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5 Attorneys for the Receiver

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

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

10 Plaintiff, )

v. )

11 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )

12 Defendant. )

Cause No. CV2009-020595

PETITION NO. 53

PETITION FOR ORDER TO APPROVE  
REIMBURSEMENT OF DFI  
RECEIVERSHIP FUND FOR 4TH  
QUARTER 2010 ADMINISTRATIVE  
EXPENSES

(Assigned to Judge Eileen Willett)

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. Pursuant to A.R.S. §6-131.01 the Arizona Department of Financial Institutions  
7 (“DFI”) is authorized to fund the operations of a receivership in which the Superintendent is  
8 the receiver and to be reimbursed for those expenditures upon order of the receivership Court.

9 3. Specifically, A.R.S. §6-131.01 provides as follows:

10 A. The superintendent may be appointed as a receiver of a financial  
11 institution or enterprise under his supervision. No bond is required of the  
superintendent for acting as a receiver.

12 B. All reasonable expenses of the department relating or apportioned to  
13 a receivership, including receiver fees and attorney fees, costs of preliminary or  
14 other examinations of the person placed into receivership and expenses relating  
15 to the management of any office or other asset of the person placed in  
16 receivership, shall be awarded by the court for payment to the department out of  
17 the assets of the receivership. The department shall assess those expenses  
18 against the receivership quarterly and shall deposit those amounts in the  
department receivership revolving fund, as provided in section 6-135.01. Those  
assessments have priority over the other creditors of the receivership.  
Notwithstanding the other provisions of this subsection, on request by the  
superintendent, the court may award personal property of the receivership to the  
department as partial compensation for the services rendered during the  
administration of the receivership.

19 C. The superintendent shall maintain a complete accounting of each  
receivership in which he is appointed as receiver.

20 4. A.R.S. §6-135.01, which establishes the DFI Receivership Revolving Fund,  
21 provides as follows:

1           A. A department receivership revolving fund is established to be  
2 administered by the superintendent. The fund shall consist of monies from the  
3 following sources:

4           1. Monies awarded and received as fees and costs in receiverships in  
5 which the superintendent was the receiver, as provided in section 6-131.01.

6           2. Monies received from the department revolving fund, as provided in  
7 section 6-135, subsection B.

8           B. Monies in the fund may be used to pay any costs incurred by the  
9 department arising out of the administration of a receivership in which the  
10 superintendent is the receiver.

11           C. The superintendent shall submit to the legislature with the  
12 department's annual budget request a full and complete account of the  
13 department receivership revolving fund through the end of its most recent fiscal  
14 year.

15           5. On August 26, 2009, the Court entered its *Order Re: Petition No. 2, Order*  
16 *Governing the Administration of the Receivership* ("Order No. 2"), which provides in  
17 pertinent part as follows:

18           9. Petitions for Payment of Fees. Pursuant to A.R.S. § 6-131.01(B),  
19 and notwithstanding the Receivership Order, the Receiver may seek an award  
20 from the Court for all reasonable expenses of the Department of Financial  
21 Institutions relating or apportioned to this receivership, including the fees of the  
Special Deputy Receiver, attorneys and accountants, costs of preliminary or  
other examinations of the person or persons in receivership and expenses  
related to the management of offices or assets of the person or persons in  
receivership by filing a petition, which petition shall not be required to include  
as exhibits the itemized statements of services rendered to, and costs incurred or  
expended on behalf of, the Receivership, provided that the petition includes a  
statement that anyone desiring additional information concerning the services  
and costs to be paid under the pay petition may obtain redacted information  
from the Receiver by delivering to the Receiver and the Receiver's general  
counsel, Guttilla Murphy Anderson, P.C., a written request specifying the  
additional information requested at least three days prior to the date set for  
hearing on the pay petition. Upon request of the Court, the Receiver shall make  
available for in camera review by the Court, the itemized statements and  
supporting documentation for the services and costs to be paid under the pay  
petition.

6. In accordance with *Order No. 2*, anyone desiring additional information concerning the services and costs paid by DFI for which reimbursement is sought in this petition may obtain redacted information from the Receiver by delivering to the Receiver and the Receiver's general counsel, Guttilla Murphy Anderson, P.C., a written request specifying the additional information requested at least three days prior to the date set for hearing on this petition.

7. For the fourth quarter of 2010 ending December 31, 2010, DFI incurred and paid a total of \$299,693.64 apportioned to this receivership for receiver fees and attorney fees and expenses relating to the management of Landmarc.

8. A summary of those fees and expenses incurred and paid by the DFI is set forth below:

<u>Vendor</u>	<u>Service Dates</u>	<u>Paid by DFI</u>			<u>Total</u>
		<u>Oct 2010</u>	<u>Nov 2010</u>	<u>Dec 2010</u>	
<u>Management &amp; Accounting</u>					
Warfield & Co.	9/1 – 10/31	\$32,248	\$83,572	\$0.00	\$115,821
Field Lawdahl, PLLC	10/6 – 10/7	\$0.00	\$450	\$0.00	\$450
<u>Attorney Fees</u>					
Guttilla Murphy Anderson	8/1 – 10/31	\$84,777	\$98,645	\$0.00	<u>\$183,422</u>
<b>Total 4<sup>th</sup> Quarter 2010 Administrative Expenses</b>					<b>\$299,693</b>

9. Once approved by the Court, these administrative expenses will be paid from the general unsecured assets of Landmarc and the other receivership entities. No funds held

1 in trust for the benefit of borrowers or investors and no funds or other assets which are the  
2 subject of a security interest or a potential ownership or equitable claim will be used to pay  
3 these administrative expenses.<sup>1</sup>

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

5 1. Awarding to the DFI Two Hundred Ninety Nine Thousand Six Hundred Ninety  
6 Three Dollars (\$299,693) as reimbursement for administrative expenses incurred and paid  
7 during the quarter ending December 31, 2010; and

8 2. Authorizing the Receiver to transfer Two Hundred Ninety Nine Thousand Six  
9 Hundred Ninety Three Dollars (\$299,693) as reimbursement for administrative expenses  
10 incurred and paid during the quarter ending December 31, 2010 as funds become available  
11 from the general unsecured assets of the receivership estate in this action to the Arizona  
12 Department of Financial Institutions Receivership Revolving Fund established under A.R.S.  
13 §6-135.01.

14 Respectfully submitted this 21<sup>st</sup> day of September, 2011.

15 GUTTILLA MURPHY ANDERSON

16  
17 /s/Patrick M. Murphy  
Patrick M. Murphy  
Attorneys for the Receiver  
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19 1157-001(110041)

20  
21 <sup>1</sup> Although A.R.S. §6-131.01 would permit the Court to award reimbursement from trust funds or other assets subject to the beneficial ownership or security claims of others, the Receiver does not seek that authority here and does not anticipate that it will be necessary at any time in this case.