

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

5 Attorneys for the Receiver

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

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

10 Plaintiff,

11 v.

12 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

13 Defendant.)
14)

Cause No. CV2009-020595

PETITION NO. 46

PETITION FOR APPROVAL OF
SETTLEMENT AGREEMENT BETWEEN
THE RECIEVER AND MELVIN HARTER
MINISTRIES, INC. AND MELVIN E.
HARTER

(Assigned to Judge Sam Myers)

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

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

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

6 2. On or about May 9, 2005, Landmarc loaned \$900,000 to Melvin Harter
7 Ministries, Inc. (“MHMI”) (“Loan No. LC050509”), which loan was evidenced by a
8 Promissory Note in the principal amount of \$900,000 and was secured by a deed of trust on
9 certain real property located at 9224 East Highway 92, Hereford, Arizona, and legally
10 described as set forth in Exhibit “A” (“Property”).

11 3. Landmarc subsequently sold participation interests in Loan No. LC050509 to
12 the David L. Wolfswinkel Trust, Desert Trails Insurance, the Penny Wolfswinkel Jenkins
13 Trust, Edward J. Humphries, and the Harvey B. Friedman & Francine A. Friedman Family
14 Trust (collectively referred to hereafter as the “Beneficial Owners”).

15 4. Landmarc sought to foreclose on Loan No. LC050509 and the Trustee issued a
16 *Trustee’s Deed Upon Sale* seeking to vest title to the Property in Landmarc, which was
17 recorded with the Cochise County Recorder on October 14, 2008 as Document No. 08-27283
18 (“Trustee’s Deed”).

19 5. The Court subsequently entered the Receivership Order placing Landmarc and
20 others in receivership and appointing the Superintendent of the Arizona Department of
21 Financial Institutions as Receiver.

1 6. On October 6, 2009, MHMI filed an action in the Arizona Superior Court for
2 Cochise County entitled *Melvin Harter Ministries, Inc. v. Landmarc Capital & Investment*
3 *Company, et al.*, Cause No. CV2009-00990, which was subsequently transferred to Maricopa
4 County and assigned Cause No. CV2010-001247 (the “Litigation”).

5 7. On or about September 21, 2010, MHMI filed with the Receiver a Verified
6 Proof of Claim (“Claim No. 7738”) setting forth a claim against the Receivership estate in the
7 amount of \$19,500,000.

8 8. On March 7, 2011, the Receiver filed his *Petition No 42, Report and Petition to*
9 *Adjudicate Claim of Melvin Harter and Melvin Harter Ministries, Inc.* which recommended
10 the denial of Claim No. 7738 and sought the entry of a judgment in favor of Landmarc in the
11 Litigation.

12 9. On March 24, 2011, MHMI filed its *Objection and Response to Report and*
13 *Petition to Adjudicate Claim of Melvin Harter Ministries, Inc. Claim No. 7738 and Motion*
14 *for Leave to File First Amendment to Verified Proof of Claim.*

15 10. Although the Receiver does not believe that there is merit to Claim No. 7738 or
16 the claims asserted in the Litigation, the cost of litigating those claims and the inherent risk of
17 any litigation presents a substantial problem for the receivership estate and the interests of the
18 Beneficial Owners of the Property. In addition, the decline in real estate values throughout
19 Arizona has caused the value of the Property to drop substantially since the inception of Loan
20 No. LC050509. Accordingly, the Receiver has entered into a Settlement Agreement with
21 MHMI and Melvin Harter, a copy of which is attached as Exhibit “B”. Under the Settlement

1 Agreement MHMI is given the opportunity to have the foreclosure set aside by order of this
2 Court upon payment to the Receiver of \$450,000 within 90 days of the entry of the order
3 approving the Settlement Agreement. Upon approval of the Settlement Agreement, Claim
4 No. 7738 will be withdrawn and the Litigation dismissed with prejudice. The Settlement
5 Agreement is conditioned on approval of this Court and contains various other provisions and
6 conditions.

7 11. The Receiver believes that the Settlement Agreement is fair and in the best
8 interests of the receivership estate and of the Beneficial Owners.

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

- 10 1. Approving the Settlement Agreement attached hereto as Exhibit "B".
- 11 2. Vacating the hearing on *Petition No. 42*.
- 12 3. Granting such other relief as may be appropriate or required under the

13 Settlement Agreement.

14 Respectfully submitted this 6th day of June, 2011.

15 GUTTILLA MURPHY ANDERSON

16 /s/Patrick M. Murphy
17 Patrick M. Murphy
18 Attorneys for the Receiver

19 1157-001(107515)

20

21

Exhibit A

PARCEL I:

A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:

COMMENCING at Northwest corner of said Section 6;
thence North 89° 52' 11" West, a distance of 709.09 feet;
thence South 00° 37' 13" East, a distance of 378.88 feet;
thence North 89° 22' 47" East a distance of 558.22 feet;
thence South 00° 02' 54" East, a distance of 191.42 feet;
thence North 89° 52' 26" East, a distance of 509.87 feet to the POINT OF BEGINNING;
thence North 89° 52' 26" East, a distance of 530.00 feet;
thence South 00° 07' 26" East, a distance of 230.00 feet;
thence South 89° 52' 26" West, a distance of 530.00 feet;
thence North 00° 07' 26" West, a distance of 230.00 feet to the POINT OF BEGINNING.

PARCEL II:

A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, and a portion of the Northeast quarter Section 1, Township 24 South, Range 21 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 1;
thence North 89° 52' 11" West a distance of 709.09 feet;
thence South 00° 37' 13" East, a distance of 378.88 feet to the POINT OF BEGINNING;
thence North 89° 22' 47" East, a distance of 558.22 feet;
thence South 00° 02' 54" East, a distance of 191.42 feet;
thence North 89° 52' 26" East, a distance of 509.87 feet;
thence South 00° 07' 26" East, a distance of 230.00 feet;
thence North 89° 52' 26" East, a distance of 50.00 feet;
thence South 00° 07' 34" East, a distance of 71.64 feet;
thence South 44° 55' 58" West, a distance of 215.20 feet;
thence North 90° 00' 00" West, a distance of 261.28 feet;
thence North 00° 07' 13" West, a distance of 70.81 feet;
thence South 89° 51' 56" West, a distance of 699.29 feet;
thence North 00° 37' 13" West, a distance of 568.99 feet to the POINT OF BEGINNING.

PARCEL III:

A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows:

mt *MA*

050518437

COMMENCING at the Northwest corner of said Section 6;
thence North 89° 52' 11" West, a distance of 709.09 feet;
thence South 00° 37' 13" East, a distance of 947.87 feet;
thence North 89° 51' 56" East, a distance of 699.29 feet;
thence South 00° 07' 13" East, a distance of 70.81 feet to the POINT OF BEGINNING;
thence South 90° 00' 00" East, a distance of 261.28 feet;
thence North 44° 55' 58" East, a distance of 215.20 feet;
thence North 00° 07' 34" West, a distance of 71.64 feet;
thence North 89° 52' 26" East, a distance of 270.00 feet;
thence South 00° 07' 34" East, a distance of 170.00 feet;
thence South 69° 05' 46" West, a distance of 302.25 feet;
thence South 44° 37' 08" West, a distance of 384.62 feet;
thence South 89° 52' 45" West, a distance of 130.29 feet;
thence North 00° 07' 13" West, a distance of 327.31 feet to the POINT OF BEGINNING.

PARCEL IV:

A portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, being more particularly described as follows;

COMMENCING at Northwest corner of said Section 6;
thence North 89° 52' 11" West, a distance of 709.09 feet;
thence South 00° 37' 13" East, a distance of 378.88 feet;
thence North 89° 22' 47" East, a distance of 558.22 feet;
thence South 00° 02' 54" East, a distance of 191.42 feet;
thence North 89° 52' 26" East, a distance of 1,039.87 feet;
thence South 00° 07' 26" East, a distance of 230.00 feet to the POINT OF BEGINNING;
thence South 00° 07' 26" East, a distance of 1,188.83 feet;
thence South 89° 53' 41" West, a distance of 405.27 feet;
thence North 01° 55' 51" East, a distance of 958.25 feet;
thence North 69° 05' 46" East, a distance of 172.11 feet;
thence North 00° 07' 34" West, a distance of 170.00 feet;
thence North 89° 52' 26" East, a distance of 210.00 feet to the POINT OF BEGINNING.

PARCEL V:

That portion of the Northwest quarter of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at Northwest corner of said Section 6;
thence North 89° 52' 11" West, a distance of 709.09 feet;
thence South 00° 37' 13" East, a distance of 1,345.84 feet;
thence North 89° 52' 45" East, a distance of 695.82 feet to the POINT OF BEGINNING;
thence North 89° 52' 45" East, a distance of 130.29 feet;
thence North 44° 37' 08" East, a distance of 384.62 feet;
thence North 69° 05' 46" East, a distance of 130.14 feet;

AH MA

050518437

thence South 01° 55' 51" West, a distance of 958.25 feet;
thence South 89° 53' 42" West, a distance of 488.39 feet;
thence North 00° 07' 13" West, a distance of 638.12 feet to the POINT OF BEGINNING.

PARCEL VI:

That portion of the Northeast quarter of Section 1, Township 24 South, Range 21 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, and a portion of Lot 1 of Section 6, Township 24 South, Range 22 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

BEGINNING at the North corner common to said Section 1 and Section 6;

thence North 89° 52' 11" West, coincident with the North line of said Section 1, a distance of 709.09 feet;

thence South 00° 37' 13" East, a distance of 378.88 feet;

thence North 89° 22' 47" East, a distance of 558.22 feet;

thence South 00° 02' 54" East, a distance of 191.42 feet;

thence North 89° 52' 26" East a distance of 1039.87 feet;

thence North 00° 07' 26" East, a distance of 560.34 feet, to a point on the North line of said Section 6;

thence North 90° 00' 00" West, coincident with said north line of Section 6, a distance of 892.02 feet to the POINT OF BEGINNING.

PARCEL VII:

That portion of the Northeast quarter of Section 1, Township 24 South, Range 21 East, of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section 1;

thence North 89° 52' 11" West, coincident with the North line of said Section 1, a distance of 709.09 feet;

thence South 00° 37' 13" East, a distance of 947.87 feet to the POINT OF BEGINNING;

thence North 89° 51' 56" East, a distance of 699.29 feet;

thence South 00° 07' 13" East, a distance of 398.12 feet;

thence South 89° 52' 45" West, a distance of 695.82 feet;

thence North 00° 37' 13" West, a distance of 397.97 feet to the POINT OF BEGINNING.

050518437

m H MAH

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Lauren Kingry, as Receiver ("Receiver"), and Melvin Harter Ministries, Inc. ("MHMI"), an Ohio corporation, and Melvin E. Harter ("Harter"). The Receiver, MHMI and Harter are referred to collectively herein as the "Parties."

Recitals

Whereas on or about May 9, 2005, Landmarc Capital & Investment Company ("Landmarc") loaned \$900,000.00 to MHMI ("Loan No. LC050509"), which loan was evidenced by a Promissory Note in the principal amount of \$900,000.00 and was secured by a deed of trust on certain real property located at 9224 East Highway 92, Hereford, Arizona, and legally described as set forth in Exhibit "A" ("Property");

Whereas Landmarc subsequently sold participation interests in Loan No. LC050509 to the David L. Wolfswinkel Trust, Desert Trails Insurance, the Penny Wolfswinkel Jenkins Trust, Edward J. Humphryes, and the Harvey B. Friedman & Francine A. Friedman Family Trust (collectively referred to hereafter as the "Beneficial Owners");

Whereas Landmarc sought to foreclose on Loan No. LC050509 and the Trustee issued a *Trustee's Deed Upon Sale* seeking to vest title to the Property in Landmarc, which was recorded with the Cochise County Recorder on October 14, 2008 as Document No. 08-27283 ("Trustee's Deed");

Whereas on June 24, 2009, the Arizona Superior Court for Maricopa County entered its *Order Appointing Receiver*, which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc in Cause No. CV2009-020595 ("Receivership Court"), and on February 27, 2010 entered its *Order placing Hayden Investments, LLC Desert Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership and Order Placing Hayden Insurance, LTD and Desert Trails Insurance Co In Receivership* (Landmarc, Hayden Investments, LLC, Desert Trails Holdings, LLC, Arizona Valuation Company, LLC, Hayden Insurance, Ltd., and Desert Trails Insurance Co. are referred to hereafter collectively as the "Receivership Entities");

Whereas on October 6, 2009, MHMI filed an action in the Arizona Superior Court for Cochise County entitled *Melvin Harter Ministries, Inc. v. Landmarc Capital & Investment Company, et al.* Cause No. CV2009-00990, which was subsequently transferred to Maricopa County and assigned Cause No. CV2010-001247 (the "Litigation");

Whereas on or about September 21, 2010, MHMI filed with the Receiver a Verified Proof of Claim ("Claim No. 7738") setting forth a claim against the Receivership estate in the amount of \$19,500,000;

Whereas on March 7, 2011, the Receiver filed his *Petition No 42, Report and Petition to Adjudicate Claim of Melvin Harter and Melvin Harter Ministries, Inc.* which recommended the denial of Claim No. 7738 and sought the entry of a judgment in favor of Landmarc in the Litigation;

Whereas on March 24, 2011, MHMI filed its *Objection and Response to Report and Petition to Adjudicate Claim of Melvin Harter Ministries, Inc. Claim No. 7738 and Motion for Leave to File First Amendment to Verified Proof of Claim;* and

Whereas without admitting the truth or validity of any claim or defense, the Parties desire to settle all claims between the Parties, including those arising out of or related to the Litigation or Claim No. 7738.

Terms

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

1. Immediately upon execution of this Settlement Agreement the Receiver and MHMI shall stipulate to a continuance of the hearing presently set on Petition No. 42 for May 26, 2011, to a date not earlier than July 26, 2011.
2. Within ten (10) calendar days following the execution of this Settlement Agreement, the Receiver shall file a petition in the Receivership Court seeking the approval of this Settlement Agreement and the provisions contained therein are conditioned upon the approval of the Settlement Agreement by the Receivership Court and the Settlement Agreement shall not become effective until and unless it is so approved.
3. At the time the Receivership Court enters an order approving this Settlement Agreement, MHMI shall deliver to the Receiver's counsel:
 - a. A stipulation, in a form acceptable to the Receiver and executed by counsel for MHMI, dismissing with prejudice all claims asserted by MHMI in the Litigation and vacating the hearing on Petition No. 42.
 - b. A written withdrawal of Claim No. Claim No. 7738 executed by Harter and an authorized officer of MHMI.
4. Effective upon the Receivership Court's entry of an order approving this Settlement Agreement and the completion of the requirements of paragraph 3:
 - a. The Receiver and the Receivership Entities on their own behalf and on behalf of their attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, release and forever discharge MHMI



and Harter and their attorneys, employees, agents, directors, shareholders, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of or relating to Loan No. LC050509 or the Litigation or Claim No. 7738, except for obligations arising under this Settlement Agreement.

b. MHMI and Harter hereby, on their own behalf and on behalf of their attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, release and forever discharge the Receiver, the Receivership Entities, and the Beneficial Owners, and their attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of or relating to Loan No. LC050509 or the Litigation or Claim No. 7738, except for obligations arising under this Settlement Agreement.

5. Commencing with the execution of this Settlement Agreement and continuing for ninety (90) days following the entry of an order by the Receivership Court approving this Settlement Agreement:

a. MHMI shall have access to the Property with three (3) days' prior written notice to the Receiver for the sole purpose of, at MHMI's own expense, having the grass mowed, the Property cleaned, trash removed, and minor repairs done to the improvements such as boarding up broken windows, etc. Nothing will be removed from the Property without the written consent of the Receiver; and

b. The Receiver shall maintain property, casualty and liability insurance on the property.

6. Within ninety (90) days of the Receivership Court's entry of an order approving this Settlement Agreement, MHMI shall pay to the Receiver the sum of \$450,000.00, which payment shall be made by delivery to the Deputy Receiver of a Cashier's Check drawn on a bank authorized to do business in Arizona for the required amount and made payable to Landmarc Capital & Investment Company. Upon the Receiver's receipt of the payment required by this paragraph, the Receiver shall file with the Receivership Court a stipulation for entry of an order setting aside the Trustee's Deed and declaring that any and all foreclosure actions attempted upon the Property pursuant to such Deed of Trust shall be deemed invalid and requesting that the Court declare that no foreclosure upon the Property was accomplished thereby, which stipulation shall be signed by and in a form acceptable to counsel for the Receiver and MHMI.

7. The failure of MHMI to make the payment as required under paragraph 6 above:

a. Shall terminate MHMI's right of access to the Property under paragraph 5.a above;

b. Shall entitle Landmarc to retain the benefit of any improvements made to the Property by MHMI; and

c. Shall not affect the validity or enforceability of any other provision of this Settlement Agreement or of the Trustee's Deed.

8. If the conditions of paragraph 6 above are satisfied neither the Receiver, nor any of the Receivership Entities nor any of the Beneficial Owners, shall have any liability for any real estate taxes regarding the Property that may currently be due and payable or may become due and payable.

9. Nothing in this Agreement shall prevent the Receiver from entering into an agreement for the sale of the Property provided such an agreement is conditioned on the rights of MHMI under paragraph 6 above.

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

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

12. This Agreement may not be amended or modified except in a writing, signed by the Parties to be bound thereby, or signed by their respective attorneys of record in the Litigation.

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

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

15. This Agreement is entered into in the State of Arizona, and shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Arizona. Any dispute concerning the interpretation of this Agreement shall be submitted to and decided exclusively in the Superior Court of the State of Arizona in and for the County of Maricopa.

mn

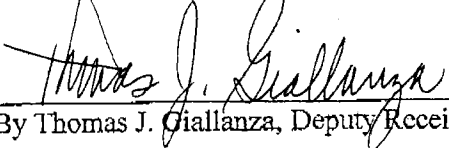
16. The person signing this Agreement on behalf of any party to this Agreement, hereby warrants and represents that the person is authorized to sign this Agreement and make the promises and grant the releases contained herein on behalf of the respective entity and that such person has the power to bind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

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

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

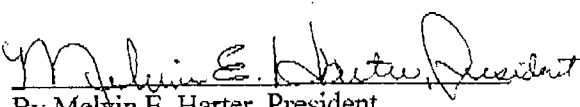
19. All Parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.

Lauren Kingry, as Receiver of Landmarc Capital & Investment Company; Hayden Investments, LLC; Desert Trails Holdings, LLC; Arizona Valuation Company, LLC; Hayden Insurance, LTD; and Desert Trails Insurance Co.


By Thomas J. Giallanza, Deputy Receiver

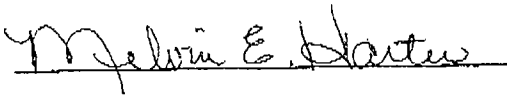
Date 5/25/11

Melvin Harter Ministries, Inc.


By Melvin E. Harter, President

Date 5-25-11

Melvin E. Harter



Date 5-25-11