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Attorneys for the Plaintiff

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

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

Plaintiff,

v.
LANDMARC CAPITAL &
INVESTMENT COMPANY,

Defendant.

Cause No. CV2009-020595

PETITION NO. 31

PETITION TO CONFIRM SALE OF
REAL PROPERTY LOCATED AT 14731
EAST YELLOWSTONE PLACE,
CHANDLER, ARIZONA

(Assigned to the Honorable Sam Myers)

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

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

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 14731 East Yellowstone Place, Chandler,
9 Arizona (“Property”). This Property is legally described in Exhibit “1” attached hereto and
10 was acquired by and is currently held in the name Landmarc. Landmarc acquired title to the
11 Property pursuant to a Trustee’s Deed Upon Sale recorded April 14, 2009.

12 3. Although fee title is vested in the name of Landmarc, the records of Landmarc
13 indicate that this Property resulted from the foreclosure of a deed of trust in which a
14 beneficial interest had been acquired by several of Landmarc’s investors. Although these
15 investors do not hold legal title, they either assert a security interest or an equitable claim to
16 this Property. One of the investors asserting an interest is Lancomarc Capital Partners, LLC.
17 Accordingly, the net sale proceeds will be held in trust until the claims of these investors are
18 resolved by the Court.

19 4. The Property consists of a residential lot with a partially constructed structure.
20 The Receiver believes that this Property is not encumbered other than obligations for real
21 estate taxes and assessments.

1 5. Because the continued holding of the Property is not necessary to protect the
2 interests of any of the persons interested in this receivership. Accordingly, the Receiver
3 commenced efforts to market and sell the property.

4 6. On July 9, 2010, Robert D. Green submitted an appraisal of the Property which
5 indicates a fair market value for the Property of \$40,000.00. Robert D. Green has been issued
6 Certificate No. 11439 by the State of Arizona as a Certified Residential Real Estate
7 Appraiser. The Receiver has agreed to pay this appraiser a fee of \$200.00 for this appraisal
8 and the appraiser has no known interest in any of the parties or in the sale of the Property.

9 7. On May 14, 2010, the Receiver received an offer from BEM Development,
10 Inc., to purchase the Property for \$24,000.00 under terms that were not acceptable to the
11 Receiver. The Receiver thereafter submitted to Buyer a Counter Offer No. 1 dated May 21,
12 2010 under terms that were not acceptable to the Buyer. The Buyer submitted a counter offer
13 to the Receiver's Counter Offer No. 1 dated June 2, 2010 agreeing to purchase the property
14 for \$32,500.00, and substituting B&M I, LLC as the Buyer. The Receiver accepted this
15 counter offer. 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 \$32,500 in
17 cash and is conditioned upon approval by this Court.

18 8. Because this Property has not been listed with a real estate broker there are no
19 commissions payable on this sale. The Receiver believes that since the sales price is over
20 80% of the appraised value it does not make economic sense to actively market the Property
21 with a broker.

LOT 9 OF FINISTERRA, A SUBDIVISION OF RECORD IN THE MARICOPA COUNTY RECORDER, ACCORDING TO BOOK 919 OF MAPS, PAGE 47.

Exhibit "1"

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: BEM Development, Inc. And/or Nominee
BUYER'S NAME(S)
- 2. SELLER: Receiver Landmark Capital & Investment c/o Thomas Giallanza,
SELLER'S NAME(S) or as identified in Section 9c.
- 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: 14731 E. Yellowstone Place Zoning: _____
- 6. Assessor's #: 304-75-310 / _____
- 7. City: _____ County: Maricopa County AZ, Zip Code: 85249
- 8. Legal Description: Lot 9 of Finisterra, recorded in Maricopa County Book 919, Page 47 or see attached legal description.
- 1c. 9. \$ 25,000.00 Full Purchase Price, paid as outlined below
- 10. \$ 1,000.00 Earnest money deposited with Title Company at opening of escrow
- 11. \$ 24,000.00 Balance paid in cash at close of escrow
- 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. See Page 9 See Page See Page ("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 ARIZONA ASSOCIATION OF REALTORS® Form VLPC 8/07 BUYER BUYER

The Hogan Group, LLC 4932 E. Lafayette Blvd. Phoenix, AZ 85018
Phone: (602)903-5967 Fax: Bryan Morganstern

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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 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 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 commitment, Buyer shall have thirty (30) days or _____ days after the Contract acceptance ("Financing Commitment Contingency Period") to obtain a financing commitment satisfactory to Buyer in Buyer's sole discretion, for a loan to purchase the Property or Buyer may cancel this Contract and receive a refund of the Earnest Money. **PRIOR TO THE EXPIRATION OF THE FINANCING COMMITMENT CONTINGENCY PERIOD, BUYER SHALL DELIVER TO SELLER AND ESCROW COMPANY NOTICE THAT BUYER HAS NOT RECEIVED SUCH SATISFACTORY FINANCING COMMITMENT OR BUYER SHALL BE DEEMED TO HAVE 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 submit a formal loan application to a lender of Buyer's choice. Buyer and Seller shall promptly provide to such lender all materials and documents lender deems appropriate to facilitate such lender's processing of such loan application. Buyer instructs the lender 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 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 or attached Addendum.
- 2h. 57. **Subordination:** If applicable, Seller carryback financing is is not to be subordinated to a construction loan. If Seller agrees to subordination, such subordination shall only be allowed if the Seller Carryback financing is not in default and if the Seller approves the terms and conditions of the construction loan to be recorded as a senior loan. Approval will not be unreasonably withheld. **IF SELLER SUBORDINATES THE SELLER CARRYBACK FINANCING TO A SENIOR LOAN, THE SELLER ACKNOWLEDGES THAT IN ORDER TO PROTECT THE SELLER CARRYBACK FINANCING, THE SELLER 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 terms of this Contract shall be:
 - 65. **Thomas Title & Escrow** (480) 222-1116
"ESCROW/TITLE COMPANY" PHONE
 - 66. (480) 383-6792 dcarpenter@thomastitle.com
FAX EMAIL
 - 67. 16435 N. Scottsdale Rd., Suite 405, Scottsdale, AZ 85254
ADDRESS
- 3b. 68. **Title and Vesting:** Buyer will take title as determined before COE. Taking title may have significant legal, estate planning 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, addressed pursuant to 8s and 9c or as otherwise provided, a Commitment for Title Insurance in sufficient detail for the issuance of an Extended Owner's Title Insurance Policy together with complete and legible copies of all documents that will

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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 see page 9 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) BM 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. A survey certified by a licensed surveyor, acceptable to Buyer and the Title 231. Company, in sufficient detail for an American Land Title Association ("ALTA") 232. Owner's Policy of Title Insurance with boundary, encroachment or survey except- 233. ions and showing all improvements, utility lines and easements on the Property 234. or within five (5) feet thereof. Other survey terms: _____ 235. _____ 236. _____ 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) BM 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) BM 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.



| | | |
|--|--|--|
| Initials: / _____ SELLER SELLER | ARIZONA ASSOCIATION OF REALTORS® Form VLPC 8/07 | Initials: / _____ BUYER BUYER |
|--|--|--|

8. ADDITIONAL TERMS AND CONDITIONS

- 8a. 307. Buyer's inspection period shall expire 5 days from Buyer's receipt of final court
- 308. order approving sale.
- 309. _____
- 310. Close of Escrow shall occur within 5 days from the expiration of the inspection
- 311. period.
- 312. _____
- 313. Some principals of Buyer hold active Arizona Real Estate License.
- 314. _____
- 315. _____
- 316. _____
- 317. _____
- 318. _____
- 319. _____
- 320. _____
- 321. _____
- 322. _____
- 323. _____
- 324. _____
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- 326. _____
- 327. _____
- 328. _____
- 329. _____
- 330. _____
- 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.



| | | |
|------------------------|---|-----------------------------|
| Initials: / SELLER | ©ARIZONA ASSOCIATION OF REALTORS® Form VLPC 8/07 | Initials: / BUYER BUYER |
|------------------------|---|-----------------------------|

8q. 390. Broker on behalf of Buyer:

391. Bryan Morganstern BM345 The Hogan Group Hogo01
 PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE

392. 7114 E. Stetson Drive, #400 Scottsdale AZ 85251
 FIRM ADDRESS STATE ZIP CODE

393. (602) 903-5967 bem@bendev.net
 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. *Bryan Morganstern* 05/14/2010 BUYER'S SIGNATURE MO/DAYR
BEM Development, Inc. And/or N BUYER'S SIGNATURE MO/DAYR

399. 4932 E. Lafayette Blvd ADDRESS
 ADDRESS

400. Phoenix, AZ 85018 CITY, STATE, ZIP CODE
 CITY, STATE, ZIP CODE

9. SELLER ACCEPTANCE

9a. 401. Broker on behalf of Seller:

402. _____ AGENT CODE _____ PRINT FIRM NAME _____ FIRM CODE
 PRINT SALESPERSON'S NAME

403. _____ FIRM ADDRESS _____ STATE _____ ZIP CODE

404. _____ 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]* 5/21/2010 SELLER'S SIGNATURE MO/DAYR
 SELLER'S SIGNATURE MO/DAYR

412. Investment Capital & Investment SELLER'S NAME PRINTED
 SELLER'S NAME PRINTED

413. _____ ADDRESS
 ADDRESS

414. _____ 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

This form is available for use by the entire real estate industry. The use of this form is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark that may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. ©Arizona Association of REALTORS® 2007 • This form is available through your local association of REALTORS® • Form VLPC 807



Counter Offer No. 1

This is a Counter Offer by the Seller, Lawrence J. Warfield, Special Deputy Receiver, to the Offer by the Buyer dated May 14, 2010 ("Buyer's Offer"). In consideration of the mutual promises and covenants set forth in this 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 14731 E. Yellowstone Place, Assessor #304-75-310, ("Property").

2. Seller. The Seller is Lawrence J. Warfield, in his capacity as the Special Deputy Receiver appointed by the Superior Court of Arizona in the action entitled State of Arizona v. Landmarc Capital, et al CV2009-020595 ("Receivership Court"). The Taxpayer Identification Number for the Seller is 86-0959744. The Seller is the appointed as the Receiver of the Property.

3. Buyer. The Buyer is BEM Development, Inc.

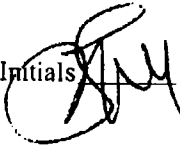
4. Purchase Price. The Purchase Price, which Buyer agrees to pay for the Property is \$40,000. The Purchase Price shall not be adjusted by any overage or shortage in area of the Property. The Purchase Price shall be paid as follows:

(a) Buyer shall deposit with Escrow Agent within two (2) days of the Buyer's acceptance of this Counter Offer a total of \$5,000 cash earnest money deposit (the "Earnest Money") which shall become non-refundable, except as otherwise provided in Paragraphs 8, 9, and 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.

Buyer's Initials _____

Seller's Initials 

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 present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect the Buyer's 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 to the Property, and, Buyer is acquiring the Property in its present condition and state of repair, "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.


8. Additional Terms.

- (a) The cost of all inspections to be performed and paid by Buyer.
- (b) Buyer to provide evidence of funds sufficient to close escrow during the inspection period.

9. Court Receivership. The Buyer understands and acknowledges that the Seller was duly appointed the Receiver in the Receivership State of Arizona v. Landmarc Capital, et al 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 60 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.

Buyer's Initials _____

Seller's Initials 

11. Inspection. Buyer shall have five (5) 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 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.

Buyer's Initials _____

Seller's Initials 

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.

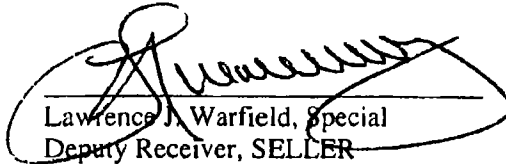
18. Close of Escrow. The sale shall close within 15 days of completion of the last of the requirements set forth in Paragraph 10 above.

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 Special Deputy Receiver, on or before May 29, 2010 at 5 PM, Mountain Standard Time, or unless the Counter Offer has been previously withdrawn by the Special Deputy 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.

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.

Dated: May 21, 2010

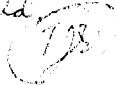

Lawrence J. Warfield, Special
Deputy Receiver, SELLER

Acceptance

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.

Dated: _____

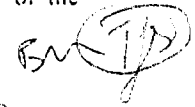
BUYER

Counter Offer No. 1 *as amended* 


This is a Counter Offer by the Seller, Lawrence J. Warfield, Special Deputy Receiver, to the Offer by the Buyer dated May 14, 2010 ("Buyer's Offer"). In consideration of the mutual promises and covenants set forth in this 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 14731 E. Yellowstone Place, Assessor #304-75-310, ("Property").

2. Seller. The Seller is Lawrence J. Warfield, in his capacity as the Special Deputy Receiver appointed by the Superior Court of Arizona in the action entitled State of Arizona v. Landmark Capital, et al CV2009-020595 ("Receivership Court"). The Taxpayer Identification Number for the Seller is 86-0959744. The Seller is the appointed as the Receiver of the Property.

3. Buyer. The Buyer is ~~BEM Development, Inc.~~ *B&M I, LLC* 

4. Purchase Price. The Purchase Price, which Buyer agrees to pay for the Property is ~~\$40,000~~. 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:



Handwritten notes:
R3257
B&M


(a) Buyer shall deposit with Escrow Agent within two (2) days of the Buyer's acceptance of this Counter Offer a total of \$5,000 cash earnest money deposit (the "Earnest Money") which shall become non-refundable, except as otherwise provided in Paragraphs 8, 9, and 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.

Buyer's Initials 

Seller's Initials  

11. Inspection. Buyer shall have five (5) 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 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.

(Handwritten initials)

*next DC
Assembly*

(Handwritten initials)

Buyer's Initials *(Handwritten initials)*

Seller's Initials *(Handwritten initials)*

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 present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect the Buyer's 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 to the Property, and, Buyer is acquiring the Property in its present condition and state of repair, "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.

8. Additional Terms.

- (a) The cost of all inspections to be performed and paid by Buyer.
- (b) Buyer to provide evidence of funds sufficient to close escrow during the inspection period.

9. Court Receivership. The Buyer understands and acknowledges that the Seller was duly appointed the Receiver in the Receivership State of Arizona v. Landmarc Capital, et al 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 60 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.

Buyer's Initials

Seller's Initials



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.

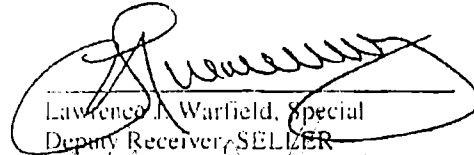
18. Close of Escrow. The sale shall close within 15 days of completion of the last of the requirements set forth in Paragraph 10 above.

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 Special Deputy Receiver, on or before ~~May 29, 2010~~ at 5 PM, Mountain Standard Time, or unless the Counter Offer has been previously withdrawn by the Special Deputy 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.

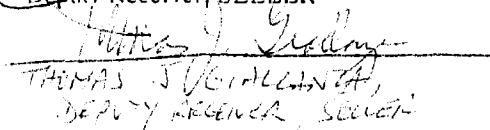
20. Signed Original. In order to facilitate the filing of appropriate pleadings with the Receivership Court, the parties agree to execute at least one original of this Counter Offer and all other contract documents and to provide such originals to the Seller.

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.

Dated: May 21, 2010


Lawrence J. Warfield, Special
Deputy Receiver, SELLER

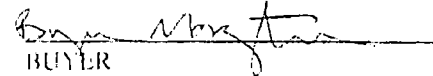
ATTEST: JUNE 2, 2010


THOMAS J. GIACALONE,
DEPUTY RECEIVER, SELLER

Acceptance

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.

Dated: 6/2/10


BUYER