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5 Attorneys for the Receiver

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 )  
9 Department of Financial Institutions, )

10 Plaintiff,

v.

11 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )

12 Defendant. )

Cause No. CV2009-020595

PETITION NO. 35

PETITION FOR ORDER APPROVING  
SETTLEMENT WITH LAZY E, LLC,  
STONEMAN PROPERTIES, LLC, AND  
SEM INVESTMENTS, LLC

(Assigned to Judge Sam Myers)

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15 \_\_\_\_\_  
16 Lauren Kingry, as the court appointed Receiver, respectfully petitions the Court as  
follows:

17 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
18 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial  
19 Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July  
20 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On  
21 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC Desert*

1 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,  
2 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*  
3 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as  
4 Deputy Receiver and authorized the Receiver to engage and employ Special Deputy  
5 Receivers to carry on the day to day business of Landmarc.

6         2.         One of Landmarc’s principle sources of funds for its hard money loans came  
7 from Warehouse Credit Facility Lenders (“WCF Lenders”). Landmarc would enter into  
8 written agreements with its WCF Lenders (“WCF Agreements”) under which Landmarc  
9 promised to repay the funds with interest and to provide a security interest in loans funded by  
10 the WCF Lender in order to secure Landmarc’s obligations under its WCF Agreement.  
11 Landmarc’s WCF Lenders included the following three affiliated entities: Lazy E, LLC, an  
12 Arizona limited liability company (“Lazy E”), Stoneman Properties, LLC, an Arizona limited  
13 liability company (“Stoneman Properties”) and SEM Investments, LLC, an Arizona limited  
14 liability company (“SEM”). Lazy E, Stoneman Properties and SEM are referred to  
15 collectively hereafter as the “Stoneman Entities.”

16         3.         On or about December 22, 2008, nearly six months before Landmarc was  
17 placed into Receivership, the Stoneman Entities filed a complaint against Landmarc and  
18 others alleging that Landmarc breached its contractual obligations with the Stoneman Entities  
19 under their various WCF Agreements. The lawsuit is styled *Lazy E, LLC, et al vs. Landmarc*  
20 *Capital, Jeff Petersen and David Crantz*, Arizona Superior Court for Maricopa County,  
21 Cause No. CV2008-032264 (“State Court Lawsuit”).

1           4.       On December 19, 2008, the Stoneman Entities executed and filed a *Notice of*  
2 *Lis Pendens* in the State Court Lawsuit and between December 22 and 29, 2008, caused it to  
3 be recorded in Maricopa County, Pima County, Pinal County, Coconino County and Yavapai  
4 County (“*Notice of Lis Pendens*”). In the *Notice of Lis Pendens* the Stoneman Entities  
5 asserted an interest in various properties that they claimed an interest in as security for  
6 obligations owed to them under their WCF Agreements with Landmarc.

7           5.       On May 19, 2009, Landmarc delivered to SEM a cashier’s check #6007581 in  
8 the amount of \$1,109,217.80 representing the repayment of the entire amount of principle and  
9 interest due to SEM under the WCF Agreement between Landmarc and SEM. David Crantz  
10 caused Landmarc to deliver this cashier’s check to SEM because David Crantz and Jeff  
11 Petersen had personally guaranteed the repayment of SEM’s WCF Agreement and by paying  
12 the obligations under that agreement they hoped to extinguish their own personal liability  
13 under their respective guarantees.

14           6.       On June 24, 2009, the Plaintiff in this action was appointed the Receiver of  
15 Landmarc and two days later counsel for the Receiver sent a letter demanding that SEM not  
16 negotiate cashiers check #6007581 and return it to the Receiver. SEM did not respond to the  
17 Receiver’s request and negotiated cashiers check #6007581 sometime after June 24, 2009  
18 (“Transfer”).

19           7.       Although SEM received \$1,109,217.80 representing the repayment of the entire  
20 amount of principal and interest due to SEM under its WCF Agreement, SEM has failed to  
21

1 reconvey and release its interest in the loans and real property which served as security for the  
2 loan or to release its *Notice of Lis Pendens*.

3           8.       The Receiver believes that it holds viable claims against the Stoneman Entities  
4 for, among other things, the recovery of the preferential payment of \$1,109,217.80 to SEM,  
5 and for the damages incurred by Landmarc from SEM's negotiation of the cashier's check  
6 and its failure to release its *Notice of Lis Pendens*. However, to avoid the delay, uncertainty,  
7 and expense of litigation between Landmarc and the Stoneman Entities, the parties have  
8 entered into a settlement of all claims against each other. A copy of the settlement agreement  
9 between the Receiver and the Stoneman Entities is attached hereto as Exhibit "A".

10           9.       Under the Settlement Agreement, The Receiver has agreed to pay the Stoneman  
11 Entities the sum of \$209,000 in exchange for the transfer to the Receiver of all of the right  
12 title and interest held by the Stoneman Entities in the 20 loans and REO set forth in Exhibit 1  
13 to the Settlement Agreement. In addition, the Stoneman Entities have agreed to release the  
14 *Notice of Lis Pendens* and assign to the Receiver all of their claims in the Landmarc  
15 Receivership. Upon payment of the agreed sum, the Stoneman Entities will also dismiss the  
16 State Court Lawsuit.

17           10.       The Receiver believes that this settlement is in the best interest of the  
18 receivership estate and that it will enable the Receiver to recover from the transferred  
19 interests sufficient funds to cover the settlement payment and reimburse the receivership  
20 estate for the recoverable damages caused by the preferential transfer and the Receiver's  
21 expenses in investigating this matter.

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WHEREFORE, the Receiver respectfully requests that the Court enter an order approving the Settlement Agreement between the Receiver and the Stoneman Entities attached hereto as Exhibit "A".

Respectfully submitted this 28<sup>th</sup> day of October, 2010.

GUTTILLA MURPHY ANDERSON  
/s/Patrick M. Murphy  
Patrick M. Murphy  
Attorneys for the Plaintiff

1157-001(99877)

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between, Lauren Kingry, as Receiver of Landmarc Capital & Investment Company ("Receiver"), and Lazy E, LLC, an Arizona limited liability company ("Lazy E"), Stoneman Properties, LLC, an Arizona limited liability company ("Stoneman Properties") and SEM Investments, LLC, an Arizona limited liability company ("SEM"). Lazy E, Stoneman Properties and SEM are collectively referred to hereafter as "Stoneman."

### Recitals

WHEREAS Stoneman provided funds to Landmarc Capital & Investment Company ("Landmarc") under the terms of Warehouse Credit Facility Loan Agreements between Stoneman and Landmarc;

WHEREAS on or about December 22, 2008, nearly six months before Landmarc was placed into Receivership, Stoneman filed a complaint against Landmarc alleging that Landmarc breached its contractual obligations with Stoneman under their various Warehouse Credit Facility Agreements. The lawsuit is styled *Lazy E, LLC et al vs. Landmarc Capital, Jeff Petersen and David Crantz*, Arizona Superior Court for Maricopa County, Cause No. CV2008-032264 ("State Court Lawsuit");

WHEREAS on December 19, 2008, Stoneman executed and filed a *Notice of Lis Pendens* in the State Court Lawsuit and between December 22 and 29, 2008, caused it to be recorded in Maricopa County, Pima County, Pinal County, Coconino County and Yavapai County, in which Stoneman identified thirteen properties that Stoneman claimed an interest in as security for obligations owed to Stoneman under its Warehouse Credit Facility Loan Agreements with Landmarc which were subject to the State Court Lawsuit ("*Notice of Lis Pendens*");

WHEREAS on May 19, 2009, Landmarc delivered to SEM a cashiers check #6007581 in the amount of \$1,109,217.80 representing the repayment of the entire amount of principle and interest due to SEM under the Warehouse Credit Facility Loan Agreement between Landmarc and SEM;

WHEREAS, David Crantz caused Landmarc to deliver the cashiers check #6007581 for \$1,109,217.80 to SEM because David Crantz and Jeff Petersen had personally guaranteed the repayment of SEM's Warehouse Credit Facility Loan Agreement;

WHEREAS on June 24, 2009, the Receiver was appointed the Receiver of Landmarc in cause number CV2009-020595, styled *State of Arizona ex rel. Felecia A. Rotellini v. Landmarc Capital & Investment Company* pending before the Arizona Superior Court for Maricopa County ("Receivership Action" and "Receivership Court" respectively);

WHEREAS on June 26, 2009, counsel for the Receiver sent a letter demanding that SEM not negotiate cashiers check #6007581 in the amount of \$1,109,217.80 and

Exhibit "A"

return it to the Receiver. SEM did not respond to the Receiver's request and negotiated cashiers check #6007581 sometime after June 24, 2009 ("Transfer");

WHEREAS although SEM received \$1,109,217.80 representing the repayment of the entire amount of principal and interest due to SEM under the Warehouse Credit Facility Loan Agreement between Landmarc and SEM, SEM has failed to reconvey and release its interest in the loans and real property to Landmarc or release its *Lis Pendens*; and

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 Stoneman in connection with this matter and provide for the appropriate disposition of all claims by Stoneman against Landmarc.

#### 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. Within five days of the execution of this Agreement, Stoneman shall execute and deliver to the Receiver such deeds, assignments, or releases and reconveyances as the Receiver may reasonably require to convey, assign or release to the Receiver all of Stoneman's interest in loans or real property in which Stoneman holds or may hold fee title or a security or beneficial interest arising from their WCF Agreements or other business dealings with Landmarc, Hayden Investments, LLC Desert Trails Holdings, LLC and Arizona Valuation Company, LLC, including the loans and real properties identified in Exhibit 1.

2. Within five days of the execution of this Agreement, Stoneman shall execute and deliver to the Receiver a *Release of Lis Pendens* in the form attached as Exhibit 2, releasing all interests asserted under the *Notice of Lis Pendens*; provided however that any interest of Stoneman to loans and property under the Notice of Lis Pendens shall attach to the proceeds from the liquidation of that interest by the Receiver until such time as the Receiver's obligations under paragraph 4 below have been fully satisfied.

3. Upon execution of this Agreement, Stoneman shall execute an assignment to the Receiver assigning to the Receiver all right title and interest to any claim that Stoneman might be entitled to assert in a proof of claim in the Receivership Action as provided in *Order Establishing Procedures for the Adjudication of Claims, Re: Petition No. 27*.

4. The Receiver shall pay \$209,000 to Stoneman, or its designee, as follows:

a. The sum of \$100,000 within ten (10) days of the Receivership Court's approval of this Agreement; and

b. The balance within sixty (60) days of the Receivership Court's approval of this Agreement.

5. Within ten (10) days of the Receiver's full compliance with paragraph 4 above, Stoneman and the Receiver shall execute and file a stipulation dismissing with prejudice all claims asserted by Stoneman in the State Court Litigation against Landmarc.

6. The Receiver and not Stoneman has responsibility for preparing at the Receiver's expense all documents that Stoneman is required to execute under this Agreement.

7. 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. In the event the Court in the Receivership Action denies the Receiver's petition to approve this Agreement, the Receiver shall within five (5) days thereafter reconvey back to Stoneman all interests previously conveyed by Stoneman to the Receiver under this Agreement so as to restore Stoneman to the position it held immediately prior to the execution of this Agreement.

8. The Receiver hereby, on his own behalf and on behalf of Landmarc, Hayden Investments, LLC Desert Trails Holdings, LLC and Arizona Valuation Company, LLC, and their attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges Stoneman 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 or Stoneman's dealings with Landmarc, Hayden Investments, LLC Desert Trails Holdings, LLC or Arizona Valuation Company, LLC, including without limitation any claims that were made or could have been made in the Receivership Action.

9. Except with respect to the assertion of a claim as provided under paragraph 3 above, Stoneman 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 or Stoneman's dealings with Landmarc, Hayden Investments, LLC Desert Trails Holdings, LLC or Arizona Valuation Company, LLC, including without limitation any claims that were made or could have been made in the Receivership Action.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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.

16. 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.

17. 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.

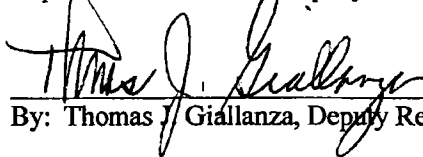
18. In the event of any future litigation between the parties to this Agreement in which the enforcement of this Agreement is sought, the prevailing party or parties with respect to issues relating to the Agreement shall be entitled to recover their reasonable attorneys' fees and costs from the other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

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

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

9/24/10

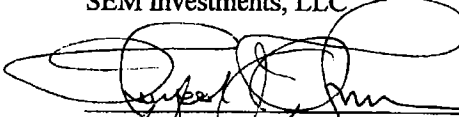
Lauren Kingry, Receiver of Landmarc  
Capital & Investment Company



By: Thomas J. Giallanza, Deputy Receiver

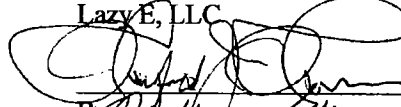
SEM Investments, LLC

Dated: 9-24-2010

  
By MEMBER

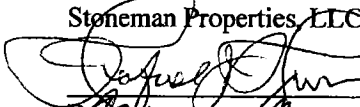
Lazy E, LLC

Dated: 9-24-2010

  
By MEMBER

Stoneman Properties, LLC

Dated: 9-24-2010

  
By MEMBER

1157-018 (98120\_4)

Loan & Property Interests of Stoneman Entities

Lender	LCI Loan No.	Borrower	Property Description	County	Current Status	%
<b>Convey All Interests to the Receiver by Quit Claim Deed</b>						
Lazy E, LLC	06030207	Poirier	Three parcels of land, Mayer	Yavapai	REO	2.60%
SEM Investments, LLC	06050368	Arellano	7931 E. 2nd Street, Tucson	Pima	REO	0.0%
Stoneman Properties, LLC	06050372	Horning	350 E. Cypress, Gilbert	Maricopa	REO	58.58%
Stoneman Properties, LLC	07020925	Farnsworth	23655 North 80th Avenue, Peoria, etc.	Maricopa	REO	100.0%
Lazy E, LLC	07030953	Lehman	10150 N. Poquito Valley Rd., Prescott Valley	Yavapai	REO	74.198%
SEM Investments, LLC	07051054	Buck	3325 West Glendale Avenue, Phoenix	Maricopa	REO	0.0%
Lazy E, LLC	07081188	Juarez	1621 West Arizona Street, San Luis	Yuma	REO	100.0%
SEM Investments, LLC	07081204	Frazier	9980 N. Shannon Rd., Tucson	Pima	REO	0.0%
Stoneman Properties, LLC	07081204	Frazier	9980 N. Shannon Rd., Tucson	Pima	REO	2.762%
SEM Investments, LLC	07081208	Thompson	1824 E. Broadway Rd., Phoenix 11006 S. 27th Drive, Laveen	Maricopa	REO	0.0%
SEM Investments, LLC	07091799	Callahan	24892 North 107th Way, Scottsdale	Maricopa	REO	0.0%
SEM Investments, LLC	07121849	Presidio West 37 LLC	37 acres of land, Woody Mt Rd, Flagstaff	Coconino	REO	0.0%
Lazy E, LLC	07121860	Rich	987 North 3rd Street, Coolidge	Pinal	REO	100.0%
Lazy E, LLC	08011873	CBI Developers, Inc	5744 East Cheney Drive, Paradise Valley	Maricopa	REO	5.218%
SEM Investments, LLC	08011873	CBI Developers	5744 East Cheney Drive, Paradise Valley	Maricopa	REO	0.0%
Lazy E, LLC	08081970	CBI Developers, Inc	S.W. Corner of 17th St. & Bell Rd., Phoenix	Maricopa	REO	0.657%
Lazy E, LLC	104th Ave	104th & Indian School	10410 W. Indian School, Phoenix	Maricopa	REO	1.905%
<b>Assign all Beneficial Interests to the Receiver by Assignment</b>						
Lazy E, LLC	07030955	David, LLC	2423 West Campbell Ave., Phoenix	Maricopa	FCLS	55.102%
Stoneman Properties, LLC	07030955	David, LLC	2423 West Campbell Ave., Phoenix 4405 W. Speedway, Tucson	Maricopa	FCLS	26.531%
Lazy E, LLC	08081976	4405 Speedway, LLC	1485 W. Prince Rd, Tucson	Pima	FCLS	9.306%