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5 Attorneys for the Receiver

6 IN THE SUPERIOR COURT OF 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 &)
12 INVESTMENT COMPANY,)

Defendant.)

Cause No. CV2009-020595

PETITION NO. 72

PETITION FOR ORDER APPROVING
THE SALE OF REAL PROPERTY
LOCATED 10400 WEST INDIAN
SCHOOL ROAD, PHOENIX, ARIZONA
85037

(Assigned to the Honorable Lisa Flores)

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 is *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 Receiver 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 taken possession
8 of certain real property located at 10400 West Indian School Road, Phoenix, Arizona 85037
9 (“Property”). This Property is legally described in Exhibit “1” attached hereto. Landmarc
10 acquired fee title to the Property pursuant to a *Quitclaim Deed* recorded with the Maricopa
11 County Recorder on November 26, 2007 as Document Number 2007-1249064. There are no
12 known encumbrances on the Property, however there are delinquent real property taxes owed
13 on the Property (“Taxes”).

14 3. The Court has previously confirmed that the beneficial ownership in the
15 Property is held by the Madelene Kepes Revocable Living Trust (39.22%), the Gubin Family
16 Trust (42.99%) and the Receiver as successor to Landmarc and LazyE, LLC (2.67%). *See the*
17 *Court’s Order Approving Receiver’s Recommendations Regarding Warehouse Credit Facility*
18 *Claims, Re: Petition No. 43.*

19 4. The continued holding of the Property is not necessary or appropriate to protect
20 the interests of any persons interested in this receivership. Accordingly, the Receiver
21 commenced efforts to market and sell the Property.

1 5. On February 6, 2012, Michael Turner of Appraisal Technology, Inc., submitted
2 to the Receiver an appraisal of the Property which indicates a fair market value for the
3 Property of \$370,000.00. Mr. Turner has been issued Certificate No. 30420 by the State of
4 Arizona as a Certified General Real Estate Appraiser. The Receiver has agreed to pay this
5 appraiser a fee of \$2,000.00 for this appraisal and the appraiser has no known interest in any
6 of the parties or in the sale of the Property.

7 6. In addition, the Receiver engaged the services of James Frazey and City to City
8 Commercial, to market the Property, under which the Receiver agreed to pay a 6% sales
9 commission, subject to the approval of this Court.

10 7. On September 20, 2012, the Receiver received an offer from Noblewest Group,
11 LLC to purchase the Property for \$275,000 under terms that were not acceptable to the
12 Receiver. The Receiver thereafter submitted to Buyer a Counter Offer No. 1 which terms
13 were not acceptable to the Buyer. A Counter Offer No. 2 was submitted by the Buyer to the
14 Receiver which has been accepted. These documents constitute the Purchase Agreement and
15 are attached hereto as Exhibit "2". The Purchase Agreement provides for the sale of the
16 Property for \$315,000 in cash to Noblewest Group, LLC, or its designee. The sale
17 contemplated under Exhibit "2" is conditioned upon, and will not take place in the absence
18 of, an order of this Court approving such sale after notice and a hearing.

19 8. In accordance with this Court's *Order Re: Petition Number 2*, the Receiver:
20
21

1 a. Has mailed a copy of this Petition, the proposed order, and the Notice of
2 Hearing, to all persons on the Master Service List as indicated in the Proof of Mailing
3 filed herewith;

4 b. Intends to publish notice of this sale in a newspaper of general
5 circulation within the county in which this action is pending and the Property is
6 located.

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

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

11 1. Approving the sale as set forth in the Purchase Agreement attached as Exhibit
12 "2" to this Petition of the Property legally described in Exhibit "1".

13 2. Authorizing the Receiver to satisfy the Taxes secured by the Property.

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

16 Respectfully submitted this 15th day of April, 2013.

GUTTILLA MURPHY ANDERSON, P.C.

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

1157-001(144454)

20
21

Exhibit "1"

Tract 184, VILLA DE PAZ UNIT 1, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 135 of Maps, page 22.

Exhibit "1"

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VACANT LAND/LOT PURCHASE CONTRACT



If subdivided land (less than 36 acres) or unsubdivided land (36 acres to 160 acres) is being sold by a subdivider, i.e., a person who owns 6 or more lots, a public report will generally be required and an Addendum regarding subdivided or unsubdivided land must be executed by the Seller and Buyer.

The printed portion of this contract has been approved by the ARIZONA ASSOCIATION OF REALTORS® ("AAR") This is intended to be a binding contract. No representation is made as to the legal validity or adequacy of any provision or the tax consequences thereof. If you desire legal, tax or other professional advice, consult your attorney, tax advisor, insurance agent or professional consultant.

1. PROPERTY

- 1a. 1. BUYER: Noblewest Group LLC BUYER'S NAME(S)
- 2. SELLER: Landmark Capital and Investment Company or as identified in Section 9c. SELLER'S NAME(S)
- 3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
- 4. or incidental thereto, if any, plus the personal property described herein (collectively the "Property").
- 1b. 5. Property Address: 10400 West Indian School Road Zoning: R4A
- 6. Assessor's #: 102-17-196C / _____
- 7. City: Phoenix County: Maricopa AZ, Zip Code: 85037
- 8. Legal Description: _____ or see attached legal description.
- 1c. 9. \$ 275,000.00 Full Purchase Price, paid as outlined below
- 10. \$ 10,000.00 Earnest money wire
- 11. \$ 265,000.00 balance paid in cash at COE
- 12. \$ _____
- 13. _____
- 1d. 14. Incidental Improvements: Buyer is purchasing the Property as vacant land. Any improvements, fixtures and appurtenances
- 15. thereon are incidental thereto, plus any personal property on the Property are merely incidental, are being transferred in their
- 16. existing condition ("AS IS") and Seller makes no warranty to Buyer, expressed or implied, as to their condition.
- 1e. 17. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office.
- 18. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all
- 19. closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on
- 20. December 31st 2012 ("COE Date"). If Escrow Company or recorder's office is closed on MONTH DAY YEAR
- 21. COE Date, COE shall occur on the next day that both are open for business.
- 22. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down
- 23. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds
- 24. to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.
- 1f. 25. Possession: Seller shall deliver access to keys and/or means to operate all locks, mailbox, and all common area facilities, subject to
- 26. the rights of tenants under existing leases, to Buyer at COE or _____. Broker(s) recommend that the parties seek appropriate
- 27. counsel from insurance, legal, tax, and accounting professionals regarding the risks of pre-possession or post-possession of the Property.
- 1g. 28. Addenda Incorporated: Assumption/Carryback Buyer Contingency Domestic Water Well H.O.A.
- 29. Additional Clause On-site Wastewater Treatment Facility Addendum to Vacant Land
- 30. Other: _____
- 31. IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.

Initials: [Signature] / [Signature]
 SELLER SELLER BUYER BUYER
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blank 10 blank Phoenix, AZ 85040
Phone: (480)888-8888

Fax: Chris Hopkins

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Indian School



2. FINANCING

(If financing is to be other than new financing, see attached addendum.)

- 2a. 32. **Loan Status Report:** The AAR Vacant Land/Lot Loan Status Report ("LSR") with, at a minimum, the Buyer's Loan Information section
- 33. completed, describing the current status of the Buyer's proposed loan, is attached hereto and incorporated herein by reference.
- 2b. 34. **Financing:** This sale is is not contingent upon Buyer obtaining a satisfactory financing commitment within Financing
- 35. **Commitment Contingency Period.** (If sale is not contingent on a financing commitment, go to Section 2g.)
- 2c. 36. **Financing Commitment Contingency Period:** If the sale is contingent upon Buyer obtaining a satisfactory financing
- 37. commitment, Buyer shall have thirty (30) days or _____ days after the Contract acceptance ("Financing Commitment
- 38. Contingency Period") to obtain a financing commitment satisfactory to Buyer in Buyer's sole discretion, for a loan to purchase the
- 39. Property or Buyer may cancel this Contract and receive a refund of the Earnest Money. **PRIOR TO THE EXPIRATION OF THE FINANC-**
- 40. **ING COMMITMENT CONTINGENCY PERIOD, BUYER SHALL DELIVER TO SELLER AND ESCROW COMPANY NOTICE THAT**
- 41. **BUYER HAS NOT RECEIVED SUCH SATISFACTORY FINANCING COMMITMENT OR BUYER SHALL BE DEEMED TO HAVE**
- 42. **WAIVED THE FINANCING COMMITMENT CONTINGENCY AND ANY RIGHT TO CANCEL DUE TO FINANCING.**
- 2d. 43. **Financing Application:** Unless previously completed, within ten (10) days or _____ after Contract acceptance, Buyer shall
- 44. submit a formal loan application to a lender of Buyer's choice. Buyer and Seller shall promptly provide to such lender all materials
- 45. and documents lender deems appropriate to facilitate such lender's processing of such loan application. Buyer instructs the lender
- 46. to provide loan status updates to Broker(s) and Seller. The AAR Loan Status Update Form is available for this purpose.
- 2e. 47. **Appraisal Contingency:** Buyer's obligation to complete this sale is contingent upon an appraisal of the Property by an appraiser
- 48. acceptable to lender for at least the sales price during the Financing Commitment Contingency Period.
- 2f. 49. **Loan Costs:** Buyer shall pay all costs of obtaining the loan, except as provided herein.
- 50. Discount points shall be paid by: Buyer Seller Other _____
- 51. Discount points shall not exceed: _____ total points (Does not include loan origination fee)
- 52. A.L.T.A. Lender Title Insurance Policy shall be paid by Buyer Seller
- 53. Loan Origination Fee (Not to exceed _____ % of loan amount) shall be paid by Buyer Seller
- 54. Appraisal Fee, when required by lender, shall be paid by Buyer Seller Other _____
- 2g. 55. **Partial Release:** Buyer and Seller agree that any partial releases will be addressed under Additional Terms and Conditions
- 56. or attached Addendum.
- 2h. 57. **Subordination:** If applicable, Seller carryback financing is is not to be subordinated to a construction loan. If Seller
- 58. agrees to subordination, such subordination shall only be allowed if the Seller Carryback financing is not in default and if the
- 59. Seller approves the terms and conditions of the construction loan to be recorded as a senior loan. Approval will not be
- 60. unreasonably withheld. **IF SELLER SUBORDINATES THE SELLER CARRYBACK FINANCING TO A SENIOR LOAN, THE**
- 61. **SELLER ACKNOWLEDGES THAT IN ORDER TO PROTECT THE SELLER CARRYBACK FINANCING, THE SELLER**
- 62. **MAY HAVE TO MAKE PAYMENTS ON THE SENIOR LOAN IF THE SENIOR LOAN IS IN DEFAULT.**

3. TITLE AND ESCROW

- 3a. 63. **Escrow:** This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the
- 64. terms of this Contract shall be:
- 65. **North American Title - Alex Graham** _____
- "ESCROW/TITLE COMPANY" PHONE
- 66. _____
- FAX EMAIL
- 67. _____
- ADDRESS
- 3b. 68. **Title and Vesting:** Buyer will take title as determined before COE. Taking title may have significant legal, estate planning
- 69. and tax consequences. Buyer should obtain legal and tax advice.
- 3c. 70. **Title Commitment and Title Insurance:** Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller directly,
- 71. addressed pursuant to 8s and 9c or as otherwise provided, a Commitment for Title Insurance in sufficient detail for the issuance
- 72. of an Extended Owner's Title Insurance Policy together with complete and legible copies of all documents that will

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73. remain as exceptions to Buyer's policy of Title Insurance ("Title Commitment"), within fifteen (15) days after Contract acceptance.
 74. Buyer shall have five (5) days after receipt of Title Commitment and after receipt of notice of any subsequent exceptions to provide notice to Seller of any items disapproved. Buyer shall be provided at Seller's expense a Standard Owner's Title Insurance Policy showing the title vested in Buyer. Buyer may acquire extended coverage(s) at Buyer's own additional expense.
 77. Seller shall convey title by general warranty deed or _____ deed.

3d. 78. **Additional Instructions:** (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and address of the Buyer to any homeowner's association in which the Property is located. (ii) If the Escrow Company is also acting as the title agency but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the Buyer and Seller, upon deposit of funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to fraudulent acts or breach of escrow instructions by the Escrow Company. (iii) All documents necessary to close this transaction shall be executed promptly by Seller and Buyer in the standard form used by Escrow Company. Escrow Company shall modify such documents to the extent necessary to be consistent with this Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally between Seller and Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications directed to Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.

3e. 89. **Prorations, Expenses and Adjustments:**
 90. **Taxes:** Real property taxes payable by the Seller shall be prorated through COE, based upon the latest tax bill available. The parties agree that any discrepancy between the latest tax bill available and the actual tax bill when received shall be handled as a Post Closing Matter and Buyer or Seller may be responsible for additional tax payments to each other.
 93. **Insurance:** If Buyer takes an assignment of the existing casualty and/or liability insurance that is maintained by Seller, the current premium shall be prorated through COE.
 95. **Rents, Interest and Expenses:** Rents; interest on existing notes, if transferred; utilities; and operating expenses shall be prorated through COE. The Parties agree to adjust any rents received after COE as a Post Closing Matter.
 97. **Deposits:** All deposits held by Seller pursuant to rent/lease agreement(s) shall be credited against the cash required of Buyer at COE or paid to Buyer by Seller at COE.

3f. 99. **Post Closing Matters:** The parties shall promptly adjust any item to be prorated that is not determined or determinable at COE as a Post Closing Matter by appropriate cash payment to the other party outside of the escrow when the amount due is determined. Seller and Buyer agree that Escrow Company and Broker(s) are relieved of any responsibility for said adjustments.

3g. 102. **Release of Earnest Money:** In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or relating in any way to the release of Earnest Money.



3h. 107. **Insurance:** Buyer shall ensure that any fire, casualty, or other insurance desired by Buyer, or required by any Lender, is in place at COE. Buyer specifically releases Broker(s) from any obligations relating to such insurance.

3i. 109. **Assessment Liens:** The amount of any assessment, other than homeowner's association assessments, that is a lien as of the COE shall be: paid in full by Seller prorated and assumed by Buyer paid in full by Buyer. Any assessment that becomes a lien after COE is the Buyer's responsibility.

3j. 112. **IRS and FIRPTA Reporting:** Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign, and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). Buyer and Seller acknowledge that if the Seller is a foreign person, the Buyer (or Escrow Company, as directed by Buyer) must withhold a tax equal to 10% of the purchase price, unless an exemption applies.

3k. 116. **Agricultural Foreign Investment Disclosure Act:** If applicable, Buyer and Seller shall comply with the Agricultural Foreign Investment Disclosure Act and make the required disclosures to the U.S. Department of Agriculture.

3l. 118. **TAX DEFERRED EXCHANGE:** Seller and Buyer are advised to consult a professional tax advisor regarding the advisability of a tax-deferred exchange pursuant to I.R.C. §1031 or otherwise. Seller and Buyer agree to cooperate in a tax deferred exchange provided that COE is not delayed. All additional costs in connection with any such tax deferred exchange shall be borne by the party requesting the exchange. The non-requesting party and Broker(s) shall be indemnified and held harmless from any liability that may arise from participation in the tax deferred exchange.

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4. DISCLOSURES

- 4a. 123. **Vacant Land/Lot Seller Property Disclosure Statement ("VLSPDS"):** Seller shall deliver a completed AAR VLSPDS form 124. to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved with- 125. in the Inspection Period or five (5) days after receipt of the SPDS, whichever is later.
- 4b. 126. **Additional Seller Disclosures and Information:** Seller shall provide to Buyer the following disclosures and information pertinent 127. to the Property within five (5) days after the Contract acceptance: (i) any information known to Seller that may adversely affect the 128. Buyer's use of the Property, (ii) any known pending special assessments, association fees, claims, or litigation, (iii) articles of incor- 129. poration; by-laws; other governing documents; and any other documents required by law, (iv) financial statements, current rent rolls, 130. lists of current deposits, personal property lists, leases, rental agreements, service contracts, (v) soils, Phase I, or other environ- 131. mental reports in Seller's possession, (vi) the most recent survey, if available, and (vii) any and all other agreements, documents, 132. studies, or reports relating to the Property in Seller's possession or control provided, however, that Seller shall not be required to 133. deliver any report or study if the written contract that Seller entered into with the consultant who prepared such report or study 134. specifically forbids the dissemination of the report to others.
- 4c. 135. **Road Maintenance Agreement:** Seller shall provide to Buyer, within five (5) days after the Contract acceptance, a copy 136. of any known road maintenance agreement affecting the Property.
- 4d. 137. **Seller's Obligations Regarding Wells:** If a well is located on the Property, or if the Property is to be served by a shared well, 138. the AAR Domestic Water Well Addendum is attached hereto and incorporated by reference. At COE, if applicable, Seller shall 139. assign, transfer and convey to the Buyer all of the water rights, or claims to water rights, if any, held by Seller that are asso- 140. ciated with the Property.
- 4e. 141. **No Seller or Tenant Bankruptcy, Probate or Insolvency Proceedings:** Seller represents that Seller has no notice or knowl- 142. edge that any tenant on the Property is the subject of a bankruptcy, probate or insolvency proceeding. Further, Seller is not 143. the subject of a bankruptcy, insolvency or probate proceeding.
- 4f. 144. **Seller's Notice of Violations:** Seller represents that Seller has no knowledge of any notice of violations of City, County, State, or 145. Federal building, zoning, fire, or health laws, codes, statutes, ordinances, regulations, or rules filed or issued regarding the Property.
- 4g. 146. **Environmental Disclosure:** Seller has only not knowingly caused or permitted the generation, storage, treatment, release or disposal of 147. any hazardous waste or regulated substances at the Property except as otherwise disclosed.
- 4h. 148. **Affidavit of Disclosure:** If the Property is located in an unincorporated area of the county, and five or fewer parcels of 149. property other than subdivided land are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in the 150. form required by law to the Buyer within five (5) days after Contract Acceptance. Buyer shall provide notice of any Affidavit 151. of Disclosure items disapproved within the Inspection Period or five (5) days after receipt of the Affidavit of Disclosure, whichever 152. is later.
- 4i. 153. **H.O.A. / Condominium / Planned Community:** The Property is is not located within a homeowners' association/ 154. condominium/planned community. If yes, the HOA addendum is attached hereto and incorporated by reference.
- 4j. 155. **Changes During Escrow:** Seller shall immediately notify Buyer of any changes in the Property or disclosures made herein, in 156. the SPDS, or otherwise. Such notice shall be considered an update of the SPDS. Unless Seller is already obligated by 157. Section 5a, or otherwise by this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer 158. shall be allowed five (5) days after delivery of such notice to provide notice of disapproval to Seller.

5. WARRANTIES

- 5a. 159. **Seller Warranties:** Seller warrants and shall maintain and repair the Property so that at the earlier of possession or COE the 160. Property and any personal property included in the sale, will be in substantially the same condition as on the date of Contract 161. acceptance; and all personal property not included in the sale and all debris will be removed from the Property.
- 5b. 162. **Warranties that Survive Closing:** Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects 163. and any information concerning the Property known to Seller, excluding opinions of value, which materially and adversely 164. affect the consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for 165. all labor, professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding 166. the COE in connection with the construction, alteration, or repair of any structure on or improvement to the Property. Seller 167. warrants that the information regarding connection to a sewer system or on-site wastewater treatment facility (conventional 168. septic or alternative) is correct to the best of Seller's knowledge.

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5c. 169. **Buyer Warranties:** Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect the
 170. Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Property or COE,
 171. Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the
 172. Property. **Buyer warrants that Buyer is not relying on any verbal representations concerning the Property**
 173. **except disclosed as follows:** _____
 174. _____

6. DUE DILIGENCE

6a. 175. **Inspection Period:** Buyer's Inspection Period shall be fifteen (15) days or ninety (90) days after the Contract acceptance.
 176. During the Inspection Period, Buyer, at Buyer's expense, shall: (i) conduct all desired physical, environmental, and other
 177. types of inspections and investigations to determine the value and condition of the Property; (ii) make inquiries and consult
 178. government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the fea-
 179. sibility and suitability of the Property for the Buyer's intended purpose and the surrounding area; (iii) investigate applicable
 180. building, zoning, fire, health, and safety codes including applicable swimming pool barrier regulations to determine any poten-
 181. tial hazards, violations or defects in the Property; and (iv) verify any material multiple listing service ("MLS") information. If
 182. the presence of sex offenders in the vicinity or the occurrence of a disease, natural death, suicide, homicide or other crime
 183. on or in the vicinity is a material matter to the Buyer, it must be investigated by the Buyer during the Inspection Period. Buyer
 184. shall keep the Property free and clear of liens, shall indemnify and hold Seller harmless from all liability, claims, demands,
 185. damages, and costs, and shall repair all damages arising from the inspections. Buyer shall provide Seller and Broker(s) upon
 186. receipt, at no cost, copies of all inspection reports concerning the Property obtained by Buyer. If Buyer cancels this Contract,
 187. Buyer shall return all documents provided by the Seller and provide Seller with copies of all reports or studies generated by
 188. Buyer, provided, however, that Buyer shall not be required to deliver any such report or study if the written contract that Buyer
 189. entered into with the consultant who prepared such report or study specifically forbids the dissemination of the report or study
 190. to others. Buyer is advised to consult the Arizona Department of Real Estate *Buyer Advisory* provided by AAR to assist in
 191. Buyer's due diligence inspections and investigations.

6b. 192. **Square Footage/Acreage:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE/ACREAGE OF
 193. THE PROPERTY, BOTH THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON IS APPROXIMATE.
 194. IF SQUARE FOOTAGE/ACREAGE IS A MATERIAL MATTER TO THE BUYER; IT MUST BE INVESTIGATED DURING
 195. THE INSPECTION PERIOD.

6c. 196. **Flood Hazard:** Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the
 197. Inspection Period. If the Property is situated in an area identified as having any special flood hazards by any governmental
 198. entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to
 199. encumber or improve the Property.

6d. 200. **Sewer or On-site Wastewater Treatment System:** The Property does does not contain an on-site wastewater
 201. treatment system. If the Property is served by a septic or alternative system, the AAR On-site Wastewater Treatment Facility
 202. Addendum is incorporated herein by reference.
 203. IF A SEWER CONNECTION, OR THE AVAILABILITY OF A SEWER CONNECTION, IS A MATERIAL MATTER TO THE
 204. BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD.
 205. (BUYER'S INITIALS REQUIRED) _____
BUYER BUYER

6e. 206. **Site/Soil Evaluation:** A site/soil evaluation (which may include percolation or other tests) shall shall not be
 207. performed to determine the suitability of the Property for installation of an on-site wastewater treatment facility.
 208. If site/soil evaluation is to be performed, Seller Buyer shall complete site/soil evaluation within Inspection Period
 209. or _____ days after Contract acceptance and the cost of the site/soil evaluation shall be paid by
 210. Seller Buyer or Other: _____
 211. Buyer and Seller are aware that the site/soil evaluation is intended to determine whether an on-site wastewater treatment
 212. facility can be installed on the Property in accordance with state laws, rules and regulations, however, the site/soil evaluation
 213. is not binding on the State-delegated County agency in any future permitting decision as to the suitability of the design or
 214. type of facility for the Property. Buyer shall have five (5) days after receipt of the site/soil evaluation report to provide notice
 215. of disapproval to the Seller.

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6f. 216. LAND DIVISIONS: LAND PROPOSED TO BE DIVIDED FOR PURPOSES OF SALE OR LEASE IS SUBJECT TO STATE, 217. COUNTY AND MUNICIPAL LAWS, ORDINANCES AND REGULATIONS. IF STATE, COUNTY AND MUNICIPAL 218. REQUIREMENTS RELATING TO THE DIVISION OR SPLITTING OF THE PROPERTY ARE A MATERIAL MATTER TO 219. THE BUYER, THEY MUST BE VERIFIED BY BUYER DURING THE INSPECTION PERIOD. BROKER(S) HAVE MADE 220. NO REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING THE ABILITY TO DIVIDE OR SPLIT THE PROPERTY. 221. (BUYER'S INITIALS REQUIRED) JB BUYER BUYER

6g. 222. ROADS: IF ROADWAYS, COST AND RESPONSIBILITY FOR ROAD MAINTENANCE, IMPROVEMENTS OR ACCESS IS 223. A MATERIAL MATTER TO BUYER, IT MUST BE INVESTIGATED BY BUYER DURING INSPECTION PERIOD.

6h. 224. Survey: A survey shall shall not be performed. If yes, the survey shall be performed by a licensed surveyor 225. within the Inspection Period or _____ days after Contract acceptance.

226. Cost of the survey shall be paid by Seller Buyer Other: _____

227. The survey shall be performed in accordance with the Arizona State Board of Technical Registration's "Arizona Land 228. Boundary Survey Minimum Standards".

- 6i. 229. Survey instructions are: A boundary survey and survey plat showing the corners either verified 230. or monumentation. 231. A survey certified by a licensed surveyor, acceptable to Buyer and the Title 232. Company, in sufficient detail for an American Land Title Association ("ALTA") 233. Owner's Policy of Title Insurance with boundary, encroachment or survey except- 234. ions and showing all improvements, utility lines and easements on the Property 235. or within five (5) feet thereof. 236. Other survey terms: _____ 237. _____ 238. _____ 239. _____

240. Buyer shall have five (5) days after receipt of results of survey or map to provide written notice of disapproval to the Seller. 241. (BUYER'S INITIALS REQUIRED) JB BUYER BUYER

6j. 242. WELL WATER/WATER RIGHTS: IF WELL WATER/WATER RIGHTS IS/ARE A MATERIAL MATTER TO THE BUYER, IT 243. MUST BE VERIFIED BY BUYER DURING THE INSPECTION PERIOD.

6k. 244. BUYER ACKNOWLEDGMENT: BUYER RECOGNIZES, ACKNOWLEDGES AND AGREES THAT BROKER(S) ARE NOT 245. QUALIFIED, NOR LICENSED, TO CONDUCT DUE DILIGENCE WITH RESPECT TO THE PROPERTY OR THE SUR- 246. ROUNDING AREA. BUYER IS INSTRUCTED TO CONSULT WITH QUALIFIED LICENSED PROFESSIONALS TO 247. ASSIST IN BUYER'S DUE DILIGENCE EFFORTS. BECAUSE CONDUCTING DUE DILIGENCE WITH RESPECT TO THE 248. PROPERTY AND SURROUNDING AREA IS BEYOND THE SCOPE OF THE BROKERS EXPERTISE AND LICENSING, 249. BUYER EXPRESSLY RELEASES AND HOLDS HARMLESS BROKER(S) FROM LIABILITY FOR ANY DEFECTS OR 250. CONDITIONS THAT COULD HAVE BEEN DISCOVERED BY INSPECTION OR INVESTIGATION. 251. (BUYER'S INITIALS REQUIRED) JB BUYER BUYER

6l. 252. Inspection Period Notice: Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any 253. items disapproved. The AAR Vacant Land/Lot Buyer's Inspection Notice and Seller's Response Form is available for this 254. purpose. Buyer shall conduct all desired inspections and investigations prior to delivering such notice to Seller and all 255. Inspection Period items disapproved shall be provided in a single notice.

6m. 256. Buyer Disapproval: If Buyer, in Buyer's sole discretion, disapproves of item(s) as allowed herein, Buyer shall deliver 257. to Seller notice of the items disapproved and state in the notice that Buyer elects to either: 258. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or 259. (2) provide the Seller an opportunity to correct the items disapproved, in which case: 260. (a) Seller shall respond in writing within five (5) days or _____ days after delivery to Seller of Buyer's notice of 261. items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall 262. conclusively be deemed Seller's refusal to correct any of the items disapproved. 263. (b) If Seller agrees in writing to correct item(s) disapproved, Seller shall correct the items, complete any 264. repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs 265. to Buyer three (3) days or _____ days prior to COE Date.

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266. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this Contract within five
 267. (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first,
 268. and all Earnest Money shall be released to Buyer. If Buyer does not cancel this Contract within the five (5) days as
 269. provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.

270. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will
 271. extend response times or cancellation rights.

272. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN
 273. THE SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE
 274. TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.

- 6n. 275. **Inspection(s):** Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct inspection(s) of the Property for
 276. the purpose of satisfying Buyer that any corrections agreed to by the Seller have been completed and that the Property is in
 277. substantially the same condition as on the date of Contract acceptance. If Buyer does not conduct such
 278. inspection(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered.

7. REMEDIES



7a. 279. **Cure Period:** A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any
 280. provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If
 281. the non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall
 282. become a breach of Contract.

7b. 283. **Breach:** In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the
 284. breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative
 285. Dispute Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in
 286. the event of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's
 287. option, accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract.

7c. 288. **Alternative Dispute Resolution ("ADR"):** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this
 289. Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid
 290. equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall
 291. be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an
 292. arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration
 293. Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall
 294. be final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdic-
 295. tion. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the
 296. mediation conference by notice to the other and in such event either party shall have the right to resort to court action.

7d. 297. **Exclusions from ADR:** The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the Small
 298. Claims Division of an Arizona Justice Court (up to \$2,500) so long as the matter is not thereafter transferred or removed from the small
 299. claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or agreement
 300. for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's lien; or (v) any matter that is within the
 301. jurisdiction of a probate court. Further, the filing of a judicial action to enable the recording of a notice of pending action ("lis pendens"),
 302. or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the
 303. obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.

7e. 304. **Attorneys Fees and Costs:** The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating
 305. to this Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney
 306. fees, expert witness fees, fees paid to investigators, and arbitration costs.

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| SELLER SELLER | | BUYER BUYER |



8. ADDITIONAL TERMS AND CONDITIONS



- 8a. 307. _____
- 308. _____
- 309. _____
- 310. _____
- 311. _____
- 312. _____
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- 331. _____
- 332. _____
- 333. _____
- 334. _____
- 335. _____
- 336. _____

8b. 337. **Risk of Loss:** If there is any loss or damage to the Property between the date of Contract acceptance and COE or possession,
 338. whichever is earlier, by reason of fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Seller,
 339. provided, however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the purchase price,
 340. either Seller or Buyer may elect to cancel the Contract.

8c. 341. **Permission:** Buyer and Seller grant Broker(s) permission to advise the public of this Contract.

8d. 342. **Arizona Law:** This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.

8e. 343. **Time is of the Essence:** The parties acknowledge that time is of the essence in the performance of the obligations
 344. described herein.

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- 8f. 345. **Compensation:** Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by
 346. separate written agreement(s), which shall be delivered by Broker(s) to Escrow Company for payment at COE, if not previously paid.
 347. If Seller is obligated to pay Broker(s), this Contract shall constitute an irrevocable assignment of Seller's proceeds at COE. If Buyer
 348. is obligated to pay Broker(s), payment shall be collected from Buyer as a condition of COE. COMMISSIONS PAYABLE FOR THE
 349. SALE, LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS®, OR
 350. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.
- 8g. 351. **Copies and Counterparts:** A fully executed facsimile or electronic copy of the Contract shall be treated as an original
 352. Contract. This Contract and any other documents required by this Contract may be executed by facsimile or other
 353. electronic means and in any number of counterparts, which shall become effective upon delivery as provided for herein.
 354. All counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.
- 8h. 355. **Days:** All references to days in this Contract shall be construed as calendar days and a day shall begin at 12:00 a.m. and
 356. end at 11:59 p.m.
- 8i. 357. **Calculating Time Periods:** In computing any time period prescribed or allowed by this Contract, the day of the act or event
 358. from which the time period begins to run is not included and the last day of the time period is included. Contract acceptance
 359. occurs on the date that the signed Contract (and any incorporated counter offer) is delivered to and received by the appropriate
 360. Broker. Acts that must be performed three days prior to the COE Date must be performed three full days prior (i.e., if COE
 361. Date is Friday the act must be performed by 11:59 p.m. on Monday).
- 8j. 362. **Entire Agreement:** This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and
 363. Buyer, shall supersede any other written or oral agreements between Seller and Buyer and can be modified only by a writing
 364. signed by Seller and Buyer. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract.
- 8k. 365. **Subsequent Offers:** Buyer acknowledges that Seller has the right to accept subsequent offers until COE. Seller understands that
 366. any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of this Contract.
- 8l. 367. **Cancellation:** A party who wishes to exercise the right of cancellation as allowed herein may cancel this Contract by
 368. delivering notice stating the reason for cancellation to the other party or to the Escrow Company. Cancellation shall become
 369. effective immediately upon delivery of the cancellation notice.
- 8m. 370. **Notice:** Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in writing
 371. and deemed delivered and received when: (i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail,
 372. if email addresses are provided herein; or (iv) sent by recognized overnight courier service, and addressed to Buyer as
 373. indicated in Section 8q, to Seller as indicated in Section 9a and to the Escrow Company indicated in Section 3a.
- 8n. 374. **Earnest Money:** Earnest Money is in the form of: Personal Check Other Check
 375. If applicable, Earnest Money has been received by Broker named in Section 8q and upon acceptance of this offer will be
 376. deposited with: Escrow Company Broker's Trust Account
- 8o. 377. **RELEASE OF BROKER(S): SELLER AND BUYER HEREBY EXPRESSLY RELEASE, HOLD HARMLESS AND INDEMNIFY**
 378. **BROKER(S) IN THIS TRANSACTION FROM ANY AND ALL LIABILITY AND RESPONSIBILITY REGARDING FINANCING, THE**
 379. **CONDITION, SQUARE FOOTAGE/ACREAGE, LOT LINES, BOUNDARIES, VALUE, RENT ROLLS, ENVIRONMENTAL**
 380. **PROBLEMS, SANITATION SYSTEMS, ABILITY TO DIVIDE OR SPLIT THE PROPERTY, BUILDING CODES, GOVERNMENTAL**
 381. **REGULATIONS, INSURANCE OR ANY OTHER MATTER RELATING TO THE VALUE OR CONDITION OF THE PROPERTY.**
 382. (BUYER'S INITIALS REQUIRED) JS
 BUYER BUYER
- 8p. 383. **Terms of Acceptance:** This offer will become a binding Contract when acceptance is signed by Seller and
 384. a signed copy delivered in person, by mail, facsimile or electronically, and received by Broker named in Section 8q
 385. by _____ at _____ a.m. / p.m., Mountain Standard Time.
 386. Buyer may withdraw this offer at any time prior to receipt of Seller's signed acceptance. If no signed acceptance is received
 387. by this date and time, this offer shall be deemed withdrawn and the Buyer's Earnest Money shall be returned.
 388. THIS CONTRACT CONTAINS TEN PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT
 389. YOU HAVE RECEIVED AND READ ALL TEN PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.

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8q. 390. Broker on behalf of Buyer:

391. Chris Hopkins ch399 Noblewest Properties nbwt01
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE

392. 7377 East Doubletree Ranch Road Sui AZ 85258
FIRM ADDRESS STATE ZIP CODE

393. (480) 788-6192 chris@noblewestproperties.com
TELEPHONE FAX EMAIL

8r. 394. Agency Confirmation: The Broker named in Section 8q above is the agent of (check one):

395. the Buyer the Seller or both the Buyer and Seller

8s. 396. The undersigned agree to purchase the Property on the terms and conditions herein stated and acknowledge receipt of a
 397. copy hereof including the Buyer Attachment.

398. [Signature] 09/20/2012 [Signature]
BUYER'S SIGNATURE MO/DAYR BUYER'S SIGNATURE MO/DAYR

399. 7377 East Doubletree Ranch Road 270
ADDRESS ADDRESS

400. Scottsdale, AZ 85258
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

9. SELLER ACCEPTANCE

9a. 401. Broker on behalf of Seller:

402. James Frazey jf059 City to City Commercial benj01
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE

403. 7201 E. Camelback Rd. Ste 210 Scottsdale AZ 85251
FIRM ADDRESS STATE ZIP CODE

404. (602) 430-8155 (480) 968-9896 jfrazey@sprintmail.com
TELEPHONE FAX EMAIL

9b. 405. Agency Confirmation: The Broker named in Section 9a above is the agent of (check one):

406. the Seller or both the Buyer and Seller

9c. 407. The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a
 408. copy hereof and grant permission to Broker named in Section 9a to deliver a copy to Buyer.

409. Counter Offer is attached, and is incorporated herein by reference. Seller should sign both this offer and the Counter Offer.
 410. If there is a conflict between this offer and the Counter Offer, the provisions of the Counter Offer shall be controlling.

411. [Signature] 9/21/12
SELLER'S SIGNATURE MO/DAYR SELLER'S SIGNATURE MO/DAYR

412. Landmark Capital and Investment Company
SELLER'S NAME PRINTED SELLER'S NAME PRINTED

413. 14555 N. Scottsdale Rd, Suite 340
ADDRESS ADDRESS

414. SCOTTSDALE, AZ 85254
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

415. OFFER REJECTED BY SELLER: _____ MONTH _____ DAY _____ YEAR (SELLER'S INITIALS)

For Broker Use Only:
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DAYR

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Counter Offer No. 1

This is a Counter Offer by the Seller, Thomas J. Giallanza, Deputy Receiver, to the Offer by the Buyer executed as of **September 20, 2012** ("Buyer's Offer"). In consideration of the mutual promises and covenants set forth in this Counter Offer No.1 ("Counter Offer"), Seller agrees to sell and Buyer agrees to buy the Property described below on the terms and conditions set forth in this Counter Offer, and to the extent not inconsistent herewith, the terms and conditions set forth in the Buyer's Offer.

1. Property. The real property, which is the subject of this Counter Offer, is located at **10400 W. Indian School Road, Phoenix, AZ 85037**("Property").

2. Seller. The Seller is **Thomas J. Giallanza**, in his capacity as the **Deputy Receiver** appointed by the Superior Court of Arizona in the action entitled State of Arizona v. Landmarc Capital and Investment Company, et al, in Cause No. **CV2009-020595** ("Receivership Court"). The Taxpayer Identification Number for the Seller is **86-0959744**. The Seller was appointed as the Deputy Receiver of the Property.

3. Buyer. The Buyer is the **Noblewest Group LLC**, an Arizona limited liability company.

4. Purchase Price. The **Purchase Price**, which Buyer agrees to pay for the Property is **\$375,000**. The Purchase Price shall not be adjusted by any overage or shortage in area of the Property. The Purchase Price shall be paid as follows:

(a) Buyer shall initially deposit by wire transfer with Escrow Agent within two (2) business days of the Buyer's acceptance of this Counter Offer a total of \$10,000 earnest money deposit (the "Earnest Money") which shall become non-refundable, except as otherwise provided in Paragraph 10 below. If Buyer does not so cancel this Agreement, and if Seller does not so cancel this Agreement, and, provided further, if Seller does not otherwise default hereunder, the Earnest Money shall be credited towards the Sales Price, if Buyer purchases the Property.

5. Deed. At the Close of Escrow, Seller shall convey title to the Property to Buyer by **Special Warranty Deed** (the "Deed"), subject to taxes and assessments not delinquent, reservations in patents, all easements, rights-of-way, covenants, conditions, restrictions, declarations, all matters that an accurate survey or a physical inspection of the Property would disclose and all matters to which Buyer has agreed.

6. Disbursements. Upon the Close of Escrow, the full amount of the Purchase Price, less any closing costs that the Seller has expressly agreed to pay, shall be disbursed to Seller.

7. Property Sold "As Is." The Property is being sold "**AS IS**" and the Seller is not providing any warranties. Buyer expressly acknowledges that there may be conditions that might affect the Buyers decision to purchase the Property. Buyer further acknowledges that Buyer has not relied on any warranties, promises, projections, calculations, understandings or representations, express or implied, of Seller or of any agent or representative of Seller, relating

Buyer's Initials _____

Seller's Initials TJG

Buyer's Initials _____


to the Property, and, Buyer is acquiring the Property in its present condition, "AS IS", with all defects, latent or apparent. Buyer further acknowledges that any information of any type which Buyer has received or may receive from Seller or Seller's agents is furnished on the express condition that Buyer shall make an independent verification of the accuracy (including without limitation calculations) of such information, all such information being furnished without any warranty or liability whatsoever. The Seller has acquired possession of the Property pursuant to Court order and has not occupied the Property and therefore Seller cannot and will not provide any Seller Disclosure Statements. **Buyer waives receipt of the Seller Property Disclosure Statement, Clue report, loss claim history report, VLSPDS; and public report, if any.**

8. Additional Terms.

- (a) Buyer agrees to pay the cost of all inspections to be performed.
- (b) Buyer agrees to provide evidence of funds sufficient to close escrow during the first ten (10) days of the inspection period.
- (c) The parties agree that the following lines appearing on the Vacant Land/Lot Purchase Contract are deleted;
 - (i) Lines 32 through 33,
 - (ii) Lines 36 through 62,
 - (iii) Line 77,
 - (iv) Lines 95 through 98,
 - (v) Lines 102 through 106,
 - (vi) Lines 123 through 152,
 - (vii) Lines 155 through 168,
 - (viii) Lines 288 through 303,
 - (ix) Lines 307 through 336,
 - (x) Line 341, and
 - (xi) Lines 383 through 387.
- (d) The parties agree to the following:
 - (i) The identity of the signatory for Noblewest Group LLC that appears at Line 398 shall be disclosed here as _____;
 - (ii) The COE Date appearing at Line 20 shall be **December 17, 2012**;
 - (iii) Lines 66 and 67 shall read as follows:
 - 66 14635 N. Kierland Blvd., Suite 110, Scottsdale, AZ 85254
 - 67 agraham@NAT.com Phone: 602-294-2200 Fax: 866-488-1907;
 - (iv) Line 153 shall be read to include the following: is is not...;

Buyer's Initials _____

Buyer's Initials _____

Seller's Initials 

- (v) Line 175 shall be read to replace the word and number **ninety (90)** with the word and number **sixty (60)**;
- (vi) Line 205 shall be deemed by the parties to be initialed by the Buyer;
- (vii) Line 206 shall be read to include the following: **shall** **shall not...**;
- (viii) Line 225 shall read as follows: "...within the **first 30 days** of the Inspection period...";
- (ix) Line 236 shall read as follows: **Other survey terms: Will be supplied by the Buyer to its surveyor;**
- (x) Line 374 shall be amended to read as follows: **Other check by wire transfer...**;

9. Court Receivership. The Buyer understands and acknowledges that the Seller was duly appointed in the Receivership of the State of Arizona v. Landmarc Capital and Investment Co., et al, in cause No. CV2009-020595 (the "Receivership Court") and that the Property and this transaction are under the jurisdiction of the Receivership Court. The parties further understand and acknowledge that this Agreement is contingent on the approval of the Receivership Court and that **the Receivership Court could decline to approve the Agreement** for various reasons, including without limitation that the sale price is not fair or that a sale of the Property is not in the best interests of the estate.


10. Cancellation. In the event Seller is unable, within 80 days of the Buyer's acceptance of this Counter Offer, to obtain the approval of the Receivership Court; the Buyer or the Seller may elect in writing to cancel this Agreement and any Escrow and receive a full refund of the Earnest Money. Upon a cancellation in accordance with the provisions of this Paragraph, all documents deposited in Escrow by Seller and Buyer shall be returned to the party depositing the document, and this Agreement shall terminate.

11. Inspection. Buyer shall have **sixty days (60)** days from the date of the Buyer's acceptance of this Counter Offer to complete the Buyer's inspection of the Property, and Seller grants Buyer reasonable access to the Property for that purpose. If Buyer does not disapprove of the condition of the property within this period, Buyer shall be deemed to have accepted the condition of the Property. If Buyer timely disapproves of the condition of the Property in writing, then, upon notice to Seller of Buyer's objections, Seller shall have until Close of Escrow to eliminate the objectionable items; or, Seller may, within five (5) days from Buyer's notice, notify Buyer that Seller does not intend to eliminate the objectionable items, and Buyer's sole and exclusive remedy shall be to either waive his objection (in which case Close of Escrow shall occur subject to such matters) or to cancel this Agreement and receive a full refund of the Earnest Money.

12. Possession. Possession of the Property shall be delivered to Buyer at Close of Escrow.

13. Release and Indemnity. Seller is hereby released from all responsibility and liability regarding the condition (including, without limitation, the presence of environmental

Buyer's Initials _____

Seller's Initials 

Buyer's Initials _____

hazards or substances) or valuation or utility of the Property. Buyer agrees that Buyer will not attempt to assert any claims of liability against Seller for furnishing such information, nor shall Buyer assert any claims of liability against Seller for the existence of or damages arising out of the existence of asbestos, mold or other environmental hazards, and Buyer agrees to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. Buyer agrees to indemnify Seller and hold Seller harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to Buyer's inspection of the Property or to the breach by Buyer of any obligation hereunder or the inaccuracy of any representation or warranty made by Buyer or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the Closing.

14. Assignment and Nomination. Buyer may not assign or otherwise transfer Buyer's rights under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any such assignee shall accept in writing the terms and conditions of this Agreement and of any supplements or Escrow Instructions that may have been entered into as of the time of the assignment. In no event shall any assignment extend the Close of Escrow.

15. No Liability. Buyer agrees that no receivers, directors, officers, employees or agents of Seller have any personal obligation hereunder, and that such party shall not seek to assert any claim or enforce any rights against such bankruptcy trustees, directors, officers, employees or agents.

16. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

17. Exclusive Jurisdiction of the Receivership Court. **The Receivership Court shall have exclusive jurisdiction to resolve any dispute arising under this Agreement.**


18. Close of Escrow. The sale shall close within 5 days following completion of the last of the requirements set forth in Paragraphs 9 and 10 above; however, unless agreed to a later date by all parties, no later than **December 17, 2012.**

19. Time of the Essence. Time is of the essence and unless the Buyer's acceptance of this Counter Offer is signed by the Buyer or an authorized representative and a signed copy of this Counter Offer delivered in person, by mail, or by facsimile and received by the Deputy Receiver, or **James Frazey of City to City Commercial on or before 1:00 p.m. September 26, 2012,** or unless the Offer has been previously withdrawn by the Receiver, this Counter Offer shall be considered withdrawn on the date and time set forth above in this Paragraph. Until this Counter Offer has been accepted as provided above, the Parties understand that the Property can be sold or leased to someone else or either Party may withdraw the offer to buy or sell the Property. The undersigned acknowledge receipt of a copy hereof.

20. Signed Original. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute at least one original of this Counter Offer and all other contract documents and to provide such originals to the Seller.

Buyer's Initials _____

Buyer's Initials _____

Seller's Initials  _____

21. Entire Agreement. This agreement supersedes any other agreement, whether oral or in writing, between the parties regarding the subject of this agreement, and renders such other agreements between the parties null and void.

The Buyer accepts the above Counter Offer and agrees to the modified or additional terms and conditions in the above Counter Offer and acknowledges receipt of a copy hereof.

Buyer Acceptance:

Dated: _____

BUYER

Dated: _____

BUYER

Seller Acceptance:

Seller:

Landmarc Capital and Investment Co.

Dated: September 21, 2012

By: Thomas J. Giallanza
Thomas J. Giallanza,
Deputy Receiver

Buyer's Initials _____

Buyer's Initials _____

Seller's Initials TJG

COUNTER OFFER 2

Document updated:
February 2011



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- 1. This is a Counter Offer originated by the: Seller Buyer Landlord Tenant.
- 2. This is a Counter Offer to the Offer Counter Offer dated 09/21/2012 between the following Parties:
MO/DAYR
- 3. Seller/Landlord: Landmarc Capital and Investment Company,
- 4. Buyer/Tenant: NobleWest Properties LLC,
- 5. Premises Address: 10400 W Indian School Rd,
- 6. Acceptance of the above Offer and/or Counter Offer is contingent upon agreement to the following:
- 7. _____
- 8. _____
- 9. Purchase Price to be \$315,000.
- 10. _____
- 11. Signatory agent for buyer is identified as John Badura
- 12. _____
- 13. All other terms in Counter #1 Accepted
- 14. _____
- 15. _____
- 16. _____
- 17. _____
- 18. _____
- 19. _____
- 20. _____
- 21. _____
- 22. _____
- 23. _____
- 24. _____

25. **Time for acceptance:** Unless acceptance of this Counter Offer is signed by all parties and a signed copy delivered pursuant to Section 8m of the Contract and received by the originating party's Broker named in Contract Section 8r or 9a as applicable

- 26. by 09/28/2012 at 5:00 a.m. p.m., Mountain Standard Time, this Counter Offer shall be considered withdrawn.
- 27. Except as otherwise provided in this Counter Offer, the Parties accept and agree to all terms and conditions of the above offer /
- 28. counter offer. Until this Counter Offer has been accepted in the manner described above, the Parties understand that the Premises
- 29. can be sold or leased to someone else or either Party may withdraw the offer to buy, sell, or lease the Premises. The undersigned
- 30. acknowledges receipt of a copy hereof.
- 31. _____
- 32. [Signature] Date: 09/25/2012 Time: 7:19 PM
- 33. Seller Buyer Landlord Tenant
- 34. _____ Date: _____ Time: _____
- 35. Seller Buyer Landlord Tenant

RESPONSE

- 36. An additional Counter Offer is attached, and is incorporated by reference. If there is a conflict between this Counter Offer and the
- 37. additional counter offer, the provisions of the additional counter offer shall be controlling.
- 38. _____
- 39. _____ Date: _____ Time: _____
- 40. Seller Buyer Landlord Tenant
- 41. _____ Date: _____ Time: _____
- 42. Seller Buyer Landlord Tenant

ACCEPTANCE

- 43. The undersigned agrees to the terms and conditions of this Counter Offer and acknowledges receipt of a copy hereof.
- 44. [Signature] Date: 9/26/12 Time: 9:38 a.m.
- 45. Seller Buyer Landlord Tenant
- 46. _____ Date: _____ Time: _____
- 47. _____
- 48. Seller Buyer Landlord Tenant

For Broker Use Only:
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DAYR
 (Added February 2012)



ADDENDUM 1

Document updated:
June 1993



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1. This is an addendum originated by the: Seller Buyer Landlord Tenant.
2. This is an addendum to the Contract dated September 25, 2012 between the following Parties:
MO/DA/YR
3. Seller/Landlord: Thomas Giallanza as Deputy Receiver
4. Buyer/Tenant: Nobelwest Group LLC
5. Premises: 10400 W. Indian School Rd, Phoenix, AZ 85037
6. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced Premises:
7. Counter Offer 1 Paragraph 11. The Buyer's Inspection Period is hereby extended to on
8. or before 1/28/2013.
9. _____
10. Counter Offer 1 paragraph 10, The Cancellation Date for approval by the Receivership
11. Court shall be 2/28/2013
12. _____
13. Counter Offer 1 paragraph 8 d(ii) The date shall be changed to on or before 2/28/2013
14. _____
15. Counter Offer 1 paragraph 18, the Close of Escrow date shall be on or before 2/28/2013
16. _____
17. Buyer also agrees that on or before 12/28/2012, the Buyer shall provide the seller and
18. it's agents with a written report as to the status of discoveries made by Buyer as to
19. its inspection.
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____
26. _____
27. _____
28. _____
29. _____
30. _____
31. _____
32. _____
33. _____
34. _____
35. _____
36. _____
37. _____
38. _____
39. _____
40. _____
41. _____

42. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

43. Thomas J. Giallanza 11/26/12

44. Seller Buyer Thomas J. Giallanza MO/DA/YR Seller Buyer MO/DA/YR

45. Landlord Tenant Deputy Receiver Landlord Tenant

46. _____

47. Seller Buyer MO/DA/YR Seller Buyer MO/DA/YR

48. Landlord Tenant Landlord Tenant

49. **For Broker Use Only:**
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
 MO/DA/YR



ADDENDUM 2

Document updated:
June 1993



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2. This is an addendum to the Contract dated September 25, 2012 between the following Parties:
MO/DAYR
3. Seller/Landlord: Thomas Giallanza as Deputy Receiver
4. Buyer/Tenant: Noblewest Group LLC
5. Premises: 10400 W. Indian School Rd, Phoenix, Az 85037
6. The following additional terms and conditions are hereby included as a part of the Contract between Seller and Buyer for the above referenced Premises:
7. _____
8. Counter Offer 1 Paragraph 11. The Buyer's Inspection Period is hereby extended to on
9. or before 3/28/2013.
10. _____
11. Counter Offer 1 paragraph 10, The Cancellation Date for approval by the Receivership
12. Court shall be 4/29/2013
13. _____
14. Counter Offer 1 paragraph 8 d(ii) The date shall be changed to on or before 5/10/2013
15. _____
16. Counter Offer 1 paragraph 18, the Close of Escrow date shall be on or before 5/10/2013
17. _____
18. Buyer also agrees that this is a final extension and the extension is solely for the
19. purpose of determining which municipality will provide water service to the property
20. and for no other reasons.
21. _____
22. _____
23. _____
24. _____
25. _____
26. _____
27. _____
28. _____
29. _____
30. _____
31. _____
32. _____
33. _____
34. _____
35. _____
36. _____
37. _____
38. _____
39. _____
40. _____
41. _____

42. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

43. _____
44. Seller Buyer _____ MO/DAYR Seller Buyer _____ MO/DAYR
45. Landlord Tenant _____ Landlord Tenant _____
46. Thomas Giallanza 1/30/13
47. Seller Buyer Deputy Receiver _____ MO/DAYR Seller Buyer _____ MO/DAYR
48. Landlord Tenant _____ Landlord Tenant _____

49. **For Broker Use Only:**
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
 MO/DAYR

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ADDENDUM 2

Document updated:
June 1993



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14. Counter Offer 1 paragraph 8 d(ii) The date shall be changed to on or before 5/10/2013
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19. purpose of determining which municipality will provide water service to the property
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21. _____
22. _____
23. _____
24. _____
25. _____
26. _____
27. _____
28. _____
29. _____
30. _____
31. _____
32. _____
33. _____
34. _____
35. _____
36. _____
37. _____
38. _____
39. _____
40. _____
41. _____

42. The undersigned agrees to the additional terms and conditions and acknowledges receipt of a copy hereof.

43. [Signature] 1/31/13
 44. Seller Buyer MO/DAYR
 45. Landlord Tenant

Seller Buyer MO/DAYR
 Landlord Tenant

46. _____
 47. Seller Buyer MO/DAYR
 48. Landlord Tenant

Seller Buyer MO/DAYR
 Landlord Tenant

49. **For Broker Use Only:**
 Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DAYR

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