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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. )

13 VICKIE R THOMPSON, a single )  
woman, )

14 Plaintiff, )

vs.

15 LANDMARC CAPITAL & )  
INVESTMENT, CO, an Arizona )  
16 corporation; LITCHFIELD FUNDING, )  
LLC., a limited liability company; JOHN )  
17 DOE I-X and JANE DOE I-X, BLACK )  
CORPORATIONS I-X; )

18 Defendants. )

Cause No. CV2009-020595

PETITION NO. 40

REPORT AND PETITION TO  
ADJUDICATE CLAIM NO. 6765 OF  
VICKIE THOMPSON

(Assigned to Judge Sam Myers)

19 Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions  
20 and the court appointed Receiver of Landmarc Capital & Investment Company, respectfully  
21 petitions the Court as follows:

1           1.       On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
2 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial  
3 Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July  
4 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On  
5 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC; Desert*  
6 *Trails Holding, LLC; and Arizona Valuation Company, LLC in Receivership*. On May 12,  
7 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*  
8 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as  
9 Deputy Receiver and authorized the Receiver to engage and employ Special Deputy  
10 Receivers to carry on the day to day business of Landmarc.

11           2.       On August 6, 2010, the Court entered its *Order Establishing Procedures for the*  
12 *Adjudication of Claims, Re: Petition No. 27*. The Order establishes procedures for the  
13 adjudication of claims against Landmarc and authorizes the Receiver to file a petition to  
14 address an individual claim. Vicki Thompson (“Thompson”) filed a proof of claim pursuant  
15 to this order on or about September 15, 2010, which claim was assigned claim number 6765.  
16 This Petition is the Receiver’s Report on Thompson’s claim.

17                                   **Landmarc’s Loan to Vicki Thompson**

18           3.       On or about September 28, 2007, Landmarc loaned Thompson \$398,000 which  
19 was secured by two parcels of real property owned by Thompson located at 11006 S. 27<sup>th</sup>  
20 Drive, Laveen, Arizona and 1824 E. Broadway, Phoenix, Arizona (collectively, “Property”).  
21 The loan was funded by several of Landmarc’s lenders and as of June 24, 2009, the loan was

1 beneficially owned by Empire Acceptance Company (50%) and Litchfield Funding, LLC  
2 (50%). Both of these lenders have filed claims to this loan and any proceeds of the loan.

3 4. Under the note and deed of trust, Thompson was obligated to make regular  
4 monthly payments to Landmarc. In April of 2008, she defaulted on her payment obligations  
5 under the note and deed of trust and therefore Landmarc exercised its rights under the note,  
6 deed of trust and loan agreement with Plaintiffs and initiated non-judicial foreclosure  
7 proceedings against the Property. On July 2, 2008, the Trustee, Ronald Horwitz of Jaburg &  
8 Wilk, P.C., issued and recorded a Notice of Trustee's Sale for the Properties and mailed same  
9 to Thompson.

10 5. The Notice of Trustee Sale set the sale for October 2, 2008, but ultimately on  
11 October 1, 2008, Landmarc entered into a forbearance agreement with Thompson under  
12 which Landmarc agreed to continue the Trustee's Sale conditioned on Thompson's payment  
13 of all obligations under the agreement. A true and correct copy of the Forbearance  
14 Agreement is attached hereto as Exhibit "A".

15 6. Under the Forbearance Agreement, Thompson agreed to resume monthly  
16 payments commencing on October 1, 2008 and continue to make said payments on or before  
17 the first of each month thereafter. Thompson made the initial payment on October 1, 2008.

18 7. As a result of the Agreement, Mr. Horowitz continued the foreclosure sale from  
19 October 2, 2008 until October 8, 2008 at the request of Landmarc. Based upon Thompson's  
20 initial payment on October 8, 2008, Mr. Horowitz again continued the trustee sale at  
21 Landmarc's request until October 9, 2008 and ultimately again, at Landmarc's request,

1 continued it for an additional day, to October 10, 2008. At that time, Mr. Horowitz, at  
2 Landmarc's request, continued the trustee sale until November 17, 2008, as allowed for under  
3 A.R.S. § 33-810.

4 8. On November 17, 2008, Mr. Horowitz continued the trustee sale for a fifth time  
5 to November 21, 2008, per Landmarc's request. Ultimately, due to Thompson's failure to  
6 make the November payment, the November 21, 2008 trustee sale proceeded. A true and  
7 correct copy of an Affidavit filed by Mr. Horowitz in connection with the underlying  
8 litigation is attached hereto as Exhibit "B".

9 9. Paragraph 9(b) of the Forbearance Agreement, provides in pertinent part:

10 So long as the payments are paid as provided for in paragraph  
11 5 hereinabove, the scheduled Trustee's Sale will not be  
12 conducted and the date will be continued from time to time.  
13 However, should Debtor fail to pay any of the payments  
14 provided for hereinabove, the failure to pay same shall  
15 constitute a default and will entitle Lender to complete the  
16 Trustee's Sale. In the event of a default, the Trustee's Sale  
will be conducted on the date of sale established by the most  
recent postponement declaration. There shall be no  
requirement for the Lender or the Trustee to furnish notice of  
each successive postponement date to Debtors, but those  
dates shall be available upon inquiry during regular business  
hours of the Trustee.

17 10. Landmarc postponed the pending Trustee's Sale five times. However,  
18 Thompson failed to make the payments required under the Forbearance Agreement, including  
19 the November, 2008 payment. Even after Thompson's failure to make the required  
20 payments, Landmarc again continued the sale one last time. Accordingly, on November 21,  
21

1 2008, the Trustee's Sale for the Property was conducted, and a Trustee's Deed Upon Sale was  
2 issued and recorded in favor of Landmarc.

3 11. Thompson does not dispute that she failed to make payments under the  
4 Forbearance Agreement and deed of trust (Complaint, page 2, ¶¶9 and 11).

5 **Thompson's Lawsuit and Claim in the Receivership**

6 12. On February 13, 2009, Vickie R. Thompson ("Thompson") filed a complaint  
7 against Landmarc in Maricopa County Superior Court Cause No. CV 2009-050052 entitled  
8 *Thompson vs. Landmarc Capital & Investment Company, et al.* ("Complaint"). A true and  
9 correct copy of Ms. Thompson's Complaint is attached hereto as Exhibit "C". The Complaint  
10 contains three causes of action seeking to quiet title and for damages for an alleged breach of  
11 contract in connection with Landmarc's foreclosure of a note and deed of trust. The lawsuit  
12 was consolidated with this receivership.

13 13. On or about September 15, 2010, the Receiver received a claim filed by  
14 Thompson pursuant to this Court's prior *Order Establishing Procedures for the Adjudication*  
15 *of Claims, Re: Petition No. 27*. A true and correct copy of Thompson's claim is attached  
16 hereto as Exhibit "D".

17 14. The claim includes several pleadings in the underlying litigation including  
18 Thompson's Revised and Amended Motion for Summary Judgment and her Response to  
19 Cross Motion for Summary Judgment filed by Landmarc's prior counsel.

20 15. Thompson's first claim (quiet title) is that Landmarc failed to properly comply  
21 with the notice statute and re-notice the sale after the Forbearance Agreement was signed.

1 (See, Complaint, page 3, ¶ 13 and 21, Plaintiff's Amended Motion for Summary Judgment,  
2 page 6, lines 1-4).

3 16. A.R.S. § 33-811 governs claimed defects in the notice of a Trustee Sale and  
4 provides in pertinent part:

5 (B) . . . The trustee's deed shall raise the presumption of  
6 compliance with the requirements of the deed of trust and this  
7 chapter relating to the exercise of power of sale and the sale of the  
8 trust property, including recording, mailing, publishing and  
9 posting of notice of sale and the conduct of the sale. A trustee's  
10 deed shall constitute conclusive evidence of the meeting of those  
11 requirements in favor of purchasers or encumbrances for value  
12 and without actual notice. Knowledge of the trustee shall not be  
13 imputed to the beneficiary.

14 (C) The trustor, its successors or assigns, and all persons  
15 to whom the trustee mails a notice of sale under a trust deed  
16 pursuant to section 33-809 shall waive all defenses and objections  
17 to the sale not raised in an action that results in the issuance of a  
18 court order granting relief pursuant to rule 65, Arizona Rules of  
19 Civil Procedure, entered before 5:00 p.m. mountain standard time  
20 on the last business day before the scheduled date of the sale. A  
21 copy of the order, the application for the order and the complaint  
shall be delivered to the trustee within twenty-four hours after  
entering the order.

17. As is clear under A.R.S. § 33-811, in order to challenge a deficiency in the  
notice of sale, the Trustor must first obtain an injunction under Rule 65 before the Trustee  
Sale. Moreover, A.R.S. § 33-811 clearly provides that the Trustee's deed issued following a  
sale provides "conclusive evidence" that the required notice requirements have been met.  
Thompson failed to timely challenge the notice given by the Trustee and is therefore  
precluded from raising the issue now. *Security Savings & Loan Association vs. Milton*, 171

1 Ariz. 75, 76, 828 P.2d 1216, 1217 (1991) (considering identical language to that contained in  
2 the current version of A.R.S. § 33-811).

3 18. Additionally, as provided in the Forbearance Agreement, Landmarc was only  
4 obligated and contractually bound to continue the pending foreclosure sale as long as  
5 Thompson performed under the Forbearance Agreement. Thompson admits in her Complaint  
6 that in fact she failed to make the required payments.

7 19. Based upon the foregoing, the Receiver recommends that the Court deny  
8 Thompson's claim for quiet title based upon the fact that as a matter of law any alleged  
9 deficiencies in the Trustee's Sale which was conducted in November of 2008 were required  
10 to be raised prior to the sale and that the claim is without merit. A ruling on this portion of  
11 Thompson's claim will permit the Receiver's pending sales of the Property to be completed  
12 and the interests of the beneficial owners to be protected.

13 20. Thompson's remaining claims (breach of contract) are that Landmarc interfered  
14 with Thompson's alleged lease hold interests (*See* Complaint, pg. 4, ¶ 26), and that Landmarc  
15 converted fixtures and personal property located on the Property (*See* Complaint, pg. 3, ¶ 3).

16 21. The Deed of Trust provided that all rents, incomes and fixtures were assigned  
17 and otherwise pledged to Landmarc as security for the loan. Specifically, the Deed of Trust  
18 provides in pertinent part:

19 6. All furniture, fixtures, machinery, equipment, furnishings,  
20 building materials, appliances and goods of every nature whatsoever  
21 (collectively called "equipment and other personal property") now  
or hereafter located in or on, or attached or affixed to, or used or  
intended to be used in connection with, the Land . . . all of which,  
including replacements and additions thereto, shall, to the fullest

1 extent permitted by law and for the purposes of this Deed of Trust,  
2 be deemed to be part and parcel of, and appropriated to the use of,  
3 the Land and, whether affixed or annexed thereto or not, be deemed  
4 conclusively to be real property and conveyed by this Deed of Trust.

5 1.5 Rents and Profits.

6 a. All of the rents, royalties, issues, profits, revenue, income and  
7 other benefits of the Mortgage Property arising from the use of  
8 enjoyment of all or any portion thereof or from any lease or  
9 agreement pertaining thereto (the "Rents and Profits"), whether now  
10 due, past due, or to become due, and including all prepaid rents and  
11 security deposits, are hereby absolutely, presently and  
12 unconditionally assigned, transferred, conveyed and set over to  
13 Beneficiary to be applied by Beneficiary in payment of the principal  
14 interest, and all other sums payable on the Note, and of all other  
15 sums payable under this Deed of Trust.

16 b. Trustor shall not execute any lease or other occupancy agreement  
17 (herein "leases") of any part of the Mortgaged Property without  
18 Beneficiary's prior written consent, which consent shall not be  
19 unreasonably withheld or delayed, and shall at all times fully  
20 perform the obligations of the lessor under all such leases. Trustor  
21 shall at any time or from time to time, upon request of Beneficiary,  
transfer and assign to Beneficiary in such form as may be  
satisfactory to Beneficiary, Trustor's interest in any lease, subject to  
and upon the condition, however, that prior to the occurrence of any  
Event of Default hereunder, except as provided in paragraph (c)  
below, Trustor shall have a license to collect and receive all Rents  
and Profits under such lease after accrual, but not prior thereto, as  
set forth in paragraph (a) above.

22. Thompson's second and third causes of action for breach of contract relating to  
Landmarc's alleged breach of contract is without merit based upon the clear language of the  
deed of trust. Specifically, Thompson alleges that Landmarc interfered with lease obligations  
and presumably payments of rents to which she believes she was entitled. However, the deed  
of trust clearly provides that all rents and profits derived from the properties were pledged as



1 security for the loan. Upon her admitted default, Landmarc was entitled to receive all such  
2 sums and to act to secure its interest. Additionally, the deed of trust assigns a security interest  
3 in all fixtures and personal property located on the premises. Again, under the plain meaning  
4 of the deed of trust and as a matter of law, Thompson's contract claims must fail because the  
5 very documents which created the relationship and serve as a basis for her claim provide for a  
6 contrary result.

7         23. Assuming *arguendo* that Landmarc was not entitled to collect rents, terminate  
8 leases or retake possession of the premises despite the plain language of the deed of trust,  
9 none of the purported actions or claims entitle Thompson to file or maintain a *lis pendens*  
10 against the property or make any legal or credible claim to title. Moreover, the claim fails to  
11 quantify any compensable damages. As a result, the Receiver requests that Counts Two and  
12 Three of the Complaint and claim be denied.

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

14         1. Denying Thompson's claim for quiet title for alleged deficiencies in the  
15 noticing of the Trustee Sale;

16         2. Denying all other claims contained in Thompson's proof of claim; and

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3. Entering judgment in favor of Landmarc in the consolidated action entitled  
*Thompson vs. Landmarc Capital & Investment Company, et al.*

Respectfully submitted this 23<sup>rd</sup> day of December, 2010.

GUTTILLA MURPHY ANDERSON  
/s/Steven R. Napoles  
Steven R. Napoles  
Attorneys for the Plaintiff

1157-001(101627)

# EXHIBIT 'A'

# FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (the "Agreement") is entered into effective the 15<sup>th</sup> day of October, 2008 (the "Effective Date") made and entered into by and between Primavera Capital & Investment Company, Arizona Corporation (hereinafter "Lender"), Mickie R. Thompson (hereinafter collectively referred to as "Debtor"); (each of the foregoing, a "Party" and collectively the "Parties")

## RECITALS

A. Lender extended to debtor a certain loan (the "Loan"), as evidenced by Promissory Note dated September 20, 2007, and Deed of Trust dated September 26, 2007, and recorded October 1, 2007 in Instrument Number 2007-1080170 record of Maricopa County, Arizona (all the foregoing documents are collectively referred to as the "Loan Documents").

B. Pursuant to the Deed of Trust, Debtor granted Lender a security interest in Debtor's real properties at 11006 South 27th Drive, Laveen, AZ 85339 and 1824 East Broadway, Phoenix, AZ 85040, which properties are legally described as follows:

PARCEL 1: THE WEST 260 FEET OF THE EAST 770 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, EXCEPT THE NORTH 755 FEET THEREOF, EXCEPT THE SOUTH 328.15 FEET THEREOF;  
PARCEL 2: LOT 12, BLOCK 6, BELMONT PARK, ACCORDING TO BOOK 31 OF MAPS, PAGE 47, RECORDS OF MARICOPA COUNTY, ARIZONA, EXCEPT THE SOUTHERLY 7 FEET.

C. Debtor defaulted in their obligations under the Loan Documents, and Lender exercised its rights under the Loan Documents and Arizona law to initiate foreclosure proceedings. A foreclosure sale is pending.

D. The Lender although under no obligation to do so, is willing to refrain from conducting the foreclosure sale upon the terms and conditions set forth in this Agreement.

## AGREEMENTS

THEREFORE, in consideration of the mutual agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

- Incorporation of Recitals.** All the above recitals are incorporated to this Agreement and are warranted by the Parties to be true and correct.
- Principal Balance/Interest.** The current principal balance of the subject loan is **\$398,500.00**, with interest owed thereon since **March 1, 2008**, since non-payment of the **April 1, 2008** payment.
- Reinstatement Amount.** The current reinstatement figure on the subject Deed of Trust as of **September 30, 2008** is **\$83,620.21**.

\$27,895.02	Payments from 04/01/2008 up to and including 09/01/2008 @ \$4,649.17 per month
\$35,532.75	Accrued Late Charges
\$10,256.00	Unpaid Late Charges
\$11.39	Unpaid Charges
\$7,596.68	Unpaid Interest
\$2,328.37	Foreclosure fees and cost
- Cure of Default.** Payment of the amount reflected above (3) would cure the default and bring the loan to a current status.

5. **Payments:**
- Payments received as of the date of the Agreement total \$0.00. This amount will be applied toward a portion of the arrears and the following monthly payments: None.
  - Monthly payments will commence with the October 1, 2008 payment. The total monthly payment amount will be \$1,992.50 and will be paid to the Lender on or before the 1st of each month in which the payment becomes due.
6. **Taxes and Insurance:** The county property taxes and property insurance will continue to be paid by the Debtor.
7. **Agreement Term:** The Agreement is for a term of 12 months and will end with the September 1, 2009 payment.
8. **Reinstatement or Payoff:** At any time during the term of the Agreement the Debtor may pay the loan in full. The original maturity date has been extended to October 1, 2009. Payoff funds must be tendered no later than October 6, 2009 in order to avoid penalties. A request for a current payoff amount will be required.
9. **Forbearance:**
- The payments made under the Agreement shall not constitute reinstatement of the loan, and the loan shall not be deemed reinstated until all amounts required herein have been paid, which shall include the accruing payments that become due during the term of the Agreement.
  - So long as the payments are paid as provided for in paragraph 5 hereinabove, the scheduled Trustee's Sale will not be conducted and the date will be continued from time to time. However, should Debtor fail to pay any of the payments provided for hereinabove, the failure to pay same shall constitute a default and will entitle Lender to complete the Trustee's Sale. In the event of a default, the Trustee's Sale will be conducted on the date of sale established by the most recent postponement declaration. There shall be no requirement for the Lender or the Trustee to furnish notice of each successive postponement date to Debtors, but those dates shall be available upon inquiry during regular business hours of the Trustee.
  - It is understood all amounts paid pursuant to this Agreement are non-refundable, but same shall be applied to reduce the amount of indebtedness owed in connection with said loan.
  - Lender may at its sole discretion extend this Agreement based on the Debtor's ability to make timely payments and provide evidence to support granting an extension. Debtor should contact the Lender on or before the last payment due date to discuss future arrangements, if needed.
10. **Representation and Warranties:** As a condition to the Lender's obligations under this Agreement, Debtor represent and warrant to the Lender that the following representations are true on the date hereof and will remain true during the term of this Agreement:
- All authorizations, approvals and consents necessary for the execution and delivery by Debtor of this Agreement, and the consummation of the transactions contemplated hereby have been given; Debtor and each of them have full right, power and authority to enter into this Agreement and carry out the transactions described herein.
  - This Agreement upon execution of the Parties shall be fully enforceable in accordance with its terms.

11. **Acknowledgement and Waiver.** The Debtor acknowledges that there is a trustee sale scheduled, and all of the Loan Documents executed related to the Property, are valid and binding and are enforceable in accordance with their respective terms, and Debtor hereby waives any and all claims, defenses or rights of setoff against Lender with respect to the Trustee's Sale and Loan Documents.
12. **No waiver by Lender.** Neither this Agreement nor actions taken by Lender pursuant to this Agreement shall constitute a waiver, termination, novation, discharge, substitution or abandonment of any term, provisions of any Loan Documents, or of any right or right of privilege arising therefrom in respect of any and all indebtedness owed to Lender pursuant to the Loan Documents or any other agreement or any property or collateral which secures the payment thereof, and all such Loan Documents shall continue in full force and effect except as expressly set forth herein. Nothing herein or done pursuant hereto shall waive nor cure any previous or existing breach or event of default under the Loan Documents, nor any circumstances giving rise to Lender's rights to exercise any remedy or seek any relief.
13. **Binding Effect.** Except as otherwise set forth herein, this Agreement is personal to the Parties and none of the Parties will have the right or power to assign or delegate any of the provisions thereof will be binding upon, inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns.
14. **Counterparts.** This agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument, and any Party may execute this Agreement by signing any such counterpart.
15. **Captions.** Captions and paragraph headings used herein are for convenience only and are not apart of this Agreement, and shall not be deemed to limit or alter any provisions hereof.
16. **Construction of Agreement.** Each of the Parties had an equal degree of control as the drafting of this Agreement and the various provisions set forth herein; the rule of construction that an ambiguous document is to be constructed against its drafter is accordingly inapplicable to this Agreement. All of the provisions of this Agreement shall be construed in accordance with their plain meaning and without partiality to any of the Parties. To the extent permitted by the context in which used words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa.
17. **Governing Law, Venue.** This Agreement was made and is to be performed in the State of Arizona. This Agreement shall be governed by the construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed entirely within that State, and any suit to enforce this Agreement or to assert any right or remedy under this Agreement shall be brought in any state or federal court sitting in Maricopa County, Arizona which shall be the exclusive venue for, and which Courts shall have exclusive jurisdiction with respect to, any such suit.
18. **Entire Agreement.** This Agreement and the Exhibits and other attachments referred to herein (all of which are incorporate by this reference) collectively set forth the entire agreement between the Parties as to the subject matter of this Agreement, and are subject to no promise, warranty or representation, not expressly set forth or referred to herein. This Agreement may not be modified except by an instrument in writing signed by the Party to be bound.
19. **Attorney's Fees.** In the event of litigation or arbitration proceedings brought by any Party to enforce the terms of this Agreement or otherwise relating directly or indirectly to the transactions and agreements reflected herein, the prevailing Party, in addition to any and all other rights and remedies, will be entitled to recover all of its costs of litigation or arbitration, including but not limited to all reasonable attorney's fees and taxable costs. Attorneys fees claimed under this Section shall be awarded without reference to A.R.S. §12-341.01.

[SIGNATURES ON FOLLOWING PAGE]

DEBTOR

VICKIE R. THOMPSON

*Vickie R. Thompson*

10-1-08  
Date

LENDER

*Jillie B. Baker*  
BY JILLIE BAKER  
US JILLIE BAKER

10-1-08  
Date

# EXHIBIT 'B'



1 Claudio E. Iannitelli (012759)  
2 Roman A. Kostenko (024444)  
3 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**  
4 1850 North Central Avenue, 19<sup>th</sup> Floor  
Phoenix, Arizona 85004  
(602) 952-6000

5 Attorneys for Defendants

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 VICKIE R. THOMPSON, a single woman,

9 Plaintiff,

10 v.

11 LANDMARC CAPITAL & INVESTMENTS  
12 CO., an Arizona corporation; and  
13 LITCHFIELD FUNDING, LLC, a Arizona  
14 limited liability company,

15 Defendants.

No. CV 2009-050052

**DECLARATION OF  
RONALD M. HORWITZ, ESQ.**

(Assigned to the Honorable Eddward Ballinger, Jr.)

16 I, RONALD M. HORWITZ, do declare as follows:

17 1. I am an attorney at law and have been admitted to practice law in the State of  
18 Arizona since December 19, 1978.

19 2. Pursuant to a Notice of Substitution of Trustee recorded in the Office of the  
20 Maricopa County Recorder on July 2, 2008 in Instrument No. 2008-0585488, I was appointed  
21 Successor Trustee under the Deed of Trust executed by Vickie R. Thompson, an unmarried  
22 woman, as Trustor ("Borrower" or "Thompson"), in which Amy D. Howland, Esq. is named as  
23 original Trustee and Landmarc Capital & Investment Company is named as Beneficiary ("Lender"  
24 or "Landmarc"), which Trust Deed is dated September 26, 2007 and was recorded on October 1,  
25 2007, in the Office of the Maricopa County Recorder, in Instrument Number 20071080170 (the  
26

1 "Deed of Trust"). In the performance of my duties as Trustee, I have been charged with the care  
2 and custody of the records relating to the Deed of Trust and the Trustee's Sale conducted,  
3 pertaining to the real properties described in the Deed of Trust. The contents of this Declaration  
4 are based upon information derived from my own personal knowledge of the facts stated herein  
5 and from my review of the business records maintained by my office in the performance of my  
6 duties as Trustee under the Deed of Trust.

7 3. The Deed of Trust provided the designated and appointed Trustee with the power of  
8 sale of the following property: 11006 South 27<sup>th</sup> Drive, Laveen, Arizona 85339 and 1824 East  
9 Broadway, Phoenix, Arizona 85040 (collectively, "the Property").

10 4. Following the Borrower's default on her obligations to Landmarc under the loan  
11 agreements which were secured by the Deed of Trust, Landmarc elected to sell the Property  
12 pursuant to a Trustee's Sale.

13 5. On July 2, 2008, I prepared a Notice of Trustee's Sale which was recorded on July  
14 2, 2008 in Instrument No. 20080585489, records of the Maricopa County Recorder, announcing  
15 that the Property would be sold at public auction to the highest bidder in the front lobby of Jaburg  
16 & Wilk, P.C., 3200 N. Central Avenue, Suite 2000, Phoenix, Arizona on October 2, 2008 at  
17 2:00PM (the "Trustee's Sale"). A true and correct copy of the Notice of Trustee's Sale is  
18 attached hereto as **Exhibit A**.

19 6. The Notice of Substitution of Trustee, Notice of Trustee's Sale and Statement of  
20 Breach were properly served by certified mail upon Defendant Thompson on July 7, 2008. True  
21 and correct copies of the Affidavit of 30 Day Mailing Notice and Affidavit of 5 Day Mailing  
22 Notice, USPS Certified Mail Receipt, and Return Receipt are attached hereto as **Exhibit B**.

23 7. Subsequently I was informed that Landmarc and Defendant Thompson entered into  
24 a Forbearance Agreement on October 1, 2008, and Landmarc requested that the Trustee's Sale  
25 under the Deed of Trust be postponed until October 8, 2008. On October 2, 2008, pursuant to  
26 A.R.S. § 33-810(B), I personally appeared in the front lobby of Jaburg & Wilk, P.C., 2100 N.

1 Central Avenue, Suite 2000, Phoenix, Arizona and publicly declared that the Trustee's Sale was  
2 continued to October 8, 2008.

3 8. On or about October 8, 2008, Landmarc requested that the Trustee's Sale be  
4 postponed to October 9, 2008. On October 8, 2008, pursuant to A.R.S. § 33-810(B), I personally  
5 appeared in the front lobby of Jaburg & Wilk, P.C., 3200 N. Central Avenue, Suite 2000,  
6 Phoenix, Arizona and publicly declared that the Trustee's Sale was continued to October 9, 2008.

7 9. On or about October 9, 2008, Landmarc requested that the Trustee's Sale be  
8 postponed to October 10, 2008. On October 9, 2008, pursuant to A.R.S. § 33-810(B), I  
9 personally appeared in the front lobby of Jaburg & Wilk, P.C., 3200 N. Central Avenue, Suite  
10 2000, Phoenix, Arizona and publicly declared that the Trustee's Sale was continued to October  
11 10, 2008.

12 10. On or about October 10, 2008, Landmarc requested that the Trustee's Sale be  
13 postponed to November 17, 2008. On October 10, 2008, pursuant to A.R.S. § 33-810(B), I  
14 personally appeared in the front lobby of Jaburg & Wilk, P.C., 3200 N. Central Avenue, Suite  
15 2000, Phoenix, Arizona and publicly declared that the Trustee's Sale was continued to November  
16 17, 2008.

17 11. On or about November 17, 2008, Landmarc requested that the Trustee's Sale be  
18 postponed to November 21, 2008. On November 17, 2008, pursuant to A.R.S. § 33-810(B), I  
19 personally appeared in the front lobby of Jaburg & Wilk, P.C., 3200 N. Central Avenue, Suite  
20 2000, Phoenix, Arizona, and publicly declared that the Trustee's Sale was continued to November  
21 21, 2008.

22 12. Thereafter, based upon Defendant Thompson's failure to meet her obligations under  
23 the Forbearance Agreement, Landmarc elected to proceed with the Trustee's Sale on November  
24 21, 2008, as previously noticed.  
25  
26

Unofficial  
Document

## FIDELITY NATIONAL TITLE

STATE OF ARIZONA  
COUNTY OF MaricopaWhen recorded return to:  
Ronald M. Horwitz  
Jaburg & Wilk, P.C.  
3200 North Central Avenue, Ste. 2000  
Phoenix, AZ 85012

2 of 2

FT08004129

Recorded: July 2, 2008

## NOTICE OF TRUSTEE'S SALE

Trustee Sale No: 13483.00084 Thompson

The following legally described trust property will be sold, pursuant to the power of sale under that certain Deed of Trust dated September 26, 2007, and recorded on October 1, 2007 in Instrument Number 20071080170, Records of Maricopa County, Arizona at public auction to the highest bidder The Front Lobby of Jaburg & Wilk, P.C., 3200 N. Central Avenue, Suite 2000, Phoenix, AZ on October 2, 2008 at 2:00PM of said day:

## LEGAL:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

The street address is purported to be:  
11006 South 27th Drive  
Laveen, AZ 85339

1824 East Broadway  
Phoenix, AZ 85040

Tax Parcel Number: 300-06-032B2 and 122-38-102 8

Original Principal Balance:\$ 398,500.00

Name and address of original Trustor:

VICKIE R. THOMPSON, an unmarried woman  
42022 North Back Creek Court  
Phoenix, AZ 85086

Name and address of the Beneficiary:  
LANDMARC CAPITAL & INVESTMENT CO.,  
as Attorney-in-Fact for  
LANDMARC CAPITAL PARTNERS, LLC  
SEM INVESTMENT, LLC  
LANDMARC CAPITAL & INVESTMENT CO.  
4110 N. Scottsdale Road  
Suite 330  
Scottsdale, AZ 85251

Name and address of Trustee:  
Ronald M. Horwitz  
Jaburg & Wilk, P.C.  
3200 North Central Avenue, Ste. 2000  
Phoenix, AZ 85012

Conveyance of the property shall be without warranty, expressed or implied, and subject to all liens, claims or interest having a priority senior to the Deed of Trust. The Trustee shall not express an opinion as to the condition of title.

Sale Information ; www.thoffice.info  
(602) 248-1000

Dated July 2, 2008

SIGNATURE OF TRUSTEE

Ronald M. Horwitz, Attorney at Law  
Member of the State Bar

Unofficial Document

We are assisting the Beneficiary to collect a debt and any information we obtain will be used for that purpose.

Manner of Trustee Qualification: Member of the Arizona State Bar  
Name of Trustee's Regulator: State Bar of Arizona

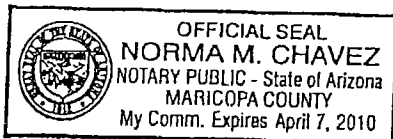
STATE OF Arizona }  
County of MARICOPA } ss.

On July 2, 2008, before me, the undersigned notary public, personally appeared Ronald M. Horwitz, Attorney at Law, Member of the State Bar, Ronald M. Horwitz personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My commission expires April 7, 2010

*Norma M. Chavez*  
Norma M. Chavez  
NOTARY PUBLIC



**EXHIBIT "ONE"**

The land referred to in this policy is described as follows:

Parcel 1:

The West 260 feet of the East 770 feet of the Northeast quarter of the Northeast quarter of Section 14, Township 1 South, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Except the North 755 feet thereof;

Except the south 328.15 feet thereof;

Parcel 2

Lot 12, Block 6, BELMONT PARK, according to Book 31 of Maps, Page 42, records of Maricopa County, Arizona.

Except the Southerly 7 feet.

Unofficial Document

# EXHIBIT 'C'

VICKIE R THOMPSON  
42022 N Black Creek Court  
Phoenix, Arizona 85086

Plaintiff Pro Se

MICHAEL K. JEANES  
Clerk of the Superior Court

By SHEILA PONICKI, Deputy  
Date 02/13/2009 Time 01:27 PM

Description	Qty	Amount
CASE# CV2009-050052		
COURT TRIAL FEE	001	286.00

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

TOTAL AMOUNT	Receipt#
286.00	00010660243

VICKIE R THOMPSON, a single woman)

Plaintiff,

vs.

LANDMARC CAPITAL & INVESTMENT  
CO, an Arizona corporation; LITCH-  
FIELD FUNDING, LLC, a limited liability  
company; JOHN DOE I-X and JANE  
DOE I-X, BLACK CORPORATIONS I-X

Defendants.

No. CV \_\_\_\_\_

COMPLAINT  
(Breach of Contract; Quiet Title)

CV2009-050052

COMES NOW plaintiff and for her complaint against defendants and each of them and alleges as follows.

COMMON ALLEGATIONS

1. Plaintiff at all times was and is a resident of this county and state.
2. At all times mentioned herein defendant Landmarc Capital & Investment Co., was and is a corporation doing business in this state and defendant Litchfield Funding, LLC, was and is a limited liability company in this state and doing business in this state; further, that said defendants are, in what is alleged herein, either joint venturers in the matters below, or predecessors or successors in interest, one to the other; collectively said defendants are referenced below as "Landmarc".

3. This complaint concerns the following parcel of real property:

See Exhibit A

more commonly known as: 11006 S 27th Drive, Laveen, and

see Exhibit A



more commonly known as: 1824 E Broadway, Phoenix.

4. Defendants Doe and Black corporation are fictitiously alleged for the reason that plaintiff is unaware of their true and correct identities; upon ascertaining same plaintiff will move this court for leave to substitute their true and correct names.

5. The acts and omissions of the defendants and each of them were done as agent, employee and cofeasor so that the acts and omissions of defendants and each of them as alleged herein after are such as to give rise to joint and several liability.

6. This matter arises in contract; that in accordance with A.R.S. 12-341.01, plaintiff will be entitled to her attorney's fees as and when incurred.

7. Sometime prior to November 1, 2007, plaintiff had borrowed from defendant Landmarc certain monies.

8. The purpose of the loan from defendant in place before November 1, 2007, was for a construction loan on the second property listed above, the Laveen parcel, and at the time of the events below, approximately \$8,000 of that earlier loan (not the one at issue here) was still due to be funded.

9. Plaintiff fell into arrears and material default under the aforesaid November 1, 2007 loan and note as owing to defendant and did enter into a forbearance agreement as to that obligation which was executed on or about October 1, 2008.

10. In consideration of that forbearance agreement, copy of which is attached as Exhibit B, plaintiff did pay to defendants on or about October 1, 2008, the required payment in the forbearance agreement in the amount of \$1,992.50; see Exhibit B, p. 2, para. 5(b).

11. The next payment due under the said note and forbearance agreement was due to have been November 1, 2008 and plaintiff did fail to make same.

12. Without pronouncement of any default or any other notice whatsoever defendant did enter each of the properties, did oust plaintiff from possession thereof, and did summarily and without judicial process thereof or other notice retake possession from plaintiff of both properties.

13. Upon Information and belief, there was also recorded by said defendant without any notice or other declaration of material default a deed conveying the properties from plaintiff to defendant; a copy of that deed is Exhibit

14. By letter of December 11, 2008, plaintiff did protest the seizure of the properties by defendant and did tender in full and complete satisfaction of all monies due and owing.

15. Defendant rejected the aforesaid demand.

16. Each of the properties in question was and is a commercial parcel of property, the Broadway property being used as a retail facility known as "Braids on Broadway".

17. The Laveen property was and is an industrial warehouse.

18. Plaintiff either had or was about to contract for tenants for both properties, those leases being known to defendant and defendant's seizure of the properties interfered with the continued performance of those leases.

19. Plaintiff demands a trial by jury.

20. All of the foregoing allegations are incorporated into each of the following claims for relief.

#### FIRST CLAIM FOR RELIEF

##### (Quiet Title)

21. By reason of the foregoing defendants have improperly reentered plaintiff's property, and improperly foreclosed or forfeited her interest, all in violation of the applicable statutes governing same.

22. The appraised value of both parcels of realty as of September, 2007, was approximately \$800,000; upon information and belief, the value thereof has not declined materially from that amount to date.

23. By reason of the foregoing, this court should quiet title in plaintiff subject to a deed of trust or other mortgage interest to the order of plaintiff in the amount of \$398,500, the principal sum due plaintiff in the contract which is Exhibit B attached less any payments

heretofore made by plaintiff, and less any court ordered offsets to that amount, inclusive the following claims for relief

WHEREFORE, plaintiff prays the judgments and orders of this court as follows:

- a. That this court enter its orders quieting title in plaintiff as against defendants and each of them subject to the amount which is the principal sum due in the contract which is Exhibit B.
- b. For her attorneys fees incurred herein;
- c. For her costs incurred herein; and,
- d. For such other and further relief as may be just and proper in the premises.

#### SECOND CLAIM FOR RELIEF

(Breach of Contract)

24. All of the matters set forth herein above are incorporated herein by this reference.
25. Defendants did breach the contract which is the agreement which is attached as Exhibit B.
26. Plaintiff has experienced damages with those breaches in the loss of the rental income in her property and other interference of her lease-hold relationships with certain third parties.
27. The acts of defendants were willful, wanton and done with an evil mind and hand so as to be deserving of the assessment of exemplary and punitive damages.
28. A reasonable sum of those exemplary and punitive damages would be the amount of \$500,000.
29. Notwithstanding all of the foregoing, and as an additional breach of contract between the parties, defendants did breach the Covenant of Good Faith and Fair Dealing implicit and implied in the contract which is Exhibit B attached.

WHEREFORE, plaintiff prays the judgments and orders of this court as follows:

- a. That she her special and compensatory damages as she may prove at trial;
- b. For an additional sum as and for breach of the Covenant of Good Faith and Fair

Dealing as she may prove at trial;

- c. That she may have her exemplary and punitive damages in the amount of \$250,000;
- d. For her attorneys fees incurred herein;
- e. For her costs incurred herein; and
- f. For such other and further relief as may be just and proper in the premises.

### THIRD CLAIM FOR RELIEF

(Breach of Contract)

30. All of the matters set forth herein above are incorporated herein by this reference.

31. Following plaintiff's ouster from possession of the property, defendants convert the personal property thereon as follows:

- a) defendants took same into their own possession.
- b) defendants did not give fair notice of the removal of the property
- c) defendants literally destroyed the property but cutting up fixtures, racks, and other equipment.

32. By these acts defendants deprived plaintiff of her possession of the property.

33. The fair market value of this property in place was and is approximately \$20,000.

34. The acts of defendants were willful, wanton and done with an evil mind and hand so as to be deserving of the assessment of exemplary and punitive damages.

35. A reasonable sum of those exemplary and punitive damages would be the amount of \$50,000.

WHEREFORE, plaintiff prays the judgments and orders of this court as follows:

- a. That she her special and compensatory damages as she may prove at trial;
- b. That she may have her exemplary and punitive damages in the amount of \$50,000;
- c. For her costs incurred herein; and
- d. For such other and further relief as may be just and proper in the premises.

Dated this 29 day of January, 2009.

Vickie R. Thompson  
VICKIE R THOMPSON

VERIFICATION

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa     )

VICKIE R THOMPSON, being first duly sworn, upon her oath, deposes and states:

That she is the plaintiff in the foregoing entitled and numbered cause; that she has read the foregoing complaint, and knows the contents thereof and the matters and things stated therein are true to her own knowledge, except as to those matters stated therein upon information and belief, and as to those matters she believes them to be true.

Vickie R. Thompson  
VICKIE R THOMPSON

SUBSCRIBED AND SWORN to before me this 29 day of January, 2009, by VICKIE R. THOMPSON, known to me or otherwise sufficiently identified to me..

[Signature]  
Notary Public

MY COMMISSION EXPIRES:  
7-1-2012



20071080170

Order No.: 88034480 - B

EXHIBIT *A*

PARCEL 1: 300-06-032B

THE WEST 260 FEET OF THE EAST 770 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

EXCEPT THE NORTH 755 FEET THEREOF;

EXCEPT THE SOUTH 308.15 FEET THEREOF.

PARCEL 2: 122-38-102

LOT 12, BLOCK 6, BELMONT PARK, ACCORDING TO BOOK 31 OF MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA.

EXCEPT THE SOUTHERLY 7 FEET.

## FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (the "Agreement") is entered into effective the 1<sup>ST</sup> day of October, 2008 (the "Effective Date") made and entered into by and between, Landmarc Capital & Investment Company, An Arizona Corporation (hereinafter "Lender"), Vickie R Thompson (hereinafter collectively referred to as "Debtor"), (each of the foregoing, a "Party" and collectively the "Parties")

### RECITALS

A. Lender extended to debtor a certain loan (the "Loan"), as evidenced by Promissory Note dated September 26, 2007, and Deed of Trust dated September 26, 2007 and recorded October 1, 2007 in Instrument Number 2007-1080170, record of Maricopa County, Arizona (all the foregoing documents are collectively referred to as the "Loan Documents").

B. Pursuant to the Deed of Trust, Debtor granted Lender a security interest in Debtors real properties at 11006 South 27th Drive, Laveen, AZ 85339 and 1824 East Broadway, Phoenix, AZ 85040 which properties are legally described as follows:

PARCEL 1: THE WEST 260 FEET OF THE EAST 770 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. EXCEPT THE NORTH 755 FEET THEREOF; EXCEPT THE SOUTH 328.15 FEET THEREOF;

PARCEL 2: LOT 12, BLOCK 6, BELMONT PARK, ACCORDING TO BOOK 31.OF MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA. EXCEPT THE SOUTHERLY 7 FEET.

C. Debtor defaulted in their obligations under the Loan Documents, and Lender exercised its rights under the Loan Documents and Arizona law to initiate foreclosure proceedings. A foreclosure sale is pending.

D. The Lender although under no obligation to do so, is willing to refrain from conducting the foreclosure sale, upon the terms and conditions set forth in this Agreement.

### AGREEMENTS

THEREFORE, in consideration of the mutual agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

1. **Incorporation of Recitals.** All the above recitals are incorporated to this Agreement and are warranted by the Parties to be true and correct.
2. **Principal Balance/Interest.** The current principal balance of the subject loan is \$398,500.00, with interest owed thereon since March 1, 2008, since non-payment of the April 1, 2008 payment.
3. **Reinstatement Amount.** The current reinstatement figure on the subject Deed of Trust as of September 30, 2008 is \$83,620.21:

\$27,895.02	Payments from 04/01/2008 up to and including 09/01/2008 @ \$4,649.17 per month
\$35,532.75	Accrued Late Charges
\$10,256.00	Unpaid Late Charges
\$11.39	Unpaid Charges
\$7,596.68	Unpaid Interest
\$2,328.37	Foreclosure fees and cost

4. **Cure of Default.** Payment of the amount reflected above (3) would cure the default and bring the loan to a current status.

**EXHIBIT B**

5. **Payments.**

- a. Payments received as of the date of the Agreement total \$0.00. This amount will be applied toward a portion of the arrears and the following monthly payments: None.
- b. Monthly payments will commence with the October 1, 2008 payment. The total monthly payment amount will be \$1,992.50 and will be paid to the Lender on or before the 1st of each month in which the payment becomes due.

6. **Taxes and Insurance.** The county property taxes and property insurance will continue to be paid by the Debtor.

7. **Agreement Term.** The Agreement is for a term of 12 months and will end with the September 1, 2009 payment.

8. **Reinstatement or Payoff.** At any time during the term of the Agreement the Debtor may pay the loan in full. The original maturity date has been extended to October 1, 2009. Payoff funds must be tendered no later than October 6, 2009 in order to avoid penalties. A request for a current payoff amount will be required.

9. **Forbearance.**

- a. The payments made under the Agreement shall not constitute reinstatement of the loan, and the loan shall not be deemed reinstated until all amounts required herein have been paid, which shall include the accruing payments that become due during the term of the Agreement.
- b. So long as the payments are paid as provided for in paragraph 5 hereinabove, the scheduled Trustee's Sale will not be conducted and the date will be continued from time to time. However, should Debtor fail to pay any of the payments provided for hereinabove, the failure to pay same shall constitute a default and will entitle Lender to complete the Trustee's Sale. In the event of a default, the Trustee's Sale will be conducted on the date of sale established by the most recent postponement declaration. There shall be no requirement for the Lender or the Trustee to furnish notice of each successive postponement date to Debtors, but those dates shall be available upon inquiry during regular business hours of the Trustee.
- c. It is understood all amounts paid pursuant to this Agreement are non-refundable, but same shall be applied to reduce the amount of indebtedness owed in connection with said loan.
- d. Lender may at its sole discretion extend this Agreement based on the Debtors ability to make timely payments and provide evidence to support granting an extension. Debtor should contact the Lender on or before the last payment due date to discuss future arrangements, if needed.

10. **Representation and Warranties.** As a condition to the Lenders obligations under this Agreement, Debtor represent and warrant to the Lender that the following representations are true on the date hereof and will remain true during the term of this Agreement.

- a. All authorizations, approvals and consents necessary for the execution and delivery by Debtor of this Agreement, and the consummation of the transactions contemplated hereby have been given; Debtor and each of them have full right, power and authority to enter into this Agreement and carry out the transactions described herein.
- b. This Agreement upon execution of the Parties shall be fully enforceable in accordance with its terms.



11. **Acknowledgement and Waiver.** The Debtor acknowledges that there is a Trustee Sale scheduled, and all of the Loan Documents executed related to the Property, are valid and binding and are enforceable in accordance with their respective terms, and Debtor hereby waives any and all claims, defenses or rights of setoff against Lender with respect to the Trustee's Sale and Loan Documents.
12. **No waiver by Lender.** Neither this Agreement nor actions taken by Lender pursuant to this Agreement shall constitute a waiver, termination, novation, discharge, substitution or abandonment of any term provisions of any Loan Documents, or of any right or right or privilege arising therefrom in respect of any and all indebtedness owed to Lender pursuant to the Loan Documents or any other agreement or any property or collateral which secures the payment thereof, and all such Loan Documents shall continue in full force and effect except as expressly set forth herein. Nothing herein or done pursuant hereto shall waive nor cure any previous or existing breach or event of default under the Loan Documents, nor any circumstances giving rise to Lenders rights to exercise any remedy or seek any relief.
13. **Binding Effect.** Except as otherwise set forth herein, this Agreement is personal to the Parties and none of the Parties will have the right or power to assign or delegate any of the provisions thereof will be binding upon inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns.
14. **Counterparts.** This agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument, and any Party may execute this Agreement by signing any such counterpart.
15. **Captions.** Captions and paragraph headings used herein are for convenience only and are not apart of this Agreement, and shall not be deemed to limit or alter any provisions hereof.
16. **Construction of Agreement.** Each of the Parties had an equal degree of control as the drafting of this Agreement and the various provisions set forth herein; the rule of construction that an ambiguous document is to be constructed against its drafter is accordingly inapplicable to this Agreement. All of the provisions of this Agreement shall be construed in accordance with their plain meaning and without partiality to any of the Parties. To the extent permitted by the context in which used words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa.
17. **Governing Law; Venue.** This Agreement was made and is to be performed in the State of Arizona, This Agreement shall be governed by the construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed entirely within that State, and any suit to enforce this Agreement or to assert any right or remedy under this Agreement shall be brought in any state or federal court sitting in Maricopa County, Arizona which shall be the exclusive venue for. And which Courts shall have exclusive jurisdiction with respect to, any such suit.
18. **Entire Agreement.** This Agreement and the Exhibits and other attachments referred to herein (all of which are incorporate by this reference) collectively set forth the entire agreement between the Parties as to the subject matter of this Agreement, and are subject to no promise, warranty or representation not expressly set forth or referred to herein. This Agreement may not be modified except by an instrument in writing signed by the Party to be bound.
19. **Attorney's Fees.** In the event of litigation or arbitration proceedings brought by any Party to enforce the terms of this Agreement or otherwise relating directly or indirectly to the transactions and agreements reflected herein, the prevailing Party, in addition to any and all other rights and remedies, will be entitled to recover all of its costs of litigation or arbitration, including but not limited to all reasonable attorney's fees and taxable costs. Attorneys fees claimed under this Section shall be awarded without reference to A.R.S. §12-341.01.

[SIGNATURES ON FOLLOWING PAGE]

DEBTOR:

VICKIE R. THOMPSON

Vickie R. Thompson

10-1-08  
Date

LENDER:

Julie Besler  
By: JULIE BESLER  
Is: SERVICING MANAGER

10-1-08  
Date

# EXHIBIT 'D'

COPY

1 Guttilla Murphy Anderson  
Ariz. Firm No. 00133300  
2 **Patrick M. Murphy** (Ariz. No. 002964)  
City North  
3 5415 E. High St., Suite 200  
Phoenix, Arizona 85054  
4 Email: pmurphy@gamlaw.com  
Phone: (480) 304-8300  
Fax: (480) 304-8301

5 Attorneys for the Receiver  
6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR MARICOPA COUNTY

8 STATE OF ARIZONA ex rel. LAUREN )  
KINGRY, Superintendent of the Arizona )  
Department of Financial Institutions, )

9 Plaintiff, )

10 v. )

11 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )

12 Defendant. )

Cause No. CV2009-020595

ORDER ESTABLISHING PROCEDURES  
FOR THE ADJUDICATION OF CLAIMS

ORDER RE: PETITION NO. 27

(Assigned to Judge Sam Myers)

Guttilla Murphy Anderson, P.C.  
City North  
5415 E. High Street, Suite 200  
Phoenix, AZ 85054  
(480) 304-8300

14  
15  
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21

The Receiver having filed Petition No. 27, and served it on the persons appearing on the Master Service List, and the Court having considered same, and it appearing to the Court that the matters requested by Petition No. 27 are reasonable, just and appropriate:

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. **DEFINITIONS**

Unless the contexts otherwise requires, the following terms shall have the meanings specified below:

1.1 **ADFI Claims** Any claim by the Arizona Department of Financial Institutions

1 pursuant to A.R.S. §6-131.01(B) for payment out of Receivership Assets.

2 1.2 **Administrative Claim**. Every cost or expense incurred on or after June 24,  
3 2009 on behalf of the Receiver or Landmarc, excluding ADFI Claims.

4 1.3 **Approved Claim**. A Claim that has been filed with the Receiver and has been  
5 approved by the Court.

6 1.4 **Claim**. A Claim is any of the following, regardless of whether or not it is the  
7 subject of pending litigation or has been reduced to judgment:

8 a. Any right to payment, liquidated, unliquidated, fixed, contingent,  
9 matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured,  
10 which right arose or accrued prior to the Receivership Date; or

11 b. Any right to an equitable remedy for breach of performance if such right  
12 gives rise to a right of payment, whether or not such right to an equitable remedy is  
13 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed,  
14 where such right arose or accrued prior to the Receivership Date; or

15 c. Any right to payment arising from the rejection by the Receiver of an  
16 executory contract or as a result of any Receivership Entity's failure to complete its  
17 obligations under a lease.

18 1.5 **Claimant**. A person entitled to assert a Claim against any Receivership Entity  
19 or against any Receivership Assets or any other property in the possession or control of the  
20 Receiver.

21 1.6 **Claims Bar Date**. September 24, 2010.

1           1.7    **Claims Report.** The Receiver’s report filed with the Court describing the  
2 Claims received by the Receiver and setting forth his recommendations concerning those  
3 Claims.

4           1.8    **Court.** The Superior Court of the State of Arizona for Maricopa County, in  
5 Cause No. CV2009-020595.

6           1.9    **Proof of Claim.** A Proof of Claim form provided by the Receiver in  
7 substantially the same form as Exhibit “A-1”, “A-2” or “A-3” to *Petition No. 27*.

8           1.10 **Receivership Assets.** Receivership Assets shall include the following:

9                   a.    All Receivership Assets as defined by the orders of the Court, including  
10 without limitation loans and real estate owned, controlled, managed or serviced by a  
11 Receivership Entity on June 24, 2009.

12                   b.    Proceeds, product, offspring, rents, interest or profits of or from  
13 Receivership Assets.

14                   c.    All interest earned and paid to the Receiver on Receivership Assets.

15           1.11 **Receiver.** Lauren Kingry, Superintendent of the Arizona Department of  
16 Financial Institutions.

17           1.12 **Receivership Date.** June 24, 2009.

18           1.13 **Receivership Entity.** The following:

19                   a.    Landmarc Capital & Investment Company (“Landmarc”);

20                   b.    Hayden Investments, LLC (“Hayden”);

21                   c.    Desert Trails Holdings, LLC (“Desert Trails”); and

1 d. Arizona Valuation Company, LLC  
2 1.14 **Secured Claim.** A Claim to the extent that it is secured by a properly perfected  
3 lien on Receivership Assets.

4 2. **NOTICE OF RIGHT TO FILE CLAIMS AND CLAIMS BAR DATE**

5 2.1 **Notice to Claimants.** The Receiver shall notify each Claimant of the Claims  
6 Bar Date and of the Claimant's right to file a Claim as provided herein by mailing to the  
7 Claimant a Notice to Claimants in a form substantially similar to Exhibit "B-1" to the  
8 Receiver's *Petition No. 27*. The Notice to Claimants shall be accompanied by a copy of the  
9 applicable Proof of Claim form, and any other information the Receiver deems appropriate  
10 and shall be deposited in the United States mail, postage pre-paid, addressed to the Claimant  
11 at the most recent address contained in the records of the Receiver within ten days of the  
12 entry of this Order.

13 2.2 **Notice by Publication.** The Receiver shall also publish a copy of the Notice by  
14 Publication in a form substantially similar to Exhibit "B-2" to the Receiver's *Petition No. 27*:

15 a. At least once for four consecutive weeks in a publication with statewide  
16 circulation within the State of Arizona with the first of such publications appearing  
17 within ten days of the entry of this Order; and

18 b. At least once in a publication with national circulation within twenty  
19 days of the entry of this Order.

20 3. **FILING OF CLAIMS**

21 3.1 **Filing a Claim.** Any person asserting a Claim against a Receivership Entity,

1 the Receiver, or the Receivership Assets or any other property in the possession of the  
2 Receiver, regardless of whether the Claim has been acknowledged by the Receiver or is the  
3 subject of pending litigation, shall complete, sign under oath, and file with the Receiver a  
4 Proof of Claim on or before the Claims Bar Date. The Proof of Claim shall be set forth on  
5 the form provided by the Receiver and shall contain all of the information requested in the  
6 form.

7         **3.2 Deadline for Filing a Claim.** Except as provided below, all Proofs of Claim  
8 shall be filed with the Receiver on or before the Claims Bar Date and any claim against a  
9 Receivership Entity, the Receiver, or the Receivership Assets or any other property in the  
10 possession or control of the Receiver, not set forth in a timely filed Proof of Claim shall be  
11 forever barred. A Proof of Claim shall be deemed filed on the date it is received by the  
12 Receiver. The Receiver, in his capacity as the Manager of Landmarc Capital Partners, LLC  
13 (“Partners”), shall file on or before the Claims Bar Date a claim on behalf of Partners with  
14 respect to loan participation interests that the Receiver reasonable believes that Partners  
15 asserts, and all other Proofs of Claim for claims asserted by Partners shall be filed as provided  
16 herein within 60 days following the replacement of the Receiver as the Manager of Partners.

17         **3.3 Place to File a Claim.** Each Proof of Claim shall be filed with the Receiver by  
18 mailing postage prepaid a properly completed Proof of Claim together with all required  
19 supporting documentation to the Receiver at the following address:

20                                 Landmarc Receiver  
21                                 P.O. Box 14050  
  Scottsdale, Arizona 85267



1           3.4    **Prohibition Against Filing Claim With The Court.** No Claim shall be filed  
2 with the Court and any Claim so filed shall not be considered properly filed as required under  
3 this Order and may subject the person filing the Claim to being held in contempt of court.

4           3.5    **Supporting Documentation.** Each Claim shall include all documentation  
5 supporting the claim as may be required by the Receiver. Original documents should not be  
6 filed with the Claim unless expressly requested by the Receiver. If a supporting document is  
7 not available, the Claimant must attach an explanation of why the document is not available.  
8 Claims filed by Lender Claimants, unless the Lender Claimant accepts the amounts set forth  
9 by the Receiver, shall include copies of personal checks, cashiers checks, wire transfer  
10 advices and other documents evidencing the transfer of funds loaned to the Receivership  
11 Entity, copies of each signed participation agreement or warehouse credit facility agreement,  
12 and a chronological accounting of all money received by the Claimant from any Receivership  
13 Entity, whether such payments are denominated as the return of principal, interest,  
14 commissions, late fees, or otherwise.

15           4.     **LENDER CLAIMS**

16           4.1    A Lender Claim for principal or accrued interest as of the Receivership Date  
17 due to the Claimant under a Warehouse Credit Facility Agreement and claims to ownership or  
18 a perfected security interest pursuant to such an agreement shall be made on a form provided  
19 by the Receiver for that purpose (“WCF Lender”). The Proof of Claim by a WCF Lender  
20 shall included:  
21

1           a.     A Schedule of all principal and accrued interest owed to the WCF  
2 Lender by LCI as of the Receivership Date containing such information as may be  
3 required by the Receiver;

4           b.     A Schedule of each loan and REO in which the WCF Lender claims an  
5 ownership or security interest containing such information as may be required by the  
6 Receiver together with the value attributed to that interest;

7           c.     A calculation of the general unsecured claim if any after deducting from  
8 the principal and interest owed under the WCF Agreement the values for the  
9 ownership or security interests claimed by the WCF Lender, provided that if the  
10 Receiver determines that value attributed to the WCF Lender's claimed interest is  
11 below its market value the Receiver may elect to acquire the interest for the value  
12 attributed to the interest by the WCF Lender rather than distribute the interest to the  
13 WCF Lender; and

14           d.     All supporting documentation as may be required by the Receiver.

15        4.2     A Lender Claim arising under a loan participation agreement to a specific  
16 percentage beneficial ownership or fee title, or both, of a loan or REO, shall be made on a  
17 form provided by the Receiver for that purpose ("Loan Participant Lender"). The Proof of  
18 Claim by a Loan Participant Lender shall include:

19           a.     A Schedule of each loan and REO in which the Loan Participant Lender  
20 claims an ownership interest containing such information as may be required by the  
21 Receiver; and

1           b. All supporting documentation as may be required by the Receiver.

2           **5. OTHER CLAIMS**

3           5.1 A Claimant asserting a Claim other than claims covered by Section 4, shall be  
4 made on the general purpose form provided by the Receiver.

5           **6. SECURED CLAIMS**

6           6.1 A Claimant asserting a Secured Claim shall demonstrate by credible evidence  
7 that in accordance with applicable laws, the Claimant possesses a valid and perfected security  
8 interest in a Receivership Asset. If a Secured Claim is approved by the Court, the Claimant  
9 making that claim shall be entitled, to the extent of the secured interest, to receive the asset in  
10 which the secured interest exists or the proceeds therefrom, after reimbursement to the  
11 Receiver of such costs or expenses as the Court may determine.

12           **7. POST RECEIVERSHIP INTEREST**

13           No claim for interest owed to the Claimant by a Receivership Entity on or after the  
14 Receivership Date shall be allowed by the Court.

15           **8. REDUCTION OF CLAIMS BY AMOUNTS RECEIVED**

16           As part of his recommendation on each claim, the Receiver shall identify the amounts,  
17 if any, that should be offset or deducted from the claim or paid to the Receiver by the  
18 Claimant as a condition for the release of his interest in a loan or REO and the reasons for  
19 such recommendations.

20           **9. RECEIVER'S CLAIMS REPORT AND THE COURT'S FINAL  
ADJUDICATION OF CLAIMS**

21           9.1 **Claims Listing.** Within twenty days of the Claims Bar Date, the Receiver shall

1 file with the Court and make available on the Receivership Website a listing setting forth all  
2 Claims, other than Administrative Claims and ADFI Claims, filed with the Receiver with the  
3 name of the claimant, the claim number, and the amount of the claim.

4       9.2    **Claims Reports.** The Receiver shall file with the Court and make available on  
5 the Receivership Website one or more reports setting forth the Receiver's final  
6 recommendations concerning each of the timely filed Claims ("Claims Report"). The  
7 Receiver may file separate Claims Reports for each type of claims such as claims by WCF  
8 Lenders, claims by Loan Participation Lenders, and all other claims.

9       9.3    **Notice to Claimants.** The Receiver shall notify each Claimant of the  
10 Receiver's recommendation concerning the Claimant's Claim in writing and deposited in the  
11 United States mail, postage pre-paid, addressed to the Claimant at the most recent address  
12 contained in the records of the Receiver on or before the date the Receiver files with the  
13 Court his Claims Report setting forth his recommendation on the Claimant's Claim. This  
14 notice may be made by serving a copy of the Claims Report or by a written document  
15 describing the Receiver's recommendation on the Claimant's Claim. At the time of filing  
16 each Claims Report, the Receiver shall mail a Notice of Filing Claims Report to each person  
17 who has timely filed a proof of claim, which notice shall briefly describe the subject of the  
18 Claims Report and indicate that the Claims Report is available for inspection on the  
19 Receivership Website or is available for a fee from the Receiver upon written request.

20       9.4    **Service of the Claims Report.** Each Claims Report shall be served on all  
21 persons appearing on the Master Service List in the same manner as for service of petitions



1 together with a notice of hearing for the Court's hearing on the petition on all persons  
2 appearing on the Master Service List and on all persons who served the Receiver with  
3 objections to the claims covered by the Claims Report and all Claimants whose Claims were  
4 objected to.

5 9.8 **Final Adjudication of Claims.** The Court may hold a hearing on objections to  
6 the Claims Report upon 10 days written notice to each person filing an objection to the  
7 Claims Report and each Claimant whose claim is objected to. Following the Court's hearing  
8 on a Claims Report, the Court shall enter an order approving or disapproving the claims filed  
9 with the Receiver which are the subject of the report.

10 **10. MISCELLANEOUS**

11 10.1 Claim shall be filed on or before the Claims Bar Date, except that:

12 a. Administrative Claims for administrative expenses shall be filed with the  
13 Receiver within sixty days from the date incurred;

14 b. Administrative Claims by the Receiver or the Receiver's agents,  
15 regardless of the date incurred, shall not be subject to a Claims Bar Date.

16 10.2 The Receiver, or any Claimant or other party in interest may file an objection to  
17 any Claim as provided in this Order.

18 10.3 All Administrative Claims shall be paid by the Receiver in accordance with the  
19 prior orders of this Court, or where required, by petition and order of the Court. All  
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10.4 Approved Claims, other than Administrative Claims, shall be paid as provided  
by further order of the Court.

Dated this 6 day of August, 2010.

~~HONORABLE SAM J. MYERS~~  
Judge of the Superior Court

1157-001(95826)

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