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

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

10 Plaintiff,)

11 v.)

12 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)

13 Defendant.)

Cause No. CV2009-020595

PETITION NO. 57

PETITION TO CONFIRM SALE OF
REAL PROPERTY LOCATED AT
10152 N. POQUITO VALLEY
ROAD, PRESCOTT VALLEY,
ARIZONA 86315

(Assigned to the Honorable Eileen Willett)

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16 _____
17 Lauren W. Kingry, as the court appointed Receiver, respectfully petitions the Court as
18 follows:

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

1 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*
2 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,
3 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*
4 (collectively “Receivership Order”). The Receivership Order appointed Thomas Giallanza as
5 Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
6 Receivers to carry on the day to day business of Landmarc.

7 2. In accordance with the Receivership Order, the Receiver has located and taken
8 possession of certain real property located at 10152 North Poquito Valley Road, Prescott
9 Valley, Arizona 86315 (“Property”). This Property is legally described in Exhibit “1”
10 attached hereto and was acquired by and is currently held in the name of the Landmarc
11 Capital & Investment Company. Title to the Property was acquired in the name of Landmarc
12 Capital & Investment Company by a Trustee’s Deed recorded March 26, 2008. On July 22,
13 2008, Landmarc entered into a *Residential Lease with Option to Purchase* with Allan Sobol
14 (“Lease/Purchase Option”). The Lease/Purchase Option expired by its terms on August 10,
15 2010, without Mr. Sobol exercising his purchase option. On November 16, 2009, Mr. Sobol
16 recorded an *Affidavit Evidencing Financial Interest in Real Property* with the Yavapai
17 County Recorder at Book 4706, Page 930, purporting to assert an interest in the property, and
18 has refused to release this recording all in violation of the Receivership Order.

19 3. The Property is not occupied and is not encumbered by any indebtedness, other
20 than obligations for real estate taxes and assessments.

1 4. Because the Property is a single family residence that necessitates the
2 expenditures of time and funds to provide security and insurance for the Property, the
3 continued holding of the Property is not necessary or appropriate to protect the interests of
4 any of the persons interested in this receivership. Accordingly, the Receiver commenced
5 efforts to market and sell the Property.

6 5. The sale contemplated under Exhibit “2” is conditioned upon, and will not take
7 place in the absence of, an order of this Court approving such sale after notice and a hearing

8 6. The Receiver engaged the services of Debbie Dunbar and Russ Lyon Sotheby’s
9 International Realty, to market the Property, under which the Receiver agreed to pay a 6%
10 sales commission, subject to the approval of this Court.

11 7. On September 17, 2011 the Receiver received an offer from Elini Vilardi to
12 purchase the Property for \$135,000 under terms that were not acceptable to the Receiver.
13 The Receiver thereafter submitted to Buyer a Counter Offer #1 under terms that were not
14 acceptable to the Buyer. Buyer submitted to Receiver a Counter Offer #2 which has been
15 accepted. These documents constitute the Purchase Agreement and are attached hereto as
16 Exhibit “2”. The Purchase Agreement provides for the sale of the Property for \$135,000 in
17 cash and is conditioned upon approval by this Court.

18 8. In accordance with this Court’s Order Re: Petition Number 2, the Receiver:

19 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
20 Hearing, to all interested persons, including those persons on the Master Service List
21 as indicated in the Proof of Mailing filed herewith;

1 b. Intends to publish notice of this sale in a newspaper of general
2 circulation within the county in which this action is pending; and

3 c. Intends to publish notice of this sale in a newspaper of general
4 circulation within the county in which the Property is located.

5 9. The Receiver recommends that the Property be sold for the price and under the
6 terms set forth in the Purchase Agreement attached as Exhibit “2”, which the Receiver
7 believes are in the best interests of the receivership estate.

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

9 1. Approving the sale as set forth in the Purchase Agreement attached as Exhibit
10 “2” to this Petition of the Property legally described in Exhibit “1” free and clear of all liens
11 and encumbrances including without limitation the *Affidavit Evidencing Financial Interest in*
12 *Real Property* recorded by Allan Sobol on the Property on November 16, 2009, with the
13 Yavapai County Recorder as Document No. 4356083, Book 4706, Page 930; and

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2. Authorizing Thomas J. Giallanza in his capacity as Deputy Receiver, to execute all necessary documents in connection with the sale of the Property confirmed by the Court.

Respectfully submitted this 23rd day of November, 2011.

GUTTILLA MURPHY ANDERSON

/s/Patrick M. Murphy
Patrick M. Murphy
Attorneys for the Receiver

1157-001(113087)