the issuance and recording of any such release or satisfaction of mortgage or deed of release and reconveyance pursuant to this subsection, the title insurer shall mail by certified mail with postage prepaid, return receipt requested, to the mortgagee of record or to the trustee and beneficiary of record and their respective successors in interest of record at their last known address shown of record and to any persons who according to the records of the title insurer received payment of the obligation at the address shown in such records, a notice of its intention to release the mortgage or deed of trust accompanied by a copy of the release or satisfaction of mortgage or deed of release and reconveyance to be recorded which shall set forth:

1. The name of the beneficiary or mortgagee or any successors in interest of record of such mortgagee or beneficiary and, if known, the name of any servicing agent.
2. The name of the original mortgagor or trustor.
3. The name of the current record owner of the property and if the release or satisfaction of mortgage or deed of release and reconveyance is a partial release, the name of the current record owner of the parcel described in the partial release or satisfaction of mortgage or deed of partial release and reconveyance of deed of trust.
4. The recording reference to the deed of trust or mortgage.
5. The date and amount of payment, if known.
6. A statement that the title insurer has actual knowledge that the obligation secured by the mortgage or deed of trust has been paid in full, or if the release or satisfaction of mortgage or deed of release and reconveyance of deed of trust is a partial release, a statement that the title insurer has actual knowledge that the partial payment required for the release of the parcel described in the partial release or satisfaction has been paid or, if the release of mortgage or deed or release and reconveyance of deed of trust results from a mortgagee's, trustee's or other person's written agreement to accept an amount less than full satisfaction of the obligation, a statement that the title insurer has actual knowledge that the agreed upon payment has been made in full.

1 **Loans Over One Million Dollars**

2 8. There are three (3) Unreleased Deeds of Trust identified in **Exhibit A**¹ in
3 which the original principal balance of the loan was in excess of \$1,000,000. Since the
4 remedy available to a future lender or buyer under A.R.S. §33-707(E) is not available
5 where the original loan by Landmarc was for more than \$1,000,000, in the case of each
6 of these three loans the Receiver has investigated the loan and determined that not only
7 do Landmarc’s records show that the loans were paid off and the loan participants
8 satisfied, but that there is also corroborating evidence of the payoff.

9 a. Landbridge Loan (#06030212). On March 22, 2006, Landmarc
10 loaned \$1,500,000 to Landbridge LLC, a Nevada limited liability company. The
11 loan was secured by two parcels (Parcel Nos. 303-03-006 and 303-12-092) located
12 in Mohave County pursuant to a *Deed of Trust and Assignment of Rents* recorded
13 with the Mohave County Recorder on March 23, 2006, at Book 6172, Page 106
14 (“Landbridge DOT”). According to Landmarc’s records, La Familia Financial, LP
15 “La Familia”) purchased a 100% participation interest in the Landbridge DOT.
16 On March 23, 2006, Landmarc recorded an assignment purporting to assign the
17 Landbridge DOT to La Familia, which was recorded with the Mohave County
18 Recorder on March 23, 2006, at Book 6172, Page 115. This assignment was likely
19 defective in that it failed to identify the recording date and recording number or
20 the correct date of the deed of trust being assigned. La Familia subsequently
21 purported to assign its interest in the Landbridge DOT to National Bank of

22 _____
¹ See the Unreleased Deeds of Trust identified with the code “03” on Schedule 4 (Maricopa County) and Schedule 5 (Mohave County) of **Exhibit A**.

1 Arizona, N.A. under an *Assignment of Beneficial Interest under Deed of Trust and*
2 *Assignment of Rents* recorded with the Mohave County Recorder on January 5,
3 2007, at Book 6613, Page 170. On March 30, 2007, Landbridge obtained a loan of
4 \$1,893,000 from Horizon Community Bank resulting in the recordation of a new
5 *Deed of Trust* in favor of Horizon Community Bank and it appears that
6 Landmarc's loan to Landbridge was satisfied from the proceeds of this new loan.
7 According to Landmarc's records, its loan was paid in full on March 30, 2007, but
8 no one recorded a release of the Landbridge DOT. Landbridge defaulted on the
9 loan from Horizon Community Bank and Horizon foreclosed taking title to the
10 property under a *Trustee's Deed Upon Sale* recorded with the Mohave County
11 Recorder on December 8, 2010 as Document No. 2010-071611. Because the
12 Landbridge DOT had purportedly been assigned to La Familia and then by La
13 Familia to ZB, NA dba National Bank of Arizona (the successor of National Bank
14 of Arizona, NA by merger), the Receiver sought to obtain assignments back to
15 Landmarc from these entities. At the Receiver's request, ZB, NA dba National
16 Bank of Arizona executed and delivered to the Receiver a full reconveyance of its
17 interest in the Landbridge DOT, which was recorded with the Mohave County
18 Recorder on August 10, 2016, as Document No. 2016-035993. At the Receiver's
19 request, La Familia executed and delivered to the Receiver a reassignment to
20 Landmarc of its interest in the Landbridge DOT, which was recorded with the
21 Mohave County Recorder on August 24, 2016, as Document No. 2016-038102.
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1 b. EME Trust, LLC Loan (#07041029). On May 22, 2007, Landmarc
2 loaned \$1,525,000 to EME Trust, LLC, an Arizona limited liability company
3 (“EME Trust”). The loan was secured by commercial property located at 30 West
4 Galveston Street, Chandler (Parcel No. 302-57-100A) pursuant to a *Deed of Trust,*
5 *Assignment of Rents and Security Agreement* recorded with the Maricopa County
6 Recorder on May 22, 2007, as Document No. 2007-0595414 (“EME DOT”). In
7 addition, a UCC-1 Financing Statement regarding this loan was filed with the
8 Arizona Secretary of State and recorded with the Maricopa County Recorder at
9 Document No. 2007-0595416. According to Landmarc’s records, participation
10 interests in this loan and the EME DOT were sold by Landmarc to TBM
11 Associates, LLC (“TBM”), Landmarc Capital Partners, LLC (“Partners”), the
12 Gubin Family Trust, LDM Acceptance Company Pension Plan, The Madelene
13 Kepes Revocable Living Trust, and I & J Holdings, LLC. Landmarc recorded an
14 assignment of 49.18% interest in the EME DOT to TBM, which was recorded
15 with the Maricopa County Recorder on July 18, 2007, as Document No. 2007-
16 0817473. No other assignments were located. On or about November 28, 2007,
17 EME Trust obtained a loan of \$1,860,000 from MetroPacific Bank resulting in the
18 recordation of a new Deed of Trust in favor of MetroPacific Bank and it appears
19 that Landmarc’s loan to EME Trust was satisfied from the proceeds of this new
20 loan. According to Landmarc’s records this loan was paid in full on December 4,
21 2007. The Receiver has confirmed from Landmarc’s records that TBM and the
22 other loan participants received full payment of their participation interests in this

1 loan. At the request of the Receiver, TBM executed and delivered to the Receiver
2 a reassignment to Landmarc of its beneficial interest in the EME DOT, which was
3 recorded with the Maricopa County Recorder on January 27, 2016, as Document
4 No. 2016-0054501.

5 c. Kimmel Loan (#08061941). On June 30, 2008, Landmarc loaned
6 \$1,356,000 to Michael and Rhonda Kimmel. The loan was secured by a single
7 family residence located at 9303 E. Andora Hills Drive, Scottsdale (Parcel No.
8 219-11-581) pursuant to a *Deed of Trust* recorded with the Maricopa County
9 Recorder on July 9, 2008, as Document No. 2008-0601810 (“Kimmel DOT”). In
10 addition a UCC-1 Financing Statement regarding this loan was filed with the
11 Arizona Secretary of State and recorded with the Maricopa County Recorder at
12 Document No. 2008-0601811. On September 18, 2008, the Kimmels sold the
13 property for \$1,700,000 and it appears that the Kimmel loan was satisfied from the
14 proceeds of that sale. According to Landmarc’s records this loan was paid in full
15 on November 3, 2008. The Receiver has confirmed from Landmarc’s records that
16 Partners received full payment of its participation interest in this loan. According
17 to Landmarc’s records, 100% of the participation interest in this loan and the
18 Kimmel DOT was sold to Partners. Landmarc recorded an assignment of 100%
19 interest in the Kimmel DOT to Partners, which was recorded with the Maricopa
20 County Recorder on July 18, 2008, as Document No. 2008-0628832. At the
21 request of the Receiver, Partners executed and delivered to the Receiver a
22 reassignment to Landmarc of its beneficial interest in the Kimmel DOT, which

1 was recorded with the Maricopa County Recorder on October 21, 2016, as
2 Document No. 2016-0775519.

3 **Conclusion**

4 9. For the above reasons the Receiver has determined that neither Landmarc
5 nor its loan participant lenders have any remaining interests in the Deeds of Trust
6 identified in Exhibit "A". Since this receivership is in its final stages it is appropriate at
7 this time for the Receiver to clear the title to the real properties identified in the Deeds of
8 Trust listed in Exhibit "A". Otherwise, once the Receivership is closed, it will be far
9 more difficult and costly for the owners of the properties to clear the title to their
10 property.

11 10. In many cases a UCC Financing Statement was filed with the Arizona
12 Secretary of State and in some cases also recorded with the County Recorder. These
13 Financing Statements may also need to be terminated.

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

15 1. Authorizing the Receiver to record deeds of release and reconveyance in
16 the appropriate counties releasing any and all interest of Landmarc in the Deeds of Trust
17 identified in **Exhibit A**;

18 2. Denying Claim No. 7421 filed by Kay Investments, LLC to the extent it
19 claims an interest in the Potter loan (LC050540) or in the deed of trust for the loan
20 recorded with the Maricopa County Recorder at 2005-0777032;

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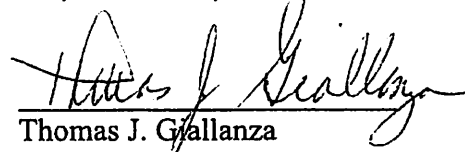
Verification

I, Thomas J. Giallanza, do hereby declare as follows:

I am the Court appointed Deputy Receiver in the action entitled *State of Arizona ex rel. v. Landmarc Capital & Investment Company*, pending before the Arizona Superior Court for Maricopa County, cause number CV2009-020595; 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 October 28, 2016, in Phoenix, Arizona.


Thomas J. Giallanza
Deputy Receiver

1157-002 (201554)