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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

11 v.

12 LANDMARC CAPITAL &
INVESTMENT COMPANY,

13 Defendant.

Cause No. CV2009-020595

PETITION NO. 80

14 PETITION FOR ORDER APPROVING
15 THE SALE OF APPROXIMATELY 37
16 ACRES OF LAND LOCATED AT THE
SOUTHWEST CORNER OF WOODY
MOUNTAIN ROAD AND ROUTE 66
NEAR FLAGSTAFF, ARIZONA

(Assigned to the Honorable Lisa Flores)

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

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

1 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction*. On
2 February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert*
3 *Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12,
4 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction*
5 (collectively "Receivership Order"). The Receivership Order appointed Thomas J. Giallanza
6 as Deputy Receiver and authorized the Receiver to engage and employ Special Deputy
7 Receivers to carry on the day to day business of Landmarc.

8 **The Presidio 37 Loan**

9 2. Beginning in 2006, Landmarc made a progression of loans to a group of
10 developers ("Presidio West Borrowers") secured by approximately 244 acres of land located
11 just west of Flagstaff between Interstate 40 and U.S. Highway Route 66 in Coconino County
12 ("Presidio West Tract").

13 3. The \$9.5 Million Loan (No. 06100775). The first loan made by Landmarc was
14 a loan of \$9.5 million on October 20, 2006, to a limited liability company created by the
15 Presidio West Borrowers, Presidio West, LLC ("\$9.5 Million Loan"). The \$9.5 Million Loan
16 was secured by the entire 244 acres of the Presidio West Tract under a deed of trust recorded
17 on October 23, 2006 as Document No. 3408716 ("\$9.5 Million DOT"). According to
18 Landmarc's records, no less than 14 of Landmarc's lenders acquired a portion of Landmarc's
19 interest in the \$9.5 Million Loan and DOT. The \$9.5 Million DOT was released by a Deed of
20 Partial Release and Partial Reconveyance recorded on January 18, 2007 and a Deed of
21 Release and Full Reconveyance recorded on January 8, 2008.

1 4. \$14.2 Million Loan (No. 06100775). Approximately six months later,
2 Landmarc replaced the \$9.8 Million Loan with a new loan for \$14.2 million to Presidio West,
3 LLC (“\$14.2 Million Loan”). The \$14.2 Million Loan was also secured by the entire 244
4 acres of the Presidio West Tract under a deed of trust recorded on April 17, 2007 as
5 Document No. 3434726 (“\$14.2 Million DOT”). According to Landmarc’s records, no less
6 than 22 of Landmarc’s lenders acquired a portion of Landmarc’s interest in the \$14.2 Million
7 Loan and DOT, including TBM Associates, LLC, and Landmarc Capital Partners, LLC.¹

8 5. In December 2007, Landmarc replaced² the \$14.2 Million Loan with two new
9 loans totaling \$17.3 million. These two loans are described below and were secured by
10 approximately 37 and 197 acres respectively.³

11 a. Presidio 37 Loan (No. 07121849). On or about December 27, 2007,
12 Landmarc loaned \$2,800,000 to Presidio West 37, LLC (“Presidio 37 Loan”), which
13 was secured by approximately 36.94 acres of the Presidio West Tract located at the
14 southwest corner of Woody Mountain Road and Route 66 in Flagstaff Arizona
15 (“Property”) under a Deed of Trust recorded with the Coconino County Recorder on
16 December 31, 2007 as Document No. 3471152 (“Presidio 37 DOT”). This Court has
17 previously confirmed the beneficial ownership of the Presidio 37 Loan and Property as

18 ¹ Although Landmarc failed to record a release of the \$14.2 Million DOT, the United States
19 Bankruptcy Court in an adversary filed in the Monterey Bankruptcy, entered judgment on February
20 11, 2014, which declared that the \$14.2 Million Loan had been satisfied. TBM and Partners have
21 appealed this judgment to the District Court and that appeal is now pending.

² The records of Landmarc reflect that the \$14.2 Million Loan was paid off as a result of Landmarc
making the Presidio 37 Loan and the Presidio 197 Loan.

³ Ten of the original 244 acres, which served as the security for the \$9.8 Million Loan and the \$14.2
Million Loan, were not included in the deeds of trust for the two new loans.

1 follows: the Receiver (27.03%); TBM Associates, LLC (53.46%), the Gubin Family
2 Trust (9.11%), Barry and Deborah Wiss (7.9%) and Manny Daskal (2.5%).⁴

3 b. Presidio 197 Loan (No. 07121853). On or about December 27, 2007,
4 Landmarc loaned \$14,500,000 to Presidio West 197, LLC, which was secured by
5 approximately 197 acres of the Presidio West Tract under a Deed of Trust recorded
6 with the Coconino County Recorder on December 31, 2007 as Document No.
7 3471146. According to LMS, this loan was beneficially owned as of the Receivership
8 Date by nine claimants.

9 **The Property**

10 6. Following the borrower's default, the Receiver foreclosed on the Presidio 37
11 DOT and acquired fee title to the Property pursuant to a *Trustee's Deed* recorded with the
12 Coconino County Recorder on November 30, 2009 as Document Number 3546194.

13 7. The continued holding of the Property is not necessary or appropriate to protect
14 the interests of any persons interested in this receivership. Moreover, since the Receiver
15 holds a significant beneficial interest in the Property the liquidation of the Property is
16 essential to the prompt resolution of this receivership and to pay for the administrative costs
17 of the receivership. Accordingly, the Receiver commenced efforts to market and sell the
18 Property.

19
20
21 ⁴ *Order Deferring Resolution of the Claimed First Out Rights and Claimed Interests in the Presidio
197 Loan and Approving Remaining Recommendations of the Receiver, Re: Petition No. 54* entered
on May 21, 2012.

1 8. TBM and Partners continue to assert that they hold a senior secured interest in
2 the Property (as well as on the adjoining 197 Acres) as a result of the unreleased \$14.2
3 Million DOT. None of the other 20 beneficial owners of the \$14.2 Million DOT take the
4 position that the DOT is still valid and enforceable. However, pending the conclusion of the
5 litigation pending in federal court regarding this issue (*see* footnote 1, *infra*), the net sale
6 proceeds from the sale of the Property should be held in trust by the Receiver.

7 **Receiver's Efforts to Market and Sell the Property**

8 9. On September 27, 2010, Tim Niebling of Niebling Commercial Appraisers
9 submitted to the Receiver an appraisal of the Property which indicates a fair market value for
10 the Property of \$3,220,000. Mr. Neibling was issued Certificate No. 30732 by the State of
11 Arizona as a Certified General Residential Real Estate Appraiser. The Receiver agreed to
12 pay this appraiser a fee of \$8,000 for this appraisal and the appraiser has no known interest in
13 any of the parties or in the sale of the Property.

14 10. In addition, the Receiver engaged the services of agents Will French and Hilton
15 Harris of Cassidy Turley BRE Commercial and Hilton Harris Real Estate, respectively, to
16 market the Property, under which the Receiver agreed to pay a 6% sales commission, subject
17 to the approval of this Court.

18 11. In May 2013, the Receiver received an offer from York Breckenridge GP, LLC,
19 a Texas limited liability company to purchase the Property for \$2,950,000. On June 6, 2013,
20 the Receiver filed his *Petition No. 76, Petition to Confirm Sale of Approximately 37 Acres of*
21 *the Presidio West Tract*, which sought an order approving the sale of the Property. A

1 competing bid was received by the Receiver prior to approval of the sale, and accordingly the
2 purchaser increased its offer to \$3,225,000 and agreed to shorten its due diligence period. On
3 August 30, 2013 the Court entered its *Order Re: Petition No. 76* approving the sale of the
4 Property. Due to the purchaser's inability to obtain a water study from the City of Flagstaff
5 prior to the end of its due diligence period, on December 13, 2013, the purchaser elected to
6 cancel the sale agreement approved by the Court.

7 12. On March 4, 2014, the Receiver received a new offer from York Breckenridge
8 GP, LLC, to purchase the Property for \$3,225,000.00 under terms that were acceptable to the
9 Receiver. This document constitutes the Purchase Agreement and is attached hereto as
10 Exhibit "2". The Purchase Agreement provides for the sale of the Property for \$3,225,000.00
11 in cash and is conditioned upon, among other things, approval by this Court. This Purchase
12 Agreement provides for the sale to close on or before June 18, 2014.⁵

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

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

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

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

21 ⁵ The deadline for closing is be extended to 10 days following this Court's approval of the sale, if that date is later than June 18th.

Exhibit A

A parcel of land being a portion of the "Presidio West Tract" as said Tract is described in that certain Warranty Deed (Deed) recorded as Instrument No. 3229602, records of Coconino County, Arizona, wherein said "Presidio West Tract" is comprised of Parcel Nos. 1D, 3, 4, 5B, 8 and 9, which are situated in the East half of Section 24, Township 21 North, Range 6 East and in Section 19, Township 21 North, Range 7 East, of the Gila and Salt River Base and Meridian, Coconino County, Arizona, said parcel of land being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 24 as described in said Deed from which the North quarter corner of said Section 19, as described in said Deed, lies North $89^{\circ} 31' 49''$ East, a distance of 2,634.20 feet;

Thence from said Northeast corner of Section 24, South $01^{\circ} 56' 25''$ East, a distance of 1,718.05 feet along the line common to said Sections 24 and 19, to a point on the North boundary of said "Presidio West Tract" from which the West quarter corner of said Section 19, as described in said Deed, lies South $01^{\circ} 54' 02''$ East, a distance of 916.63 feet;

Thence along said North boundary, South $72^{\circ} 44' 49''$ East, a distance of 1,413.86 feet to the beginning of an offset spiral;

Thence along said North boundary, being a line curved to the left, that is offset 66.00 feet Southerly from the centerline of the right of way of said U.S. Highway 66, said centerline being a clothoid spiral defined by the elements Theta = $3^{\circ} 00' 00''$, $X_s = 299.92$ feet, $Y_s = 5.23$ feet and $L_s = 300.00$ feet, the long chord bearing and length of said curved line of the North boundary are South $73^{\circ} 47' 13''$ East ~ 303.42 feet, and said curved line of the North boundary runs to an offset Point of Spiral to Curve;

Thence along said North boundary, being a simple curve to the left that is offset 66.00 feet Southerly from said centerline of the right of way of U.S. Highway 66, said simple curve having a radius of 2,930.79 feet, chord bearing and length of South $79^{\circ} 01' 53''$ East ~ 332.31 feet and central angle of $6^{\circ} 30' 00''$, an arc distance of 332.49 feet to an offset Point of Curve to Spiral;

Thence along said North boundary, being a line curved to the left that is offset 66.00 feet Southerly from said centerline of the right of way of U.S. Highway 66, said centerline being a clothoid spiral defined by the elements Theta = $3^{\circ} 00' 00''$, $X_s = 299.92$ feet, $Y_s = 5.23$ feet and $L_s = 300.00$ feet, the long chord bearing and length of said curved line of the North boundary are South $84^{\circ} 16' 33''$ East ~ 303.42 feet, and said curved line of the North boundary runs to the end of said offset spiral;

Thence along said North boundary, South $85^{\circ} 16' 49''$ East, a distance of 203.51 feet to a $\frac{1}{2}$ " rebar with plastic cap stamped "LS 14184" set at the POINT OF BEGINNING;

Thence departing said North boundary of the "Presidio West Tract", South $00^{\circ} 42' 05''$ West, a distance of 1,107.36 feet to a $\frac{1}{2}$ " rebar with plastic cap stamped "LS 14184" (set);

Thence South $43^{\circ} 42' 33''$ West, a distance of 785.53 feet to a $\frac{1}{2}$ " rebar with plastic cap stamped "LS 14184" (set);

Thence South $54^{\circ} 55' 29''$ East, a distance of 708.84 feet to a $\frac{1}{2}$ " rebar with plastic cap stamped "LS 14184" set at the beginning of a nontangent curve on the West boundary of that certain parcel of land granted to the City of Flagstaff for public right of way per Instrument Number 3337514, records of Coconino County, Arizona;

Thence Northeasterly along said West boundary, being a nontangent curve to the right, having a radius of 93.00 feet, chord bearing and length of North $66^{\circ} 57' 32''$ East ~ 98.24 feet and central angle of $63^{\circ} 46' 00''$, an arc distance of 103.50 feet to a $\frac{1}{2}$ " rebar with plastic cap stamped "LS 14184" set on said East boundary of the "Presidio West Tract";

Thence Northeasterly along said East boundary, being a nontangent curve to the left, having a radius of 5,679.58 feet, chord bearing and length of North 40° 18' 29" East ~ 108.64 feet and central angle of 1° 05' 45", an arc distance of 108.64 feet to a Point of Tangency;

Thence along said East boundary, North 39° 45' 36" East, a distance of 350.46 feet;

Thence along said East boundary, South 50° 13' 40" East, a distance of 50.01 feet;

Thence along said East boundary, North 40° 18' 19" East, a distance of 261.46 feet to the beginning of a Point of Curvature;

Thence Northerly along said East boundary, being a tangent curve to the left, having a radius of 716.20 feet, chord bearing and length of North 19° 59' 01" East ~ 497.46 feet and central angle of 40° 38' 37", an arc distance of 508.05 feet to a Point of Tangency;

Thence along said East boundary, North 00° 20' 18" West, a distance of 992.42 feet to the Northeast corner of said "Presidio West Tract" per said Deed;

Thence along said North boundary of the "Presidio West Tract", North 85° 16' 49" West, a distance of 782.95 feet to the POINT OF BEGINNING.

EXCEPT all oil, gas and other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description, and except all materials which may be essential to the production of fissionable material as reserved in Arizona Revised Statutes.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Contract"), dated as of the Effective Date (hereinafter defined) by and between **Lauren Kingry, Receiver by Thomas J. Giallanza**, in his capacity as **Deputy Receiver** of **LANDMARC CAPITAL & INVESTMENT COMPANY**, an Arizona corporation in Receivership ("Seller"), and **YORK BRECKENRIDGE GP, LLC**, a Texas limited liability company ("Purchaser").

RECITALS

A. Seller owns that certain real property consisting of approximately 37 acres located in Flagstaff, Coconino County, Arizona, as further described in Exhibit "A" hereto and incorporated herein by reference (the "Land").

B. Seller desires to sell and Purchaser desires to purchase the Land and all other rights and interests of Seller in the Land described in Article I of this Contract (collectively, the "Property").

NOW, THEREFORE, for and in consideration of the sum of Two Hundred Dollars (\$200.00), the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which Seller will acknowledge upon Purchaser's deposit in Escrow, Purchaser and Seller hereby agree as follows:

ARTICLE I

Agreement of Purchase and Sale

1.1 Seller hereby sells and agrees to convey, and Purchaser hereby agrees to purchase and accept, the Land and all rights, titles and interests of Seller in and to any easements, reciprocal easements, rights-of-way, rights of ingress or egress or other interests in, on, or to, any land, highway, street, road or avenue, open or proposed, in, on, across, in front of, abutting or adjoining the Land; all water rights, riparian rights, water association rights, storage rights, reservoir and service rights appurtenant to the Land; all surface rights, all rights of lateral and adjacent support, and all oil, gas or minerals, all timber; timber rights and trees and shrubs on the Land; all rights in and to any land lying within any street or roadway adjoining the land and any strips and gores between the Land and any adjacent property; all intangible rights relating to the Land and all improvements located on the Land (the "Improvements"); all rights, titles and interests of Seller in and to any condemnation award made or to be made, after the Effective Date, in respect of the Property and Purchaser, hereby purchases and agrees to take the Property from Seller. If this Contract is ever construed to be an option agreement, Purchaser and Seller agree that the consideration to be paid by Purchaser to Seller as described above shall be independent consideration for such option.



ARTICLE II

Purchase Price and Earnest Money

2.1 The purchase price (the "Purchase Price") for the Property shall be Three Million Two Hundred Twenty Five Thousand and No/100 Dollars (\$3,225,000.00). The Purchase Price shall not be adjusted by any overage or shortage in area of the Property. At the closing of the purchase and sale provided for herein (collectively, the "Closing"), the Purchase Price less a credit for a portion of the Earnest Money paid as more fully described in Section 7.2, below, shall be payable in cash or by wire transfer.

2.2 Within Two (2) days following the date of this Contract, Purchaser shall deliver by wire transfer to Title Company an amount equal to Seventy Thousand and No/100 Dollars (\$70,000.00) as earnest money for the Property (the "Earnest Money"), which shall be held and disbursed as provided for in this Contract. Subject to the drawdown amounts owed to Seller pursuant to Section 7.2 below (which are non-refundable to Purchaser after such drawdowns), the Earnest Money shall be refundable to Purchaser during the Inspection Period (but non-refundable to Purchaser after the expiration of the Inspection Period). Subject to the amounts non-applicable pursuant to Section 7.2 below, the Earnest Money shall be applicable to the Purchase Price at the Closing.

ARTICLE III

Survey

3.1 Purchaser has heretofore, at its sole expense, ordered a survey of the Property (the "Survey"), that complies with the minimum standard detail requirements for ALTA/ACSM surveys. Purchaser agrees that it will supply Title Company with a fully compliant ALTA survey within the first Thirty (30) days following the Effective Date. The legal description contained in the Title Commitment (defined below) shall be the legal description utilized in the Deed (defined below) and Title Policy (defined below).

ARTICLE IV

Seller's Warranties and Representations

4.1 Seller represents and warrants to Purchaser that subject to the exclusive jurisdiction of the Superior Court of the State of Arizona in a Receivership entitled State of Arizona v. Landmarc Capital, et al CV2009-020595 (the "Receivership Court"), on and as of the Effective Date that:

(a) Seller is not prohibited from (i) marketing the Property for sale, (ii) executing or delivering this Contract, (iii) complying with or performing the terms of this Contract, or (iv) consummating the transactions contemplated by this Contract by any applicable law, agreement, instrument, restriction, or by a judgment, order or decree of any applicable governmental authorities ("Governmental Authorities") having jurisdiction over Seller or Seller's properties, and Seller has no knowledge of any objections made by any person or entity to any of the foregoing.

(b) This Contract has been duly authorized, executed and delivered by Seller and constitutes a legal, valid, and binding obligation of Seller, enforceable between Seller and Purchaser in accordance with the terms hereof, except as enforceability hereof may be limited by bankruptcy, insolvency, or reorganization laws or applicable principles of equity.

(c) Seller has on the Effective Date and subject to the further Orders of the Receivership Court will have on the Closing Date and will convey to Purchaser good and indefeasible fee simple title to the Property, free and clear of all conditions, exceptions, or reservations, except the permitted exceptions stated in the Title Commitment.

(d) Except for the consent and approval of the Receivership Court and the approval of a majority of the beneficial owners of the Property (the "Beneficial Owners"), no consent, waiver, approval, or authorization of, or filing, registration, or qualification with, or notice to, any Governmental Authorities or any other entity or person is required to be made, obtained, or given by Seller in connection with the execution, delivery, and performance of this Contract, except such consent, waiver, approval, authorization, filing, registration or qualification which has been made, obtained or will be made, obtained or given. Other than the Seller, no other entity or person will be necessary to convey the Property fully and completely to Purchaser upon Closing.

(e) Seller is not a "foreign person" but is a "United States person" as such terms are defined in the Foreign Investment in Real Property Tax Act of 1980 and §§ 1445 and 7701 of the Code; that is to say, Seller is a citizen or resident of the United States, a domestic partnership, a domestic corporation, or an estate or trust which is not a foreign estate or foreign trust within the meaning of § 7701(a)(31) of the Code. The Tax Payer Identification Number for Seller is 86-0959744.

(f) There is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has not received any written notice and has no knowledge that any such proceeding is contemplated.

(g) The continued location, ownership, operation, use, and occupancy of the Property does not violate any applicable law, including without limitation all environmental laws ("violation"). No written notice of any such violation has been issued by any Governmental Authorities.

(h) There are to the best of Seller's knowledge, no pending or threatened requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property; Seller has received no notice from any Governmental Authorities of zoning, building, fire, water, use, health, environmental or other violations of applicable law issued in respect of the Property which have not been heretofore corrected, and no such violations exist; the Improvements and the present uses thereof are permitted, conforming structures and uses under all applicable zoning and building laws and ordinances.

(k) The Property is free and clear of all mechanic's liens, liens, mortgages, or encumbrances of any nature except as expressly permitted in this Contract, and no work has been performed or is in progress by Seller, and no materials have been furnished to the Property or



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any portion thereof, which might give rise to mechanic's, materialman's or other liens against the Property or any portion thereof.

(l) There are no adverse parties in possession of the Property or of any part thereof and no parties in possession thereof except Seller except as otherwise expressly disclosed herein, and no party has been granted any license, lease, or other right relating to the use or possession of the Property.

(m) There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof.

(n) There are no attachments, executions, assignments for the benefit of creditors, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or pending against Seller or the Property.

(o) The Property has a means of ingress and egress for vehicular and pedestrian traffic. To the best of Seller's knowledge the Property does not violate any restriction, condition or agreement contained in any easement, reciprocal easement, restrictive covenant, or similar instrument or agreement affecting the Property.

(p) To the best of its knowledge, no representation or warranty made by Seller in this Contract, in any Exhibit attached hereto, or in any document furnished to Purchaser pursuant to the terms hereof, contain any untrue statement of material fact.

ARTICLE V

Purchaser's Warranties and Representations

5.1 Purchaser does hereby warrant and represent to, and covenant and agree with, Seller that Purchaser has the requisite right, power and authority to enter into this Contract and to perform its obligations hereunder and the other agreements contemplated herein (including, without limitation, the execution, delivery and performance of its obligations under the documents required to be delivered at Closing) and will deliver satisfactory evidence of such right, power and authority to Seller and Escrow Agent not less than Ten (10) days prior to the Closing.

ARTICLE VI

Objections to Title

6.1 Seller has already caused title company (hereafter defined) to deliver to Purchaser and Purchaser acknowledges receipt of a title insurance commitment with respect to the Property together with copies of the underlying title exception documents (collectively, the "Title Commitment"). Purchaser waives all objections to title matters objected to in the Title Commitment prior to the Effective Date; provided, however, that on or before the expiration of the first thirty (30) days of the Inspection Period (hereafter defined), Purchaser may deliver to Seller a written statement of new objections, if any, to Seller's title to the Property relating solely to any objections Purchaser may have to matters shown on the Survey, and Seller shall



have until ten (10) days after the receipt of such notice to cure or remove the same from the Title Commitment; it being understood and agreed, however, that Purchaser may re-examine title to the Property up to and including ten (10) days prior to Closing Date and give Seller written notice of objections to any additional encumbrances which appear of record subsequent to the effective date of Purchaser's Title Commitment, and Seller shall have until five (5) days prior to Closing to cure any such additional objections.

6.2 If Seller fails or refuses within the aforesaid period to cure any objections to encumbrances, other than those created by Purchaser, which can be cured by the mere payment of sums of money in an amount acceptable to Seller, or to provide within said period evidence reasonably acceptable to Title Company that such encumbrances, other than those created by Purchaser, shall be removed from the Title Commitment at Closing in a manner which will permit Purchaser to obtain at Closing title insurance without exception therefor, then Purchaser shall have the option to terminate this Contract, whereupon the Earnest Money remaining in escrow after disbursement pursuant to section 7.2, shall be returned to Purchaser, and thereafter no party hereto shall have any further rights, claims or liabilities hereunder. Notwithstanding anything contained herein to the contrary, Seller covenants and agrees to deliver title to the Property at Closing free and clear of any and all monetary liens and encumbrances. The provisions of this Article VI shall be construed to limit any remedy of Purchaser for breach by Seller of the covenant set forth in this Contract solely to return of Earnest Money remaining in escrow after disbursement pursuant to section 7.2.

ARTICLE VII

Purchaser's Right of Inspection.

7.1 Purchaser acknowledges that prior to this Contract Seller provided Purchaser with more than one hundred eighty (180) days to inspect the Property and during such inspection period Purchaser gave Seller no Notice that the Property was not satisfactory for Purchaser's contemplated use thereof. Purchaser shall have the additional right to physically inspect the Property during the Inspection Period, conduct such feasibility studies as Purchaser may elect, and determine whether the Property is satisfactory for Purchaser's contemplated use thereof. Purchaser or Purchaser's authorized representatives shall have the right from and after the Effective Date to enter upon and make tests on the Property, including, but not limited to, tests to determine the presence of any hazardous materials. Such inspections are to be conducted in a manner as not to materially physically damage the Property or unreasonably interfere with the usual operation of the Property by Seller. Purchaser agrees to indemnify and hold Seller harmless from and against any damages arising directly from Purchaser's inspection and testing of the Property, provided however, the forgoing indemnity shall not apply with respect to any claims, damages, liabilities or expenses arising out of the mere discovery by Purchaser, or the failure to report, any pre-existing conditions, or any acts or omissions of Seller, its agents, employers, contractors, officers or invitees.

7.2 Seller acknowledges that Purchaser has not completed Purchaser's inspection of the Property, or studies of the physical and economic feasibility of Purchaser's contemplated use of the Property. Accordingly, Purchaser shall have the right for a period beginning on the Effective Date and expiring on May 31, 2014 (the "Inspection Period") to terminate this



Contract for any reason whatsoever in Purchaser's sole and absolute discretion by delivering written notice of such termination to Seller on or before the expiration of the Inspection Period. On the first day of the month following the execution of this Contract, and on the first day of each month thereafter, Purchaser directs Escrow Agent to deliver to Seller an amount equal to Eight Thousand and No/100 Dollars (\$8,000.00), which amounts (a) shall be non-refundable to Purchaser (unless Purchaser terminates this Contract due to a Seller default), and (b) shall be released to Seller for use by Seller for the payment of ad valorem taxes and insurance on the Property. An amount equal to \$4,364 of each such monthly payment shall be applicable as a credit to the Purchase Price upon the Closing of this Contract (\$3,636 of each such monthly payment shall not be applicable to the Purchase Price). If the transaction contemplated by this Contract is not closed (other than as a result of Seller's breach or default under this Contract), Purchaser shall return copies of all of Seller's Due Diligence Reports to Seller.

ARTICLE VIII

Casualty and Condemnation

8.1 Seller agrees to give Purchaser prompt notice of any fire or other casualty affecting the Property between the Effective Date and the Closing Date or of any actual or threatened taking or condemnation of all or any portion of the Property. If prior to the Closing there shall occur:

- (a) damage to the Property caused by fire or other casualty that will materially impair Purchaser's intended use of the property; or
- (b) the taking or condemnation of all or any portion of the Property as would materially interfere with the use thereof;

then in any such event, Purchaser may at its option terminate this Contract by notice to Seller within twenty (20) days after Purchaser has received the notice referred to above or at the Closing, whichever is earlier. If Purchaser does not elect to terminate this Contract, then the Closing shall take place as provided herein without abatement of the Purchase Price, and there shall be assigned to Purchaser at the Closing, all interest of Seller in and to any insurance proceeds (subject to confirmation by Seller that such assignment will not impair Seller's insurance) or condemnation awards which may be payable on account of such occurrence.

ARTICLE IX

Conditions to Closing

9.1 The obligations of Purchaser under this Contract are hereby expressly made subject to each and all of the following conditions, which conditions are for the sole benefit of Purchaser and may be waived by Purchaser, in whole or in part, by written waiver delivered to Seller:

- (a) the Property and all portions thereof being free from damage or destruction by fire, earthquake, erosion, flooding or by other force of nature or Act of God after the Effective Date;



(b) Seller's material performance of its obligations under this Contract;

(c) the truth and accuracy as of the Effective Date, and as of the date of the Closing, of each and every warranty or representation made herein by Seller, such warranties and representations being deemed, for purposes of this Section 9.1(c) only, made without qualification to the best knowledge of Seller.

9.2 In the event that any of the conditions set forth in Section 9.1 above are not satisfied on or prior to the Closing Date (or such earlier date as is specified with respect to a particular condition), Purchaser may terminate this Contract, which termination shall be a "Permitted Termination."

9.3 Purchaser understands and acknowledges that Seller was duly appointed the Receiver in the Receivership captioned as State of Arizona v. Landmarc Capital, et al. CV2009-020595 (the "Receivership Court") and that the Property and this transaction are under the exclusive jurisdiction of the Receivership Court. The parties hereto acknowledge that this Contract is contingent upon the approval of the Receivership Court and that the Receivership Court could decline to approve this Contract 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 or that a majority of the Beneficial Owners have not approved the sale of the Property. The obligations of Seller and Purchaser to close this Contract are hereby expressly made subject to Seller's receipt of approval from the Receivership Court to consummate the transaction contemplated by this Contract, including an order of approval confirming the sale contemplated by this Contract upon the terms contained in this Contract (the "Receivership Court Approval"). Seller shall commence diligent pursuit of the Receivership Court Approval immediately after the Effective Date, and if Seller is unable to receive the Receivership Court Approval on or prior to May 21, 2014, following the filing of a Petition with the Court for the Receivership Court Approval (the "Petition"), despite diligent efforts by Seller, this Contract shall terminate upon Purchaser's election. Upon any termination described in this Section 9.3, all Earnest Money remaining in escrow after disbursement by Escrow Agent pursuant to Section 7.2, shall be returned to Purchaser. Upon a cancellation in accordance with the provisions of this Section 9.3, all documents deposited in escrow by Seller and Purchaser shall be returned to the party depositing the document, and this Contract shall terminate.

ARTICLE X

Seller Covenants

10.1 Seller hereby covenants and agrees with Purchaser that so long as this Contract remains in full force and effect, as modified, amended and/or extended from time to time:

(a) Seller will take all actions to ensure that the representations and warranties of Seller in this Contract shall not be untrue or inaccurate in any material respect;

(b) Seller shall not perform or consent to any zoning or re-zoning of the Property except with the prior written consent of Purchaser;



(c) Seller shall not enter into any oral or written service, maintenance, or employment agreements affecting the Property which would survive the Closing or otherwise affect the use, operation or enjoyment of the Property after the Closing; and

(d) Seller shall promptly notify Purchaser if Seller becomes aware of, or obtains knowledge of, any objections to the purchase and sale contemplated by this Contract.

ARTICLE XI

Closing

11.1 Closing shall take place on or before the later to occur of: (i) June 18, 2014; or (ii) the date that is ten (10) days after Seller receives the Receivership Court Approval (the "Closing Date"). Purchaser and Seller shall have the right to conduct an escrow-style closing through the Title Company so that it will not be necessary for any party to physically attend the Closing. At the Closing, the Earnest Money, including any additional Earnest Money that may be deposited in connection with the Extension Option and any other extensions, shall be credited against the Purchase Price. Seller and Purchaser shall use North American Title Company, Attn: Connie Caster located in Phoenix, Arizona as ("Title Company" and "Escrow Agent").

11.2 Prior to the Closing, Seller shall deliver to Escrow Agent (a) a special warranty deed (the "Deed"), properly executed by Seller and witnessed and notarized for recording, conveying fee simple title to the Property insurable by a Title Company, free and clear of all liens, subject to real estate taxes and assessments not delinquent, reservations in patents, rights of way, covenants, conditions, declarations, restrictions, encumbrances, all easements, and other matters except those matters previously approved in writing by Purchaser prior to the expiration of the Inspection Period; (b) an owner's title affidavit and indemnity in form and substance satisfactory to the Title Company, insuring Purchaser's fee simple title to the Property, which affidavit shall be sufficient to permit Purchaser to obtain title insurance without any exception for liens of laborers, mechanics or materialmen, or parties in possession; (c) an affidavit, in form and substance satisfactory to Title Company, stating that Seller is a "United States person," as referred to and defined in Internal Revenue Code Sections 1445(f)(3) and 7701(a)(30), and stating Seller's address and United States taxpayer identification number; (d) instruments reasonably satisfactory to Title Company reflecting the proper authority of Seller to consummate the transactions contemplated by this Contract; (e) at Seller's sole expense, a standard ALTA Owner's Policy of Title Insurance from North American Title Insurance Company in the amount of the Purchase Price (the "Title Policy"), insuring title to the Property subject only to those matters of title approved by Purchaser; (f) an order executed by the Receivership Court, approving the sale of the Property, sufficient to allow the Title Company to not take exception to the Receivership Court or its proceedings; and (g) possession of the Property shall be delivered to Purchaser at the Closing.

11.3 Seller shall pay one-half of any escrow closing fee charged by Escrow Agent and Title Company, and any premium for the Title Policy and Purchaser shall pay one-half of any escrow fee or closing fee charged by Escrow Agent and Title Company and all recording fees

due and payable in connection with the delivery and recording of the Deed. Seller and Purchaser shall each pay their own attorneys' fees.

11.4 Real property ad valorem taxes shall be prorated as of 11:59 p.m. of the day immediately preceding the Closing Date, based upon actual days involved. Seller shall be responsible for all real property taxes now or hereafter assessed attributable to any period prior to the Closing Date.

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

ARTICLE XII

Default and Termination

12.1 Seller shall be in default hereunder upon the occurrence of any one or more of the following events: (i) any of Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or on the Closing Date in the sole judgment of the Receivership Court; or (ii) Seller shall fail to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Contract, for any reason other than a Permitted Termination.

12.2 Upon a default by Seller hereunder, Purchaser may, at Purchaser's sole option, terminate this Contract by written notice delivered to Seller at or prior to the Closing, which shall be deemed a "Permitted Termination".

12.3 Upon any Permitted Termination, except the Earnest Money as may have been disbursed or due Seller under Section 7.2, any other Earnest Money, if any, remaining in escrow shall be returned to Purchaser and thereafter no party shall have any further rights, claims or liabilities hereunder, except that Seller shall be entitled to retain (i) the sum of \$200.00 for having granted the right to Purchaser for inspection, examination and study, plus (ii) any Earnest Money as may have been disbursed or due Seller under Section 7.2.

ARTICLE XIII

Notices

13.1 Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Contract shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, or deposited with Federal Express or another national overnight courier service with recognized reliability, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election, demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be



effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at such address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election demand, request or response, if given to Purchaser, shall be addressed as follows:

York Breckenridge GP, LLC
1301 S. Capital of Texas Hwy
Building B, Suite 201
Austin, Texas 78746
Attn: Charlie Vatterott
Facsimile: (512) 369-3454

with a copy to: Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Tobin Swope
Facsimile: (214) 745-5390

and, if given to Seller, shall be addressed as follows:

Landmarc Capital & Investment Company
c/o Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Attention: Thomas J. Giallanza
Facsimile: 602-381-1225

with a copy to: Guttilla Murphy Anderson
City North,
5415 E. High Street, Suite 200
Phoenix, Arizona 85054
Attention: Pat Murphy
Facsimile: (480) 304-8301

ARTICLE XIV

Miscellaneous

14.1 Purchaser is acquiring only the Property from Seller and is not the successor of Seller. Purchaser does not assume or agree to pay, or indemnify Seller or any other person or entity against, any liability, obligation or expense of Seller or relating to the Property in any way except only to the extent, if any, herein expressly and specifically provided.



14.3 This contract shall be construed and interpreted in accordance with the laws of the state of Arizona and the obligations of the parties hereto are and shall be performable in either Coconino County or Maricopa County, Arizona.

14.4 This Contract constitutes the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous contracts, agreements, and understandings of the parties, either oral or written, relating to the Property. This Contract cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Contract) executed by the party against whom enforcement of the modification or waiver is sought.

14.5 This Contract may be executed in several separate counterparts, which together shall be fully effective as an original and together constitute one and the same instrument.

14.6 The headings which have been used throughout this Contract have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder," and other similar compounds of the words "here" when used in this Contract shall refer to the entire Contract and not to any particular provision or section.

14.7 With respect to all provisions of this Contract, time is of the essence. Notwithstanding the foregoing, if the last day of any time period stated herein shall fall on a day as defined in paragraph 2.2, above, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is a business day.

14.8 If any one or more of the provisions of this Contract, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be invalidated to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of any such provision shall not be affected thereby.

14.9 This Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective heirs, personal representatives, successors and assigns. Purchaser may NOT assign its rights hereunder without the written permission of Seller, such permission shall not be unreasonably withheld; provided, however, that Purchaser may assign its rights hereunder to a wholly owned affiliate of Purchaser or any entity at least partially owned by an Aspen Heights Fund entity with Seller's written consent only if, Purchaser gives written notice to Seller and Title Company identifying such affiliate or entity **not more than thirty (30) days after the Effective Date**. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the parties hereto and their respective heirs, personal representatives, successors and assigns, any rights or remedies under or by reason of this Contract. Purchaser may not assign or otherwise transfer Purchaser's rights under this Contract in any manner inconsistent with this Section 14.9. If Seller consents to an assignment in writing, as described above, any such assignee shall accept in writing the terms and conditions of this Contract and 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 Closing Date, unless such extension is agreed to in writing by Seller and Purchaser.

14.10 In addition to the acts recited in this Contract to be performed by Seller and Purchaser, Seller and Purchaser agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

14.11 The "Effective Date" of this Contract shall be the date on which this Contract is fully executed, which for all purposes in this Contract shall be the date on which the Escrow Agent acknowledges receipt of a copy of this Contract executed by Purchaser and Seller.

ARTICLE XV

Special Provisions

15.1 Seller acknowledges that the Purchaser has determined that certain zoning approvals, permits and/or variances, including, without limitation, final site plan approval, may be required in order to permit Purchaser's project (the "Approvals"). Purchaser acknowledges and agrees that Purchaser's pursuit of the Approvals shall be at Purchaser's sole cost and expense. Seller shall reasonably cooperate with Purchaser in all matters concerning the Approvals, including, without limitation, the execution and delivery of any documents, at Purchaser's cost, reasonably required by any Governmental Authorities, so long as such Approvals do not in any way conflict with or impede approval by the Receivership Court as described in Section 9.3. The terms of this Section 15.1 shall merge into the Deed at Closing.

15.2 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. Purchaser agrees that Purchaser will not attempt to assert any claims of liability against Seller for furnishing of such information, nor shall Purchaser 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 Purchaser agrees to indemnify and hold Seller free and harmless for, from and against any and all such claims of liability. Purchaser 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 Purchaser's inspection of the Property or to the breach by Purchaser of any obligation hereunder or the inaccuracy of any representation or warranty made by Purchaser or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the Closing.

15.3 Purchaser agrees that no receivers, directors, officers, employers 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.

15.4 Each party agrees in good faith to execute such further or additional documentation as may be necessary or appropriate to fully carry out the intent and purpose of this Contract.



15.5 The Receivership Court shall have exclusive jurisdiction to resolve any dispute arising under this Contract.

15.6 The Property is being sold "AS IS" and other than the representations and warranties contained in this Contract, Seller is not providing any warranties. Purchaser expressly acknowledges that there may be present on the Property asbestos in friable form, aluminum wiring, mold, or other conditions that might affect the Purchaser's decision to purchase the Property. Purchaser further acknowledges that, other than the representations and warranties contained in this Contract, Purchaser 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 Purchaser is acquiring the Property in its present condition and state of repair, "AS IS", with all defects, latent or apparent. Purchaser further acknowledges that any information of any type which Purchaser has received or may receive from Seller or Seller's agents is furnished on the express condition that Purchaser shall make an independent verification of the accuracy (including without limitation calculations) of such information, all such information, if any, being furnished without any warranty or liability whatsoever. 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.

15.7 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 the Contract, and if required, any Counter Offer and all other contract documents and to provide such originals to the Seller.

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

15.9 Broker. Seller and Purchaser hereby acknowledge that Purchaser did not employ a broker in connection with this Contract, and all commission(s) shall be paid by Seller pursuant to a separate agreement(s) with Seller relating to the sale of the Property. The commission(s) shall be earned and payable if and only if the Closing is consummated.

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IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year set forth below.

SELLER:

LANDMARC CAPITAL & INVESTMENT COMPANY

By: Thomas J. Gallanza
Name: Thomas J. Gallanza, Deputy Receiver

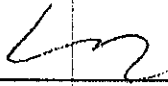
Date: 3/6/14



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PURCHASER:

YORK BRECKENRIDGE GP, LLC,
a Texas limited liability company

By:  _____

Date: 3/4/14 _____

Name: Greg Henry _____

Title: Member _____



EXHIBIT A

THE LAND

[A description of the Land contained in the Title Commitment described by Section 6.1, above.]