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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

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

Cause No. CV2009-020595

PETITION NO. 43  
RECEIVER'S CLAIMS REPORT ON THE  
WAREHOUSE CREDIT FACILITY  
CLAIMS

(Assigned to Judge Sam Myers)

Lauren Kingry, as the court appointed Receiver, reports to the Court on the Warehouse  
Credit Facility Claims and respectfully petitions the Court as follows.

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. . .

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## I. INTRODUCTION

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

2. On August 6, 2010, this Court entered its *Order Establishing Procedures for the Adjudication of Claims, Re: Petition No. 27* (“Order 27”), which established procedures for the Receiver to solicit and adjudicate claims by the creditors of Landmarc, Hayden Investments, LLC (“Hayden”), Desert Trails Holdings, LLC (“Desert Trails”) and Arizona Valuation Company, LLC (“Arizona Valuation”).

3. Order 27 set deadlines for filing claims with the Receiver (“Claims Bar Date”). Order 27 set September 24, 2010, as the Claims Bar Date for all claims other than non-loan participation claims by Landmarc Capital Partners, LLC (“Partners”). Under Order 27, Partners had until March 1, 2011, sixty days following the Receiver’s resignation as the manager of Partners, to file a claim for anything other than a loan participation claim.

4. On or before the applicable Claims Bar Date, the receiver received 186 claims. In accordance with Order 27, the Receiver has posted on the receivership website a listing of

1 all the claims filed with the Receiver. That listing can be found at [www.lcimortgage.com](http://www.lcimortgage.com).

2 The 186 filed claims categorized as follows:

<u>Claim Type</u>	<u>Number</u>
WCF Claims to principal, interest and loan interests	11
Loan Participation Claims to loan participation interests	79
Borrower claims	55
Homeowners Association claims	6
Trade creditor claims	4
Taxing authority claims	5
Claims to interests in Landmarc Capital Partners	4
Other	22

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10 5. This Petition No. 43 contains the Receiver's recommendations concerning the  
11 eleven (11) Warehouse Credit Facility claims ("WCF Claims") filed with the Receiver.

## 12 II. WCF AGREEMENTS

13 6. Landmarc, a hard money lender, originated mortgages using primarily investor  
14 supplied capital to fund loans secured by real property. The investor supplied capital was  
15 raised by Landmarc through a variety of means, one being Warehouse Credit Facility  
16 ("WCF") arrangements. The relationship between each WCF Lender and Landmarc was one  
17 of lender-borrower. Under such arrangements, a WCF Lender would agree to loan Landmarc  
18 money to be used in funding Landmarc's loans in exchange for an agreed percentage return  
19 on their money. As a mortgage originator, Landmarc would then find borrowers to make  
20 loans to ("retail loans"), execute a loan agreement with such borrower, fund the loan by  
21 drawing in whole or in part on a WCF Lender's line of credit, and obtain a deed of trust

1 securing Landmarc’s interest in such loan. From time to time, Landmarc would repurchase  
2 part or all of the interests in a retail loan assigned to a WCF Lender with Landmarc’s own  
3 funds, funds provided by another WCF Lender, a loan participation lender, or Landmarc  
4 Capital Partners, LLC.

5           7. As part of the WCF loan arrangement, the parties would execute a Warehouse  
6 Credit Facility Loan Agreement, a Warehouse Credit Facility Secured Promissory Note, and a  
7 Warehouse Credit Facility Security Agreement (collectively referred to hereafter as the  
8 “WCF Agreements”). Copies of the WCF Agreements with one of the WCF Lenders, Lydia  
9 Ball, are attached as Exhibits A, B and C respectively.<sup>1</sup> The WCF Agreements provide that  
10 the WCF Lender is granted a security interest in all of Landmarc’s right, title and interest in  
11 “certain specific real estate loan transactions . . . assigned to Lender from time to time by  
12 [Landmarc] under the terms of a Warehouse Credit Facility (‘WCF’) loan arrangement . . .  
13 including . . . all documents and agreements relating to [the assigned retail loans] that are  
14 assigned to Lender from time to time under the terms of the WCF and that have not been  
15 repurchased by [Landmarc] . . . [a]ll of the books and records of [Landmarc] relating to the  
16 [assigned retail loans] . . . [and] cash proceeds [from assigned retail loans].” *See* Exhibit C,  
17 section 2.1, at page 1, and Schedule A at page 9. In addition, under the WCF Agreements,  
18 Landmarc agreed to assign a beneficial interest in the deeds of trust securing the retail loans  
19 funded by the WCF Lender. *See* Exhibit A, sections 1 & 5 at pages 1-2 and Exhibit C,  
20

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21 <sup>1</sup> Although there are some differences, for the most part Landmarc used the same form WCF Agreements for each WCF Lender, rendering them largely similar in substance particularly as they relate to issues addressed herein.

1 section 2.1, at page 1. In other words, each WCF Lender was given a security interest in the  
2 retail loan, the Promissory Note acquired by Landmarc under the loan, as well as the cash  
3 proceeds resulting from the loan to the extent that loan was funded by the WCF Lender and  
4 was not repurchased by Landmarc.

### 5 III. WCF LENDER CLAIMS

6 8. The Receiver has determined that as of June 24, 2009, the inception date of this  
7 receivership<sup>2</sup> (“Receivership Date”), there were eleven (11) WCF Lenders with outstanding  
8 obligations owed to them by Landmarc under one or more WCF Agreements. The Receiver  
9 received WCF Lender claims from all eleven (11) of those WCF Lenders or their successors.  
10 Specifically, the Receiver received claims from: the Lydia Ball Revocable Trust dated August  
11 26, 2009 (“BallWare”); the Gubin Family Trust dated May 27, 1992, as amended and the  
12 Helen and the Stephen Gubin Charitable Remainder Trust (collectively referred to as  
13 “Gubin”); The Madelene Kepes Revocable Living Trust dated May 22, 1984 as amended  
14 (“KepesWare”); LazyE, LLC (“LazyE”); Litchfield Funding, LLC (“Litchfield”); Bruce  
15 Murray (“Murray”); The Eugene & Lenore Schupak Family Trust dated April 4, 1991  
16 (“Schupak”); SEM Investments, LLC (“SEM”); Stoneman Properties, LLC Defined Benefit  
17 Plan (“Stoneman”); TBM Associates, LLC and TBM Associates, LLC as successor to The  
18 Eugene & Lenore Schupak Family Trust of 5 of its WCF Agreements (“TBM”); and the  
19 Wesley A. & Marlene White Trust dated June 12, 1996 (“WhiteWare”). All of these WCF  
20 Lender claims were timely filed with the Receiver and are summarized below:

21 <sup>2</sup> June 24, 2009, is the date the Court entered its *Order Appointing Receiver*, appointing the  
Superintendent of the Arizona Department of Financial Institutions as the Receiver of Landmarc.

	<u>WCF Lender</u>	<u>Claim No.</u>	<u>Principal &amp; Interest</u> <sup>3</sup>	<u>Security</u> <sup>4</sup>
1	BallWare	8546	\$403,433	3
2	Gubin	7338	\$5,124,035	21
3	KepesWare	7431	\$1,950,282	16
4	LazyE <sup>5</sup>	7471	\$767,912	9
	Litchfield	8003	\$4,166,086	25
5	Murray	8089	\$250,524	4
6	Schupak	8210	\$1,548,483	1
	SEM <sup>5</sup>	8221	-0-	-0-
7	Stoneman <sup>5</sup>	8297	\$623,825	4
8	TBM	8325	\$10,084,060	16
9	WhiteWare	8381	\$1,172,261	11

10 9. These WCF Lender claims raise a number of issues relating to the validity or  
11 enforceability of the security and other interests asserted by the claimants. Most notably,  
12 Landmarc often failed to record an assignment of a beneficial interest in the deed of trust to  
13 the interested WCF Lender as it had agreed to do.<sup>6</sup> Furthermore, in some cases, Landmarc  
14 failed to file a financing statement to perfect the WCF Lender's security interest in the  
15 promissory notes to the retail loans<sup>7</sup>. Finally, all but one of the financing statements that were

16 \_\_\_\_\_  
17 <sup>3</sup> The total amount of principal and interest claimed to be due under the claimant's WCF  
18 Agreement(s).

19 <sup>4</sup> The number of loans in which a security interest or other interest is claimed.

20 <sup>5</sup> The Receiver is the assignee of this WCF Claimant.

21 <sup>6</sup> Of the 110 loans in which WCF Lenders claim an interest, only 27 have a recorded Assignment of  
Beneficial Interest to the respective WCF Lender.

<sup>7</sup> According to the terms of its WCF Agreements, Landmarc undertook the obligation to file a  
financing statement on behalf of each WCF Lender. However, Landmarc appears to have only filed  
UCC-1 Financing Statements for 5 of the 11 WCF Lenders: BallWare, Gubin, KepesWare, Murray,  
and WhiteWare. TBM filed its own UCC-1. No one filed a UCC-1 for Schupak, Litchfield, Lazy E,  
SEM, or Stoneman.

1 filed, fail to describe with specificity the collateral covered, such as a listing of the borrowers,  
2 loan numbers, or underlying real property security.

3       10.     However, upon review of Landmarc’s books and computer systems, the  
4 Receiver was able to identify the retail loan interests of each WCF Lender. The Receiver was  
5 also able to ascertain, among other things, the amount and percentage interest of each WCF  
6 Lender in its respective loans, the current status of these loans, whether the WCF Lender held  
7 as of the Receivership Date an assignment of beneficial interest or fee title to any of its loans  
8 or collateral. In this report the Receiver makes his recommendations concerning the  
9 enforceability of each WCF Lender’s security or other interests in most of the loans, cash  
10 proceeds, and REO properties. Some claimed interests in REO properties must be deferred  
11 until the resolution of the Loan Participation Lenders claims.<sup>8</sup>

12       11.     Of the 110 interests in Landmarc loans claimed by WCF Lenders, 26 can be  
13 easily resolved by the fact that those interests are reflected in a conveyance of fee title or the  
14 assignment of the deed of trust prior to the Receivership Date. An additional ten (10) claimed  
15 interests can be confirmed because of a pending lawsuit and recorded *Notice of Lis Pendens*,  
16 or by payoff funds held in trust by Landmarc for the claimant. Unfortunately, 74 of the  
17 claimed interests cannot be confirmed on one of these basis. In order for a WCF Lender to  
18 obtain its claimed interest in this latter group it must demonstrate the existence of a perfected  
19 security interest in the loan and deed of trust as of the Receivership Date. As discussed  
20 below, most of the remaining claimed interests are supported in whole or in part by a

21 \_\_\_\_\_  
<sup>8</sup> See paragraphs 46 through 48.



1 perfected security interest and can be confirmed at this time. The remaining claimed interests  
2 are not supported by a perfected security interest, recorded assignment or deed, *Notice of Lis*  
3 *Pendens* or funds held in trust, and therefore must rely on a constructive trust, equitable lien,  
4 or other legal theory in order to be confirmed by the Court. Since that issue is also presented  
5 by a large number of the Loan Participant Lender claims, the Receiver recommends that these  
6 remaining claimed interests be determined at the time the Loan Participant Lenders claims are  
7 adjudicated.

#### 8 IV. PERFECTION OF SECURITY INTERESTS

##### 9 A. Introduction.

10 12. There is a distinction between “attachment” and “perfection” of a security  
11 interest. Attachment is the creation of a security interest, while perfection relates to doing  
12 some additional act (such as filing a financing statement or taking possession of the  
13 collateral) required to make the security interest effective as against third parties. *See, e.g.*  
14 *Bramble Transp., Inc. v. Sam Senter Sales, Inc.*, 294 A.2d 97, 10 U.C.C. Rep. Serv. 939 (Del.  
15 Super. Ct. 1971), *aff'd*, 294 A.2d 104, 10 U.C.C. Rep. Serv. 939 (Del. 1972); *see also*, 68A  
16 AM. JUR. 2D SECURED TRANSACTIONS § 240 (2010).

17 13. A security interest “attaches to collateral when it becomes enforceable against  
18 the debtor with respect to the collateral . . . .” A.R.S. § 47-9203(A).<sup>9</sup> Generally a financing  
19  
20

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21 <sup>9</sup> Generally attachment requires that (i) the parties execute a security agreement; (ii) the secured party gives value; and (iii) the debtor has rights in the collateral. *See* A.R.S. § 47-9203.

1 statement is required to be filed to perfect the security interest. *See Raleigh Industries of*  
2 *America, Inc. v. Tassone*, 74 Cal. App. 3d 692, 22 U.C.C. Rep. Serv. 1235 (2<sup>nd</sup> Dist. 1977).<sup>10</sup>

3         14. The WCF Agreements required Landmarc to execute and file all financing  
4 statements deemed necessary by the WCF Lender to establish and maintain its perfected  
5 security interest. *See Exhibit C*, section 3.10, at page 3. In those cases where Landmarc  
6 attempted to comply with this requirement, Landmarc would prepare and file a Financing  
7 Statement (“UCC-1”) that merely described the collateral as “full or partial Deeds of Trust  
8 owned by Landmarc Capital & Investment Company up to the amount borrowed as set forth  
9 in the WCF Loan Agreement” and incorporated a copy of Schedule A to the WCF Security  
10 Agreement. Schedule A did not contain a specific listing of the loans assigned to the WCF  
11 Lender. It appears that Landmarc did not bother to keep the Schedule A and the UCC-1 up to  
12 date with a specific listing of loans currently assigned to the WCF Lender, because it would  
13 have required additional paperwork on the part of Landmarc and provided no benefit to  
14 Landmarc.<sup>11</sup> A copy of the UCC-1 filed for one of the WCF Lenders, BallWare, is attached  
15 as Exhibit D.<sup>12</sup> Only one WCF Lender, TBM, itself filed a financing statement that contained  
16 a “specific listing” of the retail loans in which it asserts a security interest. A copy of TBM’s  
17 UCC-1 is attached hereto as Exhibit E and was prepared and filed by TBM. Finally,

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18 <sup>10</sup> In the case of a security interest in a loan, perfection could be obtained by the creditor taking  
19 possession of the promissory note, however, none of the WCF Lenders in this case appear to have  
possession of any of the promissory notes in which they claim an interest.

20 <sup>11</sup> Since WCF Lenders were often being placed into and taken out of loans, it would have created a  
significant amount of work for Landmarc to keep the Schedule A and the UCC-1 filings up to date.

21 <sup>12</sup> The description of the collateral in Exhibit D is identical to the description contained in all of the  
filed UCC-1’s, except for the UCC-1 filed by TBM. The UCC-1 filed for Gubin, has the same  
description but does not include the attached Schedule A.

1 Landmarc did not file any UCC-1 with respect to the security interests granted to Litchfield,  
2 Stoneman, SEM or LazyE.<sup>13</sup>

3 15. The WCF Agreements also provide that concurrent with the execution of the  
4 WCF Loan Agreement, Landmarc will execute “Assignments of Deeds of Trust to Lender.”  
5 Although the WCF Agreements do not expressly require Landmarc to record such  
6 assignments, the WCF Lenders reasonably would have expected them to be recorded and  
7 Landmarc often failed to either execute or record the assignments.

8 16. The resolution of the WCF Claims requires an analysis of the state of affairs at  
9 the date of the Receiver’s appointment since at that time the Receiver acquires the same  
10 status as a lien creditor and takes priority over an unperfected security interest. *Gibson v.*  
11 *Resolution Trust Corp.*, 750 F. Supp. 1565, 1573-74 (S.D. Fla. 1990); *Rockford Housing*  
12 *Authority v. FDIC*, 1986 W.L. 14130 (N.D.Ill. 1986); *see also, Casey v. Cavaroc*, 96 U.S.  
13 467, 24 L.Ed. 779 (1878). Accordingly, not only the interests of the Receiver but the  
14 interests of the general creditors of Landmarc are impacted by whether the security interest of  
15 each WCF Lender has been properly perfected.

16 17. Accordingly, the WCF Lenders’ claimed interests fall into one of the following  
17 categories:

18 a. A properly recorded deed to the WCF Lender for the assigned interest in  
19 the loan as of the Receivership Date, or with respect to loans that had not been  
20

21 <sup>13</sup> Each of these, however, in many cases have an assignment of deed of trust, a deeded interest, or a  
recorded *Notice of Lis Pendens* upon which they rely to establish their interest.

1 foreclosed as of the Receivership Date, a properly recorded assignment of deed of trust  
2 for the assigned interest in the loan.<sup>14</sup>

3 b. No recorded assignment or deed, but a filed UCC-1 containing a  
4 “specific listing” of the assigned interests. This category applies only to interests  
5 claimed by TBM.<sup>15</sup>

6 c. No recorded assignment or deed, but a filed UCC-1 without a “specific  
7 listing” of the assigned interests. This category applies to six of the WCF Lenders<sup>16</sup>  
8 with respect to one or more of their claimed interests. This category presents the issue  
9 of whether the security agreement and the UCC-1 sufficiently describe the collateral.<sup>17</sup>

10 d. Although there is no filed UCC-1 or recorded assignment or deed as of  
11 the Receivership Date, the Claimant had a pending lawsuit asserting a claim in a loan  
12 or REO for its assigned interest and had recorded a *Notice of Lis Pendens*. This  
13 category applies to all but two of the interests claimed by LazyE and two of the  
14 interests claimed by Stoneman.<sup>18</sup>

15 e. No *Notice of Lis Pendens*, no filed UCC-1 or recorded assignment, and  
16 as to REO as of the Receivership Date there is no recorded deed. This category  
17 applies to one of the interests claimed by BallWare, ten of the interests claimed by  
18 Gubin, five of the interests claimed by KepesWare, six of the interests claimed by

19 <sup>14</sup> Those interests in this category could in many cases qualify for transfer under this Court’s  
20 previous Order Nos. 4, 8, 9 or 24. *See* paragraph 45 below.

21 <sup>15</sup> *See* paragraph 33 below.

<sup>16</sup> BallWare, GubinWare, KepesWare, Murray, Schupak, and WhiteWare.

<sup>17</sup> *See* paragraphs 34 - 41 below.

<sup>18</sup> *See* paragraph 44 below.

1 Litchfield, three of the interests claimed by Murray, eight of the interests claimed by  
2 TBM, and six of the interests claimed by WhiteWare. One of these interests can be  
3 confirmed now as it was in proceeds held in trust by Landmarc on the Receivership  
4 Date, and the remaining interests must be addressed at subsequent proceedings.<sup>19</sup>

5 **B. Security interests in promissory notes and deeds of trust are governed by**  
6 **Arizona's version of the Uniform Commercial Code.**

7 18. The perfection of an interest in real property is generally not covered by  
8 Chapter 9 of Arizona's version of the Uniform Commercial Code ("Arizona's Code"). *See*  
9 A.R.S. §47-9109(D)(11); *see also, Rodney v. Arizona Bank*, 172 Ariz. 221, 223-24, 836 P.2d  
10 434, 436-37 (App. 1992). Accordingly, in order to acquire an interest in real property  
11 enforceable as to third parties, it must be reflected in a recorded deed of trust, a recorded  
12 assignment of a properly recorded deed of trust, or a recorded deed conveying fee title. *See,*  
13 *Rodney*, 172 Ariz. at 223-24, 836 P.2d at 436-37. In contrast, Chapter 9 of Arizona's Code  
14 does govern security interests in a promissory note secured by a deed of trust in real property,  
15 and accordingly, must be perfected in accordance with the Arizona Code. *See* A.R.S. § 47-  
16 9109(A)(3); *see also, Rodney*, 172 Ariz. at 223-24, 836 P.2d at 436-37. Generally, perfection  
17 of an interest in a promissory note under Arizona's Code can be achieved by one of two  
18 means. One method is to file a financing statement evidencing a secured party's interest in  
19 particular collateral. *See* A.R.S. § 47-9312(A). Alternatively, possession of the collateral  
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<sup>19</sup> *See* paragraphs 46-48 below.

1 (i.e. the promissory note) by the secured party will also perfect a security interest.<sup>20</sup> See  
2 A.R.S. §47-9313(A). Importantly, a deed of trust follows the promissory note that it secures,  
3 and as such, acquiring an interest in a promissory note subsequently gives the purchaser an  
4 interest in the deed of trust securing the note. See *Rodney*, 172 Ariz. at 224, 836 P.2d at 437  
5 see also, A.R.S. §47-9203(G).

6 **C. The Content Requirements for a Financing Statement (UCC-1).**

7 19. The content requirements for a financing statement are set forth in A.R.S. §47-  
8 9502(A), which states that: “. . . a financing statement is sufficient only if it:

- 9 1. Provides the name of the debtor;  
10 2. Provides the name of the secured party or a representative of the  
secured party; and  
11 3. Indicates the collateral covered by the financing statement.”

12 20. For the sake of uniformity, A.R.S. §47-9521(A) prescribes an acceptable form  
13 of an initial financing statement (“UCC-1 Financing Statement”) (hereinafter, “UCC-1”).

14 21. Each of the six filed UCC-1’s provide both the name of the debtor and the name  
15 of the secured party. Furthermore, each of the six filed UCC-1’s provide a description of  
16 collateral, but with varying degrees of specificity. If a financing statement fails to sufficiently  
17 describe the collateral it covers, it is ineffective to perfect such interest in the collateral. See,  
18 e.g., *Matter of Katz*, 563 F.2d 766, 768-69, 22 U.C.C. Rep. Serv. 1282 (5th Cir. 1977). There  
19 are two different ways to ensure that a financing statement sufficiently indicates the collateral  
20

21 \_\_\_\_\_  
<sup>20</sup> As noted, *supra*, n. 10, none of the WCF Lenders in this matter appear to possess, under the  
definition of Arizona’s Code, any of the promissory notes in which they claim an interest.

1 that it covers: (1) by including a description that meets the requirements of A.R.S. §47-9108,  
2 or (2) by an indication that it covers “all assets,” or “all personal property.” A.R.S. §47-9504.

3 22. The adequacy of the description of the collateral in this case is governed by  
4 A.R.S. §47-9108, which provides as follows:

5 A. Except as otherwise provided in subsections C, D and E, a  
6 description of personal or real property is sufficient, whether or not it is  
7 specific, if it reasonably identifies what is described.

8 B. Except as otherwise provided in subsection D, a description of  
9 collateral reasonably identifies the collateral if it identifies the collateral by:

- 10 1. Specific listing;
- 11 2. Category;

12 3. Except as otherwise provided in subsection E, a type of collateral  
13 defined in this title;

14 4. Quantity;

15 5. Computational or allocational formula or procedure; or

16 6. Except as otherwise provided in subsection C, any other method, if  
17 the identity of the collateral is objectively determinable.

18 C. A description of collateral as “all the debtor’s assets” or “all the  
19 debtor’s personal property” or using words of similar import does not  
20 reasonably identify the collateral.

21 D. Except as otherwise provided in subsection E, a description of a  
security entitlement, securities account or commodity account is sufficient if it  
describes:

1. The collateral by those terms or as investment property; or
2. The underlying financial asset or commodity contract.

E. A description only by type of collateral defined in this title is an  
insufficient description of:

1. A commercial tort claim; or

2. In a consumer transaction, consumer goods, a security entitlement, a  
securities account or a commodity account. (Emphasis added)

23. The Official Comment to the analogous U.C.C. section to A.R.S. §47-9108,  
states that “[t]he test of sufficiency of a description [of collateral in a financing statement] . . .

1 is that the description do the job assigned to it: make possible the identification of the  
2 collateral described. *See* U.C.C. § 9108 cmt. 2.

3         24.       The comments to U.C.C. §9-502<sup>21</sup> describe with more specificity the purpose  
4 that a financing statement serves in a transaction and its underlying policy. Official  
5 Comment 2, entitled “Notice Filing,” states that:

6               “[w]hat is required to be filed is not, as under pre-UCC chattel mortgage and  
7 conditional sales acts, the security agreement itself, but ***only a simple record providing***  
8 ***a limited amount of information*** (financing statement) . . . . The notice itself ***indicates***  
9 ***merely that a person may have a security interest in the collateral indicated.***  
10 ***Further inquiry from parties concerned will be necessary to disclose the complete***  
11 ***state of affairs*** . . . . Even in the case of filings that do not necessarily involve a series  
12 of transaction (e.g., a loan secured by a single item of equipment), ***a financing***  
13 ***statement is effective to encompass transactions under a security agreement not in***  
14 ***existence and not contemplated at the time the notice was filed***, if the indication of  
15 collateral in the financing statement is sufficient to cover the collateral concerned.  
16 ***Similarly, a financing statement is effective to cover after-acquired property of the***  
17 ***type indicated and to perfect with respect to future advances under security***  
18 ***agreements, regardless of whether after-acquired property or future advances are***  
19 ***mentioned in the financing statement*** and even if not in the contemplation of the  
20 parties at the time the financing statement was authorized to be filed.” (Emphasis  
21 added.)

U.C.C. § 9502, cmt. 2. (the same language is used in cmt. 2 to the pre-2001 statute, § 9402).

16         25.       There is an important interplay between the financing statement and the  
17 associated security agreement. Generally, a security agreement governs the rights of the  
18 parties to the agreement, whereas a financing statement governs the rights of third parties.  
19 *See, Sierra Finance Corp. v. Excel Laboratories, LLC*, 223 Wis. 2d 694, 701, 589 N.W.2d  
20 432, 435, n.2 (Ct. App. 1998). However, a description of collateral in a financing statement  
21 can neither reduce nor enlarge the security interest actually created by the parties in the

---

<sup>21</sup> A.R.S. §47-9502.



1 security agreement. *See id.* at 702, 589 N.W.2d at 435, n.2. When a financing statement  
2 sufficiently puts a third party on notice and refers to an associated security agreement, it is the  
3 security agreement that courts will look to in determining what collateral is covered by such  
4 financing statement. *See, e.g., In re Thibodeau*, 6 U.C.C. Rep. Serv. 873 (Bankr. D. Me.  
5 1969) (noting that a security agreement in effect operates as a statute of frauds between  
6 parties and must sufficiently identify the collateral).

7         26. The case law underscores this idea that a financing statement’s purpose is  
8 simply to put third parties on notice that a security interest may be present. *See, e.g., Elf*  
9 *Atochem North America, Inc. v. Celo, Inc.* (“*Celo*”), 187 Ariz. 89, 927 P.2d 355 (Ariz. Ct.  
10 App. 1996); *In re Boogie Enterprises, Inc.*, 866 F.2d 1162 (9th Cir. 1989) (applying  
11 California Commercial Code). In *Celo*, the court held that where a UCC-1 provided the type  
12 of collateral as “equipment,” and cited two independent conditional-sale contracts, this  
13 description was sufficient. *See Celo*, 187 Ariz. at 97, 927 P.2d at 363. The court explained  
14 that where a description of collateral “directs an inquiring party to another document which  
15 has an existence, as well as legal and contractual significance, separate and apart from the  
16 UCC-1 filing, the filing party has satisfied the mandates of [the Code].” *See id.* The court  
17 then went on to distinguish related cases on the grounds that, either the omitted document had  
18 no legal significance separate from the UCC-1 filing, or the UCC-1 description was otherwise  
19 inadequate.

20         27. The *Celo* court acknowledged that, where a financing statement refers to a  
21 tangible item, including a security agreement, but fails to attach the security agreement, this

1 will not render the financing statement’s description of collateral deficient. *See id.* (citing *In*  
2 *re Tebbs Constr. Co, Inc.*, 39 B.R. 742 (E.D. Va. 1984)); *cf. Chase Manhattan Bank, N.A. v. J*  
3 *& L General Contractors, Inc.*, 832 S.W.2d 204 (Tex. Ct. App. 1992).

4 **D. The Requirements for the Security Agreement - The Composite Rule**

5 28. As stated previously, the purpose of the description of collateral in a financing  
6 statement is to put third parties on inquiry notice of the existence of a security interest. The  
7 purpose of a description of collateral in a security agreement is to act as a statute of frauds  
8 between the parties. *See*, U.C.C. § 9203, cmt. 3 (analogous section to A.R.S. § 47-9203); *see*  
9 *generally*, U.C.C. § 9110 cmt. 2. In addition, a security agreement’s collateral description  
10 serves an evidentiary purpose as well. *See* U.C.C. § 9108, cmt. 2 (discussed below).

11 29. Generally a security agreement defines the extent of the security interest of the  
12 creditor, and is interpreted the same as any other contract. *See, e.g., Safe Deposit Bank &*  
13 *Trust Co. v. Berman*, 393 F.2d 401, 5 U.C.C. Rep. Serv. 1 (1st Cir. 1968) (referring to U.C.C.  
14 § 9-102(a)(73), the U.C.C. section analogous to A.R.S. § 47-9102(A)(73)). Under A.R.S. §  
15 47-9108, the general rule is that the description must reasonably identify the collateral.

16 30. The Official Comment to U.C.C. § 9108 helps shed light on the collateral  
17 description requirements under the statute. Importantly, Official Comment 2 notes that the  
18 primary purpose of defining collateral in a security agreement is evidentiary – that it enables  
19 one to make possible the identification of the collateral described. *See* U.C.C. § 9108 cmt. 2.  
20 In contrast to a financing statement where a description such as “all the debtor’s assets” is

21

1 sufficient, a security agreement must articulate the collateral covered with more specificity.

2 *See id.*

3         31. Many courts have been relatively lax in determining what constitutes a  
4 “security agreement” for purposes of evidencing a security interest in particular collateral.  
5 These courts have been persuaded by arguments that a security agreement does not have to  
6 explicitly call itself such, and that a collection of documents or records evidencing an intent  
7 to create a security interest in particular collateral will be sufficient to accomplish such  
8 creation. *See, e.g., In re Weir-Penn, Inc.* (“*Weir-Penn*”), 344 B.R. 791, 794-95 (Bankr. N.D.  
9 W. Va. 2006). The courts focus on the underlying policy that to create a security interest, one  
10 must simply demonstrate an intent of the parties to create such an interest in particular  
11 collateral. *See id.* at 793 (*citing* Terry M. Anderson, et al., *Attachment and Perfection of*  
12 *Security Interests Under Revised Article 9: A “Nuts and Bolts” Primer*, 9 AM. BANKR. INST.  
13 L.REV. 179, 188 (2001)). Known as the “composite rule” or “composite documents theory”,  
14 the Courts permit the authentication requirement to be satisfied by a collection of documents,  
15 no one of which contains granting language, but which in the aggregate disclose an intent to  
16 grant a security interest in specific collateral. *See* 9 AM. BANKR. INST. L.REV. at 188. In  
17 other words, under the composite rule a security agreement may exist by virtue of several  
18 documents that collectively indicate an intent to create a security interest and together satisfy  
19 the requirements for an enforceable security agreement, even though none of the documents  
20 standing alone would be satisfactory. *See, e.g., In re Esteves Ortiz*, 297 B.R. 356 (Bankr. D.  
21 P.R. 2002), order *aff’d*, 295 B.R. 158 (B.A.P. 1<sup>st</sup> Cir. 2003) (applying Puerto Rico law); *In re*

1 *Cantu*, 221 F.3d 1341, 41 U.C.C. Rep. Serv. 2d 1249 (8th Cir. 2000) (applying Arkansas  
2 law); *In re Cheqnet Systems, Inc.*, 227 B.R. 166, 39 U.C.C. Rep. Serv. 2d 246 (Bankr. E.D.  
3 Ark. 1998) (applying Arkansas law); *In re Wingspread Corp.*, 107 B.R. 456 (Bankr. S.D.N.Y.  
4 1989) (applying New York law).

5 32. On this same note, courts allow parol evidence to be admitted to satisfy the  
6 evidentiary role of the collateral description requirement. *See* U.C.C. § 9-203, cmt. 3; *see*  
7 *also*, U.C.C. § 9-108, cmt. 2; *In re Ace Lumber Supply, Inc.* (“*Ace Lumber*”), 105 B.R. 964,  
8 965-66 (Bankr. D. Mont. 1989). In other words, much like the composite rule, a collection of  
9 documents can be admitted and used to demonstrate exactly what collateral a security  
10 agreement covers under a commonly recognized exemption to the parol evidence rule. *See*,  
11 *e.g.*, *Ace Lumber*, 105 B.R. at 965-66.

## 12 V. ADEQUACY OF EACH SECURITY AGREEMENT AND UCC-1

### 13 A. TBM’s UCC-1 includes a “specific listing” of claimed secured interests.

14 33. TBM’s UCC-1 includes an attached and incorporated Schedule A which  
15 includes a “specific listing” of loans by borrower name, the amount of each loan, and TBM’s  
16 claimed percentage interest in each loan<sup>22</sup>. Additionally, Schedule A to TBM’s financing  
17 statement indicates that it includes “[a]ll documents and agreements relating to [the retail  
18 loans] that are assigned to [that WCF Lender]. . .” which, by implication, includes as  
19 collateral the promissory notes related to each retail loan. Finally, Schedule A to TBM’s  
20 financing statement explicitly states that it covers “[c]ash proceeds relating to Specific

21 \_\_\_\_\_  
<sup>22</sup> *See* Exhibit E, at page 2.

1 Assigned Loan Transactions that are assigned to Lender from time to time . . . .” TBM’s  
2 financing statement is therefore sufficient to perfect its interest in at least some of the loans  
3 listed.<sup>23</sup>

4 **B. The UCC-1’s which reference the WCF Loan Agreement are sufficient to perfect**  
5 **the WCF Lender’s security interest.**

6 34. BallWare, KepesWare, Murray, WhiteWare and Gubin each have financing  
7 statements filed on their behalf, and each of their UCC-1’s states in the description of  
8 collateral section that the collateral in which they hold a security interest includes “[f]ull or  
9 partial Deed of Trust owned by Landmarc Capital & Investment Company up to the amount  
10 borrowed as set forth in the WCF Loan Agreement.” See Exhibit D, page 1. Additionally,  
11 each UCC-1, except the two for Gubin, contains as an attachment a copy of the Schedule A to  
12 the WCF Security Agreement. See Exhibit C, page 9 and Exhibit D, page 2. Although these  
13 WCF Lenders’ UCC-1’s do not contain a “specific listing” of the collateral covered, the  
14 Receiver believes that each still meet the collateral description requirements of the Code.

15 35. The Official Comment 2 to U.C.C. § 9502 underscores the idea that “[w]hat is  
16 required to be filed [in a financing statement] is . . . only a simple record providing a limited  
17 amount of information . . .” that is just enough to give notice to third parties that the debtor’s

---

18 <sup>23</sup> The Receiver has identified two loans, the Ireland and MSI Westgate loans, in which TBM’s  
19 UCC-1 asserts a percentage interest greater than shown in the records of Landmarc. Since the  
20 financing statement cannot claim a greater interest than Landmarc assigned to them, the Receiver has  
21 recommended the amount reflected in Landmarc’s records. The Receiver has identified seven loans  
in which TBM claims a security interest in loans which prior to the Receivership Date had been  
foreclosed and resulted in fee title being vested in Landmarc. Any security interest TBM may have  
had in those loans does not extend to a secured interest in the REO. Finally, one loan, the CBI  
Developers, Inc. loan, is not even listed on Schedule A to TBM’s financing statement. However,  
TBM held a 16.064% fee title in the real property as of the Receivership Date, although it has  
claimed and LMS supports a beneficial interest of 20.87%.

1 collateral may be encumbered. *See, Celo*, 187 Ariz. at 97, 927 P.2d at 363. The text goes on  
2 to state that further inquiry from parties concerned will be necessary to disclose the complete  
3 state of affairs. Beyond that, a financing statement serves little purpose, as it is the job of the  
4 security agreement to enumerate with specificity the collateral and the terms of the security  
5 arrangement. *See, e.g.*, U.C.C. § 9203, cmt. 3; *Safe Deposit Bank & Trust Co. v. Berman*,  
6 393 F.2d 401, 5 U.C.C. Rep. Serv. 1 (1<sup>st</sup> Cir. 1968).

7         36. The UCC-1's for BallWare, KepesWare, Murray, WhiteWare and Gubin, each  
8 explicitly refer to the "WCF Loan Agreement" in its description of collateral. As the court  
9 held in *Celo*, the citation in a financing statement to other documents which contain  
10 descriptions of collateral is sufficient to render that financing statement acceptable under the  
11 Code. *See* 187 Ariz. at 97, 927 P.2d at 363. It is relevant and important to note that each of  
12 these Loan Agreements incorporate by reference the associated WCF Security Agreement,  
13 which, combined with the composite rule and parole evidence as discussed further *infra*,  
14 provides a sufficient description of the precise loan interests which secure the obligations to  
15 these WCF Lenders. The UCC-1 filed for each of the aforementioned WCF Lenders fall well  
16 within the scope of the *Celo* court's holding, explaining that where a description of collateral  
17 "directs an inquiring party to another document which has an existence, as well as legal and  
18 contractual significance, separate and apart from the UCC-1 filing, the filing party has  
19 satisfied the mandates of [the Code]." *See id.* Thus, the UCC-1's filed for BallWare,  
20 KepesWare, Murray, WhiteWare and Gubin all meet the collateral description requirements  
21 of the Code. Each UCC-1 sufficiently puts third parties on notice that there may be a security

1 interest in the debtor’s property, and point an inquirer to other documents to ascertain the  
2 specific identity of the collateral which is encumbered – the WCF Loan Agreement, and by  
3 way of reference therein, the Security Agreement and supporting documents of Landmarc.

4 37. Therefore, the only remaining issue to resolve to demonstrate perfection of the  
5 security interests for the BallWare, KepesWare, Murray, WhiteWare and Gubin is the  
6 adequacy of each WCF Lender’s Security Agreement. Because each of the UCC-1’s for  
7 these WCF Lenders failed to contain a “specific listing” of the collateral and instead rely on  
8 the Security Agreement, the resolution of the perfection issue for these WCF Lenders turns  
9 on the ability to meet the collateral description requirements for a security agreement. The  
10 Receiver believes that the security agreements of each of the aforementioned WCF Lenders,  
11 which all contain the similar language and provisions, are sufficient to identify the collateral  
12 covered with specificity and give each lender a perfected security interest in any loan and  
13 deed of trust in existence as of June 24, 2009.

14 38. Demonstration of an intent between the parties to create a security interest is  
15 undisputable as between Landmarc and each WCF Lender, especially with the aid of the  
16 Composite Rule. *See, e.g., In re Weir-Penn*, 344 B.R. at 794-95. Furthermore, identification  
17 of collateral interests is clearly identifiable for each WCF Lender with the assistance of parol  
18 evidence. *See, e.g., Ace Lumber*, 105 B.R. at 965-66. The WCF Agreements between  
19 Landmarc and BallWare, KepesWare, Murray, WhiteWare, and Gubin together with the  
20 information contained in Landmarc’s books and records, make clear the intent of the parties  
21 concerning which loans these WCF Lenders were to have a security interest in. Landmarc

1 associated each WCF Lender on Landmarc’s books and computer database with the particular  
2 retail loan funded by each WCF Lender. In addition, Landmarc remitted payments on such  
3 loans to the assigned WCF Lender, foreclosed on properties on the Lender’s behalf, and  
4 generally<sup>24</sup> conducted its business in accordance with its agreements with the WCF Lender.  
5 Accordingly, under the composite rule, Landmarc’s internal documents and database provide  
6 sufficient evidence of its intent to grant security interests, and parol evidence further provides  
7 sufficient evidence of the particular loans each WCF Lender was granted an interest in.

8 39. The security agreements themselves are reasonably clear as to the criteria for  
9 determining which retail loans are being provided as security. The security agreements  
10 provide in the Recitals as follows:

11 The making of such WCF Loan by Secured Party is conditioned upon, among  
12 other things, Debtor’s securing the Note by giving to Secured Part a security  
13 interest in the collateral resulting from certain real estate loan transactions from  
14 time to time financed by Lender under the WCF Loan arrangement under the  
15 WCF Loan Agreement. A description of such collateral is described on the  
16 **Schedule “A”** attached hereto and made a part hereof which may be substituted  
17 from time to time as additional funds are advanced by Lender under the WCF  
18 Loan.

19 Exhibit C, section 1.2 at page 1. (Emphasis in original.)

20 40. Each of the Security Agreements has attached to it a copy of the referenced  
21 “Schedule A.”<sup>25</sup> The Schedule A explicitly gives a security interest in “certain specific real  
estate loan transactions assigned to Lender from time to time by [Landmarc] under the terms

22 <sup>24</sup> As noted previously, Landmarc did not uniformly record assignments of the deed of trust as it was  
obligated to do under the WCF Agreement.

23 <sup>25</sup> The Schedule A attached to the Security Agreement is the same Schedule A attached to the UCC-  
1’s for BallWare, KepesWare, Murray, WhiteWare and GubinWare.



1 of a Warehouse Credit Facility (“WCF”) including . . . all documents and agreements relating  
2 to [the assigned retail loans] that are assigned to Lender from time to time under the terms of  
3 the WCF. . . .” See Exhibit C, Schedule A at page 9. Thus, the Security Agreement refers  
4 explicitly to, and creates a security interest in favor of the WCF Lender in not only the  
5 assigned loan but all documents related to the assigned loan. As the Ninth-Circuit explained  
6 in *Amex-Protein*:

7 [t]here is . . . nothing [in the code] to prevent reference in the security  
8 agreement to another writing for a description of the collateral, so long as the  
9 reference in the security agreement is sufficient to identify reasonably what it  
10 described. . . . [I]t will at times be expedient to give a general description of the  
11 collateral in the security agreement and refer to a list or other writing for more  
12 exact description. . . . Thus, there is no requirement that the description of the  
13 collateral be complete within the four corners of the security agreement or other  
14 single document.

15 Here, the security agreements align with the *Amex-Protein* court’s analysis of the composite  
16 rule. They refer to documents relating to the assigned transactions, which encompasses the  
17 books and records of Landmarc. Such books and records identify with specificity the loans to  
18 which each WCF Lender has an assigned interest. Thus, the security agreement sufficiently  
19 describes the collateral covered for BallWare, KepesWare, Murray, WhiteWare, and Gubin,  
20 and therefore, they each hold a properly perfected security interest in the loans and deeds of  
21 trust in existence on June 24, 2009 which are assigned to them in Landmarc’s records.

1           41.     Gubin has two separate UCC-1's filed on behalf of The Gubin Family Trust and  
2 the Helen and Stephen Gubin Charitable Remainder Trust.<sup>26</sup> Each UCC-1 describes the  
3 collateral in the same terms as those filed for BallWare, KepesWare, Murray and WhiteWare.  
4 However, unlike these other UCC-1's, Gubin's two UCC-1's did not include a copy of  
5 Schedule A to the Security Agreement. The Receiver believes, however, that Gubin's UCC-  
6 1's, nevertheless meet the requirements of the Code for sufficiency of their descriptions of  
7 collateral since it is the Security Agreement, the Schedule A to the Security Agreement, and  
8 the supporting records of Landmarc that provide for the perfected security interest. The  
9 absence of a copy of Schedule A as an attachment to the UCC-1 is not fatal to Gubin's  
10 claimed security interests.

11     **C.     Failure to have a financing statement filed on behalf of a WCF Lender defeats**  
12     **perfection of the security interest.**

13           42.     As discussed *supra*, there is a distinction between attachment of a security  
14 interest, and perfection of a security interest. Attachment is the coming into existence of a  
15 security interest, while perfection relates to doing some additional act required to make the  
16 security interest effective as against third parties. *See, e.g., Bramble Transp., Inc.*, 294 A.2d,  
17 10 U.C.C. Rep. Serv. 939. Perfection of an interest in promissory notes can only be  
18 accomplished by the filing of a financing statement, or possession of the notes by the secured  
19 party. *See* A.R.S. § 47-9312 (filing); A.R.S. § 47-9313(A) (possession).

20 \_\_\_\_\_  
21 <sup>26</sup> This reference and the analysis that follows refers to both the Gubin Charitable Remainder Trust  
and the Gubin Family Trust financing statements, which are both facially the same but for the name  
of the secured party.

1           43.     Consequentially, Litchfield, Schupak, LazyE, SEM and Stoneman are unable to  
2 demonstrate the perfection of a security interest because of the absence of a duly filed  
3 financing statement on their behalf. Each of these WCF Claimants, however, has an  
4 alternative basis for approval of their WCF Claims as described more fully below.

5 **D.     A Notice of Lis Pendens recorded as part of a lawsuit initiated by a WCF Lender**  
6 **against Landmarc renders the perfection issue moot.**

7           44.     In late 2008, Lazy E, SEM and Stoneman filed a lawsuit against Landmarc for  
8 breach of their respective WCF Agreements in the Arizona Superior Court for Maricopa  
9 County entitled *Lazy E, LLC, et al vs. Landmarc Capital & Investment Company, et al*, cause  
10 number CV 2008-32264. The Plaintiffs also filed and recorded a *Notice of Lis Pendens*.<sup>27</sup> A  
11 copy of the *Notice of Lis Pendens* is attached as Exhibit F. This *Notice of Lis Pendens*  
12 provides a legally sufficient substitute for the assignment of deed of trust or deed that  
13 Landmarc was obligated to provide under its agreements with these claimants. A.R.S. §12-  
14 1191; *Warren v. Whitehall Income Fund 86*, 170 Ariz. 241, 823 P.2d 689 (Ariz. App. 1991).

15 **E.     Recorded Assignments of Deed of Trust or fee title as of June 24, 2009 are**  
16 **sufficient basis to approve claimed interests in loans and real estate**

17           45.     A total of 38 loan interests claimed by the WCF Lenders can be resolved by the  
18 fact that those interests are reflected in a conveyance of fee title or the assignment of the deed  
19 of trust prior to the Receivership Date. Of these 38 loans, 30 are not covered by a UCC-1,  
20 however, because of the recorded interest, the lack of a perfected security interest is  
21 irrelevant.

---

<sup>27</sup> The *Notice of Lis Pendens* was recorded in each county in which was located the real estate that served as security for the retail loan in which the plaintiffs claimed an interest.

1 **F. No security interest exists in real estate titled to Landmarc as of June 24, 2009.**

2 46. The interests claimed by the WCF Lenders in the real estate that resulted from  
3 the following transactions<sup>28</sup> are not perfected security interests because title to these  
4 properties had been conveyed to and was held by Landmarc as of the Receivership Date and a  
5 security interest cannot be perfected in real estate<sup>29</sup>:

<u>LCI No.</u>	<u>Borrower</u>
104th	104th and Indian School, LLC
07020933	Baca
07040995	Beck
06090680	Bijou R.E. Investments, LLC
07051040	Boone
07091799	Callahan
07061095	Campa-Perez
07101809	Caraway
08011873	CBI Developers, Inc
07061116	Chao
07081204	Frazier
07051079	Gandara
07040989	Gutierrez
07071144	Hernandez
06070507	Hinson
06050372	Horning

18 <sup>28</sup> Title to the real estate is held in whole or in part by Landmarc and resulted in most cases from the  
19 foreclosure of a promissory note and deed of trust. In the case of Loan No. 104<sup>th</sup> (104<sup>th</sup> & Indian  
20 School) and Loan No. 08011873 (CBI Developers, Inc.), rather than a secured loan to the borrower,  
21 fee title to the property was initially acquired by Landmarc and an option to purchase was granted to  
the named borrower.

<sup>29</sup> Some WCF Lenders may take a contrary view and nothing in this Petition (including the attached reports) is intended to prevent them from advancing an argument that they hold a security interest (perfected or otherwise) in the REO, when the resolution of interests in the REO are presented to the Court for adjudication along with the claims of the Loan Participant Lenders.

1                   06110816   Kunkle  
2                   07030953   Lehman  
3                   07071140   Levin  
4                   ORGILL\_08   Orgill  
5                   06060445   Orgill  
6                   06030207   Poirier  
7                   07121849   Presidio West 37, LLC  
8                   07061112   Rios  
9                   07081208   Thompson  
10                  07040994   Trujillo

11                 47.   Accordingly, the Receiver recommends that the interests claimed by the WCF  
12 Lenders in these real properties be addressed when the interests of loan participant lenders are  
13 addressed.

14                 48.   For purposes of this report the Receiver has recommended approval for the  
15 indicated percentage interest in the promissory note and other proceeds from the loan, other  
16 than real estate, that were held by Landmarc as of the Receivership Date.

#### 17   **VI. ADVERSE CLAIMS**

18                 49.   The only claims<sup>30</sup> that the Receiver has identified that are potentially adverse to  
19 the interests in loans and REO claimed by the WCF Lenders, are the claims filed by the  
20 following six borrowers<sup>31</sup> and one homeowners association:  
21

<sup>30</sup> Other than the interests of the general creditors in loans and REO in which the WCF Lenders' interests have not been properly perfected or recorded.

<sup>31</sup> These borrower claimants borrowed money from Landmarc under the designated loans, which are the subject of one or more of the WCF Claims.

<u>Claim No.</u>	<u>Claimant</u>	<u>Loan No.</u>	<u>Amount</u>	<u>WCF Claim</u>
6748	Gossett	07071145	\$106,800.00	Litchfield
6601	Kunkle	06110816	\$555,055.42	TBM
6557	Miranda	06090659	\$0.00	TBM
7557	O'Neal	LC040912	\$0.00	KepesWare
6709	Tatranska	07051063	\$0.00	KepesWare Litchfield Murray
6765	Thompson	07081208	\$0.00	Litchfield
8434	Arp	07051066	\$0.00	Gubin
8429	La Place Du Sommet Homeowners Ass'n, Inc. <sup>32</sup>	08011873	\$14,676.06	Gubin KepesWare LazyE Murray SEM TBM WhiteWare

50. Although the Court has adjudicated the Thompson claim denying the claimant any relief, Thompson has appealed the Court's ruling on her claim. The other borrower claims are as of yet unresolved. Although in some cases these borrower claims lack details by which one can readily ascertain the basis for the claim or the relief requested, the final resolution of the claims could nevertheless impact the ability of the Receiver to distribute the interests claimed in the loan (or REO) by the WCF Claimants. Accordingly, although the

<sup>32</sup> This claim includes a claim for future assessments and other charges that are a lien on the property.

1 Receiver has recommended certain dispositions of the WCF Lender claimed interests in the  
2 above loans, those recommendations are intended to be conditioned upon the denial of the  
3 related borrower claim or a determination by the Court that the related borrower claim does  
4 not prevent the Receiver from carrying out the recommended disposition. The claim by the  
5 homeowners association is a secured claim in the underlying real property, the approved  
6 amount of which will be paid from the proceeds derived by the Receiver from the sale of that  
7 property.

## 8 VII. RESOLUTION OF AMOUNTS AND INTERESTS OF WCF CLAIMS

### 9 A. Specific Recommendations.

10 51. The specific recommendations for each WCF Claimant are set forth in the  
11 following numbered exhibits under the Exhibit tab G:

	<u>WCF Lender</u>	<u>Claim No.</u>	<u>Exhibit No.</u>	<u>Approved Amount</u> <sup>33</sup>
13	BallWare	8546	G-1	\$403,433
14	Gubin	7338	G-2	\$5,124,035
15	KepesWare	7431	G-3	\$1,950,282
16	LazyE <sup>34</sup>	7471	G-4	\$767,912
17	Litchfield	8003	G-5	\$4,166,086
18	Murray	8089	G-6	\$250,524
19	Schupak	8210	G-7	\$1,548,483
20	SEM <sup>34</sup>	8221	G-8	-0-
21	Stoneman <sup>34</sup>	8297	G-9	\$623,825

<sup>33</sup> The approved amount of principal and interest due to the WCF Claimant under its WCF Agreements with Landmarc.

<sup>34</sup> The Receiver is the assignee of this WCF Claimant.

1	TBM	8325	G-10	\$10,084,060
2	WhiteWare	8381	G-11	<u>\$1,172,261</u>
3			Total	\$26,090,901

4 **B. General Principals Regarding the Recommendations**

5 52. With respect to the claimed interests in Landmarc's loans, the Receiver's  
6 recommendations are based, except where indicated otherwise, on the percentage of  
7 beneficial ownership reflected in LMS.<sup>35</sup>

8 53. The basis for the Receiver's recommendation for approval or disapproval of  
9 each of the claimed interests is indicated in column N of Schedule 2 to the attached exhibit  
10 for each WCF Claimant. The recommended disposition of the Claimant's approved interests  
11 is indicated in column O of Schedule 2 to the attached exhibit for the Claimant. The codes  
12 used in Columns N and O are explained in the attached Exhibit H. The Receiver's  
13 recommendations are conditioned on the Claimants reimbursing the estate for the loan  
14 charges as provided herein.

15 54. Amounts actually paid by the Claimant at the time the loan is transferred for  
16 loan charges or to restore a negative trust balance (*see* discussion in paragraphs 56 thru 58  
17 below) will be deducted from the values attributed to the Claimant's approved interests and  
18 amounts received by the Claimant from the Receiver as the Claimant's share of trust funds

19 \_\_\_\_\_  
20 <sup>35</sup> LMS refers to Landmarc's computerized database of information regarding the loans made by  
21 Landmarc and the funding of those loans. During the time Landmarc was in business this database  
was contained in a software program called Mortgage Office. Because Mortgage Office terminated  
Landmarc's licenses, the Receiver was forced to develop and transfer the data to a new system for  
which the Receiver had the necessary licenses. The conversion to the new system did not alter the  
underlying data.



1 will be added to those values resulting in an adjustment of the Claimant’s general creditor  
2 claim. In addition, at the time of distribution of the approved interest, the valuation of the  
3 interest may be adjusted as provided in subsection C below. The amount of the “Estimated  
4 General Unsecured Claim” shown on Schedule 2 to the attached exhibit for the Claimant will  
5 therefore change to the extent the valuation of the interest, or the amount of the loan charges  
6 or the trust funds change at the time of the transfer or disposition of the interest.

7 **C. Valuation of Approved Interests**

8 55. The security interest being confirmed and distributed to each WCF Claimant  
9 must be valued as of the date of the transfer in order to calculate the amount of the WCF  
10 Claimant’s general creditor claim. The Receiver has included in his recommendations for  
11 each WCF claim a recommended valuation of the loan or REO (which is the Receiver’s best  
12 estimate at this time of the value), and a recommended valuation of the claimant’s percentage  
13 interest in the loan or REO (the total value of the loan or REO multiplied by the claimant’s  
14 approved percentage interest). If these valuations are confirmed by the Court, they will be  
15 used in calculating the general creditor claim of the WCF Claimant. However, if the security  
16 interest has been liquidated at the time of distribution to the claimant, as the result of a sale or  
17 other disposition, then without further order of the Court the valuation of the security will be  
18 adjusted upward or downward to equal the amount of funds actually received from the  
19 liquidation of the security and the valuations of the approved interests adjusted likewise. For  
20 example, if the Court approves a valuation of an REO at \$300,000, but because of fractional  
21 interests the Receiver, rather than distributing the REO, markets and sells the REO resulting

1 in the receipt of net sale proceeds of \$330,000 (10% higher than the approved valuation for  
2 the REO), then the valuations of the various approved interest holders will be adjusted  
3 upward by 10% as well.

4 **D. Loan Charges, Trust Funds, Impounds and Rental Deposits**

5 56. Consistent with the prior orders of this Court, the Receiver recommends that  
6 prior to the transfer of the approved interests, the Claimant be required to reimburse  
7 Landmarc for the Claimant's share of the expenses incurred by Landmarc or the Receiver for  
8 the benefit of the security interest including, without limitation, postage and attorney's and  
9 trustee's fees relating to the foreclosure of deeds of trust, and expenses in insuring,  
10 maintaining or making improvements to the security. A detailed report of the current<sup>36</sup> loan  
11 charges has been provided to the Claimant and its share of those current loan charges is set  
12 forth in column R of Schedule 2 to the attached exhibit for the Claimant. Claimant's share of  
13 loan charges is obtained by multiplying its approved percentage interest by the total of loan  
14 charges. The actual loan charges may be different at the time the loan is transferred or  
15 released and the information provided in column R of Schedule 2 is not final.

16 57. Not included in the loan charges described above and in the attached schedules  
17 are the costs of the Receivership staff and professional services expended for the  
18 preservation, protection and management of the loans and REO to which WCF Lenders have  
19 made claims. These are expenses of the Deputy Receiver, the accounting and other  
20 professional services of Warfield and Company, and the legal services of Guttilla Murphy

21 \_\_\_\_\_  
<sup>36</sup> Through approximately October 1, 2010.

1 Anderson. The Receiver recommends that these expenses to the receivership estate not be  
2 allocated and charged to the WCF Lender, provided the other loan charges and trust shortages  
3 set forth in the attached schedules are paid by the WCF Lender.<sup>37</sup> This is the same approach  
4 that has been taken in the previous orders of the Court authorizing the transfer of clean  
5 interests in loan and real property.

6 58. In addition, the Claimant will be required to pay to the Receiver its share of any  
7 trust shortage and will receive its share of any funds held in trust by the Receiver. A detailed  
8 report of the current<sup>38</sup> trust funds held for each loan on Schedule 2 has been provided to the  
9 Claimant and the Claimant's share of those trust funds is set forth in column Q of Schedule 2  
10 to the attached exhibit for the Claimant. Claimant's share of the trust funds is obtained from  
11 the allocation made by Landmarc's database. The amount of trust funds may be different at  
12 the time the loan is transferred or released and the information provided in column Q of  
13 Schedule 2 is not final.

14 59. The current<sup>39</sup> balance of any impound funds or rental security deposits held in  
15 trust by the Receiver for a loan or REO is identified in column P of Schedule 2 to the attached  
16 exhibit for the Claimant.<sup>40</sup> These impound funds or rental security deposits are held for the

17 \_\_\_\_\_  
18 <sup>37</sup> In the event that the Receiver incurs fees for legal services to litigate in this or another court over  
19 attempts by a borrower or other person to prevent foreclosure or the sale of the underlying security  
20 for the loan, or to enforce a claimed interest in the loan, the security for the loan or REO resulting  
21 from the loan, adverse to the interest of the WCF Lender, the Receiver may seek to have those  
expenses reimbursed by the approved claimants.

<sup>38</sup> Through approximately October 1, 2010.

<sup>39</sup> Through approximately October 1, 2010.

<sup>40</sup> Security deposits held by a property manager engaged by the Receiver on an REO are not shown here but will be disbursed in the same manner as a security deposit held by the Receiver.

1 borrower or tenant and will be transferred by the Receiver to the Claimant or the appropriate  
2 person at the time their loan or REO is disbursed. The amount of the impound or rental  
3 security deposits may be different at the time the loan is transferred or released and the  
4 information in column P of Schedule 2 is not final.

5 WHEREFORE, the Receiver respectfully requests that the Court:

- 6 1. Enter an order approving the Receiver's recommendations regarding the WCF  
7 Claims described in this report;
- 8 2. Enter an order approving the following amounts of principal and interest due to  
9 the each claimant under its WCF Agreements:

<u>WCF Lender</u>	<u>Approved Amount</u>
BallWare	\$403,433
Gubin	\$5,124,035
KepesWare	\$1,950,282
LazyE	\$767,912
Litchfield	\$4,166,086
Murray	\$250,524
Schupak	\$1,548,483
Stoneman	\$623,825
TBM	\$10,084,060
WhiteWare	\$1,172,261

1  
2 3. Enter such additional orders as may be necessary to effectuate the dispositions  
3 approved herein by the Court.

4 Respectfully submitted this 15<sup>th</sup> day of April, 2011.

5 GUTTILLA MURPHY ANDERSON

6 /s/ Patrick M. Murphy

7 Patrick M. Murphy

8 Steven R. Napoles

9 Attorneys for the Plaintiff

10 **PROOF OF SERVICE**

11 This is to certify that on this 15<sup>th</sup> day of April, 2011, I electronically transmitted the  
12 foregoing document to the Maricopa County Clerk's Office using electronic filing and  
13 emailed or mailed by First Class Mail to all persons on the attached Master Service List and  
14 mailed by First Class Mail to the following WCF Claimants not on the Master Service List:

15 Litchfield Funding  
16 1635 N. Greenfield Rd.  
17 Suite 115  
18 Mesa, AZ 85250

19 Bruce Murray  
20 1 Sutton Farm Drive  
21 Chappaqua, NY 10514

Wesley A. & Marlene White Trust  
15118 W. Rounders Dr.  
Surprise, AZ 85374-4627

Lazy E, LLC  
P.O. Box 10100  
Phoenix, Arizona 85064

SEM Investments, LLC  
P.O. Box 10100  
Phoenix, Arizona 85064

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Stoneman Properties LLC Defined Benefit Plan  
P.O. Box 10100  
Phoenix, Arizona 85064

/s/Patrick M. Murphy  
Patrick M. Murphy

1157-027.01 (98386\_3)

## MASTER SERVICE LIST

*State of Arizona ex rel. v. Landmarc Capital & Investment Company*  
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2009-020595

(Rev. April 15, 2011)

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Phoenix, AZ 85018

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[TGiallanza@lcmortgage.com](mailto:TGiallanza@lcmortgage.com)  
14555 North Scottsdale Road, #340  
Scottsdale, AZ 85254

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Greenberg, Geoff & Katie Ball, Lydia  
Ball c/o Dr. Richard Ball, Deborah Ball

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Attorneys for Madelene Kepes, Trustee  
of The Madelene Kepes Revocable  
Living Trust, Dated May 22<sup>nd</sup> 1984 as  
Amended

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Attorney for TBM Associates

Helen and Stephen Gubin Charitable  
Remainder Trust and the Gubin Family  
Trust dated May 27, 1992  
c/o Steve Gubin  
2211 East Camelback Road, #906  
Phoenix, Arizona 85016  
[steve@gubin.net](mailto:steve@gubin.net)



## **Index of Exhibits to Petition No. 43**

- A. WCF Loan Agreement (BallWare)
- B. WCF Secured Promissory Note (BallWare)
- C. WCF Security Agreement (BallWare)
- D. UCC-1 (BallWare)
- E. UCC-1 (TBM)
- F. Notice of Lis Pendens (LazyE, SEM & Stoneman)
- G. WCF Claims Reports
  - 1. BallWare
  - 2. GubinWare
  - 3. KepesWare
  - 4. LazyE
  - 5. Litchfield
  - 6. Murray
  - 7. Schupak
  - 8. SEM
  - 9. Stoneman
  - 10. TBM
  - 11. WhiteWare
- H. Approval Codes and Disposition Codes for WCF Lender Claims

# WAREHOUSE CREDIT FACILITY LOAN AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 20<sup>th</sup> day of September, 2007, by and between Lydia Ball. Lender, (the "Lender") located at 11704 Beringer Ave NE, Albuquerque, NM 87122 and Landmarc Capital & Investment Company ("Landmarc" or "Borrower") located at 4110 N. Scottsdale Road, Suite 330, Scottsdale, Arizona 85251.

## RECITALS:

- A. Landmarc is in the business of providing lending secured by real estate deeds of trust.
- B. Borrower has applied to Lender for a Warehouse Credit Facility ("WCF") to provide financing to Borrower, which shall be secured by certain deeds of trust that shall be assigned to Lender. ("Assigned Deeds of Trust").
- C. Lender is willing to make the WCF Loan subject to the terms hereof.

## AGREEMENT:

NOW, THEREFORE, in consideration of the premises and in reliance upon the representations, warranties, covenants and recitals hereinabove and hereinafter set forth, and as contained in the instruments, agreements and documents contemplated hereby, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.**
  - a. The "**Assigned Deeds of Trust**" means the instruments described in paragraph 5(b) hereof.
  - b. The term "**Loan Documents**" means: this Agreement; the Note; the Security Agreements.
  - c. The "**Note**" shall refer to the WCF Promissory Note, in the principal amount of **Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)** to be executed by Borrower and delivered to Lender to evidence Borrower's obligation to repay the Loan (the "**WCF Loan**").
2. **Loan and Loan Amount.** Borrower agrees to borrow from Lender and Lender agrees to make the WCF Loan to Borrower, all subject to the terms and conditions set forth in this Agreement. The principal amount of the Loan shall be **Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)** (the "**Loan Amount**").
3. **Term.** The term of the WCF Loan shall be for twenty-four (24) months (subject to Borrower's right to pre-pay at any time following 12 hours prior notice without penalty) from

the date hereof (the "Initial Term") and the term shall continue after the Initial Term until Lender provides Borrower with 30 days prior written notice on Lenders intention to terminate the WCF on the Termination Date set forth in such written notice (the "**Termination Date**"). The WCF Loan (including accrued but unpaid interest) shall be repaid following the Termination Date (i) by the loan proceeds received by Borrower as the notes secured by the Assigned Deeds of Trust mature or are otherwise repaid. Lender shall have no right to otherwise accelerate the repayment of the WCF Loan.

**4. Interest Rate and Loan Payments.** Borrower shall pay Lender interest at the rate of 10% per annum as provided for in the Note. All principal and interest shall be payable pursuant to the terms of the Note.

**5. Security.** The Loan will be evidenced by the following documents, which shall be executed concurrently with this Agreement:

- a. The **Note**, in the amount of **Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)** dated on or about the date hereof, from Borrower to Lender.
- b. Assignments of Deeds of Trust to Lender.
- c. **Security Agreement** of even date with the Note granting a security interest in all Assigned Deeds of Trust assigned to Lender under the WCF Loan.
- d. This Agreement, and all exhibits hereto not separately listed.

**6. Conditions Precedent to Advances.** As express conditions precedent to Lender's obligation to make any advance of the WCF Loan, Lender shall have received or be satisfied as to the following:

- a. A commitment for the title insurance policy in a form reasonably acceptable to Borrower shall have been issued to Borrower on the Assigned Deeds of Trust.
- b. There shall exist no condition, event or act that would constitute an event of default under any of the Loan Documents and no condition, event or act which, as a result of the giving of notice or the lapse of time, or both, as specified in this Agreement, would constitute such an event of default.
- c. Borrower shall have executed all Loan Documents.
- d. Borrower shall confirm to Lender, which confirmation shall be acceptable to Lender in its sole discretion, that the property(s) that are the subject of the Assigned Deed(s) of Trust have an appraised value of not less than the amount being advanced under the WCF associated with the specific Assigned Deed(s) of Trust.

**7. Conveyance or Further Encumbrance of Assigned Deeds of Trust.** Except as provided herein, prior to the payment in full of each specific Assigned Deed of Trust, Borrower shall not, transfer or encumber any Assigned Deed of Trust, which has been assigned. Lender shall reconvey or release (as directed by Borrower) any Assigned Deed of Trust upon the payment to Lender of the pay off amount associated with such Assigned Deed of Trust.

**8. Representations and Warranties.** Borrower, in addition to the representations and warranties in the other Loan Documents, and as otherwise provided herein, warrants and represents, as follows:

a. The recitals and statements of intent appearing in this Agreement are true and correct.

b. This Agreement is a valid and binding legal obligation of Borrower, enforceable according to its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and similar federal and state laws, and applicable statutes and court decisions (none of which would invalidate the obligation to repay the indebtedness or render the remedies available to Lender inadequate for the practical realization of the basic benefits intended to be conferred upon Lender under the Loan Documents).

c. Borrower has or will have good and marketable title to the Assigned Deeds of Trust, and the liens, charges and security interests created herein will, when granted, be valid, effective, properly perfected and enforceable, and senior and prior to any other encumbrance, except unless there is a preexisting mortgage or lien accepted by Borrower with respect to such Assigned Deed of Trust or as otherwise disclosed on the commitment for title insurance referred to in section 6(a) above.

d. The making of this Agreement and compliance with its terms will not result in any material breach of the terms or conditions of, or result in the imposition of any lien, charge or encumbrance upon any property or assets of Borrower pursuant to, nor constitute a material default under, any indenture, agreement or instrument under which Borrower is a party or is obligated except as contemplated herein. Borrower is not in any material default in the performance, observance or fulfillment of any obligation, covenant or condition of any such indenture, agreement or instrument, which might result in a material adverse change in prospects (financial or otherwise) of Borrower, or in any liability on the part of Borrower which would effect the Assignment of Deeds of Trust to Lender.

e. The relationship established between Borrower and Lender by this Agreement and the other Loan Documents is strictly that of a lender and borrower

and Borrower does not intend to create any joint venture, partnership or other relationship between itself and Lender.

**9. Lender's Representations and Warranties.** Lender, in addition to any representations and warranties made by Lender in the other Loan Documents and as otherwise provided herein, warrants and represents as follows:

- a. The Recitals and statements of intent appearing in this Agreement are true and correct.
- b. Lender is fully authorized and committed to enter into this Agreement and to loan the amount contemplated under this Agreement.
- c. The relationship established between Borrower and Lender by this Agreement and the other Loan Documents is strictly that of a lender and borrower, and Borrower and Lender do not intend to create any "joint venture", "partnership" or other relationship as those terms are normally used in connection with securities laws.

**10. Events of Default.** The existence or occurrence of any one or more of the following shall constitute an "**Event of Default**" under each of the Loan Documents and all other documents executed or to be executed in connection with the Loan:

- a. Borrower's failure, following 10 days written notice and an opportunity to cure, to make any required payment when and as due.
- b. Borrower's default, following 30 days written notice (subject to an extension of another 30 days if Borrower is proceeding in good faith to cure any such default) and an opportunity to cure, in the performance of **any material obligation** to be performed under, or breach of any term, condition, covenant, warranty or representation contained in any of the Loan Documents, or the existence of a material misrepresentation of fact in any document submitted to Lender in support of or in connection with the Loan.
- c. Borrower becoming insolvent or bankrupt or making an assignment for the benefit of creditors, or consenting to the appointment of a trustee or receiver for a major part of its property; or appointment of a trustee or receiver for Borrower for a major portion of their property, if not discharged within sixty (60) days of said appointment; or any garnishment, attachment, levy or execution being issued against any substantial or material portion of the property or assets of Borrower, provided the same is not dismissed within sixty (60) days; or filing of any proceeding by Borrower in any bankruptcy, reorganization, arrangement or insolvency proceeding or any similar proceeding or if any bankruptcy, reorganization, arrangement or insolvency proceeding or any similar proceeding is instituted against Borrower and is not dismissed within one hundred fifty (150) days.

d. The sale or assignment of a controlling (more than 50%) membership interest in Borrower by Borrower, without the written consent of Lender.

**11. Lender's Remedies.** At any time after an Event of Default has occurred hereunder and Borrower has failed to cure the same within any applicable cure period set forth in paragraph 10, and subject to the terms of Section 4.2(d) of the WCF Security Agreement entered into simultaneously herewith, Lender may, but shall not have any obligation to: (a) declare the unpaid principal of the Loan, together with all accrued interest and all other sums owing by Borrower to Lender in connection with this Agreement immediately due and payable, without presentment, demand or protest, which are hereby waived by Borrower; and/or (b) proceed to protect and enforce its rights under this Agreement, the Note, the Loan Documents or other security given in conjunction herewith (but not the assigned Deeds of Trust unless there has been a default thereunder by the borrower therein), by suit in equity or action at law, or by other proceedings or action appropriate under the terms of such document or instrument. Lender may pursue any remedy or right available hereunder, under the Note or in the Loan Documents, independently and separately. All rights, remedies and powers herein, in the Note and in the other Loan Documents shall, and subject to the terms of Section 4.2(d) of the WCF Security Agreement entered into simultaneously herewith, to the extent not prohibited by law, be cumulative and nonexclusive of any other thereof or of any other rights, remedies or powers available to Lender under the laws of the State of Arizona. Any said right, remedy or power conferred upon Lender may, and subject to the terms of Section 4.2(d) of the WCF Security Agreement entered into simultaneously herewith, be exercised from time to time, independently or concurrently, and as often as Lender shall deem expedient. No single or partial exercise of any right, remedy or power by Lender shall preclude further exercise thereof by Lender.

**12. Prepayment.** Borrower may prepay all or any part of the principal balance of the WCF Loan and accrued interest at any time without the payment of any premium or penalty, provided that Borrower gives Lender notice to Lender 24 hours prior to Borrower's prepayment. Any such prepayment shall be applied first to other amounts due under the Loan Documents, then to accrued interest and then to principal.

**13. No Other Parties To Benefit.** The Loan Documents are made for the sole benefit of Borrower and Lender and their successors and assigns, and no other person or entity is intended, to or shall have any rights or benefits hereunder or under any escrow account contemplated hereby, whether as third-party beneficiary or otherwise.

**14. Notices.** Except as required by Arizona statutes relating to trust deed sales, all notices expressly provided hereunder to be given by Lender to Borrower and all notices and demands of any kind or nature whatsoever which Borrower or Lender may be required or may desire to give to or serve on Borrower or Lender shall be in writing and shall be served either in person, by facsimile transmission, or by first class or certified mail. Any such notice or demand so served by first class or certified mail shall be deposited in the United States mail, with postage thereon fully prepaid and addressed to

the party so to be served at its address stated below or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice. Service of any notice or demand made in person or be facsimile transmission shall become effective as of said delivery or transmission, and if made by mailing, it shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of forty-eight (48) hours after the date of mailing, whichever is the earlier in time:

If to Lender, to the address first given above with a copy to:

**Lydia Ball**  
**11704 Beringer Ave NE**  
Albuquerque, NM 87122

If to Borrower, to the address first given above.

David Crantz  
Landmarc Capital & Investment Company  
4110 N. Scottsdale Road, Suite 330  
Scottsdale, Arizona 85251

With a copy to:

Andrew Abraham  
Burch & Cracchiolo, PA  
702 E. Osborn Rd, #200  
PO Box 16882  
Phoenix, AZ 85011

16. **Jurisdiction, Law and Venue.**

**THIS AGREEMENT HAS BEEN DELIVERED IN THE STATE OF ARIZONA. THIS AGREEMENT AND THE RIGHTS, DUTIES AND OBLIGATIONS OF BORROWER AND (BY THEIR ACCEPTANCE HEREOF) LENDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ARIZONA (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND TO THE EXTENT THEY PREEMPT THE LAWS OF SUCH STATE, THE LAWS OF THE UNITED STATES.**

**EACH OF BORROWER AND (BY ITS ACCEPTANCE HEREOF) LENDER: (A) HEREBY IRREVOCABLY SUBMITS ITSELF TO THE PROCESS, JURISDICTION AND EXCLUSIVE VENUE OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") WITH ALL DISPUTES THAT DIRECTLY OR INDIRECTLY RELATE TO THIS AGREEMENT AND THE RELATED NOTE AND SECURITY AGREEMENT BEING RESOLVED IN**

ARBITRATION IN ACCORDANCE WITH THE AAA RULES OF COMMERCIAL ARBITRATION. NO ACTION HEREUNDER OR UNDER THE NOTE OR SECURITY AGREEMENT SHALL OTHERWISE BE COMMENCED IN ANY OTHER FORUM OTHER THAN FOR PURPOSES OF CONFIRMING AN ARBITRATION AWARD AND OPPOSING THE SAME FOR THE LIMITED PURPOSES SET FORTH IN ARS SECTIONS 12- 1512 AND 12-1513 OR AS OTHERWISE PERMITTED UNDER ARIZONA LAW.

17. **Entire Agreement.** The Loan Documents embody the entire contract between Borrower and Lender with respect to the Loan and supersede any and all prior agreements and understandings, written or oral, formal or informal. No extensions, changes, modifications or amendments made or claimed by Lender or Borrower and no notices of any extension, change, modification or amendment made or claimed by Lender or Borrower shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Lender and Borrower.

18. **Time of Essence.** Time is of the essence of this Agreement.

19. **Severability.** If any paragraph, clause or provision of this Agreement is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of this Agreement.

20. **Number and Gender.** In this Agreement, wherever the context so requires, the masculine gender shall include the feminine and/or neuter, and the singular number shall include the plural and conversely in each case.

21. **Binding Effect.** This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, executors, assigns, successors and representatives.

22. **Lender Transaction.** This Agreement provides a relationship of borrower and lender and shall not constitute a relationship of joint venture, partnership or independent contractor relationship.

23. **Cure Periods.** Lender will not exercise any of the rights or remedies authorized or permitted herein or in the other Loan Documents which are exercisable upon the occurrence of a default by Borrower unless and until Lender has given notice to Borrower pursuant to paragraph 17 hereof and Borrower shall have failed to cure the default specified within said notice within the periods set forth in paragraph 10 above.

24. **Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one and the same Agreement.




[Signatures follow on next page]


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**BORROWER:**

Landmark Capital & Investment Company

By:  Date: 10/2/07  
David Crantz, President

**LENDER:**

Lydia Ball  
By:  Date: 10/5/07  
Richard Ball POA for Lydia Ball

**WAREHOUSE CREDIT FACILITY  
SECURED PROMISSORY NOTE**

\$400,000.00

September 20<sup>th</sup>, 2007  
Scottsdale, AZ

**FOR VALUE RECEIVED**, the undersigned Landmarc Capital & Investment Company ("**Borrower**", also referred to as "**Maker**") promises to pay to the order of **Lydia Ball**, ("**Lender**" or "**Holder**"), the principal sum of Twenty Five Million **Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)** or so much thereof as maybe outstanding from time to time, together with interest thereon as provided herein

1. Interest. The Principal Sum represented by funds actually advanced pursuant to each Draw Requests outstanding from time to time shall bear interest at the rate of 10% (collectively the "**Note Rate**"), from the first date of funding of each Draw Request under the WCF and continuing until paid in full on or before the Termination Date.

2. Default Interest. In the event of a default under the WCF Loan Agreement and if Borrower fails to pay the all or any portion of the Principal Sum (i.e., the total of all Draw Requests advanced pursuant to the WCF Loan Agreement) when due, at the option of the Holder of this Note, shall bear interest at the of 10% per annum (the "**Default Rate**").

3. Monthly Interest Only Payments. Monthly payments of interest only shall be made on the twentieth (20<sup>th</sup>) day of each month, commencing on the next month from the date hereof, and continuing thereafter on the twentieth (20<sup>th</sup>) day of each month thereafter for a total period of 24 months ("Termination Date"). Thereafter, this Note shall be extended until the Holder provides Borrower with 30 days prior written notice of termination of the WCF.

4. Interest Only - No Prepayment Premium. The Borrower shall have the right to prepay this Note at any time in full without any prepayment penalty or premium whatsoever.

5. Termination Date. All obligations of Borrower hereunder shall be fully paid, and the Principal Sum and accrued but unpaid interest shall be due and payable, following the Termination Date as provided for in section 3 of the WCF Loan Agreement.

6. Collateral. This Note is secured by that certain Security Agreement of even date herewith, pledging certain real estate loans evidenced by deeds of trust with the Borrower as lender thereunder, which deeds of trust are assigned to Holder as collateral security for the WCF (the "**Assigned Deeds of Trust**").

7. Events of Default. Each of the following (subject to the notice and cure periods provided for in the WCF Loan Agreement entered into simultaneously herewith will constitute an event of default ("**Event of Default**") under this Note:

- (a) Maker's failure to pay any installment of Interest or Principal when due.

- (b) Maker's failure to pay all Principal and Interest due on the Termination Date.
- (c) Maker's failure to pay any other amount due hereunder when due.
- (d) Maker's failure in the material performance of any of the material terms, agreements, covenants or conditions contained in any of the WCF Loan Agreement or Security Agreement and such failure shall not have been cured within any applicable grace period, if any, provided for in such agreements.
- (e) Maker's (i) assignment for the benefit of its creditors, or (ii) application for, consent to or acquiescence in, the appointment of a trustee, receiver or other custodian for Maker, the property of Maker or any part thereof, or in the absence of any application, consent or acquiescence, the appointment of a trustee, receiver or other custodian for Maker or a substantial part of the property of Maker, which assignment or appointment is not rescinded or discharged within sixty (60) days.
- (f) The commencement of any case under Title 11 of the United States Code or any other bankruptcy, reorganization, receivership, custodianship, or similar proceeding under any state or federal law by or against Maker, with respect to any such case or proceeding that is involuntary, such case or proceeding is not dismissed within one hundred and fifty (150) days of the filing thereof.

8. Time of Essence. It is agreed that time is of the essence in the performance of all obligations hereunder and under the Loan Agreement.

9. Acceleration. If an Event of Default shall occur, and such default shall not have been cured within any applicable grace period in the agreements then, or at any time thereafter, the entire unpaid Principal Sum, irrespective of the Termination Date specified herein, together with the then accrued interest thereon shall, at the election of Lender, following written notice of such election, become immediately due and payable.

10. Late Charges. It is recognized by Borrower that, should any payment provided for herein not be paid within five (5) days after the same becomes due and payable, Lender will incur extra expenses for the handling of delinquent payments, the loss of the use of the money due and inability to meet financial commitments of Lender, the exact amount of such extra expense being impossible to ascertain, but that a charge of 5% of the payment then due (excluding the payment due on the Termination Date) will be charged for each payment of delinquent interest ("**Late Charge**") would be a fair approximation of the expense so incurred by Lender for handling of delinquent payments, the loss of the use of the money due and inability to meet financial commitments of Lender. Therefore, in such event, without further notice, and without prejudice to the right of Lender to collect any other amounts provided to be paid herein or to declare a default hereunder, a Late Charge shall be due and payable.

11. Transfers Prohibited. Sale or transfer of any of the following are prohibited (I) all or any part of the Assigned Deeds of Trust by Borrower unless there is an appropriate pay off in escrow for such Assigned Deed of Trust, which shall be reconveyed by Borrower and

Lender upon pay off. Upon any such prohibited sale or transfer, then Lender may, at Lender's option, declare all of the Principal Sum and accrued but unpaid interest to be immediately due and payable, and Lender may invoke any remedies permitted by this Note.

12. Concurrent Remedies. The rights and remedies of Lender as provided in this Note and the WCF Loan Agreement shall be cumulative and concurrent, and may, subject to the terms of Section 4.2(d) of the WCF Security Agreement entered into simultaneously herewith, be pursued singly, successively, or together against Borrower, the collateral described in the WCF Loan Agreement and Security Agreement. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights and remedies or of the right to exercise them at any later time.

13. Waiver. The Borrower waives diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity except as otherwise provided in the WCF Loan Agreement.

14. Attorneys' Fees and Costs. The Borrower agrees to pay all costs of collection, including reasonable attorneys' fees and all costs of suit, in case the unpaid Principal Sum, or any payment of interest or principal and interest thereon or premium, is not paid when due.

15. Modification. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any amendment, modification, change or waiver is sought; provided, however, that (a) this Note may from time to time be extended or renewed or its terms (including the terms of payment of principal and interest) otherwise modified; (b) any of the provisions of this Note or the WCF Loan Agreement may be amended or any requirement thereof or default thereunder waived or any departure therefrom consented to or any other forbearances or indulgence exercised with respect thereto; and (c) any collateral now or hereafter securing this Note may be exchanged, substituted, realized upon, released, compromised, extended or otherwise dealt with or disposed of.

16. Binding Effect. Whenever used herein, the words "Borrower" and "Lender" shall be deemed to include their respective heirs, personal representatives, successors and assigns.

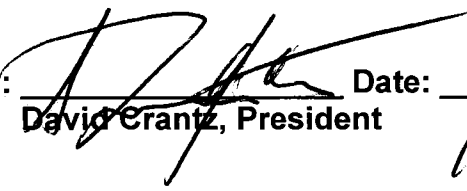
17. **Jurisdiction, Law and Venue.**

**THIS NOTE HAS BEEN DELIVERED IN THE STATE OF ARIZONA. THIS NOTE AND THE RIGHTS, DUTIES AND OBLIGATIONS OF BORROWER AND (BY ITS ACCEPTANCE HEREOF) LENDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ARIZONA (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND TO THE EXTENT THEY PREEMPT THE LAWS OF SUCH STATE, THE LAWS OF THE UNITED STATES. ANY AND ALL DISPUTES ARISING HEREUNDER SHALL BE SUBJECT RESOLUTION PURSUANT TO THE TERMS AND CONDITIONS OF THE ARBITRATION PROVISION SET FORTH IN SECTION 16 OF THE WCF LOAN AGREEMENT.**

**IN WITNESS WHEREOF,** Borrower has executed this Note as of the date first above written.

**MAKER:**

**Landmarc Capital & Investment Company**

By:  Date: 10/6/07  
David Crantz, President 10/11/07

# Warehouse Credit Facility SECURITY AGREEMENT

**THIS SECURITY AGREEMENT** is made and entered into as of this 20<sup>th</sup> day of September, 2007, by and between, **Lydia Ball** as Lender, (the "**Lender**" or "**Secured Party**") located at 11704 Beringer Ave NE, Albuquerque, NM 87122 and **Landmarc Capital & Investment Company** (sometimes referred to herein as "**Landmarc**", "**Borrower**" or "**Debtor**") located at 4110 N. Scottsdale Road, Suite 330, Scottsdale, Arizona 85251.

## 1. RECITALS

1.1 Secured Party has contemporaneously herewith evidenced credit obligations of Debtor by a Promissory Note of even date herewith (referred to as the "**Note**"), and Loan Agreement and documents and agreements related thereto (collectively referred to as the "**WCF Loan Agreement**") all of even date herewith. This extension of credit is a Warehouse Credit Facility ("**WCF**") up to the principal amount of \$400,000.00 (the "**WCF Loan**").

1.2 The making of such WCF Loan by Secured Party is conditioned upon, among other things, Debtor's securing the Note by giving to Secured Party a security interest in the collateral resulting from certain real estate loan transactions from time to time financed by Lender under the WCF Loan arrangement under the WCF Loan Agreement. A description of such collateral is described on the **Schedule "A"** attached hereto and made a part hereof which may be substituted from time to time as additional funds are advanced by Lender under the WCF Loan.

## 2. SECURITY INTEREST

2.1 In consideration of the WCF Loan described above, Debtor hereby grant to Secured Party a security interest (hereinafter called the "**Security Interest**") in the **deeds of trust** resulting from certain loans described on the **Schedule "A"** attached hereto (hereinafter collectively called the "**Collateral**"). All of the Collateral described in the Schedule A attached hereto are hereby incorporated herein by this reference.

2.2 This Agreement is given for the purpose of securing, in such order of priority as Secured Party may elect:

(a) Payment of the of the principal sums of the Note with interest thereon, extension and other fees, late charges, prepayment premiums and attorneys' fees, according to the terms of the Note dated of even date herewith, made by Debtor, payable to the order of Secured Party, and all extensions, modifications, renewals or replacements thereof;

(b) Following the expiration of any applicable cure period as provided for in the WCF Loan Agreement, payment, performance and observance by Debtor of each covenant, condition, provision and agreement contained herein and of all monies expended or advanced by Secured Party pursuant to the terms hereof, or to preserve any right of Secured Party hereunder;

(c) Following the expiration of any applicable cure period as provided for in the WCF Loan Agreement, payment, performance and observance by Debtor of each covenant, condition, provision and agreement contained in that WCF Loan Agreement dated as of even date herewith, by and between Debtor and Secured Party and in any other document or instrument related to the indebtedness hereby secured and of all monies expended or advanced by Secured Party pursuant to the terms thereof; and

(d) Following the expiration of any applicable cure period as provided for in the WCF Loan Agreement, payment and performance of any and all other indebtedness, obligations and liabilities of Debtor to Secured Party of every kind and character, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, whether such indebtedness is from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred.

All of the indebtedness and obligations secured by this Agreement are hereinafter collectively called the "Obligation."

### **3. WARRANTIES, COVENANTS AND AGREEMENTS OF DEBTOR**

Debtor hereby warrants, covenants and agrees that:

3.1 The Collateral includes the collateral securing specific assigned real estate loan transactions that are assigned to Lender from time to time pursuant to the terms of the WCF Loan arrangement as set forth on Exhibit A which may be amended from time to time by mutual agreement of the parties hereto (the "Specific Assigned Loan Transactions").

3.2 Unless Debtor has repurchased the Specific Assigned Loan Transactions, and subject to repayment of the indebtedness secured by one or more of the Specific Assigned Loan Transactions following which Secured Party shall release and reconvey any lien right against or assignment of such Assigned Loan Transaction, Debtor agree that Debtor shall not sell, transfer, assign or otherwise dispose of any Collateral or any interest therein (except as permitted herein) without obtaining the prior written consent of Secured Party and shall keep the Collateral free of all security interests or other encumbrances except the Security Interest. Although proceeds of Collateral are covered by this Agreement, this shall not be construed to mean that Secured Party consents to any sale of Loan Transactions unless repurchased by Debtor.

3.3 Debtor shall administer, preserve and protect the Collateral and shall perform the duties and obligations of lender under the Specific Assigned Loan Transactions.



3.4 Debtor shall collect payments under the Specific Assigned Loan Transactions under the terms of the WCF.

3.5 Debtor, at its expense, shall obtain and maintain in force insurance policies covering losses or damage to the Collateral.

3.6 Debtor may repurchase and reassign the Specific Assigned Loan Transactions from time to time under the terms of the WCF and the Escrow relating to the WCF.

3.7 Debtor shall pay when due all taxes, assessments and other charges that may be levied or assessed against the Collateral.

3.8 Debtor shall immediately give Secured Party written notice of any change in location of Debtor's chief executive office, or in any of Debtor's places of business at which the Collateral is kept in the ordinary course of Debtor's business.

3.09 Debtor, at its cost and expense, shall protect and defend all of the rights of Secured Party with respect to the Collateral. Debtor shall promptly notify Secured Party of any levy, distraint or other seizure by legal process or otherwise of any part of the Collateral and of any threatened or filed claims or proceedings that might in any way affect or impair the terms of this Agreement.

3.10 The Security Interest, at all times, shall be perfected and shall be prior to any other interests in the Collateral. Debtor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements, notices and other documents deemed reasonably necessary by Secured Party to establish, maintain and continue the perfected Security Interest. Debtor, on demand, shall promptly pay all costs and expenses of filing and recording deemed reasonably necessary by Secured Party from time to time to establish and determine the validity and the continuing priority of the Security Interest.

3.11 If Debtor shall fail to pay any taxes, assessments, expenses or charges, to keep all of the Collateral free from other security interests encumbrances or claims (except as otherwise permitted hereunder), or to perform otherwise as required herein, Secured Party may advance the monies necessary to pay the same, or to so perform.

3.12 All rights, powers and remedies granted Secured Party herein, or otherwise available to Secured Party, are for the sole benefit and protection of Secured Party, and Secured Party may exercise, subject to the terms of the WCF Loan Agreement, any such right, power or remedy at its option and in its sole and absolute discretion without any obligation to do so. In addition, if under the terms hereof, Secured Party is given two or more alternative courses of action, Secured Party may elect any alternative or combination of alternatives at its option and in its sole and absolute discretion.

3.13 Debtor shall furnish to Secured Party, or to any proposed assignee of the Note and any other security for the Note, within five (5) days after request therefor, a

written statement in form satisfactory to Secured Party, duly acknowledged, certifying the amount of the principal and interest then owing under the Note, whether any claims, setoffs or defenses exist thereagainst or against this Agreement or any of the terms, conditions or provisions of any other agreement securing the WCF Loan. In connection with any assignment by Secured Party of the Note and any other security for the Note, Debtor hereby agrees to cause the Collateral to be endorsed in form satisfactory to Secured Party or to such assignee and to cause such endorsements to be delivered to Secured Party within ten (10) days after request therefor from Secured Party.

#### **4. EVENTS OF DEFAULT; REMEDIES**

4.1 The occurrence of any of the following events or conditions shall constitute and is hereby defined to be an "Event of Default":

(a) Any Event of Default (as defined in the WCF Loan Agreement and following the applicable notice and cure periods);

(b) Any failure or neglect to perform or observe any material covenants, conditions or provisions of this Agreement following written notice and an opportunity to cure of not less than 30 days; and

(c) The institution of any legal action or proceedings by a third party to enforce any lien or encumbrance upon any portion of the Collateral or any other collateral or security for the WCF Loan, that is not dismissed within sixty (180) days after its institution.

4.2 Upon the occurrence of any Event of Default, and at any time while such Event of Default is continuing, Secured Party may do one or more of the following:

(a) Declare all or any part of the WCF Loan immediately due and payable, and the same, with all costs and charges, shall be collectible thereupon by action at law.

(b) Without further notice or demand and without legal process, take possession of the Collateral. Debtor, upon demand by Secured Party, shall assemble the Collateral and deliver it to Secured Party or to a place designated by Secured Party that is reasonably convenient to both parties.

(c) Pursue any legal remedy available to collect the WCF Note, to enforce its title in and right to possession of the Collateral and to enforce any and all other rights or remedies available to it.

(d) After notice to Debtor as provided in Paragraph 4.4 herein, sell all or a portion of the Collateral at public or private sale either with or without having such Collateral at the place of sale. The proceeds of such sale, after deducting therefrom all expenses of Secured Party in selling the Collateral (including reasonable attorneys' fees) shall be applied to the payment of the WCF Note, and

any surplus thereafter remaining shall be paid to Debtor or any other person that may be legally entitled thereto. Secured Party shall not be entitled to pursue any deficiency against Debtor following the sale of the Collateral to the extent that the Collateral is sold for less than the fair market value thereof which fair market value shall be not less than the value, at par (principal plus interest due to maturity) on the note(s) secured by the Collateral. Secured Party agrees that notwithstanding any other provision of the Loan Documents (all documents relating to or securing the WCF Loan), it shall sell the Collateral as provided for herein prior to exercising any other remedy against Debtor.

4.3 Secured Party, so far as may be lawful and, subject to the terms herein, may purchase all or any part of the Collateral offered at any public or private sale made in the enforcement of Secured Party's rights and remedies hereunder.

4.4 Secured Party shall give Debtor reasonable notice of any sale or other disposition of all or any part of the Collateral. Debtor agrees that notice and demand shall be deemed to be commercially reasonable and effective if such notice is given to Debtor at least ten (10) business days prior to such sale or other disposition in the manner provided herein for the giving of notices.

4.5 Debtor shall pay all costs and expenses, including without limitation costs of Uniform Commercial Code and other searches, court costs and reasonable attorneys' fees, incurred by Secured Party in enforcing payment and performance of the WCF Loan or in exercising the rights and remedies of Secured Party hereunder. All such costs and expenses shall be secured by this Agreement and all other lien and security documents securing the WCF Loan. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Secured Party.

4.6 In addition to and subject to the remedies and conditions provided herein for an Event of Default, Secured Party shall have all the rights and remedies afforded a secured party under the Uniform Commercial Code and all other legal and equitable remedies allowed under applicable law and the other loan Documents. No failure on the part of Secured Party to exercise any of its rights hereunder arising upon any Event of Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Event of Default. No delay on the part of Secured Party in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Event of Default is continuing. Subject to the terms of this Agreement, Secured Party may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the WCF Loan after its due date, Secured Party shall not thereby waive the agreement contained herein that time is of the essence, nor shall Secured Party waive either its right to require prompt payment or performance when due of the remainder of the WCF Loan or its right to consider the failure to so pay or perform an Event of Default.

## **5. MISCELLANEOUS PROVISIONS**

5.1 The acceptance of this Agreement by Secured Party shall not be considered a waiver of or in any way to affect or impair any other security that Secured Party may have, acquire simultaneously herewith, or hereafter acquire for the payment or performance of the WCF Loan, nor shall the taking by Secured Party at any time of any such additional security be construed as a waiver of or in any way to affect or impair the Security Interest; Secured Party may, subject to the terms of this Agreement, resort for the payment or performance of the Obligation, to its several securities therefor in such order and manner as it may determine.

5.2 Without notice or demand, without affecting the obligations of Debtor hereunder or the personal liability of any person for payment or performance of the WCF Loan, and without affecting the Security Interest or the priority thereof, Secured Party, from time to time, may: (i) extend the time for payment of all or any part of the WCF Loan, accept a renewal note therefor, reduce the payments thereon, release any person liable for all or any part thereof, or otherwise change the terms of all or any part of the WCF Loan; (ii) take and hold other security for the payment or performance of the WCF Loan and enforce, exchange, substitute, subordinate, waive or release any such security; (iii) join in any extension or subordination agreement; or (iv) release any part of the Collateral from the Security Interest.

5.3 Subject to the terms of this Agreement, Debtor waives and agrees not to assert: (i) any right to require Secured Party to proceed against any guarantor, to proceed against or exhaust any other security for the WCF Loan, to pursue any other remedy available to Secured Party, or to pursue any remedy in any particular order or manner; (ii) the benefits of any legal or equitable doctrine or principle of marshalling; (iii) the benefits of any statute of limitations affecting the enforcement hereof; (iv) demand, diligence, presentment for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment, relating to the WCF Loan; and (v) any benefit of, and any right to participate in, any other security now or hereafter held by Secured Party.

5.4 Until an Event of Default, Debtor may retain possession of the Collateral and may use it in any lawful manner consistent with this Agreement or with the provisions of any policies of insurance thereon.

5.5 The terms herein shall have the meanings in and be construed under the Uniform Commercial Code. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid provision had not been contained herein.

5.6 No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement subscribed by Debtor and a duly authorized officer of Secured Party.

5.7 This Agreement shall remain in full force and effect until the WCF Loan shall have been paid and performed in full.

5.8 No setoff or claim that Debtor now has or may in the future have against Secured Party shall relieve Debtor from paying or performing the WCF Loan.

5.9 Time is of the essence hereof. All liability hereunder shall be joint and several. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns. The term "Secured Party" shall include not only the original Secured Party hereunder but also any future owner and holder, including pledgees, of the Note. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

5.10 All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by delivery service or by electronic transmission. Any notice directed to a party to this Agreement shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, twenty-four (24) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Agreement or such other address as that party, from time to time, may specify by notice to the other parties.

5.11 A carbon, photographic or other reproduced copy of this Agreement and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement.

## 6. JURISDICTION, LAW AND VENUE.


**THIS SECURITY AGREEMENT HAS BEEN DELIVERED IN THE STATE OF ARIZONA. THIS SECURITY AGREEMENT AND THE RIGHTS, DUTIES AND OBLIGATIONS OF DEBTORS AND (BY THEIR ACCEPTANCE HEREOF) SECURED PARTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ARIZONA (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND TO THE EXTENT THEY PREEMPT THE LAWS OF SUCH STATE, THE LAWS OF THE UNITED STATES. EXCEPT WITH RESPECT TO THE CONDUCTING OF A PRIVATE OR PUBLIC SALE AS PROVIDED FOR HEREIN, ALL DISPUTES HEREUNDER SHALL BE SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN SECTION 16 OF THE WCF LOAN AGREEMENT.**

[Signatures follow on next page]

IN WITNESS WHEREOF, these presents are executed as of the date indicated above.

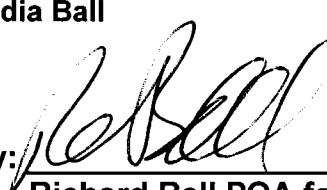
**DEBTOR:**

Landmark Capital & Investment Company

By:  Date: 10/11/07  
David Crantz, President

**SECURED PARTY:**

Lydia Ball

By:  Date: 10/11/07  
Richard Ball POA for Lydia Ball

**Debtor:** Landmarc Capital & Investment Company

**Business Address of Debtor:**  
4110 N. Scottsdale Road, Suite 330  
Scottsdale, Arizona 85251

**Lender:**

**SCHEDULE A to UCC-1**

**DESCRIPTION OF COLLATERAL  
(Security Interest in Specific Assigned Real Estate Loans)**

All of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to certain specific real estate loan transactions ("Loan Transactions") assigned to Lender from time to time by Debtor under the terms of a Warehouse Credit Facility ("WCF") loan arrangement ("Specific Assigned Loan Transactions") including the following described property relating to such Specific Assigned Loan Transactions, whether now or hereafter acquired and wherever located (collectively, the "Collateral"):

- a. All documents and agreements relating to Specific Assigned Loan Transactions that are assigned to Lender from time to time under the terms of the WCF and that have not been repurchased by Debtor (or paid off by the underlying borrower) and all rights of lender thereunder to collect and enforce the terms of such Loan Transactions.
- b. All of the books and records of Debtor relating to the Specific Assigned Loan Transactions that are currently assigned to Lender from time to time under the WCF.
- c. Cash proceeds relating to Specific Assigned Loan Transactions that are assigned to Lender from time to time under the terms of the WCF and which Loan Transactions have not been repurchased by Debtor (or paid off by the underlying borrower).

CP

SECRETARY OF STATE

2008 NOV 14 AM 10:37

FILED

200815587870

1072

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)  
480-970-8500

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

LANDMARC CAPITAL & INVESTMENT COMPANY  
4110 NORTH SCOTTSDALE ROAD, SUITE 330  
SCOTTSDALE, ARIZONA 85251

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
LANDMARC CAPITAL & INVESTMENT COMPANY

OR  
1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4110 NORTH SCOTTSDALE RD, #330 SCOTTSDALE AZ 85251 USA

1d. SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION CORPORATION 1f. JURISDICTION OF ORGANIZATION ARIZONA 1g. ORGANIZATIONAL ID #, if any NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR  
2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADDL INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any NONE

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE OF ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR  
3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

BALL LYDIA

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11704 BERINGER AVENUE NE ALBUQUERQUE NM 87122 USA

4. This FINANCING STATEMENT covers the following collateral:  
FULL OR PARTIAL DEED OF TRUST OWNED BY LANDMARC CAPITAL & INVESTMENT COMPANY UP TO THE AMOUNT BORROWED AS SET FORTH IN THE WCF LOAN AGREEMENT

11/14/2008 3:39PM 000004#4036 \*\*\*  
UCC 1/DISP COLL \$5.00

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

UNOFFICIAL DATA - Fileno: 1558787 CheckDigit: 0 Seqno: 1 Page: 1

Exhibit D



**Debtor: Landmarc Capital & Investment Company**

**Business Address of Debtor:  
4110 N. Scottsdale Road, Suite 330  
Scottsdale, Arizona 85251**

**Lender: LYDIA BALL**

**SCHEDULE A to UCC-1**

**DESCRIPTION OF COLLATERAL  
(Security Interest in Specific Assigned Real Estate Loans)**

All of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to certain specific real estate loan transactions ("Loan Transactions") assigned to Lender from time to time by Debtor under the terms of a Warehouse Credit Facility ("WCF") loan arrangement ("Specific Assigned Loan Transactions") including the following described property relating to such Specific Assigned Loan Transactions, whether now or hereafter acquired and wherever located (collectively, the "Collateral"):

a. All documents and agreements relating to Specific Assigned Loan Transactions that are assigned to Lender from time to time under the terms of the WCF and that have not been repurchased by Debtor (or paid off by the underlying borrower) and all rights of lender thereunder to collect and enforce the terms of such Loan Transactions.

b. All of the books and records of Debtor relating to the Specific Assigned Loan Transactions that are currently assigned to Lender from time to time under the WCF.

c. Cash proceeds relating to Specific Assigned Loan Transactions that are assigned to Lender from time to time under the terms of the WCF and which Loan Transactions have not been repurchased by Debtor (or paid off by the underlying borrower).

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**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

Roy W. Kyle, Esq. (520-629-4466)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Roy W. Kyle, Esq.  
 LEWIS AND ROCA LLP  
 One South Church Avenue, Suite 700  
 Tucson, AZ 85701

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME <b>LANDMARC CAPITAL &amp; INVESTMENT COMPANY</b>				
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS <b>4110 N. Scottsdale Road, Suite 330</b>		CITY <b>Scottsdale</b>	STATE <b>AZ</b>	POSTAL CODE <b>85251</b>
24. ADDL INFO RE ORGANIZATION DEBTOR		11a. TYPE OF ORGANIZATION <b>Corporation</b>	12. JURISDICTION OF ORGANIZATION <b>Arizona</b>	13. ORGANIZATIONAL ID #, if any <b>-0879362-0</b>

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
24. ADDL INFO RE ORGANIZATION DEBTOR		11a. TYPE OF ORGANIZATION	12. JURISDICTION OF ORGANIZATION	13. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR B/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>TBM ASSOCIATES, LLC</b>				
OR	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS <b>9440 E. Mariposa Grande</b>		CITY <b>Scottsdale</b>	STATE <b>AZ</b>	POSTAL CODE <b>85255</b>

4. This FINANCING STATEMENT covers the following collateral:

See attachment hereto incorporated herein by this reference.

6. ALTERNATIVE DESIGNATION (if applicable)	LEASER/LESSOR	COMMISSIONER/COMMISSIONER	BAH/SELLER/BUYER	SELLER/BUYER	AGL LIEN	NON-UCC FILING
7. THIS FINANCING STATEMENT IS TO BE USED (per request) (or reserved) in the following capacities:	17. CHECK TO INDICATE IF SEARCH REPORT IS (or is not) REQUIRED	18. ADDITIONAL FEE	19. Debtor 1	20. Debtor 2		

8. OPTIONAL FILER REFERENCE DATA  
 FILING OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

UNOFFICIAL DATA - Fileno: 1581249 CheckDigit: 0 Seqno: 1 Page: 1

Exhibit E

**SCHEDULE A to UCC-1****DESCRIPTION OF COLLATERAL**

To the extent of the undivided Collateral Percentages shown below, all of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to loan transactions evidenced by promissory notes payable to the Debtor or its order, listed below by Maker, Date, Designated Principal Amount and Collateral Percentage (collectively, the "Loans"), including without limiting the generality of the foregoing the following described property relating to any and all Loans, whether now or hereafter acquired and wherever located (collectively, the "Collateral"):

(a) All promissory notes, loan agreements, security agreements, mortgages, deeds of trust, partnership agreements, guarantees, insurance policies, indemnities and all other documents, instruments and agreements which now or in the future may evidence, secure or govern the term of the Loans and any of them, and any and all modifications, amendments, extensions, renewals, replacements and substitutions thereof and therefor.

(b) All books and records of Debtor relating to the Loans and any of the collateral.

(c) Cash proceeds and other proceeds of, from or related to the Loans or any of the Collateral of any kind or character.

<b>Maker</b>	<b>Date</b>	<b>Amount</b>	<b>Collateral Percentage</b>
Ronald E. Bush	7/26/07	\$300,000	100%
Presidio West, LLC	3/29/07	\$14,200,000	22.68%
Presidio West 37, LLC	12/28/07	\$2,800,000	53.46%
Presidio West 197, LLC	12/27/07	\$14,500,000	11.16%
Ruben Chao	6/27/07	\$123,700	100%
Bijou Real Estate Development, LLC	2/23/07	\$910,000	100%
Jeremiah Ireland	5/18/06	\$474,000	100%
James D. Kunkle	11/30/06	\$523,250	100%
Sheridan Levin & Tema Levin	11/11/07	\$164,000	100%
MSI Westgate, LLC	6/29/07	\$3,100,000	67.74%
Leonardo C. Miranda & Shawwnita Miranda	10/24/06	\$81,000	100%
Marjorie Michelle Orgill	6/9/06	\$385,000	100%
Marjorie Michelle Orgill	6/9/06	\$510,000	100%
Alma A. Cortez	4/24/07	\$111,000	100%
Yancy Frazier	9/12/07	\$905,000	55.248%
Thomas E. Stewart	11/21/07	\$2,460,000	56.874%

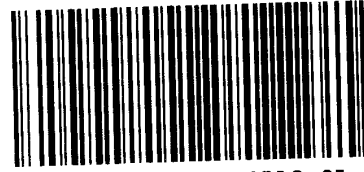
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When recorded mail to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
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2 OF 7

ACUNAR

this area reserved for county recorder

*CAPTION HEADING:*

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DO NOT REMOVE

This is part of the official document.

Exhibit F

MICHAEL K. JEANES, CLERK  
BY *Monica Crowley*  
DEP  
FILED

08 DEC 19 PM 4:17

1 CASEBOLT, GERMAINE & SCHENK, PLC  
2 3877 N. 7<sup>th</sup> Street, Suite 240  
3 Phoenix, Arizona 85014  
4 Telephone: (602) 953-5588  
5 Fax: (602) 953-5590  
6 Sanford J. Germaine (012722)  
7 Attorneys for: Plaintiffs

**CERTIFIED COPY**

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 IN AND FOR THE COUNTY OF MARICOPA

CV 2008-032264

10 LAZY E, L.L.C., an Arizona limited liability ) No. \_\_\_\_\_  
11 company; STONEMAN PROPERTIES, )  
12 L.L.C., an Arizona limited liability company; ) **NOTICE OF LIS PENDENS**  
13 SEM INVESTMENTS LLC, an Arizona )  
14 limited liability company, )  
15 )  
16 Plaintiffs, )  
17 vs. )  
18 )  
19 LANDMARC CAPITAL & INVESTMENT )  
20 COMPANY, an Arizona corporation; JEFF )  
21 PETERSEN; DAVID CRANTZ; DOES I-X, )  
22 )  
23 \_\_\_\_\_ )  
24 Defendants. )

25 NOTICE IS HEREBY GIVEN:

- 26 1. That an action has been commenced in the above entitled Court by the above  
27 named Plaintiff against the above named Defendants, which action is now pending.
2. That one of the objects of this action concerns title and/or encumbrances  
with respect to various parcels of property owned by the Defendants named in this action, including  
but not limited to the following parcels located in the following counties:

1 Maricopa County

2	<u>Parcel</u>	<u>Owner</u>	<u>Loan</u>
3	1. APN:300-06-032B	Landmarc (Thompson)	SEM
4	2. APN:217-55-579	Landmarc (Callahan)	SEM
5	3. APN:169-02-22A & SW Corner Bell & 17th	Landmarc (CBI Developers)	SEM & Lazy E
6	4. APN:154-17-032	Oprea-David LLC	Lazy E & Stoneman DB
7	5. APN:304-24-011C	Landmarc (Horning)	Stoneman DB
8	6. APN:102-17-196C	Landmarc (Funk)	Lazy E

9 Pima County

10	<u>Parcel</u>	<u>Owner</u>	<u>Loan</u>
11	1. APN:133-27-0650	Arellano	SEM
12	2. APN:224-42-006H	Landmarc (Frazier)	SEM
13	3. APN:159-36-080 APN:159-36-130	Vassious	Lazy E

14 Pinal County

15	<u>Parcel</u>	<u>Owner</u>	<u>Loan</u>
16	1. APN:205-03-355	Rich	Lazy E

17 Coconino County

18	<u>Parcel</u>	<u>Owner</u>	<u>Loan</u>
19	1. APN:112-01-019	Presidio West/Landmarc	SEM

20 Yavapai County

21	<u>Parcel</u>	<u>Owner</u>	<u>Loan</u>
22	1. APN:500-09-001 APN:500-09-002 APN:500-09-003	Landmarc (Pourier)	Lazy E

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Dated this 19<sup>th</sup> day of December, 2008.

CASEBOLT, GERMAINE & SCHENK, PLC

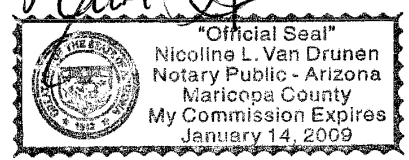
By [Signature]  
Sanford J. Germaine  
3877 North Seventh Street., Suite 240  
Phoenix, Arizona 85014  
Attorneys for Plaintiffs

STATE OF ARIZONA     )  
                                  ) ss:  
COUNTY OF MARICOPA )

Subscribed and Sworn to before me this 19<sup>th</sup> day of December, 2008, by Sanford J. Germaine.

[Signature]  
Notary Public  
[Signature]

My Commission Expires:  
1/14/09



# SCAN

The foregoing instrument is a full, true and correct copy  
of the original on file in this office.

Attest DEC 22 2008 20

MICHAEL K. JEANES, Clerk of the Superior Court of the  
State of Arizona, in and for the County of Maricopa.

By *Monica Crawley* Deputy



## **Lydia Ball Revocable Trust (Claim No. 8546)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by the Lydia Ball Revocable Trust (“BallWare”) under its WCF Agreement with Landmarc (Schedule 1), and the various interests it claims in three (3) of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by BallWare. Originally, Landmarc entered into a WCF Agreement with Lydia Ball on September 20, 2007. On or about August 26, 2009, Lydia Ball transferred her interest in the WCF Agreement to the Lydia Ball Revocable Trust. The Proof of Claim was filed in the name of the Lydia Ball Revocable Trust by its Trustee, Richard Ball.

1. The Receiver recommends approval of BallWare’s claim to unpaid principal and interest due under BallWare’s WCF Agreement as of June 24, 2009 as set forth in the attached Schedule 1.
2. The Receiver agrees with the percentages claimed in all of the three (3) loans identified in Schedule 2 of BallWare’s Proof of Claim.
3. The Receiver agrees with all of the valuations set forth in Schedule 2 of BallWare’s Proof of Claim.
4. Although a UCC-1 was filed with the Secretary of State for BallWare, it did not specifically identify in the filing or the exhibit thereto the loans in which BallWare sought to perfect a security interest. The Security Agreement referenced in BallWare’s UCC-1 also did not specifically identify individual loans. However, the Receiver believes that since the claimed security interests can be objectively ascertained from Landmarc’s records, BallWare has demonstrated sufficiently that it has a perfected security interest in the loans that had not been foreclosed as of the Receivership Date and in the percentages as reflected in Landmarc’s records and as set forth in the attached Schedule 2.<sup>1</sup>
5. The Receiver’s recommendations regarding the loan interests claimed in BallWare’s WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and include the following:
  - a. BallWare is the 100% beneficial owner of the Rednour loan (#07051062) and the Wedding loan (#07061109). After payment of the loan charges, these loans will be transferred to BallWare or a new servicing agent selected by BallWare.
  - b. BallWare is the 100% beneficial owner of the Campa-Perez loan (#07061095). Prior to the Receivership Date, however, Landmarc had foreclosed on this loan and title had been vested in Landmarc. As of the

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<sup>1</sup> The discussion of the legal basis for this conclusion is set forth in Petition No. 43.

Receivership Date BallWare did not have a recorded interest or a perfected security interest in this REO and therefore confirmation of its interest must be deferred for a later determination.<sup>2</sup>

1157-027.01 (103025\_2)

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<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**  
Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due

Claimant: **Lydia Ball Revocable Trust (Claim No. 8546)**

<u>WCF Agreements as of 6/24/09</u>				<u>Claimed as of 06/24/09</u>			<u>Recommended by the Receiver 06/24/09</u>		
<u>Date</u>	<u>Party to WCF</u>	<u>Interest Rate</u>	<u>Original Amount</u>	<u>Principal Balance</u>	<u>Accrued Interest</u>	<u>Total Due</u>	<u>Principal Balance</u>	<u>Accrued Interest</u>	<u>Total Due</u>
09/20/07	Lydia Ball	10.0%	400,000	400,000	3,433	403,433	400,000	3,433	403,433
Totals				\$400,000	\$3,433	\$403,433	\$400,000	\$3,433	\$403,433

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **Lydia Ball Revocable Trust (Claim No. 8546)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
											L	M	N	O			
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
07051062	Rednour	156,009	143,100	Default 120	100.0%	100.0%	143,100	USP	0.0%	0.0%	100.0%	143,100	1d	4b	1,668.74	8,368.88	150.42
07061095	Campa-Perez	N/A	112,500	REO	100.0%	100.0%	112,500	USP	0.0%	0.0%	100.0%	112,500	1dg2a	9a	0.00	0.00	9,565.73
07061109	Wedding	N/A	60,000	REO	100.0%	100.0%	60,000	USP	0.0%	0.0%	100.0%	60,000	1d	4b	0.00	863.66	1,470.05
							\$315,600					\$315,600			\$9,233	\$11,186	
												<b>Owed to Claimant by LCI under WCF at 6/24/09:</b>		\$403,433			
												<b>Less Value of Claimant's Secured Claim:</b>		(315,600)			
												<b>Plus Estimated Loan Charges to be Paid by Claimant:</b>		11,186			
												<b>Less Estimated Other Trust Funds to be Released to Claimant:</b>		(9,233)			
												<b>Estimated General Unsecured Claim:</b>		\$89,787			

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)

## **Gubin Family Trust Dated May 27<sup>th</sup>, 1992 and Helen and Stephen Gubin Charitable Remainder Trust (Claim No. 7338)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by the Gubin Family Trust dated May 27th, 1992 and Helen and Stephen Gubin Charitable Remainder Trust (“Gubin”) under their two WCF Agreements with Landmarc (Schedule 1), and the various interests it claims in 21 of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by Gubin.

1. The Receiver recommends approval of Gubin’s claim to unpaid principal and interest due under Gubin’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 21 loans identified in Schedule 2 of Gubin’s Proof of Claim, with the exception of:

a. The claimant’s interest in the 4405 Speedway, LLC/Vassious loan (#08081976) has been adjusted upward as described in paragraph 12 below.

3. With respect to the valuations set forth in Schedule 2 of Gubin’s Proof of Claim, the Receiver agrees with all of the valuations with the exception of:

a. CBI Developers Loan (#08011873). The valuation of this REO was based on an amount provided to the Claimant by the Receiver. However, based on an appraisal recently obtained by the Receiver from TBM, the Receiver now believes that the value of this REO should be reduced to \$825,000 and the value of the claimant’s interest in the REO adjusted proportionately downward.

b. Because of the increase in Gubin’s percentage ownership of the 4405 Speedway loan (#08081976) as described in paragraph 12 below, the resulting valuation of Gubin’s security interest has also increased.

4. Although a UCC-1 was filed with the Secretary of State for Gubin, it did not specifically identify in the filing the loans in which it sought to perfect a security interest. The Security Agreement referenced in Gubin’s UCC-1 also did not specifically identify individual loans. However, the Receiver believes that since the claimed security interests can be objectively ascertained from Landmarc’s records, Gubin has demonstrated sufficiently that he has a perfected security interest in the loans that had not been foreclosed as of the Receivership Date and in the percentages as reflected in Landmarc’s records and as set forth in the attached Schedule 2.<sup>1</sup>

5. The Receiver’s recommendations regarding the loan interests claimed in Gubin’s WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

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<sup>1</sup> The discussion of the legal basis for this conclusion is set forth in Petition No. 43.

6. Hinson Loan (#06070507). On August 2, 2006, Landmarc made a loan for \$525,000, which was secured by a first deed of trust on a commercial property located at 14819 N Cave Creek Road in Phoenix (“Property”). The borrower subsequently defaulted and Landmarc foreclosed and the TDUS recorded on June 9, 2008, conveyed title to Landmarc. On November 19, 2008, Landmarc recorded a Quit Claim Deed conveying 43% fee title to Landmarc and 57% to LDM (LDM held a 57.14% interest in the loan). Although KepesWare holds a 4.76% fractional interest in the Hinson loan, title to the REO is vested in Landmarc (43%) and LDM (57%). Gubin holds the remaining 38.1% interest in the loan. No portion of the fee title has been vested in KepesWare or Gubin. On August 9, 2010, the Receiver entered into a commercial lease agreement with several individuals for the lease of a certain portion of the Property through July 31, 2012. The lease includes a security deposit of \$2,340 and a renewal option and an option to purchase the entire Property. The confirmation of the unrecorded interests in the Property and the manner in which the approved interests in the Property are distributed will need to be resolved by further order of the Court.<sup>2</sup>

7. Two Six Seven Investments Loan (#08041903). On or about April 9, 2008, Landmarc made a loan of \$535,000 to Two Six Seven Investments, LLC, which was secured by a deed of trust on a vacant parcel of land located at 10149 E. Cavedale Drive in Scottsdale (“Property”) recorded with the Maricopa County Recorder on April 9., 2008, as Document No. 2008-0312840. This loan was funded by Gubin (6.542%), Kepes (18.692%), Partners (28.037%) and First Trust Company of Onaga, as custodian for the Rhonda K. Solheim IRA (46.729%). Initially Landmarc recorded an assignment on May 15, 2008 of 74.77% of the beneficial interest under the deed of trust to Partners. On June 30, 2008, Landmarc recorded an assignment of 46.729% of the beneficial interest under the deed of trust to the Solheim IRA. On March 3, 20, 2009, Landmarc acting as the attorney in fact for Partners, recorded an assignment of 46.733% of the beneficial interest under the deed of trust back to Landmarc, presumably in an effort to validate the earlier assignment to the Solheim IRA. No assignments to Kepes or to Gubin were recorded. Following the borrower’s default, Landmarc and the borrower entered into Forbearance Agreements but the borrower has failed to perform and Landmarc is now proceeding with foreclosure. Upon completion of the foreclosure, the Receiver will market and sell the REO and distribute the proceeds to the interest holders in accordance with their approved percentage.

8. CBI Developers Cheney Drive Property (#08011873). On January 31, 2008, Landmarc acquired title by Warranty Deed of vacant residential property located on East Cheney Drive in Paradise Valley (“Property”) for a purchase price of \$1,200,000 and at the same time entered into an Option Agreement with CBI Developers, Inc., under which CBI was granted the option to purchase the Property for \$2,490,000 plus interest and a percentage of the profit upon sale of the Property. Cipriano B. Ionutescu personally guaranteed the obligations of CBI under the Option Agreement. Landmarc

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<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.

and CBI also entered into a Memorandum of Understanding which called for an interest reserve account and a construction draw account. The Option Agreement required monthly payments which were made for several months from an interest reserve account before CBI defaulted. It does not appear that CBI ever exercised its option to purchase the Property under the Option Agreement which expired by its terms on July 31, 2009. According to Landmarc's records this Property and the agreements were funded and beneficially owned by Gubin (53.04%), TBM (20.87%), LazyE (5.22%), Murray (2.69%), Desert Trails (7.82%), Hayden (5.41%), KepesWare (3.98%), Landmarc (.71%), and White (.26%). On March 4, 2008, Landmarc recorded a Quitclaim Deed conveying title to the Property as follows: 83.936% to Landmarc and 16.064% to TBM. The Receiver has listed the Property for sale. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>3</sup>

9. CBI Developers Bell Rd. Loan (#08081970). On or about October 31, 2007, Landmarc made a construction loan of \$1,377,000 to CBI Developers, Inc. (#07101823), which was secured by a deed of trust on commercial property located at the southwest corner of 17<sup>th</sup> Street and Bell Road in Phoenix ("Property"). On April 30, 2008, the loan was modified to increase the principal balance to \$1,553,500 and a modification fee of \$50,000 was charged but not paid at that time. In August 2008, this loan was refinanced and a new loan (#08081970) for \$1,750,000 was made to CBI, which included funding to pay the balance owed under the first loan including the accrued and unpaid interest, the unpaid loan modification fee, and the loan charges associated with the new loan. Landmarc recorded assignments of the deed of trust for this loan as follows: Partners (57.73%), LazyE (0.57%), and LDM Pension (0.857%), leaving Landmarc with 40.84%. However, Landmarc's records indicate that the funding and beneficial ownership of this loan was as follows: Partners (90.08%), KepesWare (3.28%), White (1.91%), LDM Pension Plan (0.99%), LazyE (0.66%), Desert Trails (1.05%), and Gubin (2.04%). The borrower subsequently defaulted and Landmarc foreclosed resulting in a Trustee's Deed recorded on January 29, 2010, conveying title consistent with the recorded assignments as follows: Landmarc (40.843%), Partners (57.73%), LazyE (.57%), LDM Acceptance Pension Plan (0.857%). The Receiver intends to list the Property for sale and once it is sold, the Receiver recommends distribution of the net sale proceeds as follows: KepesWare (3.28%), White (1.91%), the Receiver as assignee of LazyE (0.66%), and Gubin (2.04%). The balance of the net sale proceeds will be held by the Receiver until the Court has ruled on the claims of Partners, Desert Trails and LDM Pension Plan in subsequent proceedings.

10. David, LLC Loan (#07030955). On March 28, 2007, Landmarc made a loan of \$245,000 to David, LLC, which was secured by a first position deed of trust on commercial property located at 2423 W. Campbell Avenue in Phoenix ("Property") recorded with the Maricopa County Recorder on March 28, 2007, as Document No. 2007-0367901. According to LMS, this loan is beneficially owned by Gubin (18.367%),

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<sup>3</sup> See Petition No. 43, paragraphs 46 through 48.

LazyE (55.102%), and Stoneman (26.531%). Landmarc recorded numerous assignments to these lenders and others but because they were recorded out of order or did not correctly identify the deed of trust, Landmarc held all of the beneficial interest under this loan as of June 24, 2009. The borrower has defaulted and the Receiver is proceeding with foreclosure of the loan.

11. 104<sup>th</sup> and Indian School Property (104<sup>th</sup> Ave). Landmarc agreed to finance the acquisition of a 4.020 acre site located at the northeast corner of 104<sup>th</sup> Drive and Indian School Road in Phoenix (“Property”) by 104<sup>th</sup> and Indian School, LLC. Landmarc granted to 104<sup>th</sup> and Indian School, LLC (“104<sup>th</sup>”) an option to purchase the Property from Landmarc. 104<sup>th</sup> eventually defaulted under its option agreement and quit claimed all of its interest in the Property to Landmarc on November 16, 2007. As of June 24, 2009, title to the Property was held by Landmarc but LMS shows that this Property and the agreements were funded and beneficially owned as of the Receivership Date by KepesWare (39.22%), Gubin (42.99%), WhiteWare (15.12%), LazyE (1.91%) and Landmarc (0.76%). The confirmation of the interests in the Property will need to be resolved by further order of the Court.<sup>4</sup>

12. 4405 Speedway, LLC/Vassious Loan (#08081976). On September 10, 2008, Landmarc made a loan of \$1,440,000 to 4405 Speedway, LLC, which was secured by a first position deed of trust on commercial property in Pima County recorded with the Pima County Recorder on September 10, 2008, as Document No. 2008-1760484. This loan refinanced an earlier loan from Landmarc to Peter and Spiridoula Vassious. It appears that the original loan to the Peter and Spiridoula Vassious may not have been fully funded and as a result it appears that this loan was short funded by approximately \$12,500. As was its practice, Landmarc allocated in LMS to itself the beneficial ownership of this unfunded portion of the loan. Given the relatively immaterial amount of this apparent short funding the Receiver has not completed a forensic investigation to confirm the short funding but instead recommends that each participant’s interest be recalculated as indicated below. The borrower has threatened bankruptcy or litigation over alleged wrongdoing by Landmarc and the Receiver’s efforts to resolve those issues have been unsuccessful to date. Distribution of the approved interests in this loan will therefore be determined in subsequent proceedings.

<u>Lender</u>	<u>Per LMS</u>		<u>Recalculation by Receiver</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Partners	775,828	53.877%	775,828	54.349%
KepesWare	237,168	16.470%	237,168	16.614%
GubinWare	210,137	14.593%	210,137	14.721%
WhiteWare	48,514	3.369%	48,514	3.399%
LazyE	134,006	9.306%	134,006	9.387%

<sup>4</sup> See Petition No. 43, paragraphs 46 through 48.



Desert				
Trails	21,847	1.517%	21,847	1.530%
Landmarc2	12,500	0.868%	0	0.000%
	<u>1,440,000</u>	<u>100.000%</u>	<u>1,427,168</u>	<u>100.000%</u>

13. Presidio West 197 Loan (#07121853). On or about December 27, 2007, Landmarc loaned \$14,500,000 to Presidio West 197, LLC which was secured by approximately 197 acres of vacant land west of Flagstaff (“Property”) under a Deed of Trust recorded with the Coconino County Recorder on December 31, 2007 as Document No. 3471146. This loan refinanced an earlier loan from Landmarc to Presidio West, LLL for \$14,200,000 (#07030964), which had refinanced another loan from Landmarc to Presidio West, LLC for \$9,500,000 (#06100775). According to LMS, the loan to Presidio West 197 was funded as follows:

<b>Lender</b>	<b>Percentage</b>
Monterey Capital Co., LLC	50%
Landmarc Capital Partners, LLC	16.361%
TBM & Associates, LLC	11.157%
LDM Acceptance Company Pension	9.614%
Victoria Cohen	3.655%
DVH Management Corporation	3.448%
LDM Acceptance Company	2.215%
Desert Trails Insurance Company	2.171%
Gubin Family Trust	1.379%

Assignments of beneficial interest were recorded for the interest acquired by Monterey, TBM, DVH, and Partners but not for the others. Monterey claims to be unaware of the other loan participants and claims that Landmarc breached its loan participation agreement with Monterey by selling interests in this loan. The borrower subsequently defaulted and on September 9, 2008, an involuntary bankruptcy petition was filed on the borrower by several of its creditors. Pursuant to the terms of its participation agreement, Monterey assumed the role as administrator of the loan and filed a motion in bankruptcy court to lift the automatic stay. An order granting the motion was entered on June 24, 2009. Monterey then proceeded to foreclose the deed of trust which resulted in the issuance of a Trustee’s Deed vesting Monterey and Landmarc with 50% fee title each which was recorded on August 11, 2009. TBM claims that this foreclosure and the resulting Trustee’s Deed were done incorrectly. Monterey pursued collection under the note and guarantees and the Receiver is negotiating with Monterey on the sale of the REO. Because the disposition of this loan is not under the Receiver’s direct control, the Receiver is unable to estimate when the interests of the loan participants in this loan will be resolved.

14. Poirier/Westend Investments, LLC Loan (#06030207). On April 18, 2006, Landmarc loaned \$2,500,000 to Westend Investment, LLC, which was secured by 663.85 acres of vacant rural land located near Mayer, Arizona (“Property”) under a deed of trust recorded with the Yavapai County Recorder on April 27, 2006 at Book 4389, Page 331. Apparently the loan was initially funded entirely by Schupak since Landmarc recorded an assignment of all of the interest under the deed of trust to Schupak on April 27, 2006 at Book 4389, Page 332. According to LMS, 50% of the interest in the loan was subsequently purchased from Schupak by other lenders resulting in beneficial ownership of the loan being held as follows: Schupak (50%); Gubin (30.6%); WhiteWare (8.8%), Desert Trails (4.8%), Station Park (3.2%), and the Receiver as assignee of LazyE (2.6). The borrower defaulted and Landmarc foreclosed resulting in a Trustee’s Deed Upon Sale being recorded on December 7, 2007, conveying fee title to Landmarc (50%) and Schupak (50%).

Schupak has claimed a 100% interest in this loan. However, the Receiver recommends that Schupak’s percentage interest be approved at 50% for the following reasons: the records of Landmarc reflect an ownership by Schupak of only 50%; the Trustee’s Deed conveyed only 50% of fee title to Schupak, and in fact Schupak’s own accounting of the principal owed under its WCF Agreement shows that it is only owed \$1,200,000 (which is slightly less than 50% of the original loan).

Accordingly, the Receiver recommends that the Court approve an interest of 50% for Schupak. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>5</sup> The Receiver intends to market and sell the Property and distribute the net sale proceeds according to the interests approved by the Court.

15. The Receiver’s recommendations regarding the remaining loan interests include the following:

a. The Sunrise Prep loan (#08061947) is current and has previously been transferred to Canyon State Servicing Company, LLC as the new servicing agent pursuant to Order No. 4, except that pursuant to an agreement between the Receiver and Gubin, Gubin’s claimed share of this loan is being paid to the Receiver by the new servicing agent and held in trust until the Court has determined whether Gubin has a perfected security interest in 3.54% of the loan. Accordingly, upon confirmation of Gubin’s security interest in this loan the Receiver will disburse the accumulated proceeds to Gubin after payment of Gubin’s share of the Loan Charges.

b. Gubin is the 100% beneficial owner of the Trujillo loan (#07040994). Prior to the Receivership Date, however, Landmarc had foreclosed on this loan and title to the REO had been vested in Landmarc. As of the Receivership Date Gubin did not have a recorded interest or a perfected security

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<sup>5</sup> See Petition No. 43, paragraphs 46 through 48.

interest in this REO. Therefore the confirmation of Gubin's unrecorded interest in the Property will need to be resolved by further order of the Court.<sup>6</sup>

c. The Petti loan (#07041030) is under a forbearance agreement and is wholly owned by Gubin and therefore it will be transferred to a new servicing agent upon confirmation of Gubin's interest.

d. The Polito loan (#071101811), also owned solely by Gubin, is in foreclosure with a sale scheduled for April 21, 2011 and therefore after completion of the foreclosure and confirmation of Gubin's interest, the REO will be transferred to Gubin.

e. Gubin is the 100% beneficial owner of the Baca loan (#07020933), which was foreclosed with title vesting in Landmarc prior to the Receivership Date. The REO was subsequently sold with the Receiver receiving net sale proceeds from the sale totaling \$93,933.10. The confirmation of Gubin's unrecorded interest in the Property will need to be resolved by further order of the Court.<sup>7</sup>

f. Gubin is the 100% beneficial owner of the Caraway loan (#07101809), which was foreclosed with title vesting in Landmarc prior to the Receivership Date. The REO was subsequently sold with the Receiver receiving net sale proceeds from the sale totaling \$77,627.08. The confirmation of Gubin's unrecorded interest in the Property will need to be resolved by further order of the Court.<sup>8</sup>

g. Gubin holds a fractional interest in the Rios (#07061112) loan. Since the loan was foreclosed and title vested in Landmarc prior to the Receivership Date, Gubin has no perfected or recorded interest in the REO. Therefore the confirmation of Gubin's unrecorded interest in the Property will need to be resolved by further order of the Court.<sup>9</sup>

h. Gubin holds a fractional interest in the Presidio West 37 (#07121849) loan. Since the loan was foreclosed and title vested in Landmarc prior to the Receivership Date, Gubin has no perfected or recorded interest in the REO. Therefore the confirmation of Gubin's unrecorded interest in the Property will need to be resolved by further order of the Court.<sup>10</sup>

i. Gubin holds a 50.47% beneficial interest in the Callahan loan (#07091799). As of the Receivership Date title in the REO was vested in Landmarc, Partners, Desert Trails, and Hayden Investments. No portion of the fee

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<sup>6</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>7</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>8</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>9</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>10</sup> See Petition No. 43, paragraphs 46 through 48.

title has been vested in Gubin. Therefore the confirmation of Gubin's unrecorded interest in the Property will need to be resolved by further order of the Court.<sup>11</sup>

j. Gubin has only a fractional interest in the We Did Our Part, LLC (#08021878), and Arp (#07051066) loans and the Receiver intends to complete foreclosure on these loans and then sell the REO and distribute the sale proceeds according to the percentage interests approved by the Court.

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<sup>11</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **Gubin Family Trust dated May 27, 1992, as amended; and the Helen and Stephen Gubin Charitable Remainder Trust (Claim No. 7338)**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
07/28/08	GubinWare	13.0%	4,584,034	4,474,029	228,074	4,702,103	4,474,029	228,074	4,702,103
07/28/08	GubinWare	13.0%	401,466	401,466	20,466	421,932	401,466	20,466	421,932
<b>Totals</b>				<b>\$4,875,495</b>	<b>\$248,540</b>	<b>\$5,124,035</b>	<b>\$4,875,495</b>	<b>\$248,540</b>	<b>\$5,124,035</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **Gubin Family Trust dated May 27, 1992, as amended; and the Helen and Stephen Gubin Charitable Remainder Trust (Claim No. 7338)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved		Codes	All Trust Funds		Loan Charges	
											%	Valuation					
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06030207	Poirier	N/A	597,600	REO	30.60%	30.60%	182,866	USP	0.0%	0.0%	30.6%	182,866	1dg2a	9a	0.00	0.00	10,800.64
06070507	Hinson	N/A	315,000	REO	38.10%	38.10%	120,015	USP	0.0%	0.0%	38.1%	119,999	1dg2a	9a	2,340.00	2,393.85	0.00
07020933	Baca	0	93,933	Sold	100.0%	100.0%	93,933	USP	0.0%	0.0%	100.0%	0	1dg2a	9a	0.00	93,933.10	0.00
07030955	David, LLC	245,000	147,000	FCLS	18.37%	18.37%	27,004	USP	0.0%	18.37%	18.37%	26,999	1d	8d	0.00	266.33	490.26
07040994	Trujillo	N/A	30,870	REO	100.0%	100.0%	30,870	USP	0.0%	0.0%	100.0%	30,870	1dg2a	9a	0.00	252.42	7,999.80
07041030	Petti	194,315	117,180	FCLS	100.0%	100.0%	117,180	USP	0.0%	0.0%	100.0%	117,180	1d	4b	1,603.17	4,268.55	2,001.20
07051066	Arp	650,000	390,000	FCLS	2.47%	2.47%	9,633	USP	0.0%	0.0%	2.47%	9,621	1d	8c9b	1,312.14	0.00	65.10
07061112	Rios	N/A	133,650	REO	79.34%	79.34%	106,038	USP	0.0%	0.0%	79.34%	106,037	1dg2a	9a	0.00	13,745.28	1,983.48
07091799	Callahan	N/A	342,000	REO	50.47%	50.47%	172,607	USP	0.0%	0.0%	50.47%	172,597	1dg2a	9a	1,501.15	4,537.49	0.00
07101809	Caraway	113,980	77,627	Sold	100.0%	100.0%	77,627	USP	0.0%	0.0%	100.0%	77,627	1dg2a	9a	0.00	77,627.08	0.00
07101811	Polito	17,250	10,350	FCLS	100.0%	100.0%	10,350	USP	0.0%	0.0%	100.0%	10,350	1d	5d	587.29	2,187.75	95.30
07121849	Presidio West 37, LLC	N/A	2,970,000	REO	9.11%	9.11%	270,567	USP	0.0%	0.0%	9.1%	270,448	1dg2a	9a	0.00	0.00	1,705.23
07121853	Presidio West 197, LLC	N/A	12,411,000	REO	1.38%	1.38%	171,272	USP	0.0%	0.0%	1.38%	171,148	1d	9c	0.00	0.00	575.73
08011873	CBI Developers, Inc	N/A	825,000	REO	53.04%	53.04%	620,521	USP	0.0%	0.0%	53.04%	437,547	1dg2av	9a	0.00	0.00	3,401.64
08021878	We Did Our Part LLC	1,750,000	1,215,000	FCLS	1.33%	1.33%	16,160	USP	0.0%	0.0%	1.33%	16,196	1d	8d	0.00	0.00	92.57
08041903	Two Six Seven Investments, LLC	535,000	321,000	FCLS	6.54%	6.54%	20,993	USP	0.0%	0.0%	6.54%	21,000	1d	8d	0.00	0.00	290.16
08051927	Porter 20, LLC	3,297,950	1,980,000	Default 360	9.59%	9.59%	189,882	USP	0.0%	0.0%	9.59%	189,862	1d	8d	0.00	0.00	0.57
08061947	Surprise Prep	4,100,000	4,100,000	Current	3.54%	3.54%	145,140	USP	0.0%	0.0%	3.54%	145,017	1d	4c	0.00	31,873.58	58.95
08081970	CBI Developers, Inc	N/A	270,810	REO	2.04%	2.04%	5,514	USP	0.0%	0.0%	2.04%	5,514	1d	8c9c	0.00	0.00	1,405.87
08081976	4405 Speedway, LLC/Vassious	1,440,000	342,000	FCLS	14.59%	14.59%	49,898	USP	0.0%	0.0%	14.72%	50,346	1drv	8c9c	0.00	0.00	1,883.86
104th Ave	104th & Indian School	N/A	882,000	REO	42.99%	42.99%	379,189	USP	0.0%	0.0%	42.99%	379,198	1dg2a	9a	0.00	1,954.24	1,774.21
							\$2,817,259					\$2,540,422			\$233,040	\$34,625	
												<b>Owed to Claimant by LCI under WCF at 6/24/09:</b>		\$5,124,035			
												<b>Less Value of Claimant's Secured Claim:</b>		(2,540,422)			
												<b>Plus Estimated Loan Charges to be Paid by Claimant:</b>		34,625			
												<b>Less Estimated Other Trust Funds to be Released to Claimant:</b>		(233,040)			
												<b>Estimated General Unsecured Claim:</b>		\$2,385,198			

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

- G Percentage of Ownership claimed by Claimant
- H Share of Current Fair Market Value claimed by Claimant (D x G)
- I Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
- J Fee Title percentage held by Claimant on 6/24/09
- K Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
- L Percentage interest in loan recommended for approved for this Claimant
- M Valuation of Claimant's interest in loan approved for this claimant
- N Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
- O Code explaining the recommended disposition of the Claimant's interest (see code explanations)
- P Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
- Q Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
- R Current Loan Charges to be paid by Claimant (may change at time of disposition)

## **Madelene KepesWare Revocable Living Trust (Claim No. 7431)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by the Madelene KepesWare Revocable Living Trust (“KepesWare”) under its two WCF Agreements with Landmarc (Schedule 1), and the various interests it claims in 16 of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by KepesWare.

1. 1. The Receiver recommends approval of KepesWare’s claim to unpaid principal and interest due under KepesWare’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. 2. The Receiver agrees with the percentages claimed in all of the 16 loans identified in Schedule 2 of KepesWare’s Proof of Claim, with the exception of:

a. The claimant’s interest in the Tatranska loan (#07051063) has been adjusted upward as described in paragraph 8 below; and

b. The claimant’s interest in the 4405 Speedway, LLC/Vassious loan (#08081976) has been adjusted upward as described in paragraph 13 below.

3. With respect to the valuations set forth in Schedule 2 of KepesWare’s Proof of Claim, the Receiver substantially agrees with all of the valuations, except for the following:

a. Because of the increase in KepesWare’s percentage ownership of the Tatranska loan (#07051063) as described in paragraph 8 below, the resulting valuation of KepesWare’s security interest has also increased;

b. The value of KepesWare’s interest in the Slavin loan (#07051082) has been changed to match the amount of funds transferred to Landmarc which the Receiver recommends be paid to KepesWare as more fully described in paragraph 7 below;

c. The value of the Luh loan (#07101822) has been increased to the estimated liquidation value of the security which is about to be acquired by foreclosure;

d. CBI Developers loan (#08011873). The valuation of this REO was based on an amount provided to the claimant by the Receiver. However, based on an appraisal recently provided to the Receiver by TBM, the Receiver now believes that the value of this REO should be reduced to \$825,000 and the value of the claimant’s interest in the REO adjusted proportionately downward; and

e. The value of the O’Neal loan (#LC040912) has been increased to the estimated liquidation value of the security which is about to be acquired by foreclosure.



f. Because of the increase in KepesWare's percentage ownership of the 4405 Speedway, LLC/Vassious loan (#08081976) as described in paragraph 13 below, the resulting valuation of KepesWare's security interest has also increased.

4. KepesWare filed a UCC-1 with the Secretary of State that identified in the filing the collateral in which it held a security interest as "Full or partial deed of trust owned by Landmarc Capital & Investment Company up to the amount borrowed as set forth in the WCF Loan Agreement." Attached to the UCC-1 was a copy of Schedule A to UCC-1, which did not identify specific loans. However, the Receiver believes that since the claimed interest can be objectively ascertained from Landmarc's records, KepesWare has demonstrated sufficiently that she has a perfected security interest in the loans and percentages as reflected in Landmarc's records and as set forth in the attached Schedule 2.<sup>1</sup>

5. The Receiver's recommendations regarding the security interests claimed in KepesWare's WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

6. Peart Loan (#07051077). On April 30, 2007, Landmarc made a loan of \$325,000 (#07041007) to Peart, which was secured by a first position deed of trust on a commercial building located at 6928 E. Main Street in Mesa ("Property") recorded with the Maricopa County Recorder on May 8, 2007 as Document No. 2007-0537526. According to LMS, Litchfield funded 100% of this loan. On June 8, 2007, Landmarc made a second loan to Peart for \$43,500 (#07051077), which was funded by the Gubin Family Trust ("Gubin"). This second position loan was secured by a second position deed of trust on the same Property as the first and was recorded with the Maricopa County Recorder on June 12, 2007 at 2007-0675256. On September 20, 2007, Gubin's interest in the second position loan was acquired by KepesWare. Peart subsequently defaulted and on March 10, 2008 Landmarc recorded a Notice of Trustee Sale (2008-0209734) to foreclose on the second position loan beneficially owned by KepesWare. Following the sale, the Trustee incorrectly issued and recorded a TDUS which identified the amount of the second loan, but included the recording information for the deed of trust on the first loan. The TDUS purportedly conveyed title to Landmarc and was recorded on June 12, 2008 as Document No. 2008-0521352. Landmarc then recorded on November 19, 2008, a Quitclaim Deed conveying 99% of its interest to Litchfield and 1% to Landmarc. Since the TDUS is defective there is a cloud over both the title of Landmarc and Litchfield. Since the value of the underlying security is well below the amount of the first loan balance any interest of KepesWare under the second is non-existent. Accordingly, the Receiver recommends that the Court confirm that Litchfield has 100% fee title free and clear of all liens upon payment to the Receiver of the estimated fair market value of 1% interest in the Property in accordance with this Court's Order No. 24. KepesWare's interest in the Property under its second position loan would be extinguished.

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<sup>1</sup> The discussion of the legal basis for this conclusion is set forth in Petition No. 43.

7. Slavin Loan (#07051082). On July 24, 2007, Landmarc made a loan of \$825,000, which was secured by a first deed of trust on a single family residential lot in Chandler (APN302-79-104B – a portion of the south half of Lot 16 and the north 50 feet of Lot 17, Caballos Ranchitos) (“Property”) and on four additional parcels in Maricopa County.

a. According to LMS there was a holdback on this loan of \$300,000 for construction draws. \$38,000 of this holdback was disbursed to pay construction costs and the remaining \$262,000 was eventually applied in June 2008, to reduce the principal balance of the loan to \$563,000. In July 2007, Landmarc and the borrower entered into a Partial Release Agreement under which Landmarc agreed to release all but two of the properties upon certain conditions. The borrower subsequently defaulted and on June 23, 2008, a Trustee’s Deed was recorded conveying to Landmarc title to two of the parcels covered by the Deed of Trust, APD302-79-104A and 302-79-104B. In September 2008, \$180,000 was received by Landmarc and applied to the principal balance of the loan, thus reducing the loan balance to \$383,000. When the foreclosed Property was sold by Landmarc in June 2009, Landmarc received \$282,038.74 from the closing and wrote off the \$100,961.26 balance of the loan.

b. KepesWare acquired a 5.548% interest in the Slavin Loan and the remaining interests were acquired by Hayden Insurance (19.786%), Litchfield (71.05 %) and the balance by Landmarc. The loan eventually went into default and Landmarc foreclosed which resulted in a Trustee’s Deed being recorded on June 23, 2008 vesting Landmarc with 100% fee title. Landmarc marketed the Property for sale and on June 5, 2009, the property was sold resulting in a recovery to Landmarc of \$282,038.74, which was deposited into Landmarc’s trust account. From these funds held in trust, Landmarc made the following distributions:

- (1) \$55,805.07 to Hayden Investments for its interest in the Slavin loan;
- (2) \$15,535.07 to Landmarc’s operating account for distribution to KepesWare for its interest in the Slavin loan;
- (3) \$10,057.79 to Landmarc’s operating account for its interest in the Slavin loan;
- (4) \$7,899.79 to Landmarc’s operating account purportedly for its broker fee under the Slavin loan.

c. No distribution was made to Litchfield for its interest in the Slavin loan because that payment was not scheduled until the first of July and the receivership prevented the distribution from taking place. However, the Receiver has determined that the \$192,741.02 of trust funds remaining in Landmarc’s trust

account for this loan are held for the benefit of Litchfield and should be distributed to Litchfield.

d. Litchfield has provided to the Receiver a copy of a Subordination Agreement under which Litchfield purports to receive from Landmarc a priority over all others in the repayment of \$400,000 in principal and the interest thereon from this loan. Apparently this side agreement was not disclosed to KepesWare when it was placed into this loan. However, since all of the funds held in trust for this loan are being distributed to Litchfield, the validity or enforceability of the agreement does not need to be addressed.

e. As indicated above, KepesWare’s share of the net sale proceeds was deposited into Landmarc’s general operating account but was not disbursed from the operating account prior to the freeze of the account by the Receivership Order. However, for the reasons set forth in subparagraph 4 above, the security interest attached to those funds and therefore upon approval of the Receiver’s recommendations, the sum of \$15,537.07 will be paid to KepesWare from the general funds of the receivership.

8. Tatranska Loan (#07051063). On May 24, 2007, Landmarc made a loan of \$771,000, which was secured by a second position deed of trust on eight rental properties recorded with the Maricopa County Recorder on May 25, 2007, as Document No. 2007-0609037. According to LMS, KepesWare funded 59.133% of this loan. On March 12, 2009, Landmarc modified this loan reducing the interest rate to 7.5% and extending the maturity date to March 12, 2014. In addition, \$43,368.75 in accrued and unpaid interest due (and possibly some other fees) was added to the principal balance of the loan increasing the principal balance to \$814,368.75. In its records, Landmarc allocated to itself the beneficial ownership of this increase in principal when it should have distributed the increase among the existing participants. Accordingly, the Receiver recommends that each participant’s interest be recalculated as follows (the Receiver’s recommendation with respect to KepesWare’s interest in this loan is 62.460%, the recalculated percentage indicated in the table below):

<u>Lender</u>	<u>Per LMS</u>		<u>Recalculation by Receiver</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Litchfield	250,000	30.699%	264,063	32.425%
KepesWareWare	481,563	59.133%	508,651	62.460%
MurrayWare	39,437	4.843%	41,655	5.115%
Landmarc2	43,369	5.325%	0	0.000%
	814,369	100.000%	814,369	100.000%

9. Horning Loan (#06050372). On June 1, 2006, Landmarc made a loan for \$640,000, which was secured by a deed of trust on a single family residence located at 350 East Cypress Street in Gilbert (“Property”). Various lenders acquired interests in the

loan and assignments to those lenders were recorded. After the borrower subsequently defaulted, Landmarc recorded an assignment back to itself of the previously recorded interests relying on its power of attorney, and then foreclosed on the Property. The TDUS recorded on July 12, 2007, conveyed title to Landmarc. Although Landmarc holds fee title to the Property, LMS indicates that as of June 24, 2009, the loan was beneficially owned by KepesWare (11.56%) and the Receiver as assignee of Stoneman (58.59%), and that three loan participants may have interests of 14.06% (Russo), 11.1% (Craig) and 4.69% (Sneed). No assignment was recorded to KepesWare and although an assignment to Stoneman was executed on March 7, 2007, it was not recorded until after the foreclosure. Following the foreclosure Landmarc entered into an Option Agreement granting Brandon and Barbara Farrow an option to purchase the Property for \$415,000 through November 1, 2010. On August 1, 2010, the option agreement was extended by the Receiver through April 31, 2012, in exchange for an option payment of \$6,000 and monthly payments thereafter of \$1,600 per month. The confirmation of the unrecorded interests in the Property and the manner in which the approved interests in the Property are distributed will need to be resolved by further order of the Court.<sup>2</sup>

10. Hinson Loan (#06070507). On August 2, 2006, Landmarc made a loan for \$525,000, which was secured by a first deed of trust on a commercial property located at 14819 N Cave Creek Road in Phoenix (“Property”). The borrower subsequently defaulted and Landmarc foreclosed and the TDUS recorded on June 9, 2008, conveyed title to Landmarc. On November 19, 2008, Landmarc recorded a Quit Claim Deed conveying 43% fee title to Landmarc and 57% to LDM (LDM held a 57.14% interest in the loan). Although KepesWare holds a 4.76% fractional interest in the Hinson loan, title to the REO is vested in Landmarc (43%) and LDM (57%). Gubin holds the remaining 38.1% interest in the loan. No portion of the fee title has been vested in KepesWare or Gubin. On August 9, 2010, the Receiver entered into a commercial lease agreement with several individuals for the lease of a certain portion of the Property through July 31, 2012. The lease includes a security deposit of \$2,340 and a renewal option and an option to purchase the entire Property. The confirmation of the unrecorded interests in the Property and the manner in which the approved interests in the Property are distributed will need to be resolved by further order of the Court.<sup>3</sup>

11. Luh Loan (#07101822). On or about November 19, 2007, Landmarc made a loan for \$270,000, which was secured by a deed of trust on land located at 1517 E. Cortez Street in Phoenix (“Property”) recorded with the Maricopa County Recorder on November 16, 2007 as Document No. 2007-1227796 (“Luh DOT”). According to LMS, Partners originally funded the loan and on April 10, 2008, Landmarc recorded an Assignment of Deed of Trust assigning 74.07% of the beneficial interest under the Luh DOT to Partners. Subsequently Partners’ interest was acquired by SEM and on May 27, 2008, Landmarc recorded another Assignment of DOT purporting to assign 74.07% of

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<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>3</sup> See Petition No. 43, paragraphs 46 through 48.

the beneficial interest under the Luh Deed of Trust to SEM. In November 2008, the principal balance was reduced by \$224,663.42. SEM's interest in the loan was acquired by KepesWare, however, the prior assignments were never released or corrected and no assignment to KepesWare was recorded. KepesWare asserts a security interest in this loan pursuant to its WCF Agreement and its UCC-1 filed with the Secretary of State. A dispute subsequently arose with the borrower and on May 1, 2009, the loan was modified to, among other things, reduce the principal balance to \$24,799.57. On or about May 2010 the borrower defaulted under the modified loan and the Receiver is prepared to commence foreclosure proceedings. The Receiver recommends that the Court confirm KepesWare's security interest in all of this loan and its proceeds and authorize the Receiver to foreclose on the Luh DOT and have title issued to KepesWare upon payment of all loan and foreclosure charges incurred by the Receiver.

12. Two Six Seven Investments (Porter) Loan (#08041903). On or about April 9, 2008, Landmarc made a loan of \$535,000 to Two Six Seven Investments, LLC, which was secured by a deed of trust on a vacant parcel of land located at 10149 E. Cavedale Drive in Scottsdale ("Property") recorded with the Maricopa County Recorder on April 9, 2008, as Document No. 2008-0312840. This loan was funded by Gubin (6.542%), KepesWare (18.692%), Partners (28.037%) and First Trust Company of Onaga, as custodian for the Rhonda K. Solheim IRA (46.729%). Initially Landmarc recorded an assignment on May 15, 2008 of 74.77% of the beneficial interest under the deed of trust to Partners. On June 30, 2008, Landmarc recorded an assignment of 46.729% of the beneficial interest under the deed of trust to the Solheim IRA. On March 3, 20, 2009, Landmarc acting as the attorney in fact for Partners, recorded an assignment of 46.733% of the beneficial interest under the deed of trust back to Landmarc, presumably in an effort to validate the earlier assignment to the Solheim IRA. No assignments to KepesWare or to Gubin were recorded. Following the borrower's default, Landmarc and the borrower entered into Forbearance Agreements but the borrower has failed to perform and Landmarc is now proceeding with foreclosure. Upon completion of the foreclosure, the Receiver will market and sell the REO and distribute the proceeds to the interest holders in accordance with their approved percentage.

13. 4405 Speedway, LLC/Vassious Loan (#08081976). On September 10, 2008, Landmarc made a loan of \$1,440,000 to 4405 Speedway, LLC, which was secured by a first position deed of trust on commercial property in Pima County recorded with the Pima County Recorder on September 10, 2008, as Document No. 2008-1760484. This loan refinanced an earlier loan from Landmarc to Peter and Spiridoula Vassious. It appears that the original loan to the Peter and Spiridoula Vassious may not have been fully funded and as a result it appears that this loan was short funded by approximately \$12,500. As was its practice, Landmarc allocated in LMS to itself the beneficial ownership of this unfunded portion of the loan. Given the relatively immaterial amount of this apparent short funding the Receiver has not completed a forensic investigation to confirm the short funding but instead recommends that each participant's interest be recalculated as indicated below. The borrower has threatened bankruptcy or litigation

over alleged wrongdoing by Landmarc and the Receiver's efforts to resolve those issues have been unsuccessful to date. Distribution of the approved interests in this loan will therefore be determined in subsequent proceedings.

<u>Lender</u>	<u>Per LMS</u>		<u>Recalculation by Receiver</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Partners	775,828	53.877%	775,828	54.349%
KepesWare	237,168	16.470%	237,168	16.614%
Gubin	210,137	14.593%	210,137	14.721%
WhiteWare	48,514	3.369%	48,514	3.399%
LazyE	134,006	9.306%	134,006	9.387%
Desert Trails	21,847	1.517%	21,847	1.530%
Landmarc2	12,500	0.868%	0	0.000%
	<u>1,440,000</u>	<u>100.000%</u>	<u>1,427,168</u>	<u>100.000%</u>

14. CBI Developers Bell Rd. Loan (#08081970). On or about October 31, 2007, Landmarc made a construction loan of \$1,377,000 to CBI Developers, Inc. (#07101823), which was secured by a deed of trust on commercial property located at the southwest corner of 17<sup>th</sup> Street and Bell Road in Phoenix ("Property"). On April 30, 2008, the loan was modified to increase the principal balance to \$1,553,500 and a modification fee of \$50,000 was charged but not paid at that time. In August 2008, this loan was refinanced and a new loan (#08081970) for \$1,750,000 was made to CBI, which included funding to pay the balance owed under the first loan including the accrued and unpaid interest, the unpaid loan modification fee, and the loan charges associated with the new loan. Landmarc recorded assignments of the deed of trust for this loan as follows: Partners (57.73%), LazyE (0.57%), and LDM Pension (0.857%), leaving Landmarc with 40.84%. However, Landmarc's records indicate that the funding and beneficial ownership of this loan was as follows: Partners (90.08%), KepesWare (3.28%), White (1.91%), LDM Pension Plan (0.99%), LazyE (0.66%), Desert Trails (1.05%), and Gubin (2.04%). The borrower subsequently defaulted and Landmarc foreclosed resulting in a Trustee's Deed recorded on January 29, 2010, conveying title consistent with the recorded assignments as follows: Landmarc (40.843%), Partners (57.73%), LazyE (.57%), LDM Acceptance Pension Plan (0.857%). The Receiver intends to list the Property for sale and once it is sold, the Receiver recommends distribution of the net sale proceeds as follows: KepesWare (3.28%), White (1.91%), the Receiver as assignee of LazyE (0.66%), and Gubin (2.04%). The balance of the net sale proceeds will be held by the Receiver until the Court has ruled on the claims of Partners, Desert Trails and LDM Pension Plan in subsequent proceedings.

15. CBI Developers Cheney Drive Property (#08011873). On January 31, 2008, Landmarc acquired title by Warranty Deed of vacant residential property located on East Cheney Drive in Paradise Valley ("Property") for a purchase price of \$1,200,000

and at the same time entered into an Option Agreement with CBI Developers, Inc., under which CBI was granted the option to purchase the Property for \$2,490,000 plus interest and a percentage of the profit upon sale of the Property. Cipriano B. Ionutescu personally guaranteed the obligations of CBI under the Option Agreement. Landmarc and CBI also entered into a Memorandum of Understanding which called for an interest reserve account and a construction draw account. The Option Agreement required monthly payments which were made for several months from an interest reserve account before CBI defaulted. It does not appear that CBI ever exercised its option to purchase the Property under the Option Agreement which expired by its terms on July 31, 2009. According to Landmarc's records this Property and the agreements were funded and beneficially owned by Gubin (53.04%), TBM (20.87%), LazyE (5.22%), Murray (2.69%), Desert Trails (7.82%), Hayden (5.41%), KepesWare (3.98%), Landmarc (.71%), and White (.26%). On March 4, 2008, Landmarc recorded a Quitclaim Deed conveying title to the Property as follows: 83.936% to Landmarc and 16.064% to TBM. The Receiver has listed the Property for sale. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>4</sup>

16. 104<sup>th</sup> and Indian School Property (104<sup>th</sup> Ave). Landmarc agreed to finance the acquisition of a 4.020 acre site located at the northeast corner of 104<sup>th</sup> Drive and Indian School Road in Phoenix ("Property") by 104<sup>th</sup> and Indian School, LLC. Landmarc granted to 104<sup>th</sup> and Indian School, LLC ("104<sup>th</sup>") an option to purchase the Property from Landmarc. 104<sup>th</sup> eventually defaulted under its option agreement and quit claimed all of its interest in the Property to Landmarc on November 16, 2007. As of June 24, 2009, title to the Property was held by Landmarc but LMS shows that this Property and the agreements were funded and beneficially owned as of the Receivership Date by KepesWare (39.22%), Gubin (42.99%), WhiteWare (15.12%), LazyE (1.91%) and Landmarc (0.76%). The confirmation of the interests in the Property will need to be resolved by further order of the Court.<sup>5</sup>

17. The Receiver's recommendations regarding the remaining security interests claimed by KepesWare in its WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and include the following:

a. The Smith (#LC040302) loan is current and the Receiver has recommended for approval KepesWare's claimed 50% interest in the loan. The remaining 50% of the loan is claimed by Desert Trails. This loan is a current loan and upon confirmation of Kepe's interest it will be transferred to a new servicing agent in accordance with this Court's *Order No. 4*.

b. KepesWare is the 100% beneficial owner of the Salazar Jimenez loan (#07101801). This loan defaulted and was foreclosed and the Trustees Deed was recorded on June 29, 2009, after the appointment of the Receiver. The

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<sup>4</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>5</sup> See Petition No. 43, paragraphs 46 through 48.

Receiver will transfer the REO to KepesWare upon confirmation of its interest and payment of the outstanding loan charges.

c. The Durlin (Durlin2nd) loan was a second deed of trust and the interests in the real property were extinguished when the first deed of trust was foreclosed.

d. KepesWare is the 100% beneficial owner of the Bagley loan (#07091797). This loan was foreclosed in January 2010 and title was conveyed to Landmarc. The Receiver will transfer the REO to KepesWare upon payment of the outstanding loan charges.

e. KepesWare holds only a 50% fractional interest in the O'Neil loan (#LC040912) and the remaining 50% is claimed by Desert Trails. This loan is in default and the Receiver will complete the foreclosure of the loan and will market and sell the REO and disburse the net sale proceeds to the respective interest holders in the percentages approved by the Court.



**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **The Madelene Kepes Revocable Living Trust dtd May 22, 1984, as amended**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
06/14/06	KepesWare	14.0%	1,430,000	1,430,000	120,135	1,550,135	1,430,000	120,135	1,550,135
09/29/06	KepesWare	14.0%	370,000	369,136	31,011	400,147	369,136	31,011	400,147
<b>Totals</b>				<b>\$1,799,136</b>	<b>\$151,146</b>	<b>\$1,950,282</b>	<b>\$1,799,136</b>	<b>\$151,146</b>	<b>\$1,950,282</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **Madelene Kepes Revocable Living Trust (Claim No. 7431)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
											L	M	N	O			
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06050372	Horning	N/A	369,000	REO	11.56%	11.56%	42,664	USP	0.0%	0.0%	11.56%	42,664	1dg2a	9a	0.00	4,552.94	1,141.96
06070507	Hinson	N/A	315,000	REO	4.76%	4.76%	14,994	USP	0.0%	0.0%	4.76%	15,000	1dg2a	9a	2,340.00	299.24	0.00
07051063	Tatranska	814,358	814,358	Current	59.13%	59.13%	481,558	USP	0.0%	0.0%	62.46%	508,644	1dvr	9bc	0.00	43,562.14	5,344.14
07051077	Peart	43,500	0	Wiped Out	100.0%	100.0%	26,100	USP	0.0%	0.0%	0.0%	0	2av	na	0.00	0.00	0.00
07051082	Slavin	0	282,039	Sold	5.55%	5.55%	15,648	USP	0.0%	0.0%	5.55%	15,535	1dv	8b	0.00	0.00	797.13
07091797	Bagley	N/A	11,400	REO	100.0%	100.0%	11,400	USP	0.0%	0.0%	100.0%	11,400	1d	5b	0.00	0.00	2,171.25
07101801	Salazar Jimenez	N/A	23,430	REO	100.0%	100.0%	23,430	USP	0.0%	0.0%	100.0%	23,430	1d	5b	0.00	0.00	1,408.65
07101822	Luh	24,593	162,000	Default 180	100.0%	100.0%	24,593	USP	0.0%	0.0%	100.0%	162,000	1dv	5d	0.00	2,273.26	35.74
08011873	CBI Developers, Inc	N/A	825,000	REO	3.98%	3.98%	46,613	USP	0.0%	0.0%	3.98%	32,868	1dg2av	9a	0.00	0.00	255.53
08041903	Two Six Seven Investments, LLC	535,000	321,000	FCLS	18.69%	18.69%	59,998	USP	0.0%	0.0%	18.69%	60,001	1d	8d	0.00	0.00	829.04
08081970	CBI Developers, Inc	N/A	270,810	REO	3.28%	3.28%	8,893	USP	0.0%	0.0%	3.28%	8,893	1d	8c9c	0.00	0.00	2,267.62
08081976	4405 Speedway, LLC/Vassious	1,440,000	342,000	FCLS	16.47%	16.47%	56,327	USP	0.0%	0.0%	16.61%	56,820	1drv	8c9c	0.00	0.00	2,126.11
104th Ave	104th & Indian School	N/A	882,000	REO	39.22%	39.22%	345,885	USP	0.0%	0.0%	39.22%	345,885	1dg2a	9a	0.00	1,782.55	1,618.35
Durlin2nd	Durlin	2,800	0	Wiped Out	100.0%	100.0%	0	USP	0.0%	0.0%	100.0%	0	2a	na	0.00	0.00	0.00
LC040302	Smith	17,495	17,495	Current	50.0%	50.0%	8,748	USP	0.0%	0.0%	50.0%	8,748	1d	4b	258.29	1,796.66	202.90
LC040912	O'Neal	8,859	47,250	Default 120	50.0%	50.0%	4,430	USP	0.0%	0.0%	50.0%	23,625	1dv	8d9b	422.23	811.74	39.89
							\$1,171,282					\$1,315,514			\$55,079	\$18,238	
												<b>Owed to Claimant by LCI under WCF at 6/24/09:</b>		\$1,950,282			
												<b>Less Value of Claimant's Secured Claim:</b>		(1,315,514)			
												<b>Plus Estimated Loan Charges to be Paid by Claimant:</b>		18,238			
												<b>Less Estimated Other Trust Funds to be Released to Claimant:</b>		(55,079)			
												<b>Estimated General Unsecured Claim:</b>		\$597,928			

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)

**Schedule 2**  
**Receiver's Recommendations Regarding WCF Lenders Security Claim**

- J Fee Title percentage held by Claimant on 6/24/09
- K Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
- L Percentage interest in loan recommended for approved for this Claimant
- M Valuation of Claimant's interest in loan approved for this claimant
- N Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
- O Code explaining the recommended disposition of the Claimant's interest (see code explanations)
- P Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
- Q Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
- R Current Loan Charges to be paid by Claimant (may change at time of disposition)

## Lazy E, LLC (Claim No. 7471)

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by Lazy E, LLC (“LazyE”) under its WCF Agreement with Landmarc (Schedule 1), and the various interests it claims in 9 of Landmarc’s loans (Schedule 2). As part of a Settlement Agreement between the Receiver and Stoneman, which was approved by the Court’s *Order Re: Petition No. 35* on November 9, 2010, LazyE has assigned to the Receiver all of LazyE’s claims in this receivership, including its claims under its WCF Agreement. Included in each schedule are the Receiver’s recommendations regarding the interests claimed by LazyE under its WCF Agreement.

1. The Receiver recommends approval of LazyE’s claim to unpaid principal and interest due under LazyE’s WCF Agreement as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 11 loans identified in Schedule 2 of LazyE’s Proof of Claim, with the exception of:

a. The claimant’s interest in the 4405 Speedway, LLC/Vassious loan (#08081976) has been adjusted upward as described in paragraph 6 below.

3. With respect to the valuations set forth in Schedule 2 of LazyE’s Proof of Claim, the Receiver agrees with all of the valuations with the exception of:

a. CBI Developers Loan (#08011873). The valuation of this REO was based on an amount provided to the Claimant by the Receiver. However, based on an appraisal recently obtained by the Receiver from TBM, the Receiver now believes that the value of this REO should be reduced to \$825,000 and the value of the claimant’s interest in the REO adjusted proportionately downward.

b. Because of the increase in LazyE’s percentage ownership of the 4405 Speedway, LLC/Vassious loan (#08081976) as described in paragraph 6 below, the resulting valuation of LazyE’s security interest has also increased.

4. Although LazyE did not file a UCC-1 with the Secretary of State, LazyE did file a lawsuit prior to the receivership and filed and recorded a *Notice of Lis Pendens* which identified the 9 loans in which LazyE claims an interest. Accordingly, with respect to these 9 loans, the Receiver recommends that LazyE’s claimed interest be confirmed.<sup>1</sup>

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<sup>1</sup> See Petition No. 43, paragraph 44.

5. The recommended disposition of LazyE’s approved interests is indicated in column O of the attached Schedule 2. Pursuant to the Settlement Agreement described above, all trust funds will be paid to the Receiver and all interests under the 9 loans will be transferred to the Receiver upon confirmation of the interests.

6. 4405 Speedway, LLC/Vassious Loan (#08081976). On September 10, 2008, Landmarc made a loan of \$1,440,000 to 4405 Speedway, LLC, which was secured by a first position deed of trust on commercial property in Pima County recorded with the Pima County Recorder on September 10, 2008, as Document No. 2008-1760484. This loan refinanced an earlier loan from Landmarc to Peter and Spiridoula Vassious. It appears that the original loan to the Peter and Spiridoula Vassious may not have been fully funded and as a result it appears that this loan was short funded by approximately \$12,500. As was its practice, Landmarc allocated in LMS to itself the beneficial ownership of this unfunded portion of the loan. Given the relatively immaterial amount of this apparent short funding the Receiver has not completed a forensic investigation to confirm the short funding but instead recommends that each participant’s interest be recalculated as indicated below. The borrower has threatened bankruptcy or litigation over alleged wrongdoing by Landmarc and the Receiver’s efforts to resolve those issues have been unsuccessful to date. Distribution of the approved interests in this loan will therefore be determined in subsequent proceedings.

<u>Lender</u>	<u>Per LMS</u>		<u>Recalculation by Receiver</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Partners	775,828	53.877%	775,828	54.349%
KepesWare	237,168	16.470%	237,168	16.614%
Gubin	210,137	14.593%	210,137	14.721%
WhiteWare	48,514	3.369%	48,514	3.399%
LazyE	134,006	9.306%	134,006	9.387%
Desert Trails	21,847	1.517%	21,847	1.530%
Landmarc2	12,500	0.868%	0	0.000%
	<u>1,440,000</u>	<u>100.000%</u>	<u>1,427,168</u>	<u>100.000%</u>

7. Poirier/Westend Investments, LLC Loan (#06030207). On April 18, 2006, Landmarc loaned \$2,500,000 to Westend Investment, LLC, which was secured by 663.85 acres of vacant rural land located near Mayer, Arizona (“Property”) under a deed of trust recorded with the Yavapai County Recorder on April 27, 2006 at Book 4389, Page 331. Apparently the loan was initially funded entirely by Schupak since Landmarc recorded an assignment of all of the interest under the deed of trust to Schupak on April 27, 2006 at Book 4389, Page 332. According to LMS, 50% of the interest in the loan was subsequently purchased

from Schupak by other lenders resulting in beneficial ownership of the loan being held as follows: Schupak (50%); Gubin (30.6%); WhiteWare (8.8%), Desert Trails (4.8%), Station Park (3.2%), and the Receiver as assignee of LazyE (2.6). The borrower defaulted and Landmarc foreclosed resulting in a Trustee's Deed Upon Sale being recorded on December 7, 2007, conveying fee title to Landmarc (50%) and Schupak (50%).

Since the interest of LazyE is reflected in a recorded *Notice of Lis Pendens*, it can also be confirmed at this time. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court. The Receiver intends to market and sell the Property and distribute the net sale proceeds according to the interests approved by the Court.

8. 104<sup>th</sup> and Indian School Property (104<sup>th</sup> Ave). Landmarc agreed to finance the acquisition of a 4.020 acre site located at the northeast corner of 104<sup>th</sup> Drive and Indian School Road in Phoenix ("Property") by 104<sup>th</sup> and Indian School, LLC. Landmarc granted to 104<sup>th</sup> and Indian School, LLC ("104<sup>th</sup>") an option to purchase the Property from Landmarc. 104<sup>th</sup> eventually defaulted under its option agreement and quit claimed all of its interest in the Property to Landmarc on November 16, 2007. As of June 24, 2009, title to the Property was held by Landmarc but LMS shows that this Property and the agreements were funded and beneficially owned as of the Receivership Date by KepesWare (39.22%), Gubin (42.99%), WhiteWare (15.12%), LazyE (1.91%) and Landmarc (0.76%). Since the interest of LazyE is reflected in a recorded *Notice of Lis Pendens*, that interest can be confirmed at this time. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.

9. Lehman Loan (#07030953). On or about March 21, 2007, Landmarc loaned \$169,950.00 which was secured by a deed of trust on a single family residence located at 10150 N. Poquito Valley Road in Prescott Valley ("Property") recorded with the Yavapai County Recorder on March 22, 2007 at Book 4491, Page 508. The loan defaulted and Landmarc foreclosed resulting in the recording of a Trustee's Deed on March 26, 2008, conveying title to Landmarc. Effective September 1, 2008, Landmarc entered into a two year agreement with Allan Sobol to lease the Property to Sobol with an option to purchase the Property for \$274,000. This agreement has expired. Beneficial interests in this loan are claimed by four of Landmarc's lenders. Since the interest of LazyE is reflected in a recorded *Notice of Lis Pendens* it can be confirmed at this time. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court. The Receiver intends to market and sell this REO.

10. CBI Developers Bell Rd. Loan (#08081970). On or about October 31, 2007, Landmarc made a construction loan of \$1,377,000 to CBI Developers, Inc. (#07101823), which was secured by a deed of trust on commercial property

located at the southwest corner of 17<sup>th</sup> Street and Bell Road in Phoenix (“Property”). On April 30, 2008, the loan was modified to increase the principal balance to \$1,553,500 and a modification fee of \$50,000 was charged but not paid at that time. In August 2008, this loan was refinanced and a new loan (#08081970) for \$1,750,000 was made to CBI, which included funding to pay the balance owed under the first loan including the accrued and unpaid interest, the unpaid loan modification fee, and the loan charges associated with the new loan. Landmarc recorded assignments of the deed of trust for this loan as follows: Partners (57.73%), LazyE (0.57%), and LDM Pension (0.857%), leaving Landmarc with 40.84%. However, Landmarc’s records indicate that the funding and beneficial ownership of this loan was as follows: Partners (90.08%), KepesWare (3.28%), White (1.91%), LDM Pension Plan (0.99%), LazyE (0.66%), Desert Trails (1.05%), and Gubin (2.04%). The borrower subsequently defaulted and Landmarc foreclosed resulting in a Trustee’s Deed recorded on January 29, 2010, conveying title consistent with the recorded assignments as follows: Landmarc (40.843%), Partners (57.73%), LazyE (.57%), LDM Acceptance Pension Plan (0.857%). The Receiver intends to list the Property for sale and once it is sold, the Receiver recommends distribution of the net sale proceeds as follows: KepesWare (3.28%), White (1.91%), the Receiver as assignee of LazyE (0.66%), and Gubin (2.04%). The balance of the net sale proceeds will be held by the Receiver until the Court has ruled on the claims of Partners, Desert Trails and LDM Pension Plan in subsequent proceedings.

11. CBI Developers Cheney Drive Property (#08011873). On January 31, 2008, Landmarc acquired title by Warranty Deed of vacant residential property located on East Cheney Drive in Paradise Valley (“Property”) for a purchase price of \$1,200,000 and at the same time entered into an Option Agreement with CBI Developers, Inc., under which CBI was granted the option to purchase the Property for \$2,490,000 plus interest and a percentage of the profit upon sale of the Property. Cipriano B. Ionutescu personally guaranteed the obligations of CBI under the Option Agreement. Landmarc and CBI also entered into a Memorandum of Understanding which called for an interest reserve account and a construction draw account. The Option Agreement required monthly payments which were made for several months from an interest reserve account before CBI defaulted. It does not appear that CBI ever exercised its option to purchase the Property under the Option Agreement which expired by its terms on July 31, 2009. According to Landmarc’s records this Property and the agreements were funded and beneficially owned by Gubin (53.04%), TBM (20.87%), LazyE (5.22%), Murray (2.69%), Desert Trails (7.82%), Hayden (5.41%), KepesWare (3.98%), Landmarc (.71%), and White (.26%). On March 4, 2008, Landmarc recorded a Quitclaim Deed conveying title to the Property as follows: 83.936% to Landmarc and 16.064% to TBM. The Receiver has listed the Property for sale. Since the interests of LazyE are reflected in a recorded *Notice of Lis Pendens* it can be

confirmed at this time. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>2</sup>

12. The Receiver's recommendations regarding the remaining security interests claimed by LazyE in its WCF Proof of Claim are set forth in Columns L through O of Schedule 2.

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<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.



**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: Receiver as assignee of Lazy E, LLC (Claim No. 7471)

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
12/19/06	LAZYE	11.0%	775,000	730,927	36,985	767,912	730,927	36,985	767,912
						0	0	0	0
<b>Totals</b>				<b>\$730,927</b>	<b>\$36,985</b>	<b>\$767,912</b>	<b>\$730,927</b>	<b>\$36,985</b>	<b>\$767,912</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: Receiver as assignee of Lazy E, LLC (Claim No. 7471)

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06030207	Poirier	N/A	597,600	REO	2.60%	2.60%	15,538	None	0.0%	0.0%	2.6%	15,538	1f	8c#	0.00	0.00	917.70
07030953	Lehman	N/A	209,250	REO	74.198%	74.20%	155,259	None	0.0%	0.0%	74.2%	155,259	1f	8c#	0.00	44.24	1,054.88
07030955	David, LLC	245,000	147,000	FCLS	55.102%	55.10%	81,000	None	0.0%	55.10%	55.10%	81,000	1bf	8d#	0.00	798.98	1,470.79
07081188	Juarez	N/A	54,600	REO	100.0%	100.0%	54,600	None	100.0%	100.0%	100.0%	54,600	1a	9c#	0.00	0.00	5,743.10
07121860	Rich	N/A	51,750	REO	100.0%	100.0%	51,750	None	100.0%	4.02%	100.0%	51,750	1a	4a#	0.00	8,216.38	2,935.70
08011873	CBI Developers, Inc	N/A	825,000	REO	5.218%	5.22%	43,049	None	0.0%	0.0%	5.22%	43,065	1fv	8c#	0.00	0.00	334.80
08081970	CBI Developers, Inc	N/A	270,810	REO	0.657%	0.66%	1,779	None	0.0%	0.57%	0.66%	1,779	1bf	9c#	0.00	0.00	453.66
08081976	4405 Speedway, LLC/Vassious	1,440,000	342,000	FCLS	9.306%	9.31%	31,827	None	0.0%	9.31%	9.39%	32,104	1drv	9b#	0.00	0.00	1,201.27
104th Ave	104th & Indian School	N/A	882,000	REO	1.905%	1.91%	16,802	None	0.0%	0.0%	1.91%	16,802	1f	8c#	0.00	86.59	78.61
							\$451,603					\$451,897			\$9,146	\$14,191	

Owed to Claimant by LCI under WCF at 6/24/09:

\$767,912

Less Value of Claimant's Secured Claim:

(451,897)

Plus Estimated Loan Charges to be Paid by Claimant:

14,191

Less Estimated Other Trust Funds to be Released to Claimant:

(9,146)

Estimated General Unsecured Claim:

\$321,060

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)

### **Litchfield Funding, LLC (Claim No. 8003)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by Litchfield Funding, LLC (“Litchfield”) under its four WCF Agreements with Landmarc (Schedule 1), and the various interests it claims in 25 of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by Litchfield. Litchfield and the Receiver have entered into a Settlement Agreement to resolve claims of the Receiver, which was approved by the Court’s *Order Re: Petition No. 36* entered on November 9, 2010. This Settlement Agreement affects the distribution of trust funds held on approved loans and the settlement of loan charges as more fully described in the Settlement Agreement and as discussed below.

1. The Receiver recommends approval of Litchfield’s claim to unpaid principal and interest due under Litchfield’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 25 loans identified in Schedule 2 of Litchfield’s Proof of Claim, with the exception of:

a. The claimant’s interest in the Tatranska loan (#07051063) has been adjusted upward as described in paragraph 14 below.

3. With respect to the valuations set forth in Schedule 2 of Litchfield’s Proof of Claim, the Receiver agrees with all of the valuations with the exception of:

a. Because of the increase in Litchfield’s percentage ownership of the Tatranska loan (#07051063) as described in paragraph 14 below, the resulting valuation of Litchfield’s security interest has also increased; and

b. Litchfield has valued the Barraza loan at the market value of the security, however, because the loan is a performing loan the Receiver believes that the proper valuation should be the principal balance of the loan which is \$180,000.

c. Litchfield valued the Slavin loan at \$200,383, however, since this REO was sold and the net proceeds will be distributed from trust, there is no note or REO to transfer to Litchfield and thus no valuation to include for such an interest. The amount of the trust funds distributed will result in a corresponding decrease in Litchfield’s general unsecured claim.

4. Although Litchfield did not file a UCC-1 with the Secretary of State (thus preventing it from establishing a perfected security interest in any of Landmarc’s loans), there are other bases for the Court to confirm Litchfield’s claimed interest in most of the 25 loans in which Litchfield claims an interest. In

18 of the 25 loans listed on Schedule 2, as of the Receivership Date Litchfield held fee title or a beneficial interest under a deed or assignment recorded in proper order equal to or greater than the percentage interest it claims. In addition, as to these 18 loans there are no apparent adverse claims to the interests asserted by Litchfield. Accordingly, with respect to those 18 loans, the Receiver recommends that Litchfield's claimed interest be confirmed.

5. The seven loans in which this is not the case are Peart (#07041007), Boone (#07051040), Slavin (#07051082), Gandara (#07051079), Quintana (#07071143), Frazier (#07081204), and Thompson (#07081208). The Receiver's recommendations with respect to each of these are discussed in detail below.

6. The Receiver's recommendations regarding the security interests claimed in Litchfield's WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

7. Peart Loan (#07041007). On April 30, 2007, Landmarc made a loan of \$325,000 (#07041007) to Peart, which was secured by a first position deed of trust on a commercial building located at 6928 E. Main Street in Mesa ("Property") recorded with the Maricopa County Recorder on May 8, 2007 as Document No. 2007-0537526. According to LMS, Litchfield funded 100% of this loan. On June 8, 2007, Landmarc made a second loan to Peart for \$43,500 (#07051077), which was funded by the Gubin Family Trust ("Gubin"). This second position loan was secured by a second position deed of trust on the same Property as the first and was recorded with the Maricopa County Recorder on June 12, 2007 at 2007-0675256. On September 20, 2007, Gubin's interest in the second position loan was acquired by Kepes. Peart subsequently defaulted and on March 10, 2008 Landmarc recorded a Notice of Trustee Sale (2008-0209734) to foreclose on the second position loan beneficially owned by Kepes. Following the sale, the Trustee incorrectly issued and recorded a TDUS which identified the amount of the second loan, but included the recording information for the deed of trust on the first loan. The TDUS purportedly conveyed title to Landmarc and was recorded on June 12, 2008 as Document No. 2008-0521352. Landmarc then recorded on November 19, 2008, a Quitclaim Deed conveying 99% of its interest to Litchfield and 1% to Landmarc. Since the TDUS is defective there is a cloud over both the title of Landmarc and Litchfield. Since the value of the underlying security is well below the amount of the first loan balance any interest of Kepes under the second is non-existent. Accordingly, the Receiver recommends that the Court confirm that Litchfield has 100% fee title free and clear of all liens upon payment to the Receiver of the estimated fair market value of 1% interest in the Property in accordance with this Court's Order No. 24. Kepes interest in the Property under its second position loan would be extinguished.

8. Boone Loan (#07051040). On May 29, 2007, Landmarc made a loan of \$165,900 to Vernie and Melvin Boone, which was secured by a first deed

of trust on a single family residential lot in El Mirage recorded with the Maricopa County Recorder on May 29, 2007, as Document No. 2007-0618445. According to LMS, Litchfield funded 100% of this loan. Landmarc thereafter recorded an Assignment of Deed of Trust assigning 100% of the beneficial interest under the deed of trust from the Boones to Litchfield. Subsequently the loan went into default, Landmarc foreclosed, and the Trustee's Deed was recorded on June 19, 2009 vesting Landmarc with fee title. Accordingly, as of the Receivership Date fee title to this REO was vested with Landmarc. Because Litchfield had no perfected security interest in this REO or fee title as of the Receivership Date, its claimed interest cannot at this time be confirmed by the Court. Therefore confirmation of Litchfield's unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>1</sup>

9. Slavin Loan (#07051082). On July 24, 2007, Landmarc made a loan of \$825,000, which was secured by a first deed of trust on a single family residential lot in Chandler (APN302-79-104B – a portion of the south half of Lot 16 and the north 50 feet of Lot 17, Caballos Ranchitos) (“Property”) and deeds of trust on four additional parcels in Maricopa County.

a. According to LMS there was a holdback on this loan of \$300,000 for construction draws. \$38,000 of this holdback was disbursed to pay construction costs and the remaining \$262,000 was eventually applied in June 2008, to reduce the principal balance of the loan to \$563,000. In September 2008, \$180,000 was received by Landmarc and applied to the principal balance of the loan, thus reducing the loan balance to \$383,000. When the Property was sold by Landmarc in June 2009, Landmarc received \$282,038.74 from the closing and wrote off the \$100,961.26 balance of the loan.

b. Kepes acquired a 5.548% interest in the Slavin Loan and the remaining interests were acquired by Hayden Insurance (19.786%), Litchfield (71.05 %) and the balance by Landmarc. The loan eventually went into default and Landmarc foreclosed which resulted in a Trustee's Deed being recorded on June 23, 2008 vesting Landmarc with 100% fee title. Landmarc marketed the Property for sale and on June 5, 2009, the property was sold resulting in a recovery to Landmarc of \$282,038.74, which was deposited into Landmarc's trust account. From these funds held in trust, Landmarc made the following distributions:

- (1) \$55,805.07 to Hayden Investments for its interest in the Slavin loan;
- (2) \$15,535.07 to Landmarc's operating account for distribution to Kepes for its interest in the Slavin loan;

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<sup>1</sup> See Petition No. 43, paragraphs 46 through 48.

- (3) \$10,057.79 to Landmarc's operating account for its interest in the Slavin loan;
- (4) \$7,899.79 to Landmarc's operating account purportedly for its broker fee under the Slavin loan.

c. No distribution was made to Litchfield for its interest in the Slavin loan because that payment was not scheduled until the first of July and the receivership prevented the distribution from taking place. However, the Receiver has determined that the \$192,741.02 of trust funds remaining in Landmarc's trust account for this loan are held for the benefit of Litchfield and should be distributed to Litchfield.

d. Litchfield has provided to the Receiver a copy of a Subordination Agreement under which Litchfield purports to receive from Landmarc a priority over all others in the repayment of \$400,000 in principal and the interest thereon from this loan. Apparently this side agreement was not disclosed to Kepes when Kepes was placed into this loan. However, since all of the funds held in trust for this loan are being distributed to Litchfield, the validity or enforceability of the agreement does not need to be addressed.

10. Gandara Loan (#07051079). On June 14, 2007, Landmarc made a loan of \$133,900 to Abel Gandara, which was secured by a first position Deed of Trust on a single family residence in Phoenix, recorded with the Maricopa County Recorder on June 14, 2007 as Document No. 2007-0689123. According to LMS, Litchfield funded 100% of this loan. The loan went into default and was foreclosed with a TDUS to Landmarc recorded on March 27, 2008, as Document No. 2008-0268878. Accordingly, as of the Receivership Date fee title to this REO was vested with Landmarc. Because Litchfield had no perfected security interest in this REO or fee title as of the Receivership Date, its claimed interest cannot at this time be confirmed by the Court. Litchfield, however, may have an equitable lien in the REO for the amount of its investment which is an issue that should be decided by the Court in the future as part of the Court's resolution of the Loan Participant Lenders claims. Accordingly, the Receiver recommends that the issue of whether Litchfield has an equitable lien in this property be deferred until then.

11. Quintana Loan (#07071143). On July 23, 2007, Landmarc made a loan of \$131,000 to Luis and Soledad Quintana, which was secured by a first position Deed of Trust on a single family residence in Tucson, recorded with the Pima County Recorder on July 24, 2007 as Document No.2007-1421020. According to LMS, Litchfield funded 100% of this loan. However, as of the Receivership Date 100% of the beneficial interest under this deed of trust was vested with Landmarc. Because Litchfield had no perfected security interest in this loan or a recorded beneficial interest in the deed of trust as of the Receivership Date, its claimed interest cannot at this time be confirmed by the Court.

Litchfield, however, may have an equitable lien in the loan and its proceeds for the amount of its investment which is an issue that should be decided by the Court in the future as part of the Court's resolution of the Loan Participant Lenders claims. Accordingly, the Receiver recommends that the issue of whether Litchfield has an equitable lien in this property be deferred until then.

12. Frazier Loan (#07081204). On September 20, 2007, Landmarc made a loan of \$905,000 to Yancey and Elizabeth Frazier, which was secured by a first position Deed of Trust on a single family residence in Tucson, recorded with the Pima County Recorder on September 21, 2007 as Document No.2007-1840913. According to LMS, Litchfield funded 15.5% of this loan. Subsequently the loan went into default and Landmarc foreclosed which resulted in the recording of a TDUS to Landmarc on October 29, 2008 as Document No. 2008-2110183. Accordingly, as of the Receivership Date 100% of the fee title to this REO was vested with Landmarc. Because Litchfield had no perfected security interest in this loan or any fee title in the REO as of the Receivership Date, its claimed interest cannot at this time be confirmed by the Court. Litchfield, however, may have an equitable lien in the REO which is an issue that should be decided by the Court in the future as part of the Court's resolution of the Loan Participant Lenders claims. Accordingly, the Receiver recommends that the issue of whether Litchfield has an equitable lien in this property be deferred until then.

13. Thompson Loan (#07081208). On September 28, 2007, Landmarc made a loan of \$398,500 to Vickie R. Thompson, which was secured by a first deed of trust on a single family residential lot in Laveen and a commercial property in Phoenix recorded with the Maricopa County Recorder on October 1, 2007, as Document No. 2007-1080170. According to LMS, Litchfield funded 50% of this loan. Landmarc then recorded four Assignments of Deed of Trust assigning a total of 99.98% of the beneficial interest under the deed of trust to Landmarc Capital Partners, LLC. Thereafter Landmarc recorded an Assignment of Deed of Trust purporting to assign 50% of the beneficial interest under the deed of trust to Litchfield. The loan went into default and Landmarc foreclosed, and the Trustee's Deed was recorded on January 7, 2009, vesting Landmarc with fee title to both properties. Accordingly, as of the Receivership Date fee title to this REO was vested with Landmarc. Because Litchfield had no perfected security interest in this REO or fee title as of the Receivership Date, its claimed interest cannot at this time be confirmed by the Court. Litchfield, however, may have an equitable lien in the REO which is an issue that should be decided by the Court in the future as part of the Court's resolution of the Loan Participant Lenders claims. Accordingly, the Receiver recommends that the issue of whether Litchfield has an equitable lien in this property be deferred until then.

14. Tatranska Loan (#07051063). On May 24, 2007, Landmarc made a loan of \$771,000, which was secured by a second position deed of trust on eight rental properties recorded with the Maricopa County Recorder on May 25, 2007,

as Document No. 2007-0609037. According to LMS, Litchfield funded 30.699% of this loan. Subsequently, on November 10, 2008, Landmarc recorded an *Assignment of Beneficial Interest under Deed of Trust* assigning to Litchfield 32.425% of the beneficial interest in this loan. On March 12, 2009, Landmarc modified this loan reducing the interest rate to 7.5% and extending the maturity date to March 12, 2014. In addition, \$43,368.75 in accrued and unpaid interest due (and possibly some other fees) was added to the principal balance of the loan increasing the principal balance to \$814,368.75. In its records, Landmarc allocated to itself the beneficial ownership of this increase in principal when it should have distributed the increase among the existing participants. Accordingly, the Receiver recommends that each participant's interest be recalculated as follows (the Receiver's recommendation with respect to Litchfield's interest in this loan is 32.425%, the recalculated percentage indicated below):

<b>Lender</b>	<b>Per LMS</b>		<b>Recalculation by Receiver</b>	
	<b>Amount</b>	<b>%</b>	<b>Amount</b>	<b>%</b>
Litchfield	250,000	30.699%	264,063	32.425%
KepesWare	481,563	59.133%	508,651	62.460%
MurrayWare	39,437	4.843%	41,655	5.115%
Landmarc2	43,369	5.325%	0	0.000%
	814,369	100.000%	814,369	100.000%

1157-027 (98368\_2)



**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **Litchfield Funding, LLC (Claim No. 8003)**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
03/31/05	Litchfield Funding, LLC	8.5%	4,400,000	2,559,451	74,738	2,634,189	2,559,451	74,738	2,634,189
05/26/05	Litchfield Funding, LLC	8.5%	2,000,000	1,182,600	34,533	1,217,133	1,182,600	34,533	1,217,133
03/15/06	Litchfield Funding, LLC	8.5%	500,000	200,900	5,866	213,707	200,900	5,866	213,707
10/15/06	Litchfield Funding, LLC	8.5%	1,450,000	95,000	2,774	101,057	95,000	2,774	101,057
<b>Totals</b>				<b>\$4,037,951</b>	<b>\$117,911</b>	<b>\$4,166,086</b>	<b>\$4,037,951</b>	<b>\$117,911</b>	<b>\$4,166,086</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant:

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
05120075	Barraza	180,000	180,000	Current	100.0%	100.0%	108,000	None	0.0%	100.0%	100.0%	180,000	1bv	4b	1,071.53	7,104.69	5.54
06010150	Idaho	N/A	168,600	REO	100.0%	100.0%	168,600	None	100.0%	65.13%	100.0%	168,600	1a	5b	0.00	0.00	4,967.71
07030968	Larrea	143,542	143,542	Current	100.0%	100.0%	143,542	None	0.0%	100.0%	100.0%	143,542	1b	4b	749.92	2,832.44	2,988.44
07030969	Vazquez	N/A	42,030	REO	100.0%	100.0%	42,030	None	100.0%	0.0%	100.0%	42,030	1a	5b	0.00	1,297.62	14,360.53
07041007	Peart	N/A	195,000	REO	100.0%	100.0%	195,000	None	99.0%	0.0%	100.0%	195,000	1a	6b	0.00	0.00	26,936.46
07041011	Valenzuela	N/A	38,340	REO	100.0%	100.0%	38,340	None	100.0%	0.0%	100.0%	38,340	1a	5b	0.00	1,474.13	40,890.28
07041026	Gomez	N/A	119,520	REO	100.0%	100.0%	119,520	None	100.0%	0.0%	100.0%	119,520	1a	5b	0.00	760.25	19,285.37
07051045	Rangel-Gethner	N/A	113,670	REO	100.0%	100.0%	113,670	None	100.0%	0.0%	100.0%	113,670	1a	5b	0.00	1,385.76	9,598.67
07051059	Echeverria	N/A	44,820	REO	100.0%	100.0%	49,800	None	100.0%	0.0%	100.0%	49,800	1a	5b	0.00	2,193.41	20,501.07
07051063	Tatranska	814,358	814,358	Current	30.699%	30.699%	250,000	None	0.0%	32.43%	32.43%	264,056	1bvr	9bc	0.00	22,614.90	2,774.33
07051070	Watkins	177,256	92,700	Default	94.778%	94.778%	87,859	None	0.0%	100.0%	94.78%	87,859	1b	9c	880.98	17,016.55	594.31
07051080	Esparza	N/A	102,780	REO	100.0%	100.0%	102,780	None	100.0%	0.0%	100.0%	102,780	1a	5b	0.00	13,290.84	12,080.58
07051082	Slavin	0	282,039	Sold	71.048%	71.05%	200,383	None	0.0%	0.0%	71.05%	0	1ev	8b	0.00	192,741.02	10,208.13
07061105	Perez	N/A	45,090	REO	100.0%	100.0%	45,090	None	100.0%	0.0%	100.0%	45,090	1a	5b	0.00	2,666.77	8,818.18
07061124	Saenz Ornelas	36,737	22,042	Default	100.0%	100.0%	22,042	None	0.0%	100.0%	100.0%	22,042	1b	4b	0.00	780.66	102.60
07071145	Gossett	107,636	107,636	Current	100.0%	100.0%	107,636	None	0.0%	100.0%	100.0%	107,636	1b	4b9b	1,313.73	6,202.29	50.00
07071166	Soldier	68,905	41,640	Default	100.0%	100.0%	41,640	None	0.0%	100.0%	100.0%	41,640	1b	4b	413.11	3,954.29	385.12
07071174	Suchowian	N/A	109,890	REO	100.0%	100.0%	109,890	None	100.0%	0.0%	100.0%	109,890	1a	5b	0.00	39,343.95	20,153.13
07081783	Jackson	123,114	123,114	Current	100.0%	100.0%	123,114	None	0.0%	100.0%	100.0%	123,114	1b	4b	1,561.82	11,659.07	598.56
07081789	Shukla	35,000	21,000	Default	100.0%	100.0%	21,000	None	0.0%	100.0%	100.0%	21,000	1b	4b	272.68	247.92	22.96
							\$2,089,936					\$1,975,609			\$327,567	\$195,322	
07051040	Boone	N/A	88,650	REO	100.0%	100.0%	88,650	None	0.0%	100.0%	100.0%	88,650	2a	9a	250.00	6,596.33	20,223.32
07051079	Gandara	N/A	47,700	REO	100.0%	100.0%	47,700	None	0.0%	0.0%	100.0%	47,700	2a	9a	0.00	1,881.76	6,968.63
07071143	Quintana	130,847	171,000	FCLS	100.0%	100.0%	171,000	None	0.0%	0.0%	100.0%	171,000	2a	9a	1,822.44	8,185.08	2,680.86
07081204	Frazier	N/A	477,000	REO	18.11%	18.11%	86,385	None	0.0%	0.0%	18.11%	86,385	2a	9a	0.00	5,256.86	1,119.14
07081208	Thompson	N/A	198,000	REO	50.0%	50.0%	99,000	None	0.0%	50.0%	50.0%	99,000	2a	9ab	0.00	678.03	7,701.47
							\$492,735					\$492,735			\$22,598	\$38,693	
							\$2,582,671					\$2,468,344			\$350,165	\$234,015	
<b>Owed to Claimant by LCI under WCF at 6/24/09:</b>													\$4,166,086				
<b>Less Value of Claimant's Secured Claim:</b>													(2,468,344)				
<b>Plus Estimated Loan Charges to be Paid by Claimant:</b>													0				
<b>Less Estimated Other Trust Funds to be Released to Claimant:</b>													(350,165)				
<b>Estimated General Unsecured Claim:</b>													\$1,347,578				

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

<b>Column</b>	<b>Explanation</b>
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)

## **Bruce Murray (Claim No. 8089)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by Bruce Murray (“Murray”) under his WCF Agreements with Landmarc (Schedule 1), and the various interests he claims in 4 of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by Murray.

1. The Receiver recommends approval of Murray’s claim to unpaid principal and interest due under Murray’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 4 loans identified in Schedule 2 of Murray’s Proof of Claim, with the exception of:

a. The claimant’s interest in the Tatranska loan has been adjusted upward as described in paragraph 7 below.

3. With respect to the valuations set forth in Schedule 2 of Murray’s Proof of Claim, the Receiver agrees with all of the valuations, with the exception of:

a. CBI Developers Cheney Drive Property (#08011873). The valuation of this REO was based on an amount provided to the claimant by the Receiver. However, based on an appraisal recently obtained by the Receiver from TBM, the Receiver now believes that the value of this REO should be reduced to \$825,000 and the value of the claimant’s interest in the REO adjusted proportionately downward; and

b. Because of the increase in Murray’s percentage ownership of the Tatranska loan (#07051063) as described in paragraph 7 below, the resulting valuation of Murray’s security interest has also increased.

4. Although Murray filed a UCC-1 with the Secretary of State he did not specifically identify in the filing or the exhibit thereto the loans in which he sought to perfect a security interest. The Security Agreement referenced in the UCC-1 also did not specifically identify individual loans. However, the Receiver believes that since the claimed interest can be objectively ascertained from Landmarc’s records, Murray has demonstrated sufficiently that it has a perfected security interest in the loans that had not been foreclosed as of the Receivership Date and in the percentages as reflected in Landmarc’s records and as set forth in the attached Schedule 2.<sup>1</sup>

5. The Receiver’s recommendations regarding the security interests claimed in Murray’s WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

6. Lehman Loan (#07030953). On or about March 21, 2007, Landmarc loaned \$169,950.00 which was secured by a deed of trust on a single family residence

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<sup>1</sup> The discussion of the legal basis for this conclusion is set forth in Petition No. 43.

located at 10150 N. Poquito Valley Road in Prescott Valley (“Property”) recorded with the Yavapai County Recorder on March 22, 2007 at Book 4491, Page 508. The loan defaulted and Landmarc foreclosed resulting in the recording of a Trustee’s Deed on March 26, 2008, conveying title to Landmarc. Effective September 1, 2008, Landmarc entered into a two year agreement with Allan Sobol to lease the Property to Sobol with an option to purchase the Property for \$274,000. This agreement has expired. Beneficial interests in this loan are claimed by four of Landmarc’s lenders. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>2</sup> The Receiver intends to market and sell this REO.

7. Tatranska Loan (#07051063). On May 24, 2007, Landmarc made a loan of \$771,000, which was secured by a second position deed of trust on eight rental properties recorded with the Maricopa County Recorder on May 25, 2007, as Document No. 2007-0609037. According to LMS, Murray funded 4.843% of this loan. On March 12, 2009, Landmarc modified this loan reducing the interest rate to 7.5% and extending the maturity date to March 12, 2014. In addition, \$43,368.75 in accrued and unpaid interest due (and possibly some other fees) was added to the principal balance of the loan increasing the principal balance to \$814,368.75. In its records, Landmarc allocated to itself the beneficial ownership of this increase in principal when it should have distributed the increase among the existing participants. Accordingly, the Receiver recommends that each participant’s interest be recalculated as follows (the Receiver’s recommendation with respect to Murray’ interest in this loan is 5.115%, the recalculated percentage indicated below):

<u>Lender</u>	<u>Per LMS</u>		<u>Recalculation by Receiver</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Litchfield	250,000	30.699%	264,063	32.425%
KepesWare	481,563	59.133%	508,651	62.460%
MurrayWare	39,437	4.843%	41,655	5.115%
Landmarc2	43,369	5.325%	0	0.000%
	814,369	100.000%	814,369	100.000%

8. Hernandez Loan (#07071144). On August 23, 2007, Landmarc made a loan of \$139,000 which was secured by a deed of trust on a vacant residential lot located at 22-1 South 4<sup>th</sup> Street in Avondale (“Property”) recorded with the Maricopa County Recorder on August 23, 2007 as Document No. 2007-0949150. According to LMS, Murray funded 100% of this loan. The borrower subsequently defaulted and the deed of trust was foreclosed resulting in a Trustee’s Deed being recorded on June 30, 2008,

<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.

conveying title to Landmarc. The confirmation of Murray's unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>3</sup>

9. CBI Developers Cheney Drive Property (#08011873). On January 31, 2008, Landmarc acquired title by Warranty Deed of vacant residential property located on East Cheney Drive in Paradise Valley ("Property") for a purchase price of \$1,200,000 and at the same time entered into an Option Agreement with CBI Developers, Inc., under which CBI was granted the option to purchase the Property for \$2,490,000 plus interest and a percentage of the profit upon sale of the Property. Cipriano B. Ionutescu personally guaranteed the obligations of CBI under the Option Agreement. Landmarc and CBI also entered into a Memorandum of Understanding which called for an interest reserve account and a construction draw account. The Option Agreement required monthly payments which were made for several months from an interest reserve account before CBI defaulted. It does not appear that CBI ever exercised its option to purchase the Property under the Option Agreement which expired by its terms on July 31, 2009. According to Landmarc's records this Property and the agreements were funded and beneficially owned by Gubin (53.04%), TBM (20.87%), LazyE (5.22%), Murray (2.69%), Desert Trails (7.82%), Hayden (5.41%), KepesWare (3.98%), Landmarc (.71%), and White (.26%). On March 4, 2008, Landmarc recorded a Quitclaim Deed conveying title to the Property as follows: 83.936% to Landmarc and 16.064% to TBM. The Receiver has listed the Property for sale. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>4</sup>

10. General Claim. In addition to his WCF claim, Murray filed another claim on the general proof of claim form for the same amount of principal and interest claimed in his WCF Proof of Claim. This claim appears to be duplicative of the debt owed under the WCF Agreement and claimed under Murray's WCF Proof of Claim addressed in this report and therefore the Receiver recommends that this duplicative claim be denied.

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<sup>3</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>4</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**  
**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **Bruce Murray (Claim No. 8089)**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
07/05/06	MurrayWare	10.0%	1,800,000	249,968	556	250,524	249,968	556	250,524
<b>Totals</b>				<b>\$249,968</b>	<b>\$556</b>	<b>\$250,524</b>	<b>\$249,968</b>	<b>\$556</b>	<b>\$250,524</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **Bruce Murray (Claim No. 8089)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
											L	M	N	O			
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
07030953	Lehman	N/A	209,250	REO	11.782%	11.782%	24,654	USP	0.0%	0.0%	11.78%	24,654	1dg2a	9a	0.00	7.03	167.51
07051063	Tatranska	814,358	814,358	Current	4.842%	4.842%	39,431	USP	0.0%	0.0%	5.12%	41,654	1dvr	9bc	0.00	1,431.28	437.65
07071144	Hernandez	N/A	69,750	REO	100.0%	100.0%	69,750	USP	0.0%	0.0%	100.0%	69,750	1dg2a	9a	0.00	0.00	10,475.95
08011873	CBI Developers, Inc	N/A	825,000	REO	2.693%	2.693%	31,508	USP	0.0%	0.0%	2.69%	22,193	1dg2av	9a	0.00	0.00	172.53
							\$165,343					\$158,251			\$1,438	\$11,254	
												<b>Owed to Claimant by LCI under WCF at 6/24/09:</b>		\$250,524			
												<b>Less Value of Claimant's Secured Claim:</b>		(158,251)			
												<b>Plus Estimated Loan Charges to be Paid by Claimant:</b>		11,254			
												<b>Less Estimated Other Trust Funds to be Released to Claimant:</b>		(1,438)			
												<b>Estimated General Unsecured Claim:</b>		\$102,089			

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)



## **The Eugene and Lenore Schupak Family Trust (Claim No. 8210)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by The Eugene and Lenore Family Trust dated April 4, 1991 (“Schupak”) under its one remaining WCF Agreement with Landmarc (Schedule 1), and the interest it claims in one of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by Schupak. In 2006 and 2006, Schupak entered into approximately 26 WCF Agreements with Landmarc, however, all but one of them have been either paid off or assigned to TBM Associates, LLC.

1. The Receiver recommends approval of Schupak’s claim to unpaid principal and interest due under Schupak’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver disagrees with the percentage claimed in the loan identified in Schedule 2 of Schupak’s Proof of Claim. See the discussion of the Poirier loan at paragraph 6 below.

3. With respect to the valuations set forth in Schedule 2 of Schupak’s Proof of Claim, the Receiver does not agree with the valuation of Schupak’s interest in the Poirier loan set forth in Schedule 2 of Schupak’s Proof of Claim, as more fully discussed in paragraph 6 below.

4. Although Schupak did not file a UCC-1 with the Secretary of State as indicated in paragraph 6 below, it holds 50% fee title to the property resulting from the loan it funded, which is the same percentage of this loan assigned by Landmarc to Schupak.

5. The Receiver’s recommendations regarding the security interest claimed in Schupak’s WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

6. Poirier/Westend Investments, LLC Loan (#06030207). On April 18, 2006, Landmarc loaned \$2,500,000 to Westend Investment, LLC, which was secured by 663.85 acres of vacant rural land located near Mayer, Arizona (“Property”) under a deed of trust recorded with the Yavapai County Recorder on April 27, 2006 at Book 4389, Page 331. Apparently the loan was initially funded entirely by Schupak since Landmarc recorded an assignment of all of the interest under the deed of trust to Schupak on April 27, 2006 at Book 4389, Page 332. According to LMS, 50% of the interest in the loan was subsequently purchased from Schupak by other lenders resulting in beneficial ownership of the loan being held as follows: Schupak (50%); Gubin (30.6%); White (8.8%), Desert Trails (4.8%), Station Park (3.2%), and the Receiver as assignee of LazyE (2.6). The borrower defaulted and Landmarc foreclosed resulting in a Trustee’s Deed Upon Sale being recorded on December 7, 2007, conveying fee title to Landmarc (50%) and Schupak (50%).

Schupak has claimed a 100% interest in this loan. However, the Receiver recommends that Schupak's percentage interest be approved at 50% for the following reasons: the records of Landmarc reflect an ownership by Schupak of only 50%; the Trustee's Deed conveyed only 50% of fee title to Schupak, and in fact Schupak's own accounting of the principal owed under its WCF Agreement shows that it is only owed \$1,200,000 (which is slightly less than 50% of the original loan).

Accordingly, the Receiver recommends that the Court approve an interest of 50% for Schupak. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>1</sup> The Receiver intends to market and sell the Property and distribute the net sale proceeds according to the interests approved by the Court.

Schupak values its loan interest in the Property at \$332,000, which is exactly one half of the appraised value for the Property under an appraisal obtained by the Receiver showing a fair market value of the Property at \$664,000. However, Schupak has calculated this value by multiplying its claimed 100% interest by a total value for the property of \$332,000. No support for such a valuation of the Property has been provided. Although the Receiver has an appraisal showing a valuation for the Property at \$664,000, the Receiver has reduced that appraisal by 10% to \$597,600 in order to reflect the likely net proceeds from the sale of this Property. Accordingly, the Receiver recommends that the valuation of Schupak's interest in the Property be set at \$298,800 (50% of \$597,600).

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<sup>1</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **The Eugene and Lenora Schupak Family Trust (Claim No. 8210)**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
04/25/06	The Schupak Family Trust	14.0%	2,500,000	1,200,000	348,483	1,548,483	1,200,000	348,483	1,548,483
<b>Totals</b>				<b>\$1,200,000</b>	<b>\$348,483</b>	<b>\$1,548,483</b>	<b>\$1,200,000</b>	<b>\$348,483</b>	<b>\$1,548,483</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **The Eugene and Lenora Schupak Family Trust (Claim No. 8210)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06030207	Poirier	N/A	597,600	REO	50.00%	100.00%	332,000	None	50.0%	100.0%	50.0%	298,800	1av	8c	0.00	0.00	17,648.10
							\$332,000								\$298,800		

**Owed to Claimant by LCI under WCF at 6/24/09:** \$1,548,483

**Less Value of Claimant's Secured Claim:** (298,800)

**Plus Estimated Loan Charges to be Paid by Claimant:** 17,648

**Less Estimated Other Trust Funds to be Released to Claimant:** 0

**Estimated General Unsecured Claim:** \$1,267,331

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)

### **SEM Investments, LLC (Claim No. 8221)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by SEM Investments, LLC (“SEM”) under its WCF Agreement with Landmarc (Schedule 1), and the various interests it claims in Landmarc’s loans (Schedule 2). As part of a Settlement Agreement between the Receiver and Stoneman, which was approved by the Court’s *Order Re: Petition No. 35* on November 9, 2010, SEM has assigned to the Receiver all of SEM’s claims in this receivership, including its claims under its WCF Agreement. Included in each schedule are the Receiver’s recommendations regarding the interests claimed by SEM under its WCF Agreement.

1. Prior to the Receivership Date, SEM had been paid in full for the obligations owed to it by Landmarc under SEM’s WCF Agreement and this fact is reflected in the Schedule 1 filed by SEM with the Receiver. Therefore the Receiver recommends approval of SEM’s claim as set forth in the attached Schedule 1.

2. The Receiver agrees with the SEM’s Schedule 2 in which it acknowledges that it holds no interest in the 7 loans identified in the Schedule.

**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: Receiver as Assignee of SEM Investments, LLC

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
05/27/08	SEMINVEST	13.0%	2,000,000	0	0	0	0	0	0
						0	0	0	0
<b>Totals</b>				<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: Receiver as assignee of SEM Investments, LLC

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
											L	M	N	O			
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06050368	Arellano	N/A	57,600	REO	0.0%	0.0%	0	None	0.0%	69.12%	0.0%	0	3a	na	0.00	0.00	0.00
07051054	Buck	N/A	72,450	REO	0.0%	0.0%	0	None	100.0%	61.62%	0.0%	0	3a	na	0.00	0.00	0.00
07081204	Frazier	N/A	477,000	REO	0.0%	0.0%	0	None	0.0%	0.0%	0.0%	0	3a	na	0.00	0.00	0.00
07081208	Thompson	N/A	198,000	REO	0.0%	0.0%	0	None	0.0%	0.0%	0.0%	0	3a	na	0.00	0.00	0.00
07091799	Callahan	N/A	342,000	REO	0.0%	0.0%	0	None	0.0%	9.09%	0.0%	0	3a	na	1,501.15	0.00	0.00
07121849	Presidio West 37, LLC	N/A	2,970,000	REO	0.0%	0.0%	0	None	0.0%	0.0%	0.0%	0	3a	na	0.00	0.00	0.00
08011873	CBI Developers, Inc	N/A	825,000	REO	0.0%	0.0%	0	None	0.0%	0.0%	0.0%	0	3a	na	0.00	0.00	0.00
							\$0								\$0	\$0	\$0

Owed to Claimant by LCI under WCF at 6/24/09: \$0

Less Value of Claimant's Secured Claim: 0

Plus Estimated Loan Charges to be Paid by Claimant: 0

Less Estimated Other Trust Funds to be Released to Claimant: 0

Estimated General Unsecured Claim: \$0

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)

## **Stoneman Properties LLC Defined Benefit Plan (Claim No. 8297)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by Stoneman Properties LLC Defined Benefit Plan (“Stoneman”) under its WCF Agreements with Landmarc (Schedule 1), and the various interests it claims in 4 of Landmarc’s loans (Schedule 2). As part of a Settlement Agreement between the Receiver and Stoneman, which was approved by the Court’s *Order Re: Petition No. 35* on November 9, 2010, Stoneman has assigned to the Receiver all of Stoneman’s claims in this receivership, including its claims under its WCF Agreement. Included in each schedule are the Receiver’s recommendations regarding the interests claimed by Stoneman under its WCF Agreements.

1. The Receiver recommends approval of Stoneman’s claim to unpaid principal and interest due under Stoneman’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 4 loans identified in Schedule 2 of Stoneman’s Proof of Claim.

3. The Receiver agrees with all of the valuations set forth in Schedule 2 of Stoneman’s Proof of Claim.

4. Although Stoneman did not file a UCC-1 with the Secretary of State, Stoneman did file a lawsuit prior to the Receivership Date and filed and recorded a *Notice of Lis Pendens* which identified the 4 loans in which Stoneman claims an interest. Accordingly, with respect to these 4 loans, the Receiver recommends that Stoneman’s claimed interest be confirmed.<sup>1</sup>

5. The recommended disposition of Stoneman’s approved interests is indicated in column O of the attached Schedule 2. Pursuant to the Settlement Agreement described above, all trust funds will be paid to the Receiver and all interests under the 9 loans will be transferred to the Receiver upon confirmation of the interests.

6. Horning Loan (#06050372). On June 1, 2006, Landmarc made a loan for \$640,000, which was secured by a deed of trust on a single family residence located at 350 East Cypress Street in Gilbert (“Property”). Various lenders acquired interests in the loan and assignments to those lenders were recorded. After the borrower subsequently defaulted, Landmarc recorded an assignment back to itself of the previously recorded interests relying on its power of attorney, and then foreclosed on the Property. The TDUS recorded on July 12, 2007, conveyed title to Landmarc. Although Landmarc holds fee title to the Property, LMS indicates that as of June 24, 2009, the loan was beneficially owned by KepesWare (11.56%) and the Receiver as assignee of Stoneman (58.59%), and

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<sup>1</sup> See Petition No. 43, paragraph 44.



that three loan participants may have interests of 14.06% (Russo), 11.1% (Craig) and 4.69% (Sneed). No assignment was recorded to KepesWare and although an assignment to Stoneman was executed on March 7, 2007, it was not recorded until after the foreclosure. Following the foreclosure Landmarc entered into an Option Agreement granting Brandon and Barbara Farrow an option to purchase the Property for \$415,000 through November 1, 2010. On August 1, 2010, the option agreement was extended by the Receiver through April 31, 2012, in exchange for an option payment of \$6,000 and monthly payments thereafter of \$1,600 per month. Since the interest of Stoneman in the property is reflected in a recorded *Notice of Lis Pendens*, it can be confirmed at this time. The confirmation of the unrecorded interests in the Property and the manner in which the approved interests in the Property are distributed will need to be resolved by further order of the Court.<sup>2</sup>

7. The Receiver's recommendations regarding the remaining security interests claimed by Stoneman in its WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and include the following:

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<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**  
**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: Receiver as assignee of Stoneman Properties LLC Defined Benefit Plan

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
12/29/06	Stoneman1	11.0%	150,000	148,250	6,338	154,588	148,250	6,338	154,588
12/19/06	Stoneman1	11.0%	225,000	225,000	9,619	234,619	225,000	9,619	234,619
05/25/07	Stoneman1	11.0%	225,000	225,000	9,619	234,619	225,000	9,619	234,619
						0	0	0	0
<b>Totals</b>				<b>\$598,250</b>	<b>\$25,575</b>	<b>\$623,825</b>	<b>\$598,250</b>	<b>\$25,575</b>	<b>\$623,825</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **Receiver as assignee of Stoneman Properties LLC Defined Benefit Plan**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
											L	M	N	O			
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06050372	Horning	N/A	369,000	REO	58.59%	58.59%	216,208	None	0.0%	58.59%	58.594%	216,212	1f	8c#	0.00	23,073.42	5,787.23
07020925	Farnsworth	N/A	198,900	REO	100.0%	100.00%	198,900	None	100.0%	0.0%	100.0%	198,900	1a	4a#	0.00	0.00	3,868.00
07030955	David, LLC	245,000	147,000	FCLS	26.531%	26.53%	39,001	None	0.0%	26.53%	26.53%	39,001	1bf	8d#	0.00	249.27	708.17
07081204	Frazier	N/A	477,000	REO	2.762%	2.76%	13,175	None	0.0%	0.0%	2.76%	13,175	1f	4b#	0.00	801.74	170.68
							\$467,283					\$467,287			\$24,124	\$10,534	
														<b>Owed to Claimant by LCI under WCF at 6/24/09:</b>		\$623,825	
														<b>Less Value of Claimant's Secured Claim:</b>		(467,287)	
														<b>Plus Estimated Loan Charges to be Paid by Claimant:</b>		10,534	
														<b>Less Estimated Other Trust Funds to be Released to Claimant:</b>		(24,124)	
														<b>Estimated General Unsecured Claim:</b>		\$142,948	

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
Q	Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
R	Current Loan Charges to be paid by Claimant (may change at time of disposition)

## **TBM Associates, LLC (Claim No. 8325)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by TBM Associates, LLC (“TBM”) under their 14 WCF Agreements with Landmarc (Schedule 1), and the various interests it claims in 16 of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by TBM.

1. The Receiver recommends approval of TBM’s claim to unpaid principal and interest due under TBM’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 16 loans identified in Schedule 2 of TBM’s Proof of Claim, with the exception of the Ireland loan (#06050394) discussed further in paragraph 6 below.

3. With respect to the valuations set forth in Schedule 2 of TBM’s Proof of Claim, the Receiver agrees with all of the valuations with the exception of the following:<sup>1</sup>

a. TBM has valued the REO resulting from the CBI Developers, Inc. loan (#08011873) at \$825,000 based on an appraisal dated April 8, 2010. The Receiver has reviewed the appraisal and accepts this valuation. TBM, however, appears to have calculated the value of its security interest by multiplying the appraised amount times 16.064% which is the percentage of fee title held by TBM. TBM claims an interest of 20.87% which the Receiver approves and therefore the value of TBM’s interest should be calculated by multiplying the value of the REO by TBM’s approved interest (\$825,000 times 20.873% equals \$172,202).<sup>2</sup>

b. TBM valued its 100% interest in the Levin REO at \$1,000. By agreement between TBM and the Receiver the Receiver recommends that the REO and TBM’s interest be valued at \$88,400.

4. TBM filed a UCC-1 with the Secretary of State that specifically identified in the filing all but one of the loans in which it asserts a perfected security interest. The Receiver believes that this filing properly perfects the claimed security interest in the loans and percentages as reflected in Landmarc’s

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<sup>1</sup> TBM valued the REO resulting from the Chao loan (#07061116) at \$50,000 based on a broker’s price opinion of \$50,000. The Receiver, however, has a broker’s price opinion of \$66,000. The Receiver agrees to accept TBM’s valuation.

<sup>2</sup> The Receiver’s acceptance of the \$825,000 appraised value results in the reduction of the value of the security interests claimed by the other WCF Lenders with an interest in this REO: Gubin (53.04); M. Kepes (3.98); Lazy E (5.22); Bruce Murray (2.69); & White Trust (0.26).

records and as set forth in the attached Schedule 2.<sup>3</sup> TBM, however, asserts in its UCC filing a security interest in the Ireland loan of 100% when the records of Landmarc indicate that it only held a 58.931%. See the discussion below in subparagraph 5. Also, TBM asserts a 20.9% interest in the CBI loan but this loan is not referenced in TBM's UCC filing. See the discussion in subparagraph 8 below.

5. The Receiver's recommendations regarding the security interests claimed in TBM's WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

6. Ireland Loan (#06050394). TBM claims a 100% interest in the Ireland loan, although Landmarc's records show TBM holds only a 58.931% interest in the loan as of June 24, 2009. The history of the loan is as follows: A loan of \$474,000 was made to the borrower on May 30, 2006. TBM funded \$194,268.85 (41.08%) of the loan and the Schupak Family Trust funded the remaining \$279,268.15 (58.92%). From the original loan proceeds, \$330,000 was transferred into a construction holdback escrow account at Arizona escrow. On or about May 10, 2007, TBM acquired Schupak's interest in the loan thus leaving TBM at the time with 100% of the loan. On or about June 15, 2007, \$230,555 representing the balance of the escrow account was paid to Landmarc and subsequently distributed to TBM reducing TBM's total investment in the loan to \$243,445.00. Shortly thereafter, on July 17, 2008, Desert Trails acquired 41.069% of the Ireland loan from TBM for \$100,000. This payment was made as part of a wire transfer from Landmarc to TBM of \$285,000 (the balance of \$185,000 in this transfer represented a payment to TBM for a portion of its interest in the Porter 20, LLC loan. Accordingly, as of June 24, 2009, TBM held 58.931% of the Ireland loan as reflected in Landmarc's records and Desert Trails held 41.069% of the loan. An accounting provided by TBM to the Department of Financial Institutions in April 2009, is consistent with the funding history shown in Landmarc's records. Prior to the appointment of the Receiver, Landmarc sued the borrower and obtained a judgment and the judgment was executed upon resulting in a Sheriff's deed to the Receiver to the two parcels of real property which secured the original loan. The Receiver is in the process of selling that real property and from the net sale proceeds, the Receiver will disburse 58.93% to TBM. In addition, TBM is entitled to a 58.93% interest in the judgment, which will be assigned or liquidated as appropriate.

7. Stewart Loan (#07111829). On December 6, 2007, Landmarc made a loan in the principal amount of \$2,460,000, which was secured by a deed of trust on a single family residence located in Paradise Valley ("Property"). The borrower subsequently defaulted and filed bankruptcy. After obtaining an order lifting the automatic stay, Landmarc foreclosed and took title to the Property. The

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<sup>3</sup> The discussion of the legal basis for this conclusion is set forth in Petition No. 43.

Receiver was able to sell the Property, which sale was approved by the Court's Order Re: Petition No. 14 entered on April 26, 2010. The sale of the Property resulted in the Receiver receiving net sale proceeds of \$640,787.33 and under Order Re: Petition No. 14 certain interests of Landmarc's lenders attached to the net sale proceeds, including TBM's claimed security interest. The net sale proceeds are presently held by the Receiver in a segregated interest bearing trust account.

The Stewart loan appears to have been short funded and only \$1,638,449 of actual funding occurred. As was Landmarc's practice, the short funding was allocated to Landmarc so the Receiver has recalculated the respective interests of the lenders in this loan to reallocate percentage ownership in the percentages of actual funding provided. Prior to foreclosing on this loan the Receiver attempted to modify the loan with the borrower to reflect the actual amount of the loan that was funded but the borrower was unwilling to agree to the modification probably because the property was no longer worth even the amount of the proposed modified loan.

<b>Lender</b>	<b>Per LMS</b>		<b>Recalculation by Receiver</b>	
	<b>Amount</b>	<b>%</b>	<b>Amount</b>	<b>%</b>
TBM	1,393,800	56.66%	1,393,800	85.07%
Partners	128,471	5.22%	128,471	7.84%
Landmarc	937,729	38.12%	116,178	7.09%
	<u>2,460,000</u>	<u>100.00%</u>	<u>1,638,449</u>	<u>100.00%</u>

8. CBI Developers Cheney Drive Property (#08011873). On January 31, 2008, Landmarc acquired title by Warranty Deed of vacant residential property located on East Cheney Drive in Paradise Valley ("Property") for a purchase price of \$1,200,000 and at the same time entered into an Option Agreement with CBI Developers, Inc., under which CBI was granted the option to purchase the Property for \$2,490,000 plus interest and a percentage of the profit upon sale of the Property. Cipriano B. Ionutescu personally guaranteed the obligations of CBI under the Option Agreement. Landmarc and CBI also entered into a Memorandum of Understanding which called for an interest reserve account and a construction draw account. The Option Agreement required monthly payments which were made for several months from an interest reserve account before CBI defaulted. It does not appear that CBI ever exercised its option to purchase the Property under the Option Agreement which expired by its terms on July 31, 2009. According to Landmarc's records this Property and the agreements were funded and beneficially owned by Gubin (53.04%), TBM (20.87%), LazyE (5.22%), Murray (2.69%), Desert Trails (7.82%), Hayden (5.41%), Kepes (3.98%),

Landmarc (.71%), and White (.26%). On March 4, 2008, Landmarc recorded a Quitclaim Deed conveying title to the Property as follows: 83.936% to Landmarc and 16.064% to TBM. The Receiver has listed the Property for sale and once it is sold, the Receiver recommends distribution of the net sale proceeds as follows: Gubin (53.04%), TBM (20.87%), the Receiver as assignee of LazyE (5.22%), Landmarc (.71%), Murray (2.69%), Kepes (3.98%), and White (.26%). The balance of the net sale proceeds will be held by the Receiver until the Court has ruled on the claims of Desert Trails and Hayden in subsequent proceedings.

TBM asserts a 20.9% interest in this loan. This loan is not specifically identified in TBM’s UCC-1 filed with the Secretary of State, however, as noted above TBM holds 16.064% of the fee title to the Property. The Receiver recommends confirmation of the fee title interest at this time. Because LMS reflects that the correct ownership percentage is 20.873%, the difference between this percentage and the percentage of fee title must be determined in later proceedings.<sup>4</sup>

9. Presidio West 197 Loan (#07121853). On or about December 27, 2007, Landmarc loaned \$14,500,000 to Presidio West 197, LLC, which was secured by approximately 197 acres of vacant land west of Flagstaff (“Property”) under a Deed of Trust recorded with the Coconino County Recorder on December 31, 2007 as Document No. 3471146. This loan refinanced an earlier loan from Landmarc to Presidio West, LLL for \$14,200,000 (#07030964), which had refinanced another loan from Landmarc to Presidio West, LLC for \$9,500,000 (#06100775). The loan to Presidio West 197 was funded as follows:

<b>Lender</b>	<b>Percentage</b>
Monterey Capital Co., LLC	50%
Landmarc Capital Partners, LLC	16.361%
TBM & Associates, LLC	11.157%
LDM Acceptance Company Pension	9.614%
Victoria Cohen	3.655%
DVH Management Corporation	3.448%
LDM Acceptance Company	2.215%
Desert Trails Insurance Company	2.171%
Gubin Family Trust	1.379%

Assignments of beneficial interest were recorded for the interest acquired by Monterey, TBM, DVH, and Partners but not for the others. Monterey claims to be unaware of the other loan participants and claims that Landmarc breached its loan participation agreement with Monterey by selling interests in this loan. The borrower subsequently defaulted and on September 9, 2008, an involuntary

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<sup>4</sup> See Petition No. 43, paragraphs 46 through 48.

bankruptcy petition was filed on the borrower by several of its creditors. Pursuant to the terms of its participation agreement, Monterey assumed the role as administrator of the loan and filed a motion in bankruptcy court to lift the automatic stay. An order granting the motion was entered on June 24, 2009. Monterey then proceeded to foreclose the deed of trust which resulted in the issuance of a Trustees Deed vesting Monterey and Landmarc with 50% fee title each which was recorded on August 11, 2009. Monterey is pursuing collection under the note and guarantees. The Receiver is negotiating with Monterey on the sale of the REO. Because the disposition of that loan is not under the Receiver's direct control, the Receiver is unable to estimate when the interests of the loan participants in this loan will be resolved.

10. The Receiver's recommendations regarding the remaining security interests claimed by TBM in its WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and include the following:

a. Title to the REO resulting from the foreclosures of the Orgill (#06060445), Bijou R.E. Investments, LLC (#0609068), Kunkle (#06110816), Chao (#07061116), Levin (#07071140), and Orgill (#ORGILL\_08) loans, was vested in Landmarc prior to the Receivership Date. LMS shows that TBM is the beneficial owner of 100% of those loans. The confirmation of TBM's interests in these REO will need to be resolved by further order of the Court.<sup>5</sup>

b. TBM is the 100% beneficial owner of the Miranda (#06090659) and Cortez (#07040991) loans. The borrowers under these loans are making payments under forbearance agreements. After payment of the loan charges, these loans will be transferred to a new servicing agent selected by TBM.

c. The REO resulting from the foreclosure of the Bush (#07071164) loan was conveyed by Trustee's Deed to TBM on March 14, 2008. All interests in this REO was previously transferred by the Receiver to TBM pursuant to the Court's Order No. 9 and all trust funds were applied to the loan charges and the remaining loan charges have been paid by TBM.

d. TBM has a 13.92% beneficial interest in the MSI Westgate loan (#07061130). That loan had previously been foreclosed upon by Landmarc and the REO was titled in the name of LCI-Westgate, LLC and pursuant to the Operating Agreement dated April 15, 2010, TBM has been given a 13.92859% membership interest. All loan charges have been paid and the remaining trust funds transferred to LCI-Westgate, LLC. Pursuant to *Petition No. 41*, the Court entered an order approving an operating

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<sup>5</sup> See *Petition No. 43*, paragraphs 46 through 48.



agreement for LCI-Westgate, LLC and clearing the title to the REO in the name of LCI-Westgate, LLC.

e. TBM holds only a fractional interest in the Frazier loan (#07081204). This loan was foreclosed resulting in fee title being vested in Landmarc prior to the Receivership Date. The REO has subsequently sold by the Receiver with a carryback and the sale was approved by the Court's *Order Re: Petition No. 32* entered on November 9, 2010. The confirmation of the unrecorded interests in the REO will need to be resolved by further order of the Court.<sup>6</sup>

f. TBM holds only a fractional interest in the Presidio West 37, LLC loan (#07121849). This loan was foreclosed resulting in fee title being vested in Landmarc prior to the Receivership Date. The confirmation of the unrecorded interests in the REO will need to be resolved by further order of the Court.<sup>7</sup> The Receiver controls this REO and intends to sell it and disburse the net sale proceeds as directed by the Court.

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<sup>6</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>7</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **TBM Associates, LLC (Claim No. 8325)**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
05/26/06	SchupakWar	15.5%	734,000	143,445	17,574	161,019	143,445	17,574	161,019
06/13/06	SchupakWar	15.5%	895,000	895,000	93,564	988,564	895,000	93,564	988,564
02/02/07	SchupakWar	15.5%	1,116,000	1,116,000	133,347	1,249,347	1,116,000	133,347	1,249,347
03/30/07	SchupakWar	15.5%	3,000,000	1,565,992	187,114	1,753,106	1,565,992	187,114	1,753,106
04/25/07	SchupakWar	15.5%	1,062,000	152,846	18,263	171,109	152,846	18,263	171,109
05/10/07	TBMWARE	15.5%	2,000,000	1,550,000	185,203	1,735,203	1,550,000	185,203	1,735,203
06/08/07	TBMWARE	15.5%	581,000	81,000	2,229	83,229	81,000	2,229	83,229
06/28/07	TBMWARE	15.5%	2,535,000	247,000	28,069	275,069	247,000	28,069	275,069
07/03/07	TBMWARE	15.5%	2,100,000	468,000	55,920	523,920	468,000	55,920	523,920
07/13/07	TBMWARE	15.5%	164,000	164,000	19,596	183,596	164,000	19,596	183,596
07/27/07	TBMWARE	15.5%	300,000	300,000	21,846	321,846	300,000	21,846	321,846
01/02/08	TBMWARE	15.5%	501,800	418,800	45,164	463,964	418,800	45,164	463,964
02/05/08	TBMWARE	15.5%	546,000	400,000	15,794	415,794	400,000	15,794	415,794
03/17/08	TBMWARE	15.5%	1,906,000	1,586,000	172,294	1,758,294	1,586,000	172,294	1,758,294
<b>Totals</b>				<b>\$9,088,083</b>	<b>\$995,977</b>	<b>\$10,084,060</b>	<b>\$9,088,083</b>	<b>\$995,977</b>	<b>\$10,084,060</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **TBM Associates, LLC (Claim No. 8325)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share			
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges		
											L	M	N	O				Q	R
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R		
06050394	Ireland	N/A	86,000	REO	58.931%	100.0%	76,000	100%	0.0%	100.0%	58.931%	76,000	1c	8c	0.00	0.00	21,627.06		
06060445	Orgill	N/A	231,000	REO	100.0%	100.0%	231,000	Yes	0.0%	100.0%	100.0%	231,000	1cg2a	9a	0.00	350.10	5,413.46		
06090659	Miranda	81,000	67,050	Forbearance	100.0%	100.0%	67,050	Yes	0.0%	0.0%	100.0%	67,050	1c	4b9b	206.97	8,237.19	2,269.90		
06090680	Bijou R.E. Investments, LLC	N/A	337,500	REO	100.0%	100.0%	337,500	Yes	0.0%	0.0%	100.0%	337,500	1cg2a	9a	0.00	6.12	11,700.55		
06110816	Kunkle	N/A	313,950	REO	100.0%	100.0%	313,950	Yes	0.0%	0.0%	100.0%	313,950	1cg2a	9ab	0.00	228.44	5,917.30		
07040991	Cortez	111,000	66,600	Forbearance	100.0%	100.0%	66,600	Yes	0.0%	0.0%	100.0%	66,600	1c	4b	380.52	3,407.22	2,604.32		
07061116	Chao	N/A	197,100	REO	100.0%	100.0%	50,000	Yes	0.0%	0.0%	100.0%	50,000	1cg2a	9a	0.00	0.00	1,909.66		
07061130	MSI Westgate, LLC	N/A	3,330,000	REO	13.92%	13.92%	463,536	67.74%	0.0%	14.5%	13.92%	463,536	1a	5e	9,879.58	7,867.44	5,064.74		
07071140	Levin	N/A	98,400	REO	100.0%	100.0%	1,000	Yes	0.0%	100.0%	100.0%	1,000	1cg2av	9a	0.00	2,210.58	13,150.55		
07071164	Bush	N/A	310,050	REO	100.0%	100.0%	300,000	Yes	100.0%	100.0%	100.0%	300,000	1a	5a	0.00	0.00	0.00		
07081204	Frazier	N/A	477,000	REO	55.25%	55.25%	263,543	Yes	0.0%	0.0%	55.25%	263,543	1cg2a	9a	0.00	16,037.64	3,414.27		
07111829	Stewart	2,460,000	640,787	Sold	56.66%	85.0%	544,669	56.87%	0.0%	0.0%	85.07%	545,118	1cr	8b	0.00	1,189.93	5,729.02		
07121849	Presidio West 37, LLC	N/A	2,970,000	REO	53.45%	53.46%	1,587,762	Yes	0.0%	0.0%	53.46%	1,587,732	1cg2a	9a	0.00	0.00	10,010.96		
07121853	Presidio West 197, LLC	N/A	12,411,000	REO	11.157%	11.160%	1,385,068	Yes	0.0%	11.157%	11.16%	1,385,068	1c	9c	0.00	0.00	4,658.00		
08011873	CBI Developers, Inc	N/A	825,000	REO	20.873%	20.9%	132,528	No	16.064%	0.0%	20.87%	172,178	1ag2av	8c9a	0.00	0.00	1,338.57		
ORGILL_08	Orgill	N/A	306,000	REO	100.0%	100.0%	306,000	Yes	0.0%	0.0%	100.0%	306,000	1cg2a	9a	0.00	666.31	1,610.01		
<b>\$6,126,205</b>												<b>\$6,166,274</b>				<b>\$40,201</b>		<b>\$96,418</b>	

**Owed to Claimant by LCI under WCF at 6/24/09:** \$10,084,060

**Less Value of Claimant's Secured Claim:** (6,166,274)

**Plus Estimated Loan Charges to be Paid by Claimant:** 96,418

**Less Estimated Other Trust Funds to be Released to Claimant:** (40,201)

**Estimated General Unsecured Claim:** \$3,974,004

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)

**Schedule 2**  
**Receiver's Recommendations Regarding WCF Lenders Security Claim**

- J Fee Title percentage held by Claimant on 6/24/09
- K Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
- L Percentage interest in loan recommended for approved for this Claimant
- M Valuation of Claimant's interest in loan approved for this claimant
- N Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
- O Code explaining the recommended disposition of the Claimant's interest (see code explanations)
- P Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter
- Q Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
- R Current Loan Charges to be paid by Claimant (may change at time of disposition)

## **Wesley A. & Marlene White Trust Dated June 12<sup>th</sup>, 1996 (Claim No. 8381)**

Attached to this Exhibit are schedules setting forth the amount of principal and interest claimed by the Wesley A. & Marlene White Trust Dated June 12<sup>th</sup>, 1996 (“WhiteWare”) under its WCF Agreements with Landmarc (Schedule 1), and the various interests it claims in 11 of Landmarc’s loans (Schedule 2). Included in each schedule are the Receiver’s recommendations regarding the interests claimed by WhiteWare.

1. The Receiver recommends approval of WhiteWare’s claim to unpaid principal and interest due under WhiteWare’s WCF Agreements as of June 24, 2009 as set forth in the attached Schedule 1.

2. The Receiver agrees with the percentages claimed in all of the 11 loans identified in Schedule 2 of WhiteWare’s Proof of Claim, with the exception of:

a. The claimant’s interest in the 4405 Speedway, LLC/Vassious loan (#08081976) has been adjusted upward as described in paragraph 6 below.

3. With respect to the valuations set forth in Schedule 2 of WhiteWare’s Proof of Claim, the Receiver agrees with all of the valuations with the exception of:

a. CBI Developers Loan (#08011873). The valuation of this REO was based on an amount provided to the Claimant by the Receiver. However, based on an appraisal recently obtained by the Receiver from TBM, the Receiver now believes that the value of this REO should be reduced to \$825,000 and the value of the claimant’s interest in the REO adjusted proportionately downward.

b. Because of the increase in WhiteWare’s percentage ownership of the 4405 Speedway, LLC/Vassious loan (#08081976) as described in paragraph 6 below, the resulting valuation of WhiteWare’s security interest has also increased.

4. Although WhiteWare filed a UCC-1 with the Secretary of State, it did not specifically identify in the filing or the exhibit thereto the loans in which is sought to perfect a security interest. The Security Agreement referenced in the UCC-1 also did not specifically identify individual loans. However, the Receiver believes that since the claimed interest can be objectively ascertained from Landmarc’s records, WhiteWare has demonstrated sufficiently that it has a perfected security interest in the loans and percentages as reflected in Landmarc’s records and as set forth in the attached Schedule 2.<sup>1</sup>

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<sup>1</sup> The discussion of the legal basis for this conclusion is set forth in Petition No. 43.

5. The Receiver's recommendations regarding the security interests claimed in WhiteWare's WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and are explained more fully below.

6. 4405 Speedway, LLC/Vassious Loan (#08081976). On September 10, 2008, Landmarc made a loan of \$1,440,000 to 4405 Speedway, LLC, which was secured by a first position deed of trust on commercial property in Pima County recorded with the Pima County Recorder on September 10, 2008, as Document No. 2008-1760484. This loan refinanced an earlier loan from Landmarc to Peter and Spiridoula Vassious. It appears that the original loan to the Peter and Spiridoula Vassious may not have been fully funded and as a result it appears that this loan was short funded by approximately \$12,500. As was its practice, Landmarc allocated in LMS to itself the beneficial ownership of this unfunded portion of the loan. Given the relatively immaterial amount of this apparent short funding the Receiver has not completed a forensic investigation to confirm the short funding but instead recommends that each participant's interest be recalculated as indicated below. The borrower has threatened bankruptcy or litigation over alleged wrongdoing by Landmarc and the Receiver's efforts to resolve those issues have been unsuccessful to date. Distribution of the approved interests in this loan will therefore be determined in subsequent proceedings.

<u>Lender</u>	<u>Per LMS</u>		<u>Recalculation by Receiver</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Partners	775,828	53.877%	775,828	54.349%
KepesWare	237,168	16.470%	237,168	16.614%
Gubin	210,137	14.593%	210,137	14.721%
WhiteWare	48,514	3.369%	48,514	3.399%
LazyE	134,006	9.306%	134,006	9.387%
Desert Trails	21,847	1.517%	21,847	1.530%
Landmarc2	12,500	0.868%	0	0.000%
	1,440,000	100.000%	1,427,168	100.000%

7. Lehman Loan (#07030953). On or about March 21, 2007, Landmarc loaned \$169,950.00 which was secured by a deed of trust on a single family residence located at 10150 N. Poquito Valley Road in Prescott Valley ("Property") recorded with the Yavapai County Recorder on March 22, 2007 at Book 4491, Page 508. The loan defaulted and Landmarc foreclosed resulting in the recording of a Trustee's Deed on March 26, 2008, conveying title to Landmarc. Effective September 1, 2008, Landmarc entered into a two year agreement with Allan Sobol to lease the Property to Sobol with an option to purchase the Property for \$274,000. This agreement has expired. Beneficial interests in this loan are claimed by four of Landmarc's lenders. The confirmation of the unrecorded

interests in the Property will need to be resolved by further order of the Court.<sup>2</sup> The Receiver intends to market and sell this REO.

8. CBI Developers Bell Rd. Loan (#08081970). On or about October 31, 2007, Landmarc made a construction loan of \$1,377,000 to CBI Developers, Inc. (#07101823), which was secured by a deed of trust on commercial property located at the southwest corner of 17<sup>th</sup> Street and Bell Road in Phoenix (“Property”). On April 30, 2008, the loan was modified to increase the principal balance to \$1,553,500 and a modification fee of \$50,000 was charged but not paid at that time. In August 2008, this loan was refinanced and a new loan (#08081970) for \$1,750,000 was made to CBI, which included funding to pay the balance owed under the first loan including the accrued and unpaid interest, the unpaid loan modification fee, and the loan charges associated with the new loan. Landmarc recorded assignments of the deed of trust for this loan as follows: Partners (57.73%), LazyE (0.57%), and LDM Pension (0.857%), leaving Landmarc with 40.84%. However, Landmarc’s records indicate that the funding and beneficial ownership of this loan was as follows: Partners (90.08%), KepesWare (3.28%), White (1.91%), LDM Pension Plan (0.99%), LazyE (0.66%), Desert Trails (1.05%), and Gubin (2.04%). The borrower subsequently defaulted and Landmarc foreclosed resulting in a Trustee’s Deed recorded on January 29, 2010, conveying title consistent with the recorded assignments as follows: Landmarc (40.843%), Partners (57.73%), LazyE (.57%), LDM Acceptance Pension Plan (0.857%). The Receiver intends to list the Property for sale and once it is sold, the Receiver recommends distribution of the net sale proceeds as follows: KepesWare (3.28%), White (1.91%), the Receiver as assignee of LazyE (0.66%), and Gubin (2.04%). The balance of the net sale proceeds will be held by the Receiver until the Court has ruled on the claims of Partners, Desert Trails and LDM Pension Plan in subsequent proceedings.

9. CBI Developers Cheney Drive Property (#08011873). On January 31, 2008, Landmarc acquired title by Warranty Deed of vacant residential property located on East Cheney Drive in Paradise Valley (“Property”) for a purchase price of \$1,200,000 and at the same time entered into an Option Agreement with CBI Developers, Inc., under which CBI was granted the option to purchase the Property for \$2,490,000 plus interest and a percentage of the profit upon sale of the Property. Cipriano B. Ionutescu personally guaranteed the obligations of CBI under the Option Agreement. Landmarc and CBI also entered into a Memorandum of Understanding which called for an interest reserve account and a construction draw account. The Option Agreement required monthly payments which were made for several months from an interest reserve account before CBI defaulted. It does not appear that CBI ever exercised its option to purchase the Property under the Option Agreement which expired by its terms on July 31, 2009.

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<sup>2</sup> See Petition No. 43, paragraphs 46 through 48.

According to Landmarc's records this Property and the agreements were funded and beneficially owned by Gubin (53.04%), TBM (20.87%), LazyE (5.22%), Murray (2.69%), Desert Trails (7.82%), Hayden (5.41%), KepesWare (3.98%), Landmarc (.71%), and White (.26%). On March 4, 2008, Landmarc recorded a Quitclaim Deed conveying title to the Property as follows: 83.936% to Landmarc and 16.064% to TBM. The Receiver has listed the Property for sale. The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>3</sup>

10. Poirier/Westend Investments, LLC Loan (#06030207). On April 18, 2006, Landmarc loaned \$2,500,000 to Westend Investment, LLC, which was secured by 663.85 acres of vacant rural land located near Mayer, Arizona ("Property") under a deed of trust recorded with the Yavapai County Recorder on April 27, 2006 at Book 4389, Page 331. Apparently the loan was initially funded entirely by Schupak since Landmarc recorded an assignment of all of the interest under the deed of trust to Schupak on April 27, 2006 at Book 4389, Page 332. According to LMS, 50% of the interest in the loan was subsequently purchased from Schupak by other lenders resulting in beneficial ownership of the loan being held as follows: Schupak (50%); Gubin (30.6%); WhiteWare (8.8%), Desert Trails (4.8%), Station Park (3.2%), and the Receiver as assignee of LazyE (2.6). The borrower defaulted and Landmarc foreclosed resulting in a Trustee's Deed Upon Sale being recorded on December 7, 2007, conveying fee title to Landmarc (50%) and Schupak (50%).

The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>4</sup> The Receiver intends to market and sell the Property and distribute the net sale proceeds according to the interests approved by the Court.

11. 104<sup>th</sup> and Indian School Property (104<sup>th</sup> Ave). Landmarc agreed to finance the acquisition of a 4.020 acre site located at the northeast corner of 104<sup>th</sup> Drive and Indian School Road in Phoenix ("Property") by 104<sup>th</sup> and Indian School, LLC. Landmarc granted to 104<sup>th</sup> and Indian School, LLC ("104<sup>th</sup>") an option to purchase the Property from Landmarc. 104<sup>th</sup> eventually defaulted under its option agreement and quit claimed all of its interest in the Property to Landmarc on November 16, 2007. As of June 24, 2009, title to the Property was held by Landmarc but LMS shows that this Property and the agreements were funded and beneficially owned as of the Receivership Date by KepesWare (39.22%), Gubin (42.99%), WhiteWare (15.12%), LazyE (1.91%) and Landmarc (0.76%). The confirmation of the unrecorded interests in the Property will need to be resolved by further order of the Court.<sup>5</sup>

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<sup>3</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>4</sup> See Petition No. 43, paragraphs 46 through 48.

<sup>5</sup> See Petition No. 43, paragraphs 46 through 48.



12. The Receiver's recommendations regarding the remaining security interests claimed by WhiteWare in its WCF Proof of Claim are set forth in Columns L through O of Schedule 2 and include the following:

a. Since the Slade loan (#07041005) is current, WhiteWare's 100% interest in that loan will be transferred for servicing to WhiteWare or to a new servicing agent pursuant to Order No. 4.

b. Since WhiteWare's claim of 100% security interest in the REO derived from the Dominguez (#07030979) loan is approved and since those REO is titled in the name of Landmarc after the Receivership Date, the Receiver will convey title to WhiteWare pursuant to Order No. 9.

c. Prior to the Receivership Date Landmarc acquired title to the REO derived from the Gutierrez (#07040989) and Beck (#07040995) loans. LMS shows that WhiteWare is the 100% beneficial owner of both loans, however, the confirmation of WhiteWare's interests in the REO will need to be resolved by further order of the Court.<sup>6</sup>

d. WhiteWare has only a fractional interest in the We Did Our Part, LLC loan (#08021878) and the Receiver intends to complete foreclosure on this loan and then sell the REO and distribute the sale proceeds according to the percentage interests approved by the Court.

1157-027 (98882)

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<sup>6</sup> See Petition No. 43, paragraphs 46 through 48.

**Schedule 1**

**Receiver's Recommendations Regarding WCF Lenders Calculation of Principal & Interest Due**

Claimant: **Wesley A. & Marlene White Trust (Claim No. 8381)**

<b>WCF Agreements as of 6/24/09</b>				<b>Claimed as of 06/24/09</b>			<b>Recommended by the Receiver 06/24/09</b>		
<b>Date</b>	<b>Party to WCF</b>	<b>Interest Rate</b>	<b>Original Amount</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>	<b>Principal Balance</b>	<b>Accrued Interest</b>	<b>Total Due</b>
12/11/06	WHITEWARE	11.0%	1,150,000	1,150,899	21,362	1,172,261	1,150,899	21,362	1,172,261
<b>Totals</b>				<b>\$1,150,899</b>	<b>\$21,362</b>	<b>\$1,172,261</b>	<b>\$1,150,899</b>	<b>\$21,362</b>	<b>\$1,172,261</b>

Schedule 2  
Receiver's Recommendations Regarding WCF Lenders Security Claim

Claimant: **Wesley A. & Marlene White Trust (Claim No. 8381)**

LCI Loan No.	Borrower	Current Note Balance	Est. Current Valuation	Current Status	LCI %	Claimed %	Claimed Value Amt	UCC	Fee	ABI	Receiver's Recommendations				Total Impound Funds/ Deposits	Claimant's Estimated Current Share	
											Approved %	Valuation	Codes			All Trust Funds	Loan Charges
											L	M	N	O		Q	R
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
06030207	Poirier	N/A	597,600	REO	8.80%	8.80%	52,589	USP	0.0%	0.0%	8.80%	52,589	1dg2a	9a	0.00	0.00	3,106.07
07030953	Lehman	N/A	209,250	REO	1.77%	1.77%	3,697	USP	0.0%	0.0%	1.77%	3,697	1dg2a	9a	0.00	1.05	25.12
07030979	Dominguez	N/A	104,850	REO	100.0%	100.0%	104,850	USP	0.0%	0.0%	100.0%	104,850	1d	5d	0.00	1,458.26	1,575.87
07040989	Gutierrez	N/A	30,870	REO	100.0%	100.0%	30,870	USP	0.0%	0.0%	100.0%	30,870	1dg2a	9a	0.00	232.74	6,428.81
07040995	Beck	N/A	79,290	REO	100.0%	100.0%	79,290	USP	0.0%	0.0%	100.0%	79,290	1dg2a	9a	0.00	2,409.86	7,272.08
07041005	Slade	192,722	192,722	Current	100.0%	100.0%	192,722	USP	0.0%	0.0%	100.0%	192,722	1d	4b	702.44	17,408.89	0.00
08011873	CBI Developers, Inc	N/A	825,000	REO	0.26%	0.26%	2,137	USP	0.0%	0.0%	2.60%	21,450	1dg2av	9a	0.00	0.00	166.76
08021878	We Did Our Part, LLC	1,750,000	1,215,000	FCLS	0.09%	0.09%	1,045	USP	0.0%	0.0%	0.09%	1,045	1d	8d	0.00	0.00	5.97
08081970	CBI Developers, Inc	N/A	270,810	REO	1.91%	1.91%	5,159	USP	0.0%	0.0%	1.91%	5,159	1d	8c9c	0.00	0.00	1,315.41
08081976	4405 Speedway, LLC/Vassious	1,440,000	342,000	FCLS	3.37%	3.37%	11,522	USP	0.0%	0.0%	3.40%	11,625	1drv	8c9c	0.00	0.00	434.97
104th Ave	104th & Indian School	N/A	882,000	REO	15.12%	15.12%	133,394	USP	0.0%	0.0%	15.12%	133,394	1dg2a	9a	0.00	687.46	624.13
							\$617,274					\$636,690			\$22,198	\$20,955	

**Owed to Claimant by LCI under WCF at 6/24/09:** \$1,172,261

**Less Value of Claimant's Secured Claim:** (636,690)

**Plus Estimated Loan Charges to be Paid by Claimant:** 20,955

**Less Estimated Other Trust Funds to be Released to Claimant:** (22,198)

**Estimated General Unsecured Claim:** \$534,327

Column	Explanation
C	Current Principal balance of the Note
D	Current Fair Market Value of Note or REO
E	Current Status of Loan
F	Claimant's Percentage of Ownership per LCI records
G	Percentage of Ownership claimed by Claimant
H	Share of Current Fair Market Value claimed by Claimant (D x G)
I	Security Interest Perfected by UCC Filing (USP = Unspecified in UCC)
J	Fee Title percentage held by Claimant on 6/24/09
K	Percentage of Beneficial Interest Assigned to Claimant under a recorded Assignment
L	Percentage interest in loan recommended for approved for this Claimant
M	Valuation of Claimant's interest in loan approved for this claimant
N	Code explaining basis for Receiver's recommendation (1 = Approved; 2 = Deferred; 3 = Disapproved; see code explanations)
O	Code explaining the recommended disposition of the Claimant's interest (see code explanations)
P	Total Impound Funds or Security Deposits currently held by Landmarc fbo the borrower or renter

Schedule 2

Receiver's Recommendations Regarding WCF Lenders Security Claim

- Q Claimant's share of trust funds currently held by Receiver (may change at time of disposition)
- R Current Loan Charges to be paid by Claimant (may change at time of disposition)

**Approval Codes for WCF Lender Claims**  
Column N of Schedule 2

1. Approve for the percentage indicated as Approved % for one or more of the following reasons:
  - a. Fee title vested in the Claimant or an LLC at the Receivership Date by a duly recorded deed was equal to or greater than the Approved %.
  - b. Beneficial interest vested in the Claimant at the Receivership Date by a duly recorded Assignment was equal to or greater than the Approved %.
  - c. Claimant held a perfected security interest in the note and deed of trust with the loan specifically identified in a duly filed UCC-1.
  - d. Claimant held a perfected security interest in the note and deed of trust under the composite rule where interest in the specific loan is objectively shown by Landmarc's records even though the UCC-1 does not specifically identify the loan.
  - e. Loan proceeds from payoff of the loan or sale of the underlying security were held in Landmarc's Trust Account at the Receivership Date for the benefit of the Claimant in the Approved %.
  - f. Claimant held an interest pursuant to a *Notice of Lis Pendens* recorded prior to the Receivership Date.
  - g. Some claimed interests are approved and some are deferred.
  - r. Percentage interest of Claimant has been recalculated due to short funding or other factors.
  - v. The valuation claimed by the claimant for its interest has been changed by the Receiver.
2. Defer action on part or all of the Claimant's claimed interest for one or more of the following reason (although the Receiver has made a recommendation for an Approved % interest, this is contingent on the Court ultimately confirming the interest being deferred):
  - a. At the Receivership Date fee title was held by Landmarc and the Claimant had no recorded interest or perfected security interest in the REO and the Claimant's claimed interest in the REO must be addressed in subsequent proceedings.
  - b. Although Claimant has a beneficial interest under a recorded Assignment, the recordation of the Assignment occurred when Landmarc did not possess the interest purportedly assigned.
  - r. Percentage interest of Claimant has been recalculated due to short funding or other factors.
  - v. The valuation claimed by the claimant for its interest has been changed by the Receiver.
3. Disapprove the claimed interest in its entirety for one or more of the following reasons:
  - a. The records of Landmarc indicate that the claimed interest in this loan was repurchased from the Claimant.
  - b. The records of Landmarc indicate that the Claimant did not at any time hold the claimed interest in this loan.

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4. The loan is eligible for transfer to a new servicing agent or the Claimant:
    - a. Previously transferred for the Approved % pursuant to *Order No. 4*.
    - b. Will be transferred for the Approved %.
    - c. Previously transferred but distributions on the Approved % for this claimant are being held by Receiver but will be released to claimant.
  5. The REO is eligible for transfer to the Claimant:
    - a. Previously transferred for the Approved % pursuant to *Order No. 9*.
    - b. Will be transferred for the Approved %.
    - c. Approved % in the REO confirmed or will be transferred to a LLC.
    - d. Upon completion of the foreclosure the Approved % will be transferred.
    - e. Previously transferred for the Approved % and confirmed by the Court under *Order No. 41*.
  6. The interest held by the Receiver is eligible for sale to the Claimant (and transfer of control/management of the REO):
    - a. Receivership interest previously sold pursuant to *Order No. 24*.
    - b. Receivership interest will be sold pursuant to *Order No. 24*.
  7. The loan payoff proceeds (“Proceeds”) are eligible for transfer:
    - a. Approved % of the Proceeds was previously transferred to Claimant pursuant to *Order No. 8*.
    - b. Approved % of the Proceeds will be transferred to Claimant.
    - c. Approved % of the Proceeds will be transferred to the Claimant’s assignee.
  8. The net sale proceeds from the sale of the REO (“Proceeds”) are eligible for transfer:
    - a. Approved % of the Proceeds was previously transferred to Claimant.
    - b. Approved % of the Proceeds will be transferred to Claimant.
    - c. Property to be sold and the Approved % of the Proceeds (or that portion confirmed at the time) will be transferred to the Claimant.
    - d. Upon completion of the foreclosure, the REO will be sold and the Approved % of the Proceeds will be transferred to the Claimant.
  9. To be determined later by subsequent order of the Court
    - a. Confirmation of an ownership or security interest in the loan or REO has been deferred until later.
    - b. Claim of a borrower or other creditor may need to be resolved before disposition of the confirmed interest.
    - c. Co-ownership, bankruptcy, or other issues may require further investigation and action by the Court before a final disposition can be made.
    - d. Resolution of the Approved % has been deferred until later.
  10. The Receiver has elected to acquire for cash the Approved % for the value attributed to the interest by the claimant.
- # The interest has been assigned to the Receiver or to another person & will be distributed to the assignee.