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6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA ex rel. LAUREN )  
KINGRY, Superintendent of the Arizona )  
Department of Financial Institutions, )  
9 Plaintiff, )  
10 v. )  
LANDMARC CAPITAL & )  
11 INVESTMENT COMPANY, )  
Defendant. )

Cause No. CV2009-020595

PETITION NO. 33

PETITION FOR ORDER AUTHORIZING  
AND APPROVING SETTLEMENT WITH  
DR. MARC AND JACQUELINE KAY

(Assigned to Judge Sam Myers)

13 Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions as  
14 court appointed Receiver of Landmarc Capital & Investment Company ("Landmarc"),  
15 respectfully petitions the Court as follows:

16 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
17 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial  
18 Institutions as Receiver of Landmarc. On July 10, 2009, this Court entered its *Order*  
19 *Appointing Permanent Receiver and Injunction* (collectively "Receivership Order").

20 2. By virtue of his appointment as Receiver of Landmarc, the Receiver is the  
21 manager of Landmarc Capital Partners, LLC ("Partners"). Partners was a regulation D

1 securities offering, whereby Landmarc raised approximately twenty-seven million  
2 (\$27,000,000) from private investors nationwide. The purpose of Partners was to establish a  
3 pool of capital that Partners could use to make or acquire recourse or non-recourse loans to  
4 borrowers, secured by deeds of trust. Partner's investors purchased from Partners "units or  
5 shares" of participation in Partners which Partners used to fund loans.

6 3. Pursuant to the Receivership Order, the Receiver may institute, defend,  
7 compromise or adjust actions or proceedings in State or Federal Courts, including initiating  
8 actions or proceedings or impose constructive trusts, obtain possession or recover judgments  
9 with respect to persons or entities who received assets or funds traceable to investors'  
10 moneys.

11 4. Since his appointment, the Receiver has conducted an investigation into the  
12 operations of Landmarc and Partners for the purpose of locating assets of Landmarc and  
13 Partners and developing facts that would support the recovery of Landmarc and Partners'  
14 assets. The Receiver's investigation has resulted in a settlement of the Receiver's claims  
15 against Dr. Marc and Jacqueline Kay (collectively "Kay"). Dr. Marc Kay is related to the  
16 principal of Landmarc, David Crantz, by marriage, as Jacqueline Kay is the sister of David  
17 Crantz.

18 . . .  
19 . . .  
20 . . .  
21 . . .

1           5.     Kay was an investor with Landmarc as Loan Participant<sup>1</sup> and an investor in  
2 Partners. The Receiver has determined that Kay received profit from his investment in  
3 Partners and a series of financial benefits from his investments in Landmarc.

4           6.     Kay has represented to the Receiver that he had no knowledge that he was an  
5 investor in Partners and was unaware of any financial benefits provided to him by Crantz and  
6 Landmarc. The Receiver's investigation has not uncovered any evidence to the contrary to  
7 establish that Kay had any knowledge of the financial benefits provided to him as a Loan  
8 Participant.

9           7.     In an effort to be treated like all other investors, Kay wishes to return to the  
10 Receiver any funds representing any financial benefit obtained from Landmarc or Partners.

11          8.     Accordingly, the Receiver and Kay have agreed to settle any claims that  
12 Landmarc or Partners may have against Kay for \$110,000.00, representing the financial  
13 benefit Kay obtained from Landmarc and Partners.

14          9.     As part of the settlement, the Receiver will retain \$93,950.33 currently held by  
15 the Receiver for the benefit of Kay from loans that qualified under *Order Re Petition No. 8 -*  
16 *Petition for Order Authorizing the Distribution of Certain Loan Pay-Off Proceeds and*  
17 *Approving Procedures for Disbursing Funds from Paid-off Loans* and upon approval of the  
18 settlement agreement, Kay will pay an additional \$16,049.67 to the Receiver.

19  
20 \_\_\_\_\_  
21 <sup>1</sup> Landmarc facilitated investments into deeds of trust with private investors who did not have a Warehouse  
Credit Facility agreement with Landmarc. ("Loan Participants"). The Loan Participants, under their agreements with  
Landmarc, bear the risk of loss with respect to any investments with Landmarc. There were approximately 90 Loan  
Participants.



## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between, Lauren Kingry, as Receiver of Landmarc Capital & Investment Company (“Receiver”), and Dr. Marc and Jacqueline Kay (collectively “Kay”)

### Recitals

WHEREAS on June 24, 2009, the Receiver was appointed in Maricopa County Superior Court, cause no. CV2009-020595, styled *State of Arizona ex rel. Felecia A. Rotellini v. Landmarc Capital & Investment Company* which is pending before the Arizona Superior Court for Maricopa County (“Receivership Action” and “Receivership Court” respectively);

WHEREAS Kay was an investor in various loans, real property and real estate owned assets (“REO”) currently under the control of the Receiver, and listed on Exhibit A to this Settlement Agreement, and an investor in Landmarc Capital Partners LLC, a regulation D securities offering managed and controlled by Landmarc (“Landmarc”);

WHEREAS the Receiver has completed an investigation into all Kay loans, real property, REO and investment in Landmarc Capital Partners to, among other things, establish the true and correct ownership of the loans, real property and REO and determine if Kay received any profits from his investment in Landmarc Capital Partners;

WHEREAS Kay is related to David Crantz, the principal of Landmarc by marriage and during the course of the Receiver’s investigation into the business relationship between Landmarc and Kay, the Receiver has determined that unbeknownst Kay, he received a series of financial benefits from Landmarc;

WHEREAS the Receiver has determined that Kay received a “profit” from his investment in Landmarc Capital Partners of \$51,633.98.

WHEREAS the Receiver has determined that Landmarc is insolvent and Kay desires to return to the Receiver any funds representing any financial benefit it obtained from Landmarc and Landmarc Capital Partners;

Whereas without admitting the truth or validity of any claim or defense, the parties desire to settle all claims that the Receiver may be entitled to assert against Kay in connection with this matter.

### Terms

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

1. Kay agrees to pay \$110,000.00 to the Receiver representing the financial benefit obtained from his investment with Landmarc and the “profit” from his investment in Landmarc Capital Partners.

EXHIBIT ‘A’

2. Kay agrees that a portion of the settlement payment, \$93,950.33 will be paid to Landmarc from funds held by the Receiver, designated for Kay under the Kivel Nursing Home (#08041909), Molina (#07121867), Lucero (#06043433RD), Christenson (#LC040904), and Potter (#L050540) loans, in the Landmarc Trust account, after reimbursement to Landmarc of the unpaid loan charges on such loans totaling \$2,618.57.

3. Kay agrees that the remaining \$16,049.67 will be paid to the Receiver in the form of a certified check made payable to "Landmarc Capital & Investment Company" upon the approval of this Agreement.

4. Upon payment of the amount required under paragraph 3 above, the Receiver will initiate the transfer to Kay the Saenz (#06090653), Molina (#07121867) and Lucero (#060433RD) loans pursuant to Order Re Petition No. 4: *Petition for Order Approving Procedures for Disposing of Certain Loans Where Ownership by Third Parties is Not in Doubt*.

5. The Receiver will also initiate the transfer of the Potter (#LC050540) loan and to Kay and LDM. As acknowledged by the parties to this agreement, Kay owns 22.33% of the Potter loan and LDM owns 77.67%. Due to the close relationship between LDM and Kay and the fact that Kay and LDM have reached settlements with the Receiver, the Receiver will recommend to the Court that the Potter loan be released to LDM and Kay pursuant to Order Re Petition No. 4: *Petition for Order Approving Procedures for Disposing of Certain Loans Where Ownership by Third Parties is Not in Doubt*.

6. Kay will file a Proof of Claim in the form attached hereto and the Receiver shall recommend approval of that claim.

7. Kay agrees to cooperate with Receiver's ongoing investigations into Landmarc.

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

9. The Receiver hereby, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges Kay and their attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of the Receivership Action, including without limitation any claims that were made or could have been made in the Receivership Action.

10. Kay hereby, on its own behalf and on behalf of their attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Receiver, Landmarc and their attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of the Receivership Action, including without limitation any claims that were made or could have been made in the Receivership Action.

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

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

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

14. The parties hereto warrant and represent that none of them has sold, assigned, granted, or otherwise transferred to anyone not a party hereto, any right, privilege, or cause of action, or any part thereof, arising out of or otherwise connected with the subject matter or terms of this Agreement.

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

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

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

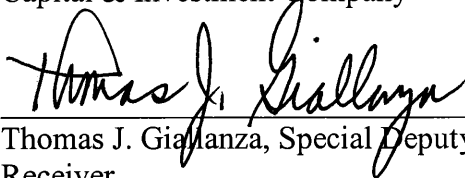
18. This Agreement may be executed in counterparts by one or more of the undersigned, and all such counterparts so executed shall together be deemed to constitute one final Agreement, as if one document had been signed by all parties hereto. Each such counterpart shall be deemed to be an original, binding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

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

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


Lauren Kingry, Receiver of Landmarc  
Capital & Investment Company

Dated: 9/24/10

  
Thomas J. Giallanza, Special Deputy  
Receiver

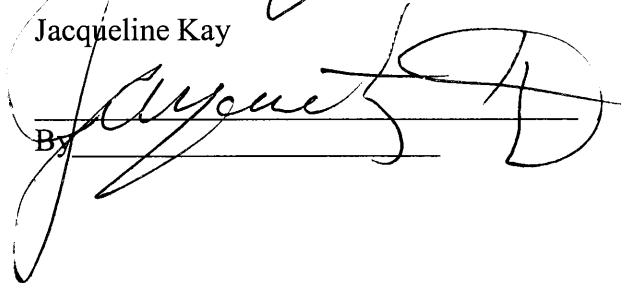
Dr. Marc Kay

Dated: 9.23.2010

  
By Dr. Marc Kay

Jacqueline Kay

Dated: 9.23.2010

  
By

1157-020(93076)



KAY INVESTMENTS

<b>LOAN NUMBER</b>	<b>BORROWER NAME</b>	<b>PROPERTY ADDRESS</b>
06090653	Mario David Saenz	70335 W. Lower Buckeye, Phoenix 85043
07121867	Jose Luis Molina	1945 E. Jefferson St., Phoenix 85034
06043433RD	Mayra Lucero	7125 W. Toronto Way, Phoenix 85043
LC040904	Richard Christenson	14626 E. Bull Spring Dr., Wikieup 85360
LC050540	Bradley and Vicki Potter	1855 S. 74 <sup>th</sup> st., Mesa 85208
08041909	Phoenix Jewish Community Kivel Nursing Home c/o S. W. Petersen	3020 N. 36 <sup>th</sup> st., Phoenix 85018

**Exhibit A**

**VERIFIED PROOF OF CLAIM  
LOAN PARTICIPATION LENDER**

**Landmarc Receivership**

PLEASE PRINT OR TYPE ALL INFORMATION

**(1) NAME, ADDRESS AND PHONE NUMBER OF CLAIMANT**

Kay Investments, LLC  
9162 North 70th Street  
Paradise Valley AZ 85253

Reference Number (from mailing page): KAY01

**(2) NAME, ADDRESS AND PHONE NUMBER OF CLAIMANT'S ATTORNEY OR CONTACT PERSON, IF ANY**

Patricia Lane Briones  
Rake Petti PC  
2701 East Camelback Road, Phoenix, AZ 85016 (602) 773-2625

**(3) AMOUNT OF LOAN PARTICIPANT CLAIM**

- (a) State the total paid to LCI under loan participation agreements as of June 24, 2009:         \$235,722
- (b) State the total of all loan participation agreements in effect on June 24, 2009:         6

**(4) DOCUMENTATION OF CLAIM:**

Where required by the instructions or requested in writing by the Receiver, you must provide copies of all documents in support of your claim.

**(5) LOAN PARTICIPATIONS:**

If you indicated any amount in Section 3(a) you must sign and attach Schedule 1 – Loan Participant Lender Participation Interests and correct any amounts set forth therein that you believe are not correct.

**(6) OFFSETTING OBLIGATIONS TO LCI OR ANOTHER RECEIVERSHIP ENTITY:**

- (a) State the amount you owe to LCI or any other Receivership Entity as of the date of the claim:         \$
- (b) If you are aware of any other setoffs or counterclaims LCI or a Receivership Entity may have against you or your claim, check this box [  ] and provide details and documentation of such setoff or counterclaim.

(c) Describe the nature of the obligation set forth in 6(a).

**Schedule 1 to Proof of Claim**  
 Loan Participant Lender Claimed Loan Interests

LCI Loan No.	Borrower	Note Amount	Current		LCI %	Claimed %	Balance Amt	Fee %	ABI %
			D	Status					
A	B	C	D	Status	E	F	I	G	H
06090653	Mario David Saenz	50,000	FCLS		100.000%	100.000%	50,000	0.000%	100.000%
07121867	Jose Luis Molina	61,000	Pd 90		100.000%	100.000%	61,000	0.000%	100.000%
06043433RD	Mayra Lucero	4,800	Pd 3 yrs		100.000%	100.000%	4,800	0.000%	100.000%
LC040904	Christenson	6,028	Current		94.708%	94.708%	5,709	0.000%	94.708%
LC050540	Bradley Potter, Vicki Potter	25,750	Pd 120		22.330%	22.330%	5,750	0.000%	22.330%
08041909	Phoenix Jewish Community Kivel Nursing Home c/o S. W. Petersen	\$910,000.00	Paid Off		11.919%	11.919%	108,463	0.000%	11.919%

Column	Explanation
D	Current Status of Loan
E	Percentage of Ownership per LCI records
F	Percentage of Ownership Claimed by Claimant
G	Fee Title percentage held on 6/24/09
H	Percentage of Beneficial Interest Assigned by Recorded Assignment

**IMPORTANT**

**After you have fully completed this form, read and sign the Declaration below and follow the mailing instructions.**

DECLARATION OF Dr. Marc Kay and Jacqueline Kay  
(Print or Type Name)

I have read the contents of this Proof of Claim and declare under penalty of perjury that the information contained therein is true and correct in substance and in fact, to the best of the knowledge and belief of the Claimant and the undersigned. I am aware that if any of the foregoing information is false, this claim may be denied in its entirety and I may be subject to punishment for perjury.

Executed this 23 day of September, ~~200~~ 2010, in Phoenix,  
(City)  
Arizona  
(State)

Marc Kay  
Signature of Claimant

Jacqueline Kay

\_\_\_\_\_ position of  
authority to sign for claimant who is not  
an individual.

**AFTER COMPLETION, MAIL THIS FORM ON OR BEFORE SEPTEMBER 24, 2010 TO:**

Landmarc Receiver  
P.O. Box 14050  
Scottsdale, AZ 85267