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8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 STATE OF ARIZONA ex rel. LAUREN )  
12 KINGRY, Superintendent of the Arizona )  
Department of Financial Institutions, )  
13 Plaintiff, )  
14 v. )  
15 LANDMARC CAPITAL & )  
16 INVESTMENT COMPANY, )  
17 Defendant. )

Cause No. CV2009-020595  
PETITION NO. 77  
PETITION FOR ORDER APPROVING  
JONES/SPRAY SETTLEMENT  
AGREEMENT  
(Assigned to Judge Lisa Flores)

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

20 1. On June 24, 2009, this Court entered its *Order Appointing Receiver and Order*  
21 *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*  
*Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,  
2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*

1 (collectively "Receivership Order"). The Receivership Order appointed Thomas Giallanza as  
2 Deputy Receiver.

3 2. On or about March 31, 2008, Landmarc loaned \$3,310,000 to 141 Route 69,  
4 LLC, a Delaware limited liability company ("Borrower"). The Loan was secured by a first  
5 position deed of trust on real property located in Prescott Valley, Arizona ("Property"). The  
6 obligations under the Loan were guaranteed pursuant to a *Continuing Guaranty* from Ronald  
7 and Noreen Jones and a *Continuing Guaranty* from Rod and Renee Spray (collectively  
8 referred to hereafter as the "Guarantors").

9 3. The Borrower subsequently defaulted and the Receiver initiated a trustee's sale  
10 of the Property, which was to be conducted on December 13, 2011. However, on December  
11 13, 2011, the Borrower filed a chapter 11 bankruptcy petition in the United States Bankruptcy  
12 Court for the District of Arizona as case number 2:11-bk-33728-EPB ("Administrative  
13 Case"). The Borrower is serving as Debtor in Possession in the administrative case and there  
14 are various contested matters pending between the Borrower and the Receiver in the case.

15 4. On or about December 3, 2012, the Borrower initiated an adversary proceeding  
16 in the United States District Court for the District of Arizona against the Receiver which is  
17 pending as adversary number 3:12-ap-01996-EPB ("Adversary Proceeding"). In the  
18 Adversary Proceeding the Borrower has asserted multiple claims against the Receiver  
19 including contesting the enforceability of the Loan, seeking equitable subordination due to  
20 alleged acts of fraudulent misrepresentation and breach of contract by Landmarc, and for  
21 damages, punitive damages and injunctive relief.

1           5.       On April 12, 2012, the Receiver initiated suit against the Guarantors to enforce  
2 their respective guarantees in the Arizona Superior Court for Maricopa County which is  
3 pending as case number CV2012-006606 (“State Court Action”).

4           6.       The Receiver, Borrower, and the Guarantors entered into a mediation conducted  
5 by Sherman D. Fogel on April 10, 2013. At the mediation the parties agreed to a global  
6 settlement of all pending and contested claims, the terms of which are set forth in the  
7 Settlement Agreement attached hereto as Exhibit 1.

8           7.       The Settlement Agreement is conditioned on approval by both this Court and  
9 by the Bankruptcy Court in the Administrative Case. The principal provisions of the  
10 Settlement Agreement provide that upon court approvals:

11               a.       The Borrower and the Receiver will stipulate to an order lifting the  
12 automatic stay in the Administrative Case with respect to the Receiver’s pending  
13 trustee sale and the enforcement of the Receiver’s *in rem* rights under the loan  
14 documents, provided that the trustee sale of the Property may not take place until thirty  
15 (30) days after the entry of the lift stay order;

16               b.       The Borrower and the Receiver will stipulate to an order dismissing the  
17 Administrative Case and the Adversary Proceeding;

18               c.       The Guarantors and the Receiver will stipulate to an order dismissing the  
19 State Court Action; and

20               d.       The Borrower, the Guarantors and the Receiver shall execute mutual  
21 releases in the form set forth in Exhibit “A” to the Settlement Agreement.



## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made as of the 1<sup>st</sup> day of June, 2013, by and between the following parties:

1. 141 ROUTE 69, LLC, a Delaware limited liability company (hereafter "Borrower");
2. RONALD W. JONES and NOREEN E. JONES, husband and wife (hereafter collectively "Jones");
3. ROD SPRAY and RENEE J. SPRAY, husband and wife (hereafter collectively "Spray"); and
4. LAUREN KINGRY, Superintendent of the Arizona Department of Financial Institutions, as the Receiver of Landmarc Capital & Investment Company (hereafter "the Receiver") on behalf of himself and the receivership estate of Landmarc Capital & Investment Company (hereafter "the Landmarc Receivership Estate") and any creditors or beneficiaries of the Landmarc Receivership Estate.

### RECITALS

A. The Receiver is the holder of claims against the Borrower and against Spray and Jones (hereafter collectively "the Guarantors") stemming from a secured real estate loan transaction entered into on or about March 27, 2008, by and between the Borrower and Landmarc Capital & Investment Company, an Arizona corporation (hereafter "Landmarc"), as lender (hereafter "the Loan").

B. The Loan is documented by the following instruments, agreements and security documents (hereafter collectively "the Loan Documents"):

- i. Loan Agreement dated March 27, 2008, signed by the Borrower and

Landmarc;

- ii. Promissory Note dated March 27, 2008, in the principal amount of \$3,310,000.00 executed by the Borrower as maker in favor of Landmarc as payee;
- iii. Deed of Trust, Assignment of Rents and Security Agreement (the "Deed of Trust") dated March 27, 2008, recorded on April 3, 2008, at Book 4586, Page 121 in the Official Records of Yavapai County, Arizona, executed by the Borrower as trustor for the benefit of Landmarc as beneficiary which created an encumbrance with first lien priority upon the real property located at 141 South State Route 69, Prescott Valley, Arizona 86314, comprised of approximately 22.43 acres and the improvements thereon (hereafter "Property");
- iv. Security Agreement dated March 27, 2008, executed by the Borrower as debtor in favor of Landmarc as secured party;
- v. Continuing Guaranty dated March 27, 2008, executed by Spray in favor of Landmarc; and
- vi. Continuing Guaranty dated March 27, 2008, executed by Jones in favor of Landmarc.

C. The Receiver became the holder of his claims pursuant to orders entered in proceedings brought in the Maricopa County, Arizona, Superior Court in Case Number CV 2009-020595 originally styled "STATE OF ARIZONA ex rel. FELECIA A. ROTELLINI, Superintendent of the Arizona Department of Financial Institutions, Plaintiff, v. Landmarc Capital & Investment Company, Defendant" and since restyled to reflect Lauren Kingry as

the successor Superintendent of the Arizona Department of Financial Institutions in the place of and in the stead of Felecia A. Rotellini (hereafter "the Receivership Action").

D. The Receiver initiated a trustee's sale of the Property on or about September 7, 2011, which was to be conducted on December 13, 2011, at 10:00 a.m. in Prescott, Yavapai County, Arizona.

E. On December 13, 2011, the Borrower filed a voluntary chapter 11 petition in the United States Bankruptcy Court for the District of Arizona initiating Case No. No. 2:11-BK-33728-EPB (hereafter "the Administrative Bankruptcy Case").

F. The Borrower is serving as Debtor In Possession in the Administrative Bankruptcy Case.

G. There are various contested matters pending by and between the Borrower and the Receiver in the Administrative Bankruptcy Case including, but not limited to, contested plan confirmation proceedings.

H. On or about December 3, 2012, the Borrower as Plaintiff initiated an adversary proceeding in the United States Bankruptcy Court for the District of Arizona against the Receiver as Defendant which is now pending as Adversary No. 3:12-ap-01996-EPB (hereafter "the Bankruptcy Adversary Proceeding").

I. The Bankruptcy Adversary Proceeding involves multiple claims against the Receiver including, but not limited, contesting the enforceability of the Loan, seeking equitable subordination due to certain alleged acts of fraudulent misrepresentation and breach of contract on the part of Landmarc and for damages, punitive damages and injunctive relief.

J. The Receiver is the holder of claims against Spray and Jones (hereafter

collectively "the Guarantors") stemming from the Continuing Guaranties entered into on or about March 27, 2008, whereby the Guarantors personally guaranteed the obligations due and owing by the Borrower to Landmarc.

K. On April 9, 2012, the Receiver of Plaintiff initiated suit against the Guarantors in the Maricopa County, Arizona, Superior Court which is now pending as Case No. CV2012-006606 in which the Guarantors have answered and raised multiple affirmative defenses (hereafter "the State Court Proceeding").

L. The parties hereto and their counsel entered into a mediation conducted by Sherman D. Fogel (hereafter "Mr. Fogel") of Phoenix, Arizona, on April 10, 2013 (hereafter "the Mediation"). At the Mediation the parties agreed in writing upon the terms of a global settlement of all pending and contested claims running by and between the parties (a) pursuant to the terms of the Loan and the terms of the Loan Documents, (b) the claims and disputes in the Administrative Bankruptcy Case, (c) the claims and disputes in the Bankruptcy Adversary Proceeding, and (d) the claims and disputes in the State Court Proceeding (hereafter "the Global Settlement").

M. The parties hereto wish to memorialize the complete and final terms of the Global Settlement by entering into this Settlement Agreement.

#### **AGREEMENTS**

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained hereinafter, it is mutually agreed between the parties as follows:

1. Each of the parties has given full and mature thought to the making of the



Global Settlement and this Settlement Agreement and all of the obligations contained therein. The Borrower has received the advice and aid of its bankruptcy counsel Polsinelli Shughart, P.C. and its special litigation counsel Treon & Aguirre, PLLC. The Guarantors have received the advice and aid of their counsel Gordon Silver. The Receiver has received the advice of his counsel Burch & Cracchiolo, PA.

2. Each of the parties understands that the agreements and obligations assumed by the others in this Settlement Agreement are assumed with the express understanding that they are in satisfaction of all obligations that the parties now have or might have or otherwise have toward the other as of the date of this Settlement Agreement. The parties each represent and warrant to the other that each has considered with particularity their respective economic circumstances as such applies to the division and disposition of property and obligations contained herein and each is satisfied that the provisions and terms of this Settlement Agreement are reasonable and fair. The parties acknowledge and agree that except as expressly set forth in this Settlement Agreement, neither party has relied upon any warranty of the other, or of any agent, employee or attorney of the other, in entering into this Settlement Agreement. The parties have each relied upon their independent investigations, judgment, personal assessments and the advice of their respective counsel in reaching this Settlement Agreement. The parties further acknowledge and agree that this Settlement Agreement has been bargained for at arm's length. Each of the Parties understands the legal and practical effect of this Settlement Agreement and the provisions hereof and acknowledges that this Settlement Agreement is not the result of any fraud, duress or undue influence exercised by either party upon the other or by any other person or persons upon the parties hereto.

3. The legal effectiveness of this Settlement Agreement is subject to the prior fulfillment of the following conditions subsequent (hereafter "the Court Approvals"):

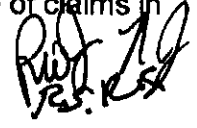
(a) that the Borrower secure court approval in the Administrative Bankruptcy Case pursuant to FBR 9019 of its joinder in this Settlement Agreement by way of a final order; and

(b) that the Receiver secure court approval in the Receivership Action of his joinder in this Settlement Agreement by way of a final order.

4. Upon the event of the Court Approvals, the Borrower and the Receiver shall stipulate and agree to the entry of an order in the Administrative Bankruptcy Case lifting and terminating the automatic stay of 11 U.S.C. § 362(a) with respect to (a) the Receiver's pending deed of trust sale of the Property which has been continued from time to time; and (b) with respect to the Receiver's enforcement of his *in rem* rights in and to the Property under the Loan Documents (hereafter "the Stay Lift Order"), provided, however, that no deed of trust sale of the Property shall take place until thirty (30) days after the entry a lift stay order.

5. The Borrower and the Receiver shall stipulate and agree to the entry of an order of dismissal of (1) the Bankruptcy Administrative case; and (2) the Bankruptcy Adversary Proceeding with prejudice with the parties to bear their own attorneys' fees and costs of suit.

6. Upon the event of the Court Approvals, the Guarantors and the Receiver shall stipulate and agree to the entry of an order of dismissal with prejudice of the State Court Action with the parties to bear their own attorneys' fees and costs of suit.

7. Upon the event of the Court Approvals, the Borrower, the Guarantors and the Receiver shall each execute and deliver to the other parties hereto a release of claims in the form annexed hereto as Exhibit <sup>"A"</sup> "B" and incorporated by this reference. 

8. The Guarantors shall, within twelve (12) days of April 10, 2013, provide the Receiver with the following documents:

- A. Jones: Copies of their filed 2010, 2011 and 2012 state and federal income tax returns warranted as being filed.
- B. Spray: (i) Copies of any filed and unfiled state and federal income tax returns warranted as being filed and/or, if not filed, warranted as being substantially true and correct;  
(ii) Copy of the Iowa law suit Complaint; and  
(iii) Copy of demand letter from San Diego counsel.

9. The parties agree that, upon receipt of the additional materials from Messrs. Spray and Jones, the Receiver shall have an additional seven (7) days to signify its approval of the Spray and Jones financial materials. Disapproval shall render the Global Settlement and this Settlement Agreement null and void; provided that the Receiver has first allowed Spray and Jones reasonable time to cure any deficiencies associated with the additional materials that were the cause of the Receiver's disapproval.

10. All Spray and Jones financial materials shall be kept confidential, whether produced before or after the execution of this Settlement Agreement and whether this agreement is rendered null and void. .

11. There shall be notices of settlement and of stay filed in the Administrative Bankruptcy Case, the Bankruptcy Adversary Proceeding and the State Court Action as

soon as practicable after the execution of this Settlement Agreement to be joined in by all counsel of record for the parties in those proceedings.

12. The counsel of record for the parties in the Administrative Bankruptcy Case, the Bankruptcy Adversary Proceeding and the State Court Action hereto shall stipulate and agree to extend all response times and hearings during the time periods in which the court approvals provided for in ¶ 3 hereof are being sought by the Borrower and the Receiver.

13. The parties shall reasonably cooperate with on another as required to implement the terms hereof including, but not limited to, action by the Borrower and the Receiver to initiate and consummate the notice and hearing procedures to obtain the court approvals provided for in ¶ 3 hereof.

14. If the Receiver issues a 1099 form to the Borrower, said form shall reflect that the Property was accepted in satisfaction of the debt and that the Property was of an equivalent value as the debt.

15. If any dispute arises by and between the parties hereto with regard to the terms of this Settlement Agreement, including the documentation thereof or the implementation of the terms thereof, Mr. Fogel shall arbitrate all such disputes and shall be empowered to enter arbitration orders final and non-appealable as to all such issues. The arbitration shall be conducted pursuant to the Uniform Arbitration Act as enacted in Arizona. The losing party or parties shall be obligated to pay the costs of the arbitration, including Mr. Fogel's fees, and the reasonable attorneys' fees and costs of the prevailing party or parties as determined by Mr. Fogel and his decisions thereon shall also be within the scope of his power to enter arbitration orders which orders shall also be final and non-appealable as to all such issues.

16. It is agreed that there is no other contract, oral or written, existing between the parties hereto relative to the matters herein mentioned except the prior Global Settlement and this Settlement Agreement, and that all agreements and understandings between the parties hereto relative to the matters herein mentioned are embodied in this Settlement Agreement. This Settlement Agreement is entire in itself and is not a part of any other contract or agreement. No promises, warranties or representations of any nature or character, other than those set forth in this Settlement Agreement, have been made to induce any of the parties to enter into this Settlement Agreement. The parties hereto agree and acknowledge that they have not been influenced by the others in the making or execution of this Settlement Agreement and that none of said parties is acting or relying upon any statement, representation or information furnished by any of the other parties with reference to any matter or things of any kind, nature or character, except as is set forth in this Settlement Agreement.

17. A modification or waiver of any of the provisions of this Settlement Agreement shall be effective only if made in writing and executed with the same formality as this Settlement Agreement.

18. All of the parties hereto have participated in the drafting of this Settlement Agreement.

19. This Settlement Agreement shall be construed under the laws of the State of Arizona.

20. Except as otherwise stated herein, all of the provisions of this Settlement Agreement shall apply to, be binding upon and inure to the benefit of the successors,

10/2  
California  
all purposes  
attached  
Debra  
June 6  
2012

respective heirs, next of kin, executors and administrators of the parties.

21. To the extent that any provision of this Settlement Agreement is determined to be void and/or unenforceable, such determination shall not affect the validity of the remainder of this Settlement Agreement, and the remainder thereof shall be fully enforceable.

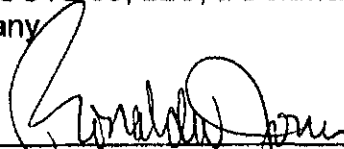
22. This Settlement Agreement are solely for the benefit of the parties hereto. No person nor entity not a party hereto shall be entitled to claim any benefit or status as a third party beneficiary under the terms of this Settlement Agreement.


23. Each of the parties hereto shall each execute such other and further documents and perform such other and further acts as may reasonably be required by the other parties to implement and consummate the terms of this Settlement Agreement.

24 This Agreement may be signed in counterparts.

**IN WITNESS WHEREOF**, the parties have signed and acknowledged this Agreement.

141 ROUTE 69, LLC, a Delaware limited liability company

By:   
RONALD W. JONES, Manager

By:   
ROD SPRAY, Manager

State of California )  
County of Santa Cruz ) ss.

*See attached*

The foregoing instrument was acknowledged before me this 6 day of

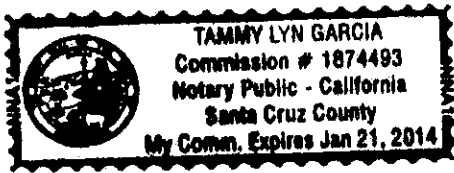
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

2 of 2  
Signature  
Notary  
at Stake

State of California }  
County of Santa Cruz } ss.

On June 6, 2013 before me, Tammy Lyn Garcia, Notary Public, personally appeared Ronald W Jones and Rod Spray, who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

*Tammy Lyn Garcia*  
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title or Type of Document

Title

- Partner(s)
- Limited
- General

Number of Pages

- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

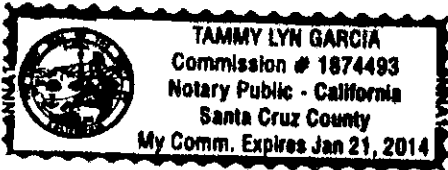
1 of 4 June 2013  
Signatures  
attached

State of California }  
County of Santa Cruz } ss.

Rod Spay & Renee Spay  
and

On June 6, 2013 before me, Tammy Lyn Garcia, Notary Public, personally appeared Ronald W Jones and Noreen Jones, who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

*Tammy Lyn Garcia*  
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title or Type of Document

Title

- Partner(s)  Limited
- General

Number of Pages

- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above





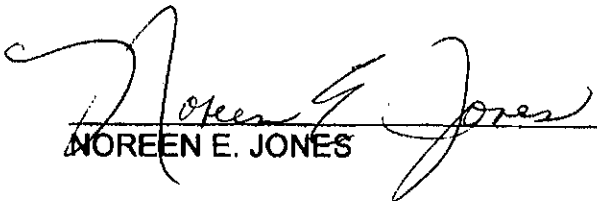
The foregoing instrument was acknowledged before me this 6 day of June, 2013, by Ronald W. Jones.

394  
California  
all purpose  
attached  
June  
2013

\_\_\_\_\_  
Notary Public

My Commission Expires:

See attached

  
\_\_\_\_\_  
NOREEN E. JONES

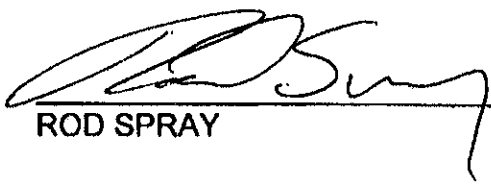
State of California )  
County of Santa Cruz ) ss.

The foregoing instrument was acknowledged before me this 6 day of June, 2013, by Noreen E. Jones.

See attached

\_\_\_\_\_  
Notary Public

My Commission Expires:

  
\_\_\_\_\_  
ROD SPRAY

State of California )  
County of Santa Cruz ) ss.

The foregoing instrument was acknowledged before me this 6 day of June, 2013, by Rod Spray.

\_\_\_\_\_  
Notary Public

My Commission Expires:

See attached

4 of 4  
California  
all purpose  
attached  
June  
2013

Renee J. Spray  
RENEE J. SPRAY

See attached

State of California )  
County of Santa Cruz ) ss.

The foregoing instrument was acknowledged before me this 6 day of June, 2013, by Renee J. Spray.

\_\_\_\_\_  
Notary Public

My Commission Expires:

# **EXHIBIT “A”**

## **MUTUAL RELEASE OF CLAIMS**

In consideration of the premises and the mutual covenants and agreements contained hereinafter, it is mutually agreed between the parties as follows:

### **I. RELEASE FROM RECEIVER TO BORROWER AND GUARANTORS**

LAUREN KINGRY, Superintendent of the Arizona Department of Financial Institutions, as the Receiver of Landmarc Capital & Investment Company, an Arizona corporation (hereafter "Landmarc"), and his respective predecessors, successors and assigns on behalf of himself and the receivership estate of Landmarc Capital & Investment Company (hereafter "the Landmarc Receivership Estate") and any creditors or beneficiaries of the Landmarc Receivership Estate, hereby releases 141 ROUTE 69, LLC, a Delaware limited liability company (hereafter "Borrower"), RONALD W. JONES and NOREEN E. JONES, husband and wife (hereafter collectively "Jones"), ROD SPRAY and RENEE J. SPRAY, husband and wife (hereafter collectively "Spray") and/or their affiliates and all of their employees, agents, attorneys and other privies in contract for all claims, causes of action, in law or in equity, demands, damages, liabilities, torts, duties, contracts, attorneys' fees, costs, expenses of any nature and kind whatsoever, known or unknown, liquidated or unliquidated, fixed or contingent, arising out of any matters or events which are or have been asserted or comprehended including Bankruptcy Case No. 2:11-bk-33728 and any related adversary proceeding currently pending in the U.S. Bankruptcy Court for the District of Arizona, or which could have been asserted or comprehended up to and through the date of this Agreement with stemming from a secured real estate loan transaction entered into on or about March 27, 2008, by and between the Borrower and Landmarc (hereafter "the Loan") and the following instruments,

agreements and security documents (hereafter collectively "the Loan Documents"):

- i. Loan Agreement dated March 27, 2008, signed by the Borrower and Landmarc;
- ii. Promissory Note dated March 27, 2008, in the principal amount of \$3,310,000.00 executed by the Borrower as maker in favor of Landmarc as payee;
- iii. Deed of Trust, Assignment of Rents and Security Agreement (the "Deed of Trust") dated March 27, 2008, recorded on April 3, 2008, at Book 4586, Page 121 in the Official Records of Yavapai County, Arizona, executed by the Borrower as trustor for the benefit of Landmarc as beneficiary which created an encumbrance with first lien priority upon the real property located at 141 South State Route 69, Prescott Valley, Arizona 86314, comprised of approximately 22.43 acres and the improvements thereon (hereafter "Property");
- iv. Security Agreement dated March 27, 2008, executed by the Borrower as debtor in favor of Landmarc as secured party;
- v. Continuing Guaranty dated March 27, 2008, executed by Spray in favor of Landmarc; and
- vi. Continuing Guaranty dated March 27, 2008, executed by Jones in favor of Landmarc.

Nothing contained herein shall compromise nor otherwise impair the Receiver's pending deed of trust sale of the Property which has been continued from time to time; and the Receiver's enforcement of his *in rem* rights in and to the Property under the Loan

Documents. Notwithstanding the terms hereof, the Loan and the Loan Documents shall continue to be enforceable against the Property on a nonrecourse basis. The Receiver's release shall be deemed only (a) to prohibit asserting any recourse liability against the Borrower; and (b) to prohibit asserting any further claim against Jones and/or Spray as guarantors. If the Receiver issues a 1099 form to the Borrower, said form shall reflect that the Property was accepted in satisfaction of the debt and that the Property was of an equivalent value as the debt.

Except as expressly limited herein, this Mutual Release of Claims shall be construed to apply to all facts, circumstances, events, actions, activities, errors, omissions and occurrences, whether known or unknown, whether asserted or not asserted on or before the date of this Mutual Release of Claims arising in connection with the Loan and/or the Loan Documents.

This Mutual Release of Claims shall not apply to any new obligations or duties intended to be or created by the Global Settlement entered into by the parties hereto on April 10, 2013 (as defined in the Settlement Agreement), and/or any new obligations or duties intended to be or created by the Settlement Agreement entered into by and between the parties thereafter which provides for this Mutual Release of Claims in ¶ 7 thereof.

## **II. RELEASE FROM BORROWER AND GUARANTORS TO RECEIVER**

141 ROUTE 69, LLC, a Delaware limited liability company (hereafter "Borrower"), RONALD W. JONES and NOREEN E. JONES, husband and wife (hereafter collectively "Jones"), ROD SPRAY and RENEE J. SPRAY, husband and wife (hereafter collectively "Spray") hereby release LAUREN KINGRY, Superintendent of the Arizona Department of Financial Institutions, as the Receiver of Landmarc Capital & Investment Company, an

Arizona corporation (hereafter "Landmarc"), and/or their affiliates and all of their employees, agents, attorneys and other privies in contract for all claims, causes of action, in law or in equity, demands, damages, liabilities, torts, duties, contracts, attorneys' fees, costs, expenses of any nature and kind whatsoever, known or unknown, liquidated or unliquidated, fixed or contingent, arising out of any matters or events which are or have been asserted or comprehended or which could have been asserted or comprehended up to and through the date of this Agreement with stemming from a secured real estate loan transaction entered into on or about March 27, 2008, by and between the Borrower and Landmarc (hereafter "the Loan") and the following instruments, agreements and security documents (hereafter collectively "the Loan Documents"):

- i. Loan Agreement dated March 27, 2008, signed by the Borrower and Landmarc;
- ii. Promissory Note dated March 27, 2008, in the principal amount of \$3,310,000.00 executed by the Borrower as maker in favor of Landmarc as payee;
- iii. Deed of Trust, Assignment of Rents and Security Agreement (the "Deed of Trust") dated March 27, 2008, recorded on April 3, 2008, at Book 4586, Page 121 in the Official Records of Yavapai County, Arizona, executed by the Borrower as trustor for the benefit of Landmarc as beneficiary which created an encumbrance with first lien priority upon the real property located at 141 South State Route 69, Prescott Valley, Arizona 86314, comprised of approximately 22.43 acres and the improvements thereon (hereafter "Property");



- iv. Security Agreement dated March 27, 2008, executed by the Borrower as debtor in favor of Landmarc as secured party;
- v. Continuing Guaranty dated March 27, 2008, executed by Spray in favor of Landmarc; and
- vi. Continuing Guaranty dated March 27, 2008, executed by Jones in favor of Landmarc.

Except as expressly limited herein, this Mutual Release of Claims shall be construed to apply to all facts, circumstances, events, actions, activities, errors, omissions and occurrences, whether known or unknown, whether asserted or not asserted on or before the date of this Mutual Release of Claims arising in connection with the Loan and/or the Loan Documents.

This Mutual Release of Claims shall not apply to any new obligations or duties intended to be or created by the Global Settlement entered into by the parties hereto on April 10, 2013, and/or any new obligations or duties intended to be or created by the Settlement Agreement entered into by and between the parties thereafter which provides for this Mutual Release of Claims in ¶ 7 thereof.

### **III. GENERAL TERMS APPLICABLE TO ALL RELEASES CONTAINED HEREIN**

If any dispute arises by and between the parties hereto with regard to the terms of this Mutual Release of Claims, Sherman D. Fogel (hereafter "Mr. Fogel") shall arbitrate all such disputes and shall be empowered to enter arbitration orders final and non-appealable as to all such issues. The arbitration shall be conducted pursuant to the Uniform Arbitration Act as enacted in Arizona. The losing party or parties shall be obligated to pay the costs of the arbitration, including Mr. Fogel's fees, and the reasonable attorneys' fees and costs

of the prevailing party or parties as determined by Mr. Fogel and his decisions thereon shall also be within the scope of his power to enter arbitration orders which orders shall also be final and non-appealable as to all such issues.

It is agreed that there is no other contract, oral or written, existing between the parties hereto relative to the matters herein mentioned except the Global Settlement and this Settlement Agreement, and that all agreements and understandings between the parties hereto relative to the matters herein mentioned are embodied in either the Global Settlement or this Settlement Agreement.

No promises, warranties or representations of any nature or character, other than those set forth in the Global Settlement or in this Settlement Agreement, have been made to induce any of the parties to enter into this Mutual Release of Claims. The parties hereto agree and acknowledge that they have not been influenced by the others in the making or execution of this Mutual Release of Claims and that none of said parties is acting or relying upon any statement, representation or information furnished by any of the other parties with reference to any matter or things of any kind, nature or character, except as is set forth in the Global Settlement or in this Settlement Agreement.

A modification or waiver of any of the provisions of this Mutual Release of Claims shall be effective only if made in writing and executed with the same formality as this Settlement Agreement.

All of the parties hereto have participated in the drafting of this Mutual Release of Claims.

This Mutual Release of Claims shall be construed under the laws of the State of Arizona.

**IN WITNESS WHEREOF**, the parties have signed and acknowledged this

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

1 of 2  
Signatures  
Attached  
June 3  
20  
13

State of California

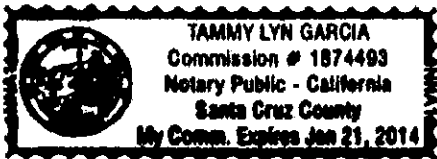
County of Santa Cruz

} ss.

Ronald W. Jones +  
Rod Spray

On June 3, 2013 before me, Tammy Lyn Garcia, Notary Public, personally appeared , who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

*Tammy Lyn Garcia*  
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title or Type of Document

Title

- Partner(s)
- Limited
- General

Number of Pages

- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

10/02  
signatures  
attached  
June 2013

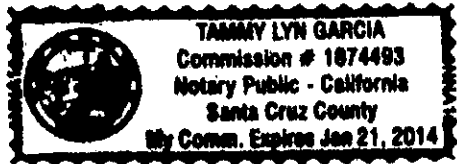
State of California  
County of Santa Cruz

} ss.

Ronald W. Jones  
Noreen E. Jones

On June 3, 2013 before me, Tammy Lyn Garcia, Notary Public, personally appeared \_\_\_\_\_, who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

*Tammy Lyn Garcia*  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- Individual
- Corporate Officer

Title

- Partner(s)
- Limited
- General

- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

#### DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

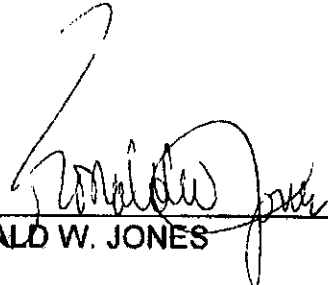
Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above

2 of 2  
California  
acknowledged  
attached  
June 3  
2013  
RWB

\_\_\_\_\_  
Notary Public

My Commission Expires:

  
\_\_\_\_\_  
RONALD W. JONES

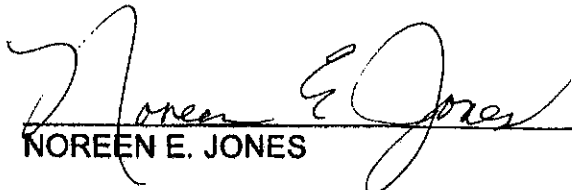
State of California )  
County of Santa Cruz ) ss.

See attached

The foregoing instrument was acknowledged before me this 3 day of June, 2013, by Ronald W. Jones.

\_\_\_\_\_  
Notary Public

My Commission Expires:

  
\_\_\_\_\_  
NOREEN E. JONES

State of California )  
County of Santa Cruz ) ss.

See attached

The foregoing instrument was acknowledged before me this 3 day of June, 2013, by Noreen E. Jones.

\_\_\_\_\_  
Notary Public

My Commission Expires:

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

*19/2. Signatures attached. June 3 2013*

*Rod Spray  
Renee J. Spray*

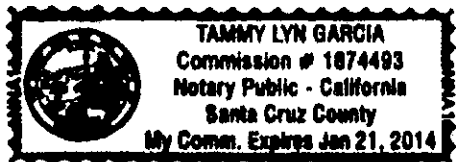
State of California

County of Santa Cruz

} ss.

On June 3, 2013 before me, TAMMY LYN GARCIA, Notary Public, personally appeared who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

*Tammy Lyn Garcia*  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

*Title or Type of Document*

Title

- Partner(s)
- Limited
- General

*Number of Pages*

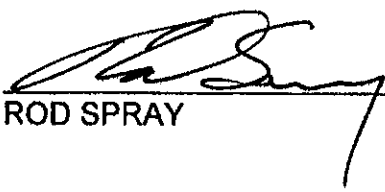
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

*Date of Document*

**Absent Signer (Principal) is Representing:**

*Signer(s) Other Than Name(s) Above*

2 of 2  
California  
all purpose  
acknowledged  
attached  
June 3  
2012

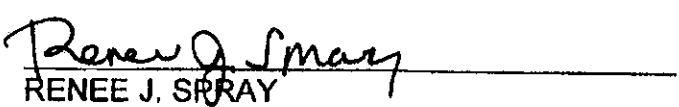
  
ROD SPRAY

State of California )  
County of Santa Cruz ) ss.

The foregoing instrument was acknowledged before me this 3 day of June, 2013, by Rod Spray. *see attached*

\_\_\_\_\_  
Notary Public

My Commission Expires:

  
RENEE J. SPRAY

State of California )  
County of Santa Cruz ) ss.

The foregoing instrument was acknowledged before me this 3 day of June, 2013, by Renee J. Spray. *see attached*

\_\_\_\_\_  
Notary Public

My Commission Expires: