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6 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, )  
11 v. )  
12 LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )  
13 Defendant. )  
14

Cause No. CV2009-020595  
PETITION NO. 32  
PETITION TO CONFIRM SALE OF  
REAL PROPERTY LOCATED AT 9980  
NORTH SHANNON ROAD, TUCSON,  
ARIZONA  
(Assigned to the Honorable Sam Myers)

15  
16 Lauren Kingry, as the court appointed Receiver, respectfully petitions the Court as  
17 follows:  
18 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
19 *to Show Cause*, which appointed the Superintendent of the Arizona Department of Financial  
20 Institutions as Receiver of Landmarc Capital & Investment Company (“Landmarc”). On July  
21 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.

6           2.       In accordance with the Receivership Order, the Receiver has located and taken  
7 possession of certain real property, located at 9980 North Shannon Road, Tucson, Arizona  
8 (“Property”). The Property is legally described in Exhibit “1” attached hereto and is titled in  
9 the name of Landmarc.

10           3.       Landmarc acquired fee title to this property pursuant to a Trustee’s Deed  
11 recorded with the Pima County Recorder on October 29, 2008, as Docket 13423, Page 415.  
12 Although fee title is vested in the name of Landmarc, the records of Landmarc indicate that  
13 this Property resulted from the foreclosure of a deed of trust in which a beneficial interest had  
14 been acquired by several of Landmarc’s investors. Although these investors do not hold legal  
15 title, they either assert a security interest or an equitable claim to this Property. Accordingly,  
16 the net sale proceeds will be held in trust until the claims of these investors are resolved by  
17 the Court.

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

20           5.       The Court previously approved the sale of this Property by the Court’s *Order*  
21 *No. 13* which was entered on April 26, 2010. The sale of the Property, however, was not

1 completed due to the Buyer's failure to close escrow. As a result of the Buyer's failure to  
2 close escrow, the Receiver renewed his efforts to market and sell the Property.

3 6. On June 25, 2010 the Receiver entered into a new Listing Agreement with The  
4 Voyager Bay Co., LLC, a real estate company, to market the Property. The Receiver agreed  
5 to pay a 6% sales commission subject to the approval of this Court.

6 7. There have been two appraisals done this property. On December 15, 2009,  
7 Colleen S. Smith of Sweetwater Appraisal Group, PLLC, submitted to the Receiver an  
8 appraisal of the Property which indicated a fair market value for the Property of \$675,000.  
9 The appraiser has been issued Certificate No. 10506 by the State of Arizona as a Licensed  
10 Real Estate Appraiser. The Receiver agreed to pay this appraiser a fee of \$850 for this  
11 appraisal and the appraiser had no known interest in any of the parties or in the sale of the  
12 Property. On September 13, 2010, Jeffrey C. Patch of Tucson Real Estate Appraisal  
13 submitted an appraisal of the Property which indicates a fair market value for the Property of  
14 \$562,000. Jeffrey C. Patch has been issued Certificate No. 30263 by the State of Arizona as a  
15 Certified Residential Real Estate Appraiser. The Receiver has agreed to pay this appraiser a  
16 fee of \$475.00 for this appraisal and the appraiser has no known interest in any of the parties  
17 or in the sale of the Property.

18 8. On July 14, 2010, the Receiver received an offer from Vivian Gonzales to  
19 purchase the Property for \$450,000 under terms that were not acceptable to the Receiver.  
20 The Receiver thereafter submitted to Buyer a Counter Offer No. 1 which was accepted by the  
21 Buyer. These documents constitute the Purchase Agreement and are attached hereto as

1 Exhibit "2". The Purchase Agreement provides for the sale of the Property for \$542,000.  
2 \$25,000 in earnest money is to be deposited in escrow upon mutual acceptance of the Counter  
3 Offer No. 1. Buyer shall provide not less than \$25,000 in additional cash five (5) days prior  
4 to Close of Escrow and \$492,000 will be carried by Seller at 4.878% for a period of 18  
5 months (unless construction as been halted). Interest is payable in the amount of \$2,000  
6 monthly, with the first interest payment due 210 days from Close of Escrow and continuing  
7 subsequently for the next 11 months. Principal and final interest will be due 18 months from  
8 Close of Escrow.

9 9. In accordance with this Court's Order Re: Petition Number 2, the Receiver:

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

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

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

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

20 WHEREFORE, the Receiver respectfully requests that the Court enter an order:  
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1. Approving the sale as set forth in the Purchase Agreement attached as Exhibit “2” to this Petition of the Property legally described in Exhibit “1”.
2. Authorizing Thomas Giallanza, as Deputy Receiver to execute all necessary documents in connection with the sale of the Property confirmed by the Court.

Respectfully submitted this 7<sup>th</sup> day of October, 2010.

GUTTILLA MURPHY ANDERSON

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

1157-001(99269)

**PARCEL 1:**

All that portion of the Northwest one quarter of the Southwest one quarter of Section 16, Township 12 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

Commencing at the Southwest corner of said Section 16, being a brass stem in concrete;

Thence North along the West line of the Southwest quarter of said Section 16 and being the basis of bearing for this legal description a distance of 2640.43 feet (2640.44 record) to a brass capped survey monument in concrete with a punch mark marking the West one quarter corner of said Section 16 (the basis of bearing is shown in Book 41 of Maps and Plats at page 44);

Thence South 89° 54' 30" East along the North line of the Southwest one quarter of said Section 16, a distance of 75.01 feet to a ½ inch iron pin with a brass tag stamped "RLS 35111" on the East sideline of Shannon Road as shown in Book 41 of Maps and Plats at page 44 and being the TRUE POINT OF BEGINNING for said Parcel 1 (South 89° 57' 31" East 75.00 feet record);

Thence South 89° 57' 31" East along the North line of the Southwest one quarter of said Section 16 a distance of 556.04 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745" (South 89° 57' 31" East record);

Thence South 00° 02' 58" West a distance of 246.39 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745";

Thence South 78° 50' 23" West a distance of 566.19 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745" said point being on the East sideline of said Shannon Road as recorded in Docket 10138, page 3350;

Thence North 00° 03' 03" East along said East line of said Shannon Road as recorded in Docket 10138, page 3350, a distance of 356.35 feet to the TRUE POINT OF BEGINNING of said Parcel 1 (North 00° 04' 05" West record);

Except all that portion lying within the following described parcel:

All that portion of the Northwest one quarter of the Southwest one quarter of Section 16, Township 12 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

Commencing at the Southwest corner of said Section 16, being a brass stem in concrete;

Thence North along the West line of the Southwest quarter of said Section 16 and being the basis of bearing for this legal description a distance of 2640.43 feet (2640.44 record) to a brass capped survey monument in concrete with a punch mark marking the West one quarter corner of said Section 16 (the basis of bearing is shown in Book 41 of Maps and Plats at page 44);

Thence South 89° 54' 30" East along the North line of the Southwest one quarter of said Section 16, a distance of 75.01 feet to a ½ inch iron pin with a brass tag stamped "RLS 35111" on the East sideline of

Shannon Road as shown in Book 41 of Maps and Plats at page 44 (South 89° 57' 31" East 75.00 feet record);

Thence South 89° 57' 31" East along the North line of the Southwest one quarter of said Section 16 a distance of 556.04 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745" and the TRUE POINT OF BEGINNING for (South 89° 57' 31" East record);

Thence continuing South 89° 57' 31" East along the North line of said Southwest one quarter of said Section 16 a distance of 25.00 feet to a ½ inch iron pin with a brass tag stamped "RLS 35111";

Thence South 00° 02' 58" West along the West line of Linda Vista Estates II, Lots 429 thru 430 and Lots 485 thru 487 as recorded in Book 41 of Maps and Plats at page 44 a distance of 352.11 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745" (South 00° 07' 13" East record);

Thence South 59° 10' 24" West a distance of 418.03 feet to a ½ inch iron with a brass tag stamped "RLS 38745";

Thence North 00° 03' 17" East a distance of 254.00 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745";

Thence North 75° 50' 23" East, a distance of 311.91 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745";

Thence North 39° 26' 46" East a distance of 44.58 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745";

Thence North 00° 02' 58" East, a distance of 217.55 feet to a ½ inch iron pin with a brass tag stamped "RLS 38745", and the TRUE POINT OF BEGINNING.

# RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

Document updated:  
May 2008




The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS. Any change in the pre-printed language of this form must be made in a pre-printed addendum. No representations are made as to the legal validity, adequacy and/or effect of any provision, including but not limited to, this contract. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.

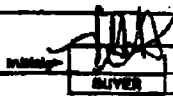


## 1. PROPERTY

- 1a. 1. BUYER: Vivian Gonzalez (BUYER(S))
2. SELLER: Landmark Capital & Investment 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 and incidental thereto, plus the personal property described herein (collectively the "Premises").
- 1b. 5. Premises Address: 9980 E. Shannon Road Assessor's #: 224-42-006X  
 6. City: Tucson County: Pima AZ, Zip Code: 85742-8202  
 7. Legal Description: Long Legal to be provided before close of escrow.
- 1c. 8. \$ 450,000.00 Full Purchase Price, paid as outlined below  
 9. \$ 25,000.00 Earnest money To be deposited in escrow upon mutual acceptance  
 10. \$ 25,000.00 Additional cash at close of escrow.  
 11. \$ 400,000.00 To be carried by Seller at 5%. The Balance of the Purchase shall become all due and payable on the 24 Month after closing.
- 1d. 13. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on August 25, 2010 ("COE Date"). If Escrow Company or recorder's office is closed on COE Date, COE shall occur on the next day that both are open for business.
18. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds to Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.
- 1e. 21. Possession: Seller shall deliver possession, occupancy, access to keys and/or means to operate all locks, mailbox, security systems, alarms, and all common area facilities to Buyer at COE or .  
 23. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professional regarding the risks of pre-possession or post-possession of the Premises.
- 1f. 25. Addenda Incorporated:  Assumption and Carryback  Buyer Contingency  Domestic Water Well  HUD forms  
 H.O.A.  Lead-Based Paint Disclosure  Additional Clause  On-site Wastewater Treatment Facility  
 27.  Other: see Additional Terms and Conditions
- 1g. 28. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Premises, and any existing personal property specified herein, shall be included in this sale, including the following:
- |  |   |  |
|--|---|--|
| 30. • free-standing range/oven             | • flush-mounted speakers                      | • outdoor landscaping, fountains, and lighting |
| 31. • built-in appliances                  | • attached fireplace equipment                | • water-misting systems                        |
| 32. • light fixtures                       | • window and door screens, sun screens        | • solar systems                                |
| 33. • ceiling fans                         | • storm windows and doors                     | • pellet, wood-burning or gas-log stoves       |
| 34. • towel, curtain and drapery rods      | • shutters and awnings                        | • timers                                       |
| 35. • draperies and other window coverings | • garage door openers and controls            | • mailbox                                      |
| 36. • attached floor coverings             | • attached TV/media antennas/satellite dishes | • storage sheds                                |

  
BUYER

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SELLER





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- 37. If owned by the Seller, the following items also are included in this sale:
- 38. • pool and spa equipment (including any
- 39. mechanical or other cleaning systems)
- security and/or fire systems and/or alarms
- water softeners
- water purification systems
- 40. Additional existing personal property included in this sale (if checked):  refrigerator  washer  dryer
- 41. As described: None
- 42. \_\_\_\_\_
- 43.  Other: None
- 44. \_\_\_\_\_
- 45. \_\_\_\_\_
- 46. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no monetary value, and free and clear of all liens or encumbrances.
- 47. Fixtures and leased items NOT included: None
- 48. \_\_\_\_\_
- 49. IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.

2. FINANCING

- 2a. 50. Loan Contingency: Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described in the AAR Loan Status Report without conditions no later than COE Date. If Buyer is unable to obtain loan approval without conditions by COE Date, Buyer shall deliver a notice of the inability to obtain loan approval without conditions to Seller or Escrow Company no later than COE Date.
- 2b. 54. Unfulfilled Loan Contingency: This Contract shall be cancelled and Buyer shall be entitled to a return of the Earnest Money if after diligent and good faith effort, Buyer is unable to obtain loan approval without conditions by COE Date. Buyer is aware that failure to have the down payment or other funds due from Buyer necessary to obtain the loan approval without conditions and close this transaction is not an unfulfilled loan contingency. Buyer acknowledges that prepaid items paid separately from earnest money are not refundable.
- 2c. 58. Appraisal Contingency: Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises by an appraiser acceptable to lender for at least the sales price. If the Premises fails to appraise for the sales price, Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the appraisal contingency shall be waived.
- 2d. 62. Loan Status Report: The AAR 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.
- 2e. 64. Loan Application: Unless previously completed, within five (5) days after Contract acceptance, Buyer shall (i) complete, sign and deliver to the lender a loan application with requested disclosures and documentation; (ii) grant lender permission to access Buyer's Trimagend Residential Credit Report; and (iii) pay all required loan application fees.
- 2f. 67. Loan Processing During Escrow: Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all additional documentation required. Buyer instructs the lender to provide loan status updates to Broker(s) and Seller. Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.
- 2g. 70. Type of Financing:  Conventional  FHA  VA  Assumption  Seller Carryback  \_\_\_\_\_  
71. (if financing is to be other than new financing, see attached addendum.)
- 2h. 72. Loan Costs: Private Mortgage Insurance is required for certain types of loans and shall be paid by Buyer at COE in a manner acceptable to lender. The following may be paid by either party:  
74. Discount points shall be paid by:  Buyer  Seller  Other \_\_\_\_\_  
75. Discount points shall not exceed: \_\_\_\_\_ total points (Does not include loan origination fee)  
76. A.L.T.A. Lender Title Insurance Policy shall be paid by  Buyer  Seller  
77. Loan Origination Fee (Not to exceed \_\_\_\_\_ % of loan amount) shall be paid by  Buyer  Seller  
78. Appraisal Fee, when required by lender, shall be paid by  Buyer  Seller  Other \_\_\_\_\_
- 2i. 79. Other Loan Costs: In the event of an FHA or VA loan, Seller agrees to pay up to \$ \_\_\_\_\_ of loan costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein. In addition, for VBI loans, Seller agrees to pay the escrow fee. All other costs of obtaining the loan shall be paid by the Buyer.

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Contract No. \_\_\_\_\_

Seller: \_\_\_\_\_ Buyer: \_\_\_\_\_

Escrow: \_\_\_\_\_

Contract Date: \_\_\_\_\_

**Residential Real Estate Purchase Contract >>**

- 2j. 82. Changes: Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the 83. LBR and shall only make any such changes without the prior written consent of Seller if such changes do not adversely affect 84. Buyer's ability to obtain loan approval without conditions, increase Seller's closing costs, or delay COE.
- 2k. 85. FHA Notice (FHA Buyer Initials Required): HUD does not warrant the condition of the property. By initialing below, Buyer acknowledges receipt of Form HUD-82584-CN, "For Your Protection: Get a Home Inspection." Buyer further acknowledges that such 87. form was signed at or before the Contract date. Signed HUD-82584-CN is attached and made a part of this Purchase Contract.

88. (FHA BUYER'S INITIALS REQUIRED) \_\_\_\_\_ BUYER \_\_\_\_\_ BUYER

**3. TITLE AND ESCROW**

- 2a. 89. Escrow: This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the 90. terms of this Contract shall be:

91. Fidelity National Title  
Escrow/Title Company \_\_\_\_\_ REALTOR \_\_\_\_\_

- 3b. 92. Title and Vesting: Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax 93. consequences. Buyer should obtain legal and tax advice.

- 3c. 94. Title Commitment and Title Insurance: Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller 95. directly, addressed pursuant to 8t and 9c or as otherwise provided, a Commitment for Title Insurance together with 96. complete and legible copies of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title 97. Commitment"), including but not limited to Conditions, Covenants and Restrictions ("CC&R"); deed restrictions; and 98. assessments. Buyer shall have five (5) days after receipt of the Title Commitment and after receipt of notice of any 99. subsequent exceptions to provide notice to Seller of any items disapproved. Seller shall convey title by general warranty 100. deed. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's Title 101. Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language"/"1-4 units") or, if not 102. available, a Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage 103. at Buyer's own additional expense.

- 3d. 104. Additional Instructions: (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and 105. address of the Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is 106. also acting as the title agency but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver 107. to the Buyer and Seller, upon deposit of funds, a closing protection letter from the title insurer indemnifying the Buyer 108. and Seller for any losses due to fraudulent acts or breach of escrow instructions by the Escrow Company. (iii) All 109. documents necessary to close this transaction shall be executed promptly by Seller and Buyer in the standard form used 110. by Escrow Company. Escrow Company shall modify such documents to the extent necessary to be consistent with this 111. Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally between Seller and 112. Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications directed to 113. Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information 114. regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.

- 3e. 115. Tax Prorations: Real property taxes payable by the Seller shall be prorated to COE based upon the latest tax information available

- 3f. 116. Release of Earnest Money: In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with 117. Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions 118. of this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company 119. against any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees 120. arising from or relating in any way to the release of Earnest Money.

- 3g. 121. Prorations of Assessments and Fees: All assessments and fees that are not a lien as of the COE, including homeowner's 122. association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on encumbrances 123. and service contracts, shall be prorated as of COE or  Other \_\_\_\_\_

- 3h. 124. Assessment Liens: The amount of any assessment, other than homeowner's association assessments, that is a lien as of the 125. COE, shall be  paid in full by Seller  prorated and assumed by Buyer. Any assessment that becomes a lien after COE is 126. the Buyer's responsibility.

- 3i. 127. IRS and FIRPTA Reporting: Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete 128. sign, and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to 129. the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person 130. the Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.

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SELLER SELLER BUYER BUYER

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4. DISCLOSURES

- 4a. 131. Seller Property Disclosure Statement ("SPDS"): Seller shall deliver a completed AAR SPDS form to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved within the Inspection Period or 133. five (5) days after receipt of the SPDS, whichever is later.
- 4b. 134. Insurance Claims History: Seller shall deliver to Buyer a written five-year insurance claims history regarding Premises (or a 135. claims history for the length of time Seller has owned the Premises if less than five years) from Seller's insurance company or 136. an insurance support organization or consumer reporting agency, or if unavailable from these sources, from Seller; within five 137. (5) days after Contract acceptance. (Seller may obscure any reference to date of birth or social security number from the 138. document). Buyer shall provide notice of any items disapproved within the Inspection Period or five (5) days after receipt of the 139. claims history, whichever is later.
- 4c. 140. Lead-based Paint Disclosure: If the Premises were built prior to 1978, the Seller shall: (i) notify the Buyer of any known 141. lead-based paint ("LBP") or LBP hazards in the Premises; (ii) provide the Buyer with any LBP risk assessments or inspections 142. of the Premises in the Seller's possession; (iii) provide the Buyer with the Disclosure of Information on Lead-based Paint and 143. Lead-based Paint Hazards, and any report, records, pamphlets, and/or other materials referenced therein, including the 144. pamphlet "Protect Your Family from Lead in Your Home" (collectively "LBP Information"). Buyer shall return a signed copy of 145. the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards to Seller prior to COE.
- 146.  LBP information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct LBP risk 147. assessments or inspections during Inspection Period.
- 148.  Seller shall provide LBP information within five (5) days after Contract acceptance. Buyer may within ten (10) days or 149. \_\_\_\_\_ days after receipt of the LBP information conduct or obtain a risk assessment or inspection of the Premises 150. for the presence of LBP or LBP hazards ("Assessment Period"). Buyer may within five (5) days after receipt of the LBP 151. information or five (5) days after expiration of the Assessment Period cancel this Contract.
- 152. If Premises were constructed prior to 1978, (BUYER'S INITIALS REQUIRED) \_\_\_\_\_ BUYER
- 153. If Premises were constructed in 1978 or later, (BUYER'S INITIALS REQUIRED) JKH BUYER
- 4d. 154. Affidavit of Disclosure: If the Premises is located in an unincorporated area of the county, and five or fewer parcels or 155. property other than subdivided property are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in 156. the form required by law to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any 157. Affidavit of Disclosure items disapproved within the Inspection Period or five (5) days after receipt of the Affidavit of 158. Disclosure, whichever is later.
- 4e. 159. Changes During Escrow: Seller shall immediately notify Buyer of any changes in the Premises or disclosures made herein, or 160. the SPDS, or otherwise. Such notice shall be considered an update of the SPDS. Unless Seller is already obligated by Section 161. 5a, or otherwise by this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer shall be 162. allowed five (5) days after delivery of such notice to provide notice of disapproval to Seller.

5. WARRANTIES

- 5a. 163. Seller Warranties: Seller warrants and shall maintain and repair the Premises so that, at the earlier of possession or COE: (i) a 164. heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems 165. cleaning systems, and heaters, if any), free-standing range/oven, and built-in appliances will be in working condition; (ii) all other 166. agreed upon repairs and corrections will be completed pursuant to Section 5; (iii) the Premises, including all additional estate 167. personal property included in the sale, will be in substantially the same condition as on the date of Contract acceptance; and (iv) 168. all personal property not included in the sale and all debris will be removed from the Premises.
- 5b. 169. Warranties that Survive Closing: Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects or 170. any information concerning the Premises known to Seller, including opinions of value, which materially and adversely affect the 171. consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for all labor 172. professional services, materials, machinery, fixtures, or tools furnished within the 180 days immediately preceding the COE. 173. connection with the construction, alteration, or repair of any structure on or improvement to the Premises. Seller warrants that the 174. information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic or alternative) is 175. correct to the best of Seller's knowledge.

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Seller: [Signature] BUYER: [Signature]

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- 5c. 178. **Buyer Warranties:** Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect 177. the Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Premises or 178. COE, Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the 179. Premises. Buyer warrants that Buyer is not relying on any verbal representations concerning the Premises except 180. disclosed as follows: N/A
- 181.

**6. DUE DILIGENCE**

- 6a. 182. **Inspection Period:** Buyer's Inspection Period shall be ten (10) days or \_\_\_\_\_ days after Contract 183. acceptance. During the Inspection Period, Buyer, at Buyer's expense, shall (i) conduct all desired physical, environmental, and 184. other types of inspections and investigations to determine the value and condition of the Premises; (ii) make inquiries and 185. consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the 186. suitability of the Premises and the surrounding area; (iii) investigate applicable building, zoning, fire, health, and safety codes to 187. determine any potential hazards, violations or defects in the Premises; and (iv) verify any material multiple listing service 188. ("MLS") information. If the presence of sex offenders in the vicinity or the occurrence of a disease, natural death, suicide, 189. homicide or other crime on or in the vicinity is a material matter to the Buyer, it must be investigated by the Buyer during the 190. Inspection Period. Buyer shall keep the Premises free and clear of liens, shall indemnify and hold Seller harmless from all 191. liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. Buyer shall provide 192. Seller and Broker(s) upon receipt, at no cost, copies of all inspection reports concerning the Premises obtained by Buyer. Buyer 193. is advised to consult the Arizona Department of Real Estate Buyer Advisory provided by AAR to assist in Buyer's due diligence 194. inspections and investigations.
- 6b. 195. **Square Footage:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH 196. THE REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A 197. MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD.
- 6c. 198. **Wood-Destroying Organism or Insect Infestation IF CURRENT OR PAST WOOD-DESTROYING ORGANISMS OR 199. INSECTS (SUCH AS TERMITES) ARE A MATERIAL MATTER TO THE BUYER, THESE ISSUES MUST BE INVESTIGATED 200. DURING THE INSPECTION PERIOD.** The Buyer shall order and pay for all wood-destroying organism or insect inspections 201. performed during the inspection period. If the lender requires an updated Wood-Destroying Organism or Insect Inspection Report 202. prior to COE, it will be performed at Buyer's expense.
- 6d. 203. **Flood Hazard:** Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the 204. inspection period. If the Premises are situated in an area identified as having any special flood hazards by any governments 205. entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to 206. encumber or improve the Premises.
- 6e. 207. **Insurance:** IF HOMEOWNER'S INSURANCE IS A MATERIAL MATTER TO THE BUYER, BUYER SHALL APPLY FOR AND 208. OBTAIN WRITTEN CONFIRMATION OF THE AVAILABILITY AND COST OF HOMEOWNER'S INSURANCE FOR THE 209. PREMISES FROM BUYER'S INSURANCE COMPANY DURING THE INSPECTION PERIOD. Buyer understands that any 210. homeowner's, fire, casualty, or other insurance desired by Buyer or required by lender should be in place at COE.
- 6f. 211. **Sewer or On-site Wastewater Treatment System:** The Premises are connected to a: 212.  sewer system;  septic system;  alternative system.  
213. IF A SEWER CONNECTION IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE 214. INSPECTION PERIOD. If the Premises are served by a septic or alternative system, the AAR On-site Wastewater Treatment 215. Facility Addendum is incorporated herein by reference.  
216. \_\_\_\_\_ (BUYER'S INITIALS REQUIRED) \_\_\_\_\_  
217. \_\_\_\_\_ BUYER \_\_\_\_\_ BUYER
- 6g. 217. **Swimming Pool Barrier Regulations:** During the Inspection Period, Buyer agrees to investigate all applicable state, county, and 218. municipal Swimming Pool barrier regulations and agrees to comply with and pay all costs of compliance with said regulation 219. prior to occupying the Premises, unless otherwise agreed in writing. If the Premises contains a Swimming Pool, Buyer 220. acknowledges receipt of the Arizona Department of Health Services approved private pool safety notice.  
221. \_\_\_\_\_ (BUYER'S INITIALS REQUIRED) \_\_\_\_\_  
222. \_\_\_\_\_ BUYER \_\_\_\_\_ BUYER

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SELLER: \_\_\_\_\_ BUYER: \_\_\_\_\_

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6h. 222. BUYER ACKNOWLEDGMENT: BUYER RECOGNIZES, ACKNOWLEDGES, AND AGREES THAT BROKER(S) ARE NOT 223. QUALIFIED, NOR LICENSED, TO CONDUCT DUE DILIGENCE WITH RESPECT TO THE PREMISES OR THE 224. SURROUNDING AREA. BUYER IS INSTRUCTED TO CONSULT WITH QUALIFIED LICENSED PROFESSIONALS TO 225. ASSIST IN BUYER'S DUE DILIGENCE EFFORTS. BECAUSE CONDUCTING DUE DILIGENCE WITH RESPECT TO THE 226. PREMISES AND THE SURROUNDING AREA IS BEYOND THE SCOPE OF THE BROKER'S EXPERTISE AND LICENSING, 227. BUYER EXPRESSLY RELEASES AND HOLDS HARMLESS BROKER(S) FROM LIABILITY FOR ANY DEFECTS OR 228. CONDITIONS THAT COULD HAVE BEEN DISCOVERED BY INSPECTION OR INVESTIGATION.

229.

(BUYER'S INITIALS REQUIRED)

[Handwritten initials] BUYER

6i. 230. Inspection Period Notice: Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any items 231. disapproved. AAR's Buyer's Inspection Notice and Seller's Response form is available for this purpose. Buyer shall conduct all 232. desired inspections and investigations prior to delivering such notice to Seller and all Inspection Period items disapproved shall 233. be provided in a single notice.

6j. 234. Buyer Disapproval: If Buyer, in Buyer's sole discretion, disapproves of items as allowed herein, Buyer shall deliver to Seller 235. notice of the items disapproved and state in the notice that Buyer elects to either:

- 236. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or
237. (2) provide the Seller an opportunity to correct the items disapproved, in which case:
238. (a) Seller shall respond in writing within five (5) days or \_\_\_\_\_ days after delivery to Seller of Buyer's notice of
239. items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall
240. conclusively be deemed Seller's refusal to correct any of the items disapproved.
241. (b) If Seller agrees in writing to correct items disapproved, Seller shall correct the items, complete any
242. repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs
243. to Buyer three (3) days or \_\_\_\_\_ days prior to COE Date.
244. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this
245. Contract within five (5) days after delivery of Seller's response or after expiration of the time for Seller's
246. response, whichever occurs first, and all Earnest Money shall be released to Buyer. If Buyer does not cancel
247. this Contract within the five (5) days as provided, Buyer shall close escrow without correction of those items that
248. Seller has not agreed in writing to correct.

249. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will 250. extend response times or cancellation rights.

251. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN THE 252. SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE 253. TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.

6k. 254. Notice of Non-Working Warranted Items: Buyer shall provide Seller with notice of any non-working warranted item(s) of which 255. Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived. Delivery of such notice 256. shall not effect Seller's obligation to maintain or repair the warranted item(s).

6l. 257. Home Warranty Plan: Buyer and Seller are advised to investigate the various home warranty plans available for purchase. The 258. parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations, service fees and 259. most plans exclude pre-existing conditions.

260.  A Home Warranty Plan will be ordered by  Buyer or  Seller with the following optional coverage

261. \_\_\_\_\_, to be issued by \_\_\_\_\_ at a cost not to exceed

262. \$ \_\_\_\_\_, to be paid for by  Buyer  Seller

263.  Buyer declines the purchase of a Home Warranty Plan.

6m. 264. Walkthrough(s): Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct walkthrough(s) of the Premises for the 265. purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in 266. working condition and that the Premises is in substantially the same condition as of the date of Contract acceptance. If Buyer does 267. not conduct such walkthrough(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered

6n. 268. Seller's Responsibility Regarding Inspections and Walkthrough(s): Seller shall make the Premises available for a 269. inspections and walkthrough(s) upon reasonable notice by Buyer. Seller shall, at Seller's expense, have all utilities on, includin 270. any propane, until COE to enable Buyer to conduct these inspections and walkthrough(s).

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**7. REMEDIES**

- 7a. 271. Cure Period: A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any 272. provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the 273. non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall become 274. a breach of Contract.
- 7b. 275. Breach: In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the 276. breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute 277. Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event of 278. Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept 279. the Earnest Money as Seller's sole right to damages; and in the event of Buyer's breach arising from Buyer's failure to deliver the 280. notice required by Section 2a, or Buyer's inability to obtain loan approval due to the waiver of the appraisal contingency pursuant 281. to Section 2c, Seller shall exercise this option and accept the Earnest Money as Seller's sole right to damages. An unfulfilled 282. contingency is not a breach of Contract.
- 7c. 283. Alternative Dispute Resolution ("ADR"): Buyer and Seller agree to mediate any dispute or claim arising out of or relating to 284. this Contract in accordance with the REALTOR® Dispute Resolution System, or as otherwise agreed. All mediation costs shall 285. be paid equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or 286. claims shall be submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the 287. scheduling of an arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the 288. American Arbitration Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The 289. decision of the arbitrator shall be final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in 290. any court of competent jurisdiction. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty 291. (30) days after the conclusion of the mediation conference by notice to the other and in such event either party shall have the 292. right to resort to court action.
- 7d. 293. Exclusions from ADR: The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in 294. the Small Claims Division of an Arizona Justice Court (up to \$2,500) so long as the matter is not thereafter transferred or 295. removed from the small claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of 296. trust, mortgage, or agreement for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's 297. lien; or (v) any matter that is within the jurisdiction of a probate court. Further, the filing of a judicial action to enable the 298. recording of a notice of pending action ("lis pendens"), or order of attachment, receivership, injunction, or other provisions 299. remedies shall not constitute a waiver of the obligation to submit the claim to ADR, nor shall such action constitute a breach of 300. the duty to mediate or arbitrate.
- 7e. 301. Attorney Fees and Costs: The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating to this 302. Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney fees, expert 303. witness fees, fees paid to investigators, and arbitration costs.

**8. ADDITIONAL TERMS AND CONDITIONS**

8a. 304. Beginning on the 1st day of February 2011 the buyer shall make interest  
 305. payments in the amount of \$2,422.00. The payments will be due in the same  
 306. amount on the 1st day of every month thereafter. On the 1st day of  
 307. September 2012 the balance of the purchase price will become all due and  
 308. payable. The terms and conditions of "Seller Financing" will be detailed by  
 309. separate agreement.  
 310. \_\_\_\_\_  
 311. \_\_\_\_\_  
 312. \_\_\_\_\_  
 313. \_\_\_\_\_  
 314. \_\_\_\_\_  
 315. \_\_\_\_\_

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SELLER SELLER
BUYER BUYER

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8r. 367. Broker on behalf of Buyer:

368. [Signature] 8000 [Signature] 8000 [Signature] 8000 [Signature] 8000
369. [Signature] [Signature] [Signature] [Signature]
370. [Signature] [Signature] [Signature]

8s. 371. Agency Confirmation: The Broker named in Section 8r above is the agent of (check one):
372. [ ] the Buyer; [ ] the Seller; or [ ] both the Buyer and Seller

8t. 373. The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of 374, a copy hereof including the Buyer Attachment.

375. [Signature] 07/14/2010 [Signature]
376. [Signature] [Signature]
377. Jackson, AL 36754 [Signature] [Signature]

9. SELLER ACCEPTANCE

9a. 378. Broker on behalf of Seller:

379. [Signature] 6313 [Signature] The Vanguard Bay Co., LLC
380. 1672 N. Flamingo Del Rio Chicago IL [Signature] [Signature]
381. (520) 444-5672 (520) 207-5174 [Signature]

9b. 382. Agency Confirmation: The Broker named in Section 9a above is the agent of (check one):

383. [ ] the Seller; or [ ] both the Buyer and Seller

9c. 384. The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a 385, copy hereof and grant permission to Broker named on Section 9a to deliver a copy to Buyer.

386. [Signature] [Signature]
387. [Signature] [Signature]
388. [Signature] [Signature]
389. [Signature] [Signature]
390. [Signature] [Signature]
391. [Signature] [Signature]

392. [ ] OFFER REJECTED BY SELLER: [Signature] [Signature] [Signature] [Signature]

Per Broker Use Only:
Brokerage File/Log No. [Signature] Manager's Initials [Signature] Broker's Initials [Signature] Date [Signature]

Exhibit 2



## 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 July 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 9980 N Shannon Road, Tucson, AZ 85742-8202 ("Property").

2. Seller. The Seller is Lawrence J. Warfield or Thomas J. Giallanza, in their capacity as the Special Deputy Receiver or Deputy Receiver, respectively, 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 Vivian Gonzales

4. Purchase Price. The Purchase Price, which Buyer agrees to pay for the Property is \$542,000. 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 \$25,000 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 monies held in escrow the Purchase Price, less any closing costs that the Seller has expressly agreed to pay, shall be disbursed to Seller and the Buyer shall exercise a Deed of Trust and Note as further described herein, in the amount of \$492,000.

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 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 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 shall provide not less than \$25,000 additional cash five (5) days prior to Close of Escrow.
- (c) \$492,000 to be carried by Seller at 4.878% for a period of 18 months ( Unless construction has been halted), interest payable \$2,000 monthly , with the first interest payment due 210 days from Close of Escrow and continuing subsequently for the next 11 months. Principal and final interest will be due 18 months from Close of Escrow.
- (d) Buyer's intentions are to complete construction of this residential unit,
- (e) Buyer intends to commence construction within 90 days from Close of Escrow.
- (f) Buyer will provide to Seller as the first lienholder on this property, quarterly accountings of Buyer's construction expenses subsequent to Close of Escrow.
- (g) If, in any 90 day period subsequent to Close of Escrow, construction costs expended do not exceed \$50,000, if any violation notice issued by any instrumentality of government remains uncured for more than 40 days, then Buyer and Seller agree that construction has been halted. If construction has been halted, as defined herein, then demand shall be made of Buyer by Seller for the full amount due and owing, and all amounts due and owing shall be due and payable within 90 days from the date of such demand.

Buyer's Initials



Seller's Initials



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.

11. Inspection. Buyer shall have ten days (10) 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.

Buyer's Initials



Seller's Initials



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 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 Deputy Receiver or Special Deputy Receiver, or by Henry Zipf of Voyager Bay, LLC on or before August 31, 2010 at 5 PM, Mountain Standard Time, or unless the Counter Offer has been previously withdrawn by the Deputy Receiver or 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: 8/27/2010

  
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: 8/30/10

  
BUYER