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9 Attorneys for the Receiver

10 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
11  
12 IN AND FOR THE COUNTY OF MARICOPA

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

16 Plaintiff,

17 v.

18 LANDMARC CAPITAL & )  
19 INVESTMENT COMPANY, )

20 Defendant. )  
21 )

Cause No. CV2009-020595

PETITION NO. 74

PETITION FOR ORDER TO APPROVE  
REIMBURSEMENT OF DFI  
RECEIVERSHIP FUND FOR 1ST  
QUARTER 2012 ADMINISTRATIVE  
EXPENSES

(Assigned to Judge Lisa Flores)

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Lauren W. 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 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7           7.       For the first quarter of 2012 ending March 31, 2012, DFI incurred and paid a  
 8 total of \$357,230.26 apportioned to this receivership for receiver fees and attorney fees and  
 9 expenses relating to the management of Landmarc.

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

<u>Vendor</u>	<u>Service Dates</u>	<u>Paid by DFI</u>			<u>Total</u>
		<u>Jan 2012</u>	<u>Feb 2012</u>	<u>Mar 2012</u>	
<u>Management &amp; Accounting</u>					
Warfield & Co.	10/16 – 3/15	\$ .00	\$229,417.54	\$61,312.31	\$290,729.85
<u>Attorney Fees</u>					
Guttilla Murphy Anderson	12/1 – 2/29	\$ .00	\$44,015.16	\$22,485.25	<u>\$66,500.41</u>
<b>Total 1st Quarter 2012 Administrative Expenses</b>					<b>\$357,230.26</b>

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 18          9.       Once approved by the Court, these administrative expenses will be paid from  
 19 the general unsecured assets of Landmarc and the other receivership entities. No funds held  
 20 in trust for the benefit of borrowers or investors and no funds or other assets which are the  
 21

1 subject of a security interest or a potential ownership or equitable claim will be used to pay  
2 these administrative expenses.<sup>1</sup>

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

4 1. Awarding to the DFI Three Hundred Fifty Seven Thousand Two Hundred  
5 Thirty Dollars and 26/100 (\$357,230.26) as March reimbursement for administrative  
6 expenses incurred and paid during the quarter ending March 31, 2012; and

7 2. Authorizing the Receiver to transfer Three Hundred Fifty Seven Thousand Two  
8 Hundred Thirty Dollars and 26/100 (\$357,230.26) as reimbursement for administrative  
9 expenses incurred and paid during the quarter ending March 31, 2012 as funds become  
10 available from the general unsecured assets of the receivership estate in this action to the  
11 Arizona Department of Financial Institutions Receivership Revolving Fund established under  
12 A.R.S. §6-135.01.

13 Respectfully submitted this 30<sup>th</sup> day of May, 2013.

14 GUTTILLA MURPHY ANDERSON, P.C.

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

17 1157-001(145432)

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