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6
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR MARICOPA COUNTY

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

10 Plaintiff,

11 v.

12 LANDMARC CAPITAL &
INVESTMENT COMPANY,

13 Defendant.

Cause No. CV2009-020595

RECEIVER'S REPORT ON
OBJECTIONS TO THE RECEIVER'S
CLAIMS REPORT ON THE LOAN
PARTICIPANT LENDERS CLAIMS
AND DEFERRED WCF CLAIMS

RE: PETITION NO. 54

(Assigned to the Honorable Eileen Willett)

14
15
16 The Receiver reports to the Court on the objections filed with the Receiver to the
17 Receiver's *Petition No. 54 – Receiver's Claims Report on the Loan Participant Lenders*
18 *Claims and the Deferred WCF Lender Claims ("Petition No. 54")* filed on March 30, 2012.

19 1. On March 30, 2012, the Receiver filed *Petition No. 54*. In accordance with the
20 procedures prescribed by this Court's *Order Establishing Procedures for the Adjudication of*
21 *Claims, Re: Petition No. 27 ("Order No. 27")* entered on August 6, 2010, a copy of *Petition*
No. 54 was made available on the Receivership Website and mailed to all persons on the

1 Master Service List and to all persons whose claims are sought to be adjudicated by the
2 petition. In addition, a notice of the filing of *Petition No. 54* was mailed to every person who
3 had previously filed a proof of claim in this case. In accordance with *Order No. 27* and the
4 notice mailed to claimants, all responses or objections to *Petition No. 54* were required to be
5 mailed to the Receiver (not filed with the Court) on or before April 19, 2012.

6 2. The Receiver has received only four objections or responses to *Petition No. 54*.
7 These four objections are attached as Exhibits A thru D and are addressed below.

8 **Wild West Investors, LLC**

9 3. On April 13, 2012, Wild West Investors, LLC (“Wild West”) mailed to the
10 Receiver¹ a document entitled *Response and Request for Clarification*. This filing objected to
11 the Receiver’s failure to address in *Petition No. 54* the interest claimed by Wild West in
12 property located at 14619 North 31st Drive, in Phoenix. Claimant’s counsel was advised that
13 this property had already been transferred to the claimant on February 23, 2011, in
14 accordance with the Court’s *Order Approving Procedures for Disposing of Certain Real*
15 *Property Where Ownership by Third Parties Is Not In Doubt, Re: Petition No. 9*.
16 Accordingly, on April 19, 2012, the claimant mailed to the Receiver an *Amended Response*
17 *and Request for Clarification filed by Wild West Investors, LLC* objecting to the Receiver’s
18 failure to address in *Petition No. 54* the claimant’s interest in property located at 2620 North
19 91st Avenue in Buckeye (“Buckeye Property”). A copy of the amended objection is attached
20 as **Exhibit A**.

21 _____
¹ Contrary to the Court’s *Order No. 27*, the Claimant also filed this pleading with the Court.

1 4. An investigation by the Receiver disclosed that Wild West had in fact prepared
2 and mailed to the Receiver a Proof of Claim asserting a 100% beneficial interest in the
3 Buckeye Property. The Receiver's investigation further discloses that Landmarc's records
4 indicate that Wild West acquired all of the beneficial interest in the loan for which the
5 Buckeye Property was security. Accordingly, for the reasons set forth in *Petition No. 54*
6 Wild West should have an equitable lien in all of the right, title and interest in the Buckeye
7 Property. The attached **Exhibit E-1** reflects that addition to the Receiver's original
8 recommendations contained in *Petition No. 54* regarding the interest claimed by Wild West in
9 the Buckeye Property. In addition, this revised exhibit includes the addition of the other
10 interest claimed by Wild West, which had previously been transferred to the claimant
11 pursuant to this Court's *Order No. 24*.

12 **Landmarc Capital Partners, LLC**

13 5. Landmarc Capital Partners, LLC ("Partners") has filed an objection to the
14 Receiver's recommendation that the Court set a briefing schedule to resolve the First Out
15 claims of the Oxford Investors. A copy of the objection is attached as **Exhibit B**. Partners
16 contends that a pending appeal by Partners to the Court of Appeals from an earlier order of
17 this Court somehow divests this Court from proceeding further with respect to the First Out
18 Rights claimed by the Oxford Investors. As noted below, the Oxford Investors have filed an
19 objection. As noted below the Receiver recommends that the Court set a Rule 16 Pretrial
20
21

1 Conference with the Oxford Investors and the other claimants involved² to resolve these
2 competing claims and if appropriate, set deadlines for resolving the First Out Rights claimed
3 by the Oxford Investors. A proposed Special Service List for the First Out Litigation is
4 attached to the proof of service for this report.³ This Special Service List identifies all of the
5 parties and their counsel that have an interest in loans in which the Oxford Investors assert
6 First Out Rights.

7 **Oxford Investors**

8 6. The Oxford Investors timely filed *Oxford Investors Objections to Petition No.*
9 *54*. Subsequently, the Oxford Investors filed the *Oxford Investors' Amended Objections to*
10 *Petition No. 54*. A copy of the amended objection is attached as **Exhibit C**. In their
11 objections, the Oxford Investors (1) request that instead of setting a briefing schedule, that the
12 Court schedule a Rule 16 Pretrial Conference to set deadlines for resolving the First Out
13 Issue, (2) dispute the Receiver's statement that by entering into the transfer agreement for the
14 Bear Loan (#07111834) the Oxford Investor may have waived her "First Out Right", (3)
15 contend that in Exhibit E for the Espinoza Loan (#07061120) Column "L" should include the
16 Code 9c, and (4) dispute the argument made by Partners in its objections that this Court has
17 no jurisdiction to decide the First Out Rights under Petition No. 54. The Receiver
18 recommends that the Court set a Rule 16 Pretrial Conference with the Oxford Investors and

19 ² As set forth in *Petition No. 54*, the other claimants involved in the First Out Rights claimed by the
20 Oxford Investors are LDM Acceptance, LDM Acceptance Pension, Gubin Family Trust, Wesley &
21 Marlene White Trust, Madelene Kepes Revocable Trust, and two receivership entities, Desert Trails
Holdings, LLC and Hayden Investments, LLC.

³ The Court may provide for a special service list for discrete matters being resolved by the Court in
accordance with the Court's *Order No. 2* entered on August 26, 2009.

1 the other claimants involved to resolve these competing claims and if appropriate, set
2 deadlines for resolving the First Out Rights claimed by the Oxford Investors. The Receiver
3 takes no position on whether the transfer agreement for the Hubbard Loan constitutes a
4 waiver of the First Out Rights. However, the Receiver agrees with the changes to the
5 disposition codes for the Espinoza Loan and has made those changes in the attached **Exhibit**
6 **E-1**⁴. As noted above under the discussion of the objections filed by Partners, the First Out
7 Rights claimed by the Oxford Investors should be set for a Rule 16 conference for
8 consideration of all of the various contentions.

9 **Monterey Capital, LLC**

10 7. Monterey Capital, LLC (“Monterey”), filed an objection to the Receiver’s
11 recommendation concerning Loan No. 07121853 (“Presidio 197 Loan”) and the proceeds
12 therefrom including the approximately 197 acres of real property resulting from the
13 foreclosure of the Presidio 197 Loan. A copy of the objection is attached as **Exhibit D**. In its
14 objection, Monterey raises various issues, including some of the same issues that it raised in
15 its *Petition for Order Directing Reimbursement of Property Preservation Expenses* and its
16 *Petition for Order Compelling Receiver to Execute and Record Releases Clearing Title to*
17 *Real Property* both filed on July 22, 2011 (“Monterey Petitions”). The issues raised in the
18 Monterey Petitions (previously deferred by stipulated orders) are presently the subject of
19 settlement discussions between the Receiver, Monterey and others. These settlement

20 ⁴ The codes set forth in Columns K and L of the attached Exhibit E-1 are the same as those used in
21 the original Exhibit E attached to *Petition No. 54*. Those codes were defined in Exhibit G to *Petition*
No. 54 and as a convenience to the Court and the interested parties another copy of Exhibit G is
attached hereto.

1 discussions if successful could resolve objections by Monterey to *Petition No. 54*.

2 Accordingly the Receiver recommends that the Court defer action on the interests claimed in
3 the Presidio 197 Loan and set a Rule 16 Pretrial Conference with the Receiver, Monterey and
4 the claimants that claim an interest in the Presidio 197 Loan⁵. The Receiver has therefore
5 removed the claimed interest in the Presidio 197 loan from the schedule of interests to be
6 approved at this time, which changes are reflected in the attached **Exhibit E-1**. A proposed
7 Special Service List for the Presidio 197 Litigation is attached to the proof of service for this
8 report. This Special Service List identifies all of the parties and their counsel that have
9 claimed an interest in the Presidio 197 Loan.⁶

10 **Additional Corrections Reflected in Exhibit E-1**

11 8. Since filing *Petition No. 54*, the Receiver has identified several changes in
12 addition to those described above that should be made to the Exhibit E attached to *Petition*
13 *No. 54*. Those changes have been included in the attached **Exhibit E-1** and are as follows:

14 a. In the Two Six Seven Investments Loan (#08041903), the interest of
15 LCPARTNER is shown in the attached **Exhibit E-1** as 28.04% rather than the 28.0%
16 reflected in Exhibit E attached to *Petition No. 54*, and the interest of SOLHEIMR is
17 shown in the attached **Exhibit E-1** as 46.73% rather the 46.7% reflected in Exhibit E
18 to *Petition No. 54*. These changes are necessary to correctly reflect the true beneficial

19 ⁵ The claimants asserting an interest in the Presidio 197 Loan/REO are: Monterey Capital, LLC;
20 Landmarc Capital Partners, LLC; TBM Associates, LLC; LDM Acceptance Co. Pension Plan; LDM
21 Acceptance Company; Victoria Cohen; DVH Management, Corp.; the Gubin Family Trust; and
Desert Trails Insurance.

⁶ The Court may provide for a special service list for discrete matters being resolved by the Court in
accordance with the Court's *Order No. 2* entered on August 26, 2009.

1 ownership of these claimants in this loan and to make the total of all approved interests
2 in this loan total 100%.⁷

3 b. In the Bos Loan (#06070546), the interest of JAMIESON is shown in the
4 attached **Exhibit E-1** as 19.88% rather than the 19.9% reflected in Exhibit E attached
5 to *Petition No. 54*. This change is necessary to correctly reflect the true beneficial
6 ownership of this claimant and to make the total of all approved interests in this loan
7 total 100%.

8 c. In the Arp Loan (#07051066), the interest of LCPARTNER is shown in
9 the attached **Exhibit E-1** as 97.53% rather than the 97.5% reflected in Exhibit E
10 attached to *Petition No. 54*. This change is necessary to correctly reflect the true
11 beneficial ownership of this claimant and to make the total of all approved interests in
12 this loan total 100%.

13 d. In the Michael Porter Loan (#08041902) the interest of LCPARTNER is
14 shown in the attached **Exhibit E-1** as 12.48% rather than the 12.5% reflected in
15 Exhibit E attached to *Petition No. 54*, the interest of LDMACCEPT is shown in the
16 attached **Exhibit E-1** as 77.67% rather than the 77.7% reflected in Exhibit E attached
17 to *Petition No. 54*, the interest of MACKEN1 is shown in the attached **Exhibit E-1** as
18 33.26% rather than the 33.3% reflected in Exhibit E attached to *Petition No. 54*, and
19 the interest of SOLHEIMR is shown in the attached **Exhibit E-1** as 38.76% rather than
20 the 38.8% reflected in Exhibit E attached to *Petition No. 54*. These changes are

21 ⁷ The Court's *Order No. 43* previously approved the following ownership interests of these WCF
Lenders: 18.69% for KepesWare and 6.54% for GubinWare.

1 necessary to correctly reflect the true beneficial ownership of these claimants and to
2 make the total of all approved interests in this loan total 100%.⁸

3 e. The current status for several claimed interests have changed and, where
4 appropriate, the disposition code has been changed accordingly. As an example in the
5 case of the Escalante Loan (#07121866) the current status has been changed in the
6 attached Exhibit E-1 to reflect that this property has been sold and the net sale
7 proceeds transferred to Partners, the sole beneficial owner, pursuant to this Court's
8 *Order No. 8*.

9 **Conclusion**

10 Accordingly, the Receiver recommends that the Court enter an order deferring action
11 on the First Out Rights claimed by the Oxford Investors and the claimed interests in the
12 Presidio 197 Loan, and approve all other recommendations in Petition No. 54, as modified
13 herein and by the attached Exhibit E-1. The Receiver further recommends that the Court
14 enter additional orders setting Rule 16 conferences for the First Out Litigation and the
15 Presidio 197 Litigation for a date and time convenient to the interested parties. Proposed
16 orders consistent with these recommendations are being lodged herewith.

17 Respectfully submitted this 9th day of May, 2012.

18 GUTTILLA MURPHY ANDERSON, P.C.

19 /s/Patrick M. Murphy
20 Patrick M. Murphy
Attorneys for the Receiver

21 ⁸ The interest of VANBLADEL recommended for approval for this loan remains unchanged at 15.50%.

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PROOF OF SERVICE

This is to certify that on this 9th day of May, 2012, I electronically transmitted the foregoing document; Notice of Hearing and Proposed Orders Re: Petition No. 54, to the Maricopa County Clerk's Office using electronic filing and emailed or mailed by First Class Mail to all persons on the attached Master Service List and emailed or mailed by First Class Mail to each of the claimants whose claims are addressed in this Report including those set forth in the attached Special Service List for the First Out Litigation and the Special Service List for the Presidio 197 Litigation.

/s/Patrick M. Murphy
Patrick M. Murphy

1157-027.02 (120407_2)

MASTER SERVICE LIST

State of Arizona ex rel. v. Landmarc Capital & Investment Company
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
CV2009-020595
(Rev. May 3, 2012)

The Honorable Eileen Willett
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SERVICE LIST FOR PRESIDIO 197 LITIGATION

State of Arizona ex rel. v. Landmarc Capital & Investment Company

The Superior Court of Arizona for Maricopa County

CV2009-020595

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Robert Hicklin, President
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Claimant

SERVICE LIST FOR FIRST OUT LITIGATION

State of Arizona ex rel. v. Landmarc Capital & Investment Company

The Superior Court of Arizona for Maricopa County

CV2009-020595

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Claimant

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Amended

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9 Attorney for Respondent

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

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

15 Plaintiff,

16 vs.

17 LANDMARC CAPITAL & INVESTMENT)
18 COMPANY;)
19)

20 Defendants.

Case No.: CV2009-020595

RE: PETITION NO. 54

AMENDED RESPONSE AND REQUEST
FOR CLARIFICATION

21 Plaintiff, Wild West Investors, LLC ("Wild West") by and through its attorney
22 undersigned, hereby responds and requests clarification of Petition No. 54 as follows:

23 I. FACTUAL RECITALS:

24 1. In January, 2007, Landmarc Capital & Investment Co ("Landmarc") executed
25 an Assignment of Deed of Trust to Wild West Investors, LLC. of that certain Deed of Trust
executed by Lester D. and Traci Leslie. A copy of this Assignment is attached as part of
Exhibit A hereto which was recorded in the Maricopa County Recorder's Office on February

1 28, 2008 at Recorder's No. 20080177564. The deed of trust was a lien upon the following
2 Property:

3 2621 North 192nd Ave Buckeye AZ 85396 (the "Property")

4 2. The ~~Loan~~ made to the Leslie's was made by Wild West pursuant to an "Invest
5 Disclosure and Purchase Agreement (Purchase of an Interest in a Single Loan). Wild West
6 was the only lender for this loan and the loan to Leslie was funded 100% by Wild West. A
7 copy of the Purchase Agreement is attached hereto as **Exhibit B**.

8 3. Thereafter, Landmarc foreclosed the Deed of Trust for the benefit of Wild
9 West and now holds title to the Property for the benefit of Wild West. A true and correct
10 copy of the Trustee's Deed is attached hereto as **Exhibit C**.

11 4. This deed arose out of a foreclosure sale of the Property that was conducted by
12 Landmarc on behalf of Wild West. Wild West was the only lender on this Property, and it
13 was not a "participation" loan situation.

14 5. On or about August 26, 2010, Wild West filed a Proof of Claim with the Receiver
15 and again asserted an interest in the Property. (See **Exhibit B** to original Response)

16 6. Petition 54 fails to mention or address the Property or the claim of Wild West
17 herein.

18
19 **II. REQUEST FOR CLARIFICATION**

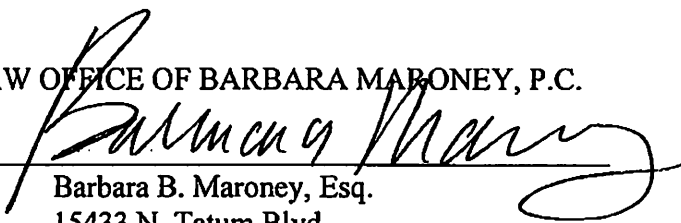
20 Wild West believes that its claim should be included in Petition 54 for transfer of the
21 Property to Wild West.

22 WHEREFORE, Wild West hereby requests that the Petition be clarified as to whether
23 Wild West and the Property were intended to be included in the Petition and whether they will be
24 transferred consistent with the provisions of the Petition relating to other similarly situated claim.

1 DATED: April 19, 2012.

2 LAW OFFICE OF BARBARA MARONEY, P.C.

3 By


4 Barbara B. Maroney, Esq.
5 15433 N. Tatum Blvd.
6 Suite 106
7 Phoenix, Arizona 85032
8 Attorney for Wild West

9 Copy of the foregoing
10 Mailed this 19th day
11 Of April, 2012, to:

12 Patrick M. Murphy
13 City North
14 5415 E. High St. Suite 200
15 Phoenix, AZ 85054

16 Thomas J. Giallanza
17 Deputy Receiver
18 Office of the Receiver
19 P.O. Box 14050
20 Scottsdale, AZ 85267

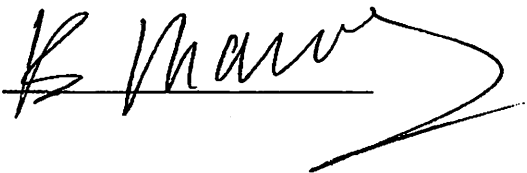
21 

EXHIBIT A

Exhibit A

OFFICIAL RECORDS OF
**Unofficial
Document**

RECORDING REQUESTED BY
LANDMARC CAPITAL & INVESTMENT CO

WHEN RECORDED MAIL TO:
WILD WEST INVESTORS, LLC
C/O: LANDMARC CAPITAL
4110 N SCOTTSDALE RD. STE 330
SCOTTSDALE, AZ 85251

_____SPACE ABOVE THIS LINE IS FOR RECORDER'S USE_____

**ASSIGNMENT OF DEED OF TRUST
(Participation Interest Partial Assignment)**

FOR THE VALUE RECEIVED, the undersigned Beneficiary hereby grants, bargains, assigns, sells and transfers, and sets over to WILD WEST INVESTORS, LLC ("Assignee") a participation interest, pursuant to the terms and conditions of that certain Investor Disclosure and Purchase Agreement dated JANUARY 15th, 2007 by and between Assignee, as Participant, and Beneficiary (the "Participation Agreement"), in the beneficial interest of 100% under that certain Deed of Trust dated executed by LESTER D TRACI G LESLIE, HUSBAND AND WIFE, AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, Trustor, to FIDELITY NATIONAL TITLE INSURANCE COMPANY, Trustee, and recorded in Document # 07-0012017 in the Office of the County Recorder of MARICOPA, State of Arizona.

TOGETHER with a participation interest, subject to the terms and conditions of the Participation Agreement, in the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

IN WITNESS WHEREOF, said Assignor-Beneficiary has signed these presents this 15th DAY OF JANUARY, A.D., 2007.

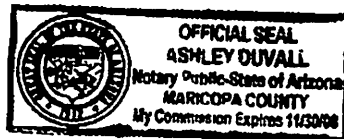
LANDMARC CAPITAL & INVESTMENT CO,
Assignor-Beneficiary

By: *Malecia Jewell*
Malecia Jewell, Corporate Secretary

Address of Assignee-Beneficiary

4110 N SCOTTSDALE RD. STE 330
SCOTTSDALE, AZ 85251

STATE OF ARIZONA)
) ss.
County of Maricopa)



On this 15th DAY OF JANUARY, A.D., 2007, before me, the undersigned, a Notary Public, personally appeared Malecia Jewell, who acknowledged herself to be the Corporate Secretary of LANDMARC CAPITAL & INVESTMENT CO, a corporation, and that she, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My commission expires:
11/30/08

Ashley Duvall
Notary Public

EXHIBIT B

Exhibit A

LANDMARC Capital & Investment Co.

4110 N Scottsdale Rd, Suite 330

Scottsdale, AZ 85251

Tel 480 - 970 - 8500

Fax 480 - 970 - 4592

PRIVATE AND CONFIDENTIAL

INVESTOR DISCLOSURE and PURCHASE AGREEMENT (PURCHASE OF AN INTEREST IN A SINGLE LOAN)

Ver-Waxman.01.18.06

INVESTMENT INTEREST AND PARTICIPATION IN THAT CERTAIN NOTE AND DEED OF TRUST SECURED BY THAT CERTAIN RESIDENTIAL REAL ESTATE DESCRIBED HEREIN.

BY THIS AGREEMENT, made and entered into this 15th DAY OF JANUARY, A.D. 2007, by and between LANDMARC CAPITAL & INVESTMENT COMPANY, having its principal place of business at 4110 N Scottsdale Rd, Suite 330, Scottsdale, AZ 85251 (hereinafter referred to as "Principal", "Lender" or "Landmarc") and the undersigned, WILD WEST INVESTORS, LLC, with offices at 4531 NORTH 16TH STREET, SUITE 103, PHOENIX, ARIZONA 85016 (hereinafter called "Participant"), in consideration of the recitals and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, confirm and agree as follows:

RECITALS

A. Principal has agreed to provide a residential real estate loan secured by a FIRST Deed of Trust to LESTER D TRACI G LESLIE ("Borrower"), residing at 2621 NORTH 192ND AVENUE, BUCKEYE, 85396, with the secured real property location commonly known as 502-66-008G, BUCKEYE, ARIZONA 85396 (the "Property" or the "Secured Property") and a Note in the principal sum of Thirty Five Thousand Dollars and Zero Cents (\$35,000.00) (the "Loan Amount"), all as more specifically set forth in "Loan Agreements" related to the Loan which the Participant is purchasing an interest in. The "Loan Agreements" are sometimes referred to as the "Loan", the "Loan and Deed of Trust Agreements" or the "Loan Agreements". Participant hereby acknowledges

receipt of copies of the Loan Agreements. The Loan is evidenced by a promissory note made in the total sum of the Loan Amount executed by Borrower, as maker, payable to the order of Landmarc (the "Note"). The Loan and all advances thereunder are governed by the terms, conditions and provisions set forth in the Loan and Deed of Trust Agreements executed at closing, which was on JANUARY 3rd, 2007 (the "Closing") by and between Borrower and Landmarc, as Lender. The Loan is secured by a Deed of Trust against the Secured Property executed by Borrower for the benefit of Landmarc, as Secured Party (the "Deed of Trust"), and by other security documents and instruments of even date with the Note. The Loan and Deed of Trust, the Note and all documentation related thereto shall be included within the definition and as part of the terms "Loan", "Loan Agreements" and "Loan and Deed of Trust Agreements".

B. Landmarc desires to sell and Participant desires to purchase participations in the Loan and Deed of Trust upon the terms, conditions and agreements set forth herein.

AGREEMENT

1. Recitals and Participant's Interest. The above recitals are hereby incorporated herein as if fully set forth in its entirety. Participant shall participate in the Loan and Deed of Trust, subject to the conditions and upon the terms and provisions herein set forth, to the extent of the principal amounts under the Loan, as follows: Thirty Five Thousand Dollars and Zero Cents (\$35,000.00) by Participant (the "Participant Interest" or "Participant's Interest" or "Participation Interest").

2. Loan Closing and Conditions of Disbursement. The Loan was/will be closed under an escrow closing arrangement. The proceeds of the Loan were/will be advanced and disbursed under the escrow closing in accordance with the terms, conditions and provisions of the Loan and Deed of Trust Agreements. Landmarc shall service the Loan and collect all payments due under the Loan. Lender will forward Participant's portion, as set forth in this Agreement, of Borrower payments Lender receives from Borrower.

3. Purchase of Participations. Upon written or telegraphic demand of Landmarc, Participant shall deposit with Landmarc the full amount of Participant's Interest. Upon the latter of (a) funding by Participant, or (b) at Closing of the Loan and Deed of Trust and the advance by Lender at Closing, Landmarc shall issue to Participant a "Participation Certificate" in form attached hereto as Schedule "A" showing Participant's total interest in the Loan and Deed of Trust for Participant's intended purchase of Participant's Participation Interest. If such advance(s) of the Loan is not made after Landmarc has received the funds in Escrow representing Participant's Interest, then (a) Landmarc shall cause the return of Participant's advance back to Participant and (b) Participant shall not be deemed to have purchased a participation in the Loan hereunder.

4. Possession and Control of Instruments. Lender shall hold the Loan and Deed of Trust Agreements for the benefit of Lender and Participant, and, subject to the terms as herein provided, Participant shall be deemed to have an interest in the Loan and Deed of Trust Agreements in proportion to Participant's Participation Interest in the Loan. Lender shall not, without the prior written consent of Participant: (a) make or consent to any alteration or change of the interest rate, repayment schedule, covenants or default provisions of the Loan and Deed of Trust Agreements; (b) make or consent to any release, substitution or exchange of any of the security for the Loan; (c) accelerate or extend the maturity of the Note; or (d) waive any claim against Borrower or any other obligor existing under the Loan and Deed of Trust Agreements. Anything in the foregoing to the contrary notwithstanding, Lender shall be entitled, in Lender's sole discretion, to make or consent to changes to the Loan and Deed of Trust Agreements, which are not limited by the foregoing.

5. Lender's Obligation to Furnish Papers. After the Closing of the Loan Agreements, Lender shall deliver copies of the Loan and a copy of the recorded Deed of Trust Agreements executed or delivered in connection with the Closing to Participant.

6. Direction to Pay Participant's Monthly Payment and Loan Servicing and Loan Administration. Participant shall receive a Participation Certificate evidencing Participant's Participation Interest and Lender is hereby directed to pay Participant's Monthly Participation Payment to Participant, as set forth in Paragraph 7(b) herein below (the "Direction to Pay Participant's Monthly Participation Payment"). Lender shall administer and service the Loan pursuant to the terms hereof and under the terms of the Loan Agreements. Lender shall bill and collect the payments under the Loan from Borrower and then disburse payments to Participant as provided by this Agreement. Lender shall keep books of account and records reflecting Participant's interest in the Loan and Deed of Trust Agreements. The books and records shall be accessible for inspection by Participant or by such examining or regulatory authorities as may have jurisdiction over Participant or Lender at the offices of Lender at all times during business hours upon reasonable notice and request.

7. Collection of Principal and Interest. Participant and Lender agree that:

(a). Lender shall collect, on behalf of the Lender and Participant, the entire principal of the Note, and all interest due thereon, together with all other monies due on or in connection with the Loan and Deed of Trust or the satisfaction or sale of the Loan.

(b). Notwithstanding anything to the contrary contained in the Loan and Deed of Trust Agreements, Participant and Lender understand and agree, as follows:

(i) Participant's Participation Interest in the Loan is in the total principal amount of \$35,000.00;

(ii) Participant's interest rate on Participant's Participation Interest is 14.00% (the "Participation Interest Rate" or "Participant's Interest Rate"); and

(iii) Payment of interest to Participant at Participant's Interest Rate is \$408.33 per month (the "Participant's Monthly Participation Payment" or the "Monthly Participation Payment"). Participant is scheduled to receive the Participant's Monthly Participation Payment within ten days after the payment due date under the Loan.

Interest to Participant on its Participation Interest shall commence and accrue as of the date the Participant's funds are released to Lender. Notwithstanding anything to the contrary contained in the Loan and Deed of Trust Agreements, interest to Participant shall be computed at the Participant's Interest Rate using an annual simple interest rate calculation, which shall be paid monthly. Subject to the terms and conditions of the Loan and Deed of Trust Agreements, Lender shall promptly account for and pay to Lender its share and to Participant the Participant's share as set forth herein.

(c). Upon payment of the entire Loan according to the terms of the Note and the Loan and Deed of Trust Agreements, Participant shall accept said payment and thereupon execute proper release or satisfaction or, in lieu thereof, an assignment of the Loan and of the Loan Documents as required by Lender.

(d). Notwithstanding anything to the contrary contained in the Loan and Deed of Trust Agreements and Lender's rights thereto under the Loan and Deed of Trust Agreements, (1) Participant shall earn interest on Participant's Participation Interest only at Participant's Interest Rate stated in Paragraph (b) above and (2) all Loan fees, charges or prepayment penalties, if any, under the Loan shall be retained by Lender and Participant hereby acknowledges that Participant shares no interest in such fees, charges or penalties.

8. Notice of Substantial Default. Lender shall notify the parties hereto of any default by Borrower under the Loan and Deed of Trust Agreements. Lender shall, from time to time, deliver to Participant such other information, which is in the possession of Lender as may be reasonably requested by Participant.

9. Recoveries.

(a). Prior to an Event of Default under the Loan and Deed of Trust Agreements, and except as hereinafter provided as to late fees and prepayment penalties, all sums recovered (and the proceeds of all property recovered) in connection with the Loan shall be distributed to the parties hereto, as set forth in Paragraph 7 hereof, as follows: first, to repay principal and unpaid interest; second, to pay the expenses of such recovery; third, to late charges and prepayment penalties.

(a). Prior to an Event of Default under the Loan and Deed of Trust Agreements, and except as hereinafter provided as to late fees and prepayment

penalties, all sums recovered (and the proceeds of all property recovered) by either party hereto in connection with the Loan shall be shared by the parties hereto according to their interests in the Loan, as set forth in Paragraph 7 hereof, then in the Loan and shall be applied as follows: first, to pay the expenses of such recovery; second, to repay principal; third, to unpaid interest; and fourth, to late charges and prepayment penalties.

(b). After an Event of Default under the Loan and Deed of Trust Agreements, all sums recovered (and the proceeds of all property recovered) by either party hereto in connection with the Loan, whether by foreclosure of any banker's or other lien or any setoff or other claim on or against any deposit or other balance held to the credit of Borrower, or otherwise, shall, after paying or making reserve for all costs of collection as hereinafter provided, shall be shared by the parties hereto according to their interests, as set forth in Paragraph 7 hereof, then in the Loan and shall be applied as follows: first, to pay the expenses of such recovery; second, to repay principal; third, to unpaid interest; and fourth, to late charges and prepayment penalties. Lender shall have no obligation to make any distribution of amounts recovered after an Event of Default until all collection activities have been concluded; provided, however, that if Lender elects to make such a distribution, Lender may reserve such portion of the amounts so recovered as Lender may deem appropriate to cover all costs of collection.

10. Additional Collateral. Lender shall hold additional collateral, if any was provided as additional security for the Loan, (the "Additional Collateral") for the benefit of Lender and Participant to the extent of their respective Interests hereunder. Anything herein to the contrary notwithstanding, Lender shall not be required to take any action with respect to the Loan or the Additional Collateral, which would be in violation, or cause the violation, of any applicable federal or state securities law.

11. Expenses and Losses. Participant shall be paid principal and interest as set forth in Paragraph 7 hereof and shall receive recoveries as set forth in Paragraphs 9 and 13 hereof. Lender shall use due diligence to recover from Borrower all expenses that are properly reimbursable from Borrower and shall remit to Participant all amounts due to Participant under the terms hereof. Lender may advance, in its sole discretion, such enforcement expenses as Lender solely deems necessary and such expenses advanced by Lender shall be repaid as set forth in Paragraphs 9 and 13 hereof.

12. Remedies. Lender may take any remedial action with respect to the Loan or avail itself of any remedy existing under the laws of the United States or the State of Arizona, and may vote, with respect to the Loan, in any bankruptcy, arrangement, reorganization or other creditors' proceeding, upon the occurrence of any default by Borrower with respect to the Loan, or of any other event or condition which gives rise to a right or option in Lender to take any such action; or Lender may, in its sole discretion, refrain from taking any such action or exercising any such option.

13. Recovery of the Property. In the event Lender determines that it is advisable to take possession of the property encumbered by the Loan and Deed or Trust Agreements through foreclosure or otherwise, Lender shall acquire the Property in its name for the benefit of the parties hereto as set forth herein. Lender shall then hold any such Property for the benefit of Lender and Participant. Lender may manage, maintain and improve the Property or to sell or dispose of the Property so acquired. Upon sale or disposition of the Property, Participant shall be paid its/their principal, unpaid interest and any expenses advanced by Participant before Lender recovers its expenses, fees, penalties and charges. Lender shall bear the risk of loss of its recovery expenses and the gain on disposition of the Property including any late fees and charges and prepayment penalties. Participant acknowledges and agrees that Participant has no authority to nor shall Participant enter into any agreements to release or waive, without Lender's written consent, any principal, unpaid interest, late charges and fees, foreclosure fees and charges, prepayment penalties or any other rights, remedies or obligations of Lender or Participant with respect to the Borrower relating to the Property and the Loan and Deed of Trust Agreements relating to the Property.

14. Disclaimers, Representations and Liability of Lender. Lender makes the following representation and disclaimers with respect to this Participation transaction and with respect to the Loan and Deed of Trust Agreements:

(a) No Representations as to Borrower Credit Worthiness. Lender makes no representations to the credit worthiness of the Borrower to Participant. The only information being provided to Participant are documents in writing, which may include an underwriting package provided to Participant, and the Loan and Deed of Trust Agreements. Lender makes no warranty as to the veracity of Borrower's information or representations made therein.

(b) No Representations as to Validity of Borrower's Representations and as to Enforceability of Loan and Deed of Trust Agreements. Lender represents that the Loan and Deed of Trust Agreements were duly entered into between Lender and Borrower. Lender makes no express or implied representations or warranty as to the validity of representations of Borrower under the Loan and Deed of Trust Agreements. Lender represents that Lender is the holder of the Note and of the other Loan and Deed of Trust Agreements and that Lender has the right and title to sell to Participant the Participation therein.

(c) Agency. Lender shall act only as agent for Participant in the control and management of the non-defaulted Loan, without charge, and shall not be responsible to Participant beyond that degree of ordinary care that Lender exercises in the conduct and management of its own business. Lender shall not be liable to Participant for any loss except that arising as a direct result of Lender's own gross negligence or willful misconduct. Lender shall not be liable to Participant for any act of Escrow Agent. In the event of a default under the Loan, Lender shall be reimbursed on a pro rata basis by Participant for any expenses advanced by Lender to enforce the rights of Lender under the Loan as set forth hereunder and as set forth in Paragraph 11 hereof.

15. Representations and Warranties by Participant. Participant represents and warrants to Lender and Lender may rely on such representations and warranties of Participant, as follows:

(a) Borrower Credit Risk and Risk of Default by Borrower. Participant understands that (i) Lender is not a guarantor of Borrower's performance under the Loan and Deed of Trust Agreements and (ii) that, in the event of a default by Borrower, monthly payments of principal and interest to Participant may cease and the parties hereto may have to foreclose on the Secured Property. Participant understands that in the event of a foreclosure of the Property, the parties hereto may suffer a loss on their investment in accordance with their respective interests as set forth herein.

(b) Loan and Deed of Trust Agreements. Participant understands that it is purchasing an interest in, to and under the Loan and Deed of Trust Agreements to the extent of Participant's Participation Interest in the Loan.

(c) No Reliance. Participant acknowledges that Participant has entered into this Agreement upon Participant's own independent credit review of (i) the Borrower and the Underwriting Package, (ii) the Property as security for the Loan and (iii) the Loan and Deed of Trust Agreements. Participant further acknowledges that Participant is not relying, and will not rely, on Lender with respect to Participant's decision to purchase this Participation Interest relating to this Loan.

(d) Accredited Investor. Participant represents to Lender and Lender may rely on Participant's representation that Participant is an accredited investor pursuant to any applicable Federal and State guidelines and that the loss of principal and interest payments or the loss of principal under the Loan and Deed of Trust Agreements will not have a significant impact on Participant and that any such loss would be only a small portion of Participant's cash flow and Participant's net worth. Further, Participant hereby incorporates and affirms all of Participant's representations and warranties set forth in Participant's Disclosure Statement a copy of which is attached hereto as Schedule "B" and incorporated herein as if fully set forth and made a part hereof.

(e) Representation and Review by Participant's Counsel. Participant represents that Participant and Participant's advisors, if any, have reviewed this Agreement and all other documents related hereto or made a part hereof.

(f) Loan Rates and Terms vs. Participation Rates and Terms. Participant is aware, acknowledges and accepts that the Loan rates and terms may be different and higher than the Participant's rate and terms set forth herein and that such rates and terms not assigned to or purchased by Participant are owned by Lender unless specifically set forth otherwise herein.

(g) Risks of Second Mortgage Lending, if Applicable. In the event the Loan and Deed of Trust is a second lien, a default by Borrower under the first mortgage or deed of trust may trigger a foreclosure in which case Lender and Participant may lose their entire investment unless the parties hereto mutually agree to buy out the first lien on the Property in accordance with their respective interests set forth herein.

(h) Risks Related to Title Insurance; Land Remediation and Real Estate Market Values. Participant understands the potential for risks and the risk of loss due to: (i) title disputes and the limitations on title insurance; (ii) the risks to secured lenders as a result of any contamination that may be found on the land which may be subject to any Federal and State laws; and (iii) real estate market value fluctuations in the event of a foreclosure and sale of the Property.

(i) Acknowledgement that the Participant's Investment in the Loan is a Purchase of a Participation Interest in the Loan. Participant understand and acknowledges that Lender retains an ownership interest in the Loan and Deed of Trust Agreements and that Participant is purchasing an interest under the Loan and Deed of Trust Agreements to the extent of Participant's investment interest in the Loan.

(j) Acknowledgement of Awareness of Risks of Residential Real Estate Lending, Regulations and Laws. Participant understands and agrees that Lender does not warrant or guaranty against the risks associated with suits being brought by Borrower or any governmental agency with respect to Section 32 Home Owners and Equity Protection Act disclosures and compliance with any laws respecting residential real estate lending, which may be raised against the Lender with respect to this Loan and Deed of Trust Agreements.

(k) No Reliance on Participant for Legal or Tax Advice. Participant shall seek Participant's own advice and counsel with respect to any legal or tax matters associated with Participant's purchase of the Participation Interest herein.

16. Restrictions on Assignment. Participant shall not sell or assign all or any part of its interest in the Loan without the prior written consent of Lender.

17. Parties in Interest; Context; Headings. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and assigns. Words and expressions used herein shall be applicable according to the context thereof and without regard to the number or gender of such words or expressions. The headings or captions of paragraphs in this Agreement are for reference only, do not define or limit the provisions of such paragraphs, and shall not affect the interpretation of this Agreement.

18. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Arizona.

19. Arbitration. The parties hereto agree to resolve all disputes through arbitration and mutually agree, as follows:

(a) If any dispute arises between the parties concerning the interpretation or enforcement of any term of this Agreement, either party or their representatives may request arbitration.

(b) The arbitration provided herein shall proceed according to the Arbitration Rules for Arizona, and the award of the arbitrator shall have the effect therein provided. The arbitration shall take place in Maricopa County, Arizona, at a site selected by the arbitrator. The costs and expenses of any such arbitration shall be awarded in accordance with the terms of this Agreement.

(c) The arbitration procedure set forth herein shall be binding, non-appealable and the exclusive remedy of the parties hereto in the event of any dispute concerning the interpretation or enforcement of any term of this Agreement.

20. Option and Irrevocable Powers of Attorney. Lender has the option and right at any time to repurchase Participant's Interest hereunder upon the payment of the then remaining principal balance due Participant along with any interest due thereon. Concurrent with such repurchase exercise by Lender, Participant shall execute all documentation required by Lender with respect to the repurchase of Participant's Interest including assignments of the Deed of Trust and tendering to Lender Participant's original Participation Certificate.

(a) Repurchase Power of Attorney. Participant hereby appoints Lender as Participant's attorney in fact for the purpose set forth below. Participant hereby grants Lender an irrevocable special power of attorney to execute all documents and agreements on behalf of Participant deemed necessary by Lender to effect a reconveyance of the Loan and Deed of Trust Agreements to Lender or any designee of Lender upon the repurchase of Participant's Participation Interest at any time upon the payment of the appropriate pay off amount due to Participant. This special power of Attorney extends to the execution of all documents and agreements by Lender on behalf of Participant as are deemed necessary by Lender to reconvey the Loan and Deed of Trust, which documents include, but are not limited to, the execution, filing and recording an assignment of the Deed of Trust from Participant to Lender or to Lender's designee. Lender has the sole right and authority to act on behalf of Participant as set forth herein. This special power of attorney cannot be revoked and will survive Participant's death.

(b) Foreclosure Power of Attorney. In the event of a default under the Loan, Lender has the sole right and authority to act on behalf of Participant, as set forth herein, in any foreclosure proceedings. Participant agrees to appoint Lender as Participant's attorney in fact for all matters following a default. This special power of attorney cannot be revoked and will survive Participant's death or any subsequent transfer or assignment of the Property.


21. Entire Agreement. This Agreement constitutes the entire agreement among the parties. It supersedes any prior agreement or understanding among them, and it may not be modified or amended in any manner unless in writing executed by both parties hereto.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PRINCIPAL:

LANDMARC CAPITAL & INVESTMENT COMPANY

By: 
Malecia Jewell, Corporate Secretary

PARTICIPANT:

WILD WEST INVESTORS, LLC

By: 
RICHARD JUTZI, FINANCIAL ADVISOR

SCHEDULE "A"
PARTICIPANT'S
PARTICIPATION CERTIFICATE

\$35,000.00	Date: JANUARY 15th, 2007
--------------------	---------------------------------

TO: WILD WEST INVESTORS, LLC ("Participant")

Gentlemen:

The undersigned hereby certifies that Participant has, and is hereby granted, a participation interest in the amount of \$35,000.00 (based on advances to be made by Participant), and that, as of the date hereof, Participant now holds a total participation of \$35,000.00 in the that certain Loan and Deed of Trust extended by the undersigned to LESTER D TRACI G LESLIE evidenced by a Promissory Note and Deed of Trust in the amount of \$35,000.00 dated DECEMBER 29th, 2006, which Loan and Deed of Trust is being administered by Landmarc Capital & Investment Company on behalf of the undersigned Principal and Participant pursuant to that certain Participation Agreement between the undersigned Principal and the Participant dated JANUARY 15th, 2007.

PRINCIPAL:

LANDMARC CAPITAL & INVESTMENT COMPANY

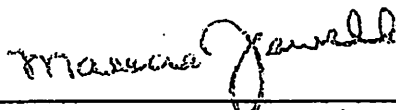
By 
Malecia Jewell, Corporate Secretary

EXHIBIT C

Exhibit A

Unofficial Document

**RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE COMPANY**

This information was recorded at request of:

CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
P.O. BOX 22004
EL CAJON CA 92022-9004

The recording official is directed to return
This information or a copy to above person



Space Reserved For Recording Information

NOTICE OF TRUSTEE'S SALE UNDER DEED OF TRUST

3981978

Trust No. 1193286-01
Loan No. XXXX0855

Ref. LESTER D LESLIE
UNVER

Date: February 16, 2009

County where Real Property is Located MARICOPA, Arizona

ORIGINAL TRUSTOR
LESTER D LESLIE AND TRACI G LESLIE
2621 NORTH 192ND AVENUE
BUCKEYE, AZ 85396

CURRENT TRUSTEE
CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
P.O. BOX 22004
EL CAJON CA 92022-9004

1(800)546-1531

CURRENT BENEFICIARY
LANDMARC CAPITAL & INVESTMENT COMPANY

C/O LANDMARC CAPITAL & INVESTMENT COMPANY
4110 N. SCOTTSDALE ROAD
SUITE 330
SCOTTSDALE AZ 85251

ORIGINAL PRINCIPAL BALANCE AS SHOWN ON DEED OF TRUST: \$35,000.00

DEED OF TRUST RECORDING INFORMATION RECORDING NUMBER: 20070012017
DOCKET: XX
PAGE: XX
DATE: January 03, 2007
COUNTY ASSESSOR'S TAX PARCEL NUMBER: 502-66-008G

T.S. No: 1193286-01

SUBJECT REAL PROPERTY (ADDRESS OR LOCATION)
502-66-008E, 502-66-008G
BUCKEYE AZ 85396

SUBJECT REAL PROPERTY (LEGAL DESCRIPTION)
THE EAST 321.03 FEET OF THE SOUTH 335.00 FEET OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA MORE COMPLETELY DESCRIBED IN ATTACHED EXHIBIT A.

NOTICE IS HEREBY given pursuant to ARS SEC. 33-808 that the Subject Real Property will be sold pursuant to the power of sale under the above described Deed of Trust, at public auction to the highest bidder at the below date, time and place. In accordance with ARS SEC. 33-808(B), time of sale is between 9 a.m. and 5 p.m. at a specific place on the Subject Real Property, at the courthouse or at a specific place at the principal place of business of Trustee.

DATE: May 26, 2009
PLACE: AT THE STEPS AT THE MAIN ENTRANCE
TO THE SUPERIOR
COURT BUILDING, 201 WEST JEFFERSON
PHOENIX, ARIZONA

TIME: 2:00pm

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

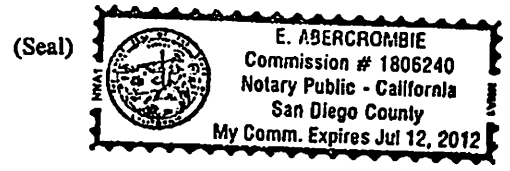
Cal-Western Reconveyance Corporation
A Licensed Escrow Agent

By Wendy V. Perry
Wendy V. Perry, A.V.P.

On 2/16/09 before me, E. Abercrombie
a Notary Public in and for said State, personally appeared Wendy V. Perry, A.V.P.

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
Signature E. Abercrombie



THE SUCCESSOR TRUSTEE HEREIN QUALIFIES AS TRUSTEE OF THE TRUST DEED IN THE TRUSTEE'S CAPACITY AS A LICENSED ESCROW AGENT AS REQUIRED BY A.R.S. SECTION 33-803, SUBSECTION A(1)
THE TRUSTEE'S REGULATOR IS THE ARIZONA STATE BANKING DEPARTMENT

Legal Description
Exhibit A

THE EAST 321.03 FEET OF THE SOUTH 335.00 FEET OF THE SOUTHEAST
QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF
SECTION 33, TOWNSHIP 2 NORTH, RANGE 2 WEST OF THE GILA AND SALT
RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; EXCEPT THE
SOUTH 180.00 FEET THEREOF; AND EXCEPT THE EAST 40.00 FEET
THEREOF.

A.P.N.: 502-66-008E /502-66-008G

Unofficial Document

VERIFIED PROOF OF CLAIM
LOAN PARTICIPATION LENDER

Landmarc Receivership

PLEASE PRINT OR TYPE ALL INFORMATION

(1) NAME, ADDRESS AND PHONE NUMBER OF CLAIMANT

Wild West Investors, LLC *c/o Richard J. Jurek*
4531 North 16th Street, #103
Phoenix AZ 85016 *(602) 263-9000 x101*

Reference Number (from mailing page): WILDWEST

(2) NAME, ADDRESS AND PHONE NUMBER OF CLAIMANT'S ATTORNEY OR CONTACT PERSON, IF ANY

Law Office of Barbara Manney PC
c/o Barbara Manney
15433 N. Tatum Blvd, #106
Phx, AZ 85032

(3) AMOUNT OF LOAN PARTICIPANT CLAIM

(a) State the total paid to LCI under loan participation agreements as of June 24, 2009: \$193,000.00

(b) State the total of all loan participation agreements in effect on June 24, 2009: 2

(4) DOCUMENTATION OF CLAIM:

Where required by the instructions or requested in writing by the Receiver, you must provide copies of all documents in support of your claim.

(5) LOAN PARTICIPATIONS:

If you indicated any amount in Section 3(a) you must sign and attach Schedule 1 – Loan Participant Lender Participation Interests and correct any amounts set forth therein that you believe are not correct.

(6) OFFSETTING OBLIGATIONS TO LCI OR ANOTHER RECEIVERSHIP ENTITY:

(a) State the amount you owe to LCI or any other Receivership Entity as of the date of the claim:\$ 0

(b) If you are aware of any other setoffs or counterclaims LCI or a Receivership Entity may have against you or your claim, check this box [] and provide details and documentation of such setoff or counterclaim.

NO

(c) Describe the nature of the obligation set forth in 6(a).

N/A

**Schedule 1 to Proof of Claim
Loan Participant Lender Claimed Loan Interests**

LCI Loan No.	Borrower	Note Amount	Current Status	LCI %	Claimed %	Fee %	ABI %
A	B	C	D	E	F	G	H
06070498	Gabriel Gutierrez, Christina K. Brainard	158,000	REO	100.000%	100.00%	95.000%	0.000%
06120855	Lester D Leslie, Traci G Leslie	35,000	REO	100.000%	100.00%	0.000%	0.000%


Column	Explanation
D	Current Status of Loan
E	Percentage of Ownership per LCI records
F	Percentage of Ownership Claimed by Claimant
G	Fee Title percentage held on 6/24/09
H	Percentage of Beneficial Interest Assigned by Recorded Assignment

Claimant

IMPORTANT

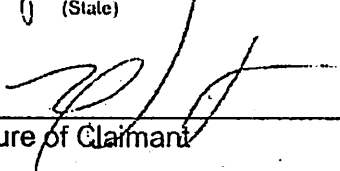
After you have fully completed this form, read and sign the Declaration below and follow the mailing instructions.

DECLARATION OF _____


RICHARD J. JUTZ
(Print or Type Name)

I have read the contents of this Proof of Claim and declare under penalty of perjury that the information contained therein is true and correct in substance and in fact, to the best of the knowledge and belief of the Claimant and the undersigned. I am aware that if any of the foregoing information is false, this claim may be denied in its entirety and I may be subject to punishment for perjury.

Executed this 26 day of August, 2010, in Phoenix,
Arizona
(City)
(State)



Signature of Claimant

MANAGER position or
authority to sign for claimant who is not
an individual.

AFTER COMPLETION, MAIL THIS FORM ON OR BEFORE SEPTEMBER 24, 2010 TO:

Landmarc Receiver
P.O. Box 14050
Scottsdale, AZ 85267


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Job : 86
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Time: 1:41:16 PM

1 Filed via COSC E-Filing at
2 <http://www.azturhocourt.gov>

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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

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

17 Plaintiff[s],

18 vs.

19 LANDMARC CAPITAL & INVESTMENT
20 COMPANY,

21 Defendant.

Case No. CV2009-020595

OBJECTION TO PETITION 54

(Assigned to the Honorable Eileen
Willett)

22 Landmarc Capital Partners, LLC, by and through its attorneys undersigned,
23 objects to the Receiver's Petition 54, to the extent it requests the Court to establish
24 procedures to resolve the "first out" issues regarding various loans, because those issues
25 are currently pending in the Court of Appeals, and this court lacks the jurisdiction to
26 address those issues while they are on appeal.

1 **MEMORANDUM**

2 “The principals well established that an appeal generally divests the trial court of
3 jurisdiction to proceed except in furtherance of the appeal.” *Continental Casualty Co. v.*
4 *Industrial Commission*, 111 Ariz. 291, 294, 528 P.2d 818, 820 (1974). By his Petition
5 54, the Receiver requests “that the Court set a briefing schedule for adjudication of” the
6 first-out priorities on various Landmarc loans, based upon several letters written by Jeff
7 Peterson after the Oxford Investors invested. *See* Petition 54 at 45-48. The identical
8 issue is pending in the Court of Appeals, on Landmarc Capital Partners, LLC’s appeal of
9 this Court’s refusal to vacate Order 41. Case No. 1 CA-CV-11-0739 *See e.g.* Reply
10 Brief, filed April 5, 2012, attached hereto as Exhibit “A”. Accordingly, this court has no
11 jurisdiction to be considering the identical issues with other loans. ¹

12 **CONCLUSION**

13 The Petition should be denied.

14 **RESPECTFULLY SUBMITTED** this 6th day of April, 2012.

15 **MARISCAL, WEEKS, McINTYRE**
16 **& FRIEDLANDER, P.A.**

17 By: /s/ Russell Piccoli
18 Russell Piccoli
19 Of Counsel
20 Attorneys for Defendant

21
22
23
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25
26
27
28 ¹ Notwithstanding numerous efforts of the undersigned to cause the receiver to
withdrawal this issue from Petition 54, he has been unsuccessful in doing so.

1 **ORIGINAL** of the foregoing
2 e-filed this 6th day of April, 2012:

3 Clerk of the Superior Court
4 201 West Jefferson
5 Phoenix, Arizona 85003

6 The Honorable Eileen Willett
7 Maricopa County Superior Court
8 201 W. Jefferson
Phoenix, Arizona 85003

9 **COPY** of the foregoing mailed
10 this 6th day of April, 2012 to:

11
12 **SEE ATTACHED MAILING LIST**
13

14 /s/ Kristi Arendt
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21 U:\ATTORNEYS\RXP\Landmarc Capital Partners, LLC\PLEADINGS\Objection to Petition 54 (4-6-12).doc
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MASTER SERVICE LIST
State of Arizona ex rei. v. Landmarc Capital & Investment Company
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA CV2009-020595
(Rev. October 20, 2011)

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Geoff & Katie Ball, Lydia Ball
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EXHIBIT A

**IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

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

Plaintiff/Appellee,

TMB ASSOCIATES, LLC,

Intervener/Appellee,

OXFORD INVESTMENT PARTNERS,
LLC,

Respondent/Appellee,

v.

LANDMARC CAPITAL &
INVESTMENT COMPANY,

Defendant/Appellant

1CA-CV 11-0739

COURT OF APPEALS
Division One

Maricopa County Superior
Court No. CV2009-020595
CV2009-050052
(Consolidated)

**DEFENDANT/APPELLANT LANDMARC CAPITAL PARTNERS, LLC'S
REPLY BRIEF**

Russell Piccoli (#004492)
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SUMMARY OF REPLY

1. *Order 41 is Void.* The central issue of this appeal is whether *Order 41* is void for lack of due process. Here, the Oxford Investors do not contest that interested parties must be provided adequate notice of the action to be undertaken by the Court in order to protect their interests, or that an order made without such notice is void. Nor do they deny that Petition 41 sought to judicially confirm an operating agreement providing them priority over Partners and its 173 members; that at the time of the Receiver's petition, Partners 173 members were represented by five new managers; or that Petition 41 provided no notice of the terms of the new operating agreement or its legal impact. They cite no authority as to how the Receiver's knowledge of his own actions dispensed with later notice to interested parties when judicial confirmation was requested, and the law belies such a notion. *Order 41* was void for lack of due process.

2. *Order 41 Had Legal Significance.* In effect, the Oxford Investors argue *Order 41* to be immaterial because a prior order authorized the Receiver to enter into contracts, and they had first out priority anyway. While the order of appointment authorized the Receiver to make contracts, it also provided that the Court "retain[ed] jurisdiction for all purposes...and directed [the Receiver] to apply to this Court for this issuance for the issuance of such orders as necessary and appropriate in order to carry out the mandate of this Court." **R 12 at 9.** The

law likewise required the Receiver to obtain Court approval of his contracts, which was precisely how all parties interpreted the Court's order. Otherwise, the scores of petitions which the Receiver made to the Court to approve his actions would have all been legal nullities. Without a Court-approved operating agreement, the Oxford Investors hardly had any priority: they had the bad side of a contract argument, and

3. *Oxford's Priority Rights Were Legally Defective.* The Oxford Investors' interests were memorialized by integrated contracts giving them no priority over other Landmarc investors. Those contracts provided they could not be modified except by writings signed by both parties. The law requires consideration for any modification. Peterson's after-the-fact letters were *not* signed by both parties, provided *no* consideration, were signed by an individual who was *barred* by Landmarc's operating agreement from providing such priority and Peterson *denied* it. Even if Oxford had some unassailable underlying right to its priority, this is no basis for the Trial Court not to vacate an order which had been entered without due process. And the Oxford Investors' rights were hardly unassailable; they were contractually defective.

I. **THE RECEIVER'S AND TBM ASSOCIATES' FAILURES TO FILE ANSWERING BRIEFS COMPRISE CONFESSIONS OF ERROR.**

Where debatable issues exist, "the failure to file an answering brief is a confession of error on the part of appellee." *Barrett v. Hiney*, 94 Ariz. 133, 134,

382 P.2d 240, 241 (1963). *Accord.*, *Tiller v. Tiller*, 98 Ariz. 156, 402 P.2d 573 (1965); *Nelson v. Nelson*, 91 Ariz. 215, 217, 370 P.2d 952, 953 (1962).

Partners' motion to vacate Order 41 was opposed by the Receiver, TBM Associates and the Oxford Investors in the Trial Court. R 493, 498 and 513. Although all three are appellees, neither the Receiver nor TBM Associates filed any answering brief. Such comprises an admission by both of them that the Trial Court erred. *Tiller*, 98 Ariz. at 157, 402 P.2d at 574; *Barrett*, 94 Ariz. at 134, 382 P.2d at 241; *Nelson*, 91 Ariz. at 217, 370 P.2d at 953.¹ The Receiver's confession of error is particularly significant, as his application obtained Order 41. R 316. Arizona does not provide any no "dog in the fight" exception to the rule on confession of error. Answering Brief ("AB") at 9.

II. ORDER 41 WAS VOID FOR LACK OF DUE PROCESS AND THE TRIAL COURT HAD NO DISCRETION BUT TO SET IT ASIDE.

The Opening Brief set forth extensive Arizona and Federal authorities holding that an order entered without adequate notice to interested parties is void, and that a trial court has no discretion but to vacate it. Opening Brief ("OB") at 11-12. It also cited numerous cases holding that due process requires notice sufficiently apprising interested parties of the precise action to be taken against

¹ Partners recognize that this Court may disregard the rule on confession of error where the Trial Court supported its decision by appropriate legal reasoning. *Nydom v. Crawford*, 181 Ariz. 101, 887 P.2d 631 (App. 1994). Here, however, the Trial Court provided no reasonable explanation for its decision whatsoever. R 526. Rather, from all that can be gleaned from the record, the Trial Court simply declined to address the propriety of an order entered by a predecessor judge.

them. *Id.* at 12-17. It established how Order 41 was void, *i.e.*, because Petition 41 failed to attach the operating agreement or advise interested parties of any of its terms – inclusive of the fact that the resulting order would judicially confirm a significant priority by some Landmarc investors over others. *Id.* at 17-18.

The Answering Brief fails to meaningfully contest any of these legal principles.² It essentially concedes that Petition 41 provided no clue that the requested order would judicially confirm a priority in the Westgate Property to some investors over others. For all intents and purposes, the Oxford Investors' sole argument is that notice to Partners was unnecessary because the Receiver was Partners' former manager and he was cognizant of his own actions. **AB at 7, 8 and 16.** That argument is unsupported by any relevant legal authority, implicitly belied by all pertinent case law and effectively would have rendered Order 41 meaningless.

The Oxford Investors do not deny that Partners represents the interests of its 173 loan participant members **R 458 at Exh. E at ¶ 3**, that control of Partners passed to its 5 member-managers in December 31, 2010 (*Id.* at ¶ 3) or that Petition

² The Oxford Investors did assert, without relevant citation, that vacation of a court order pursuant to Rule 60 is in the discretion of the Court (**AB at 10**), but failed to distinguish *Martin v Martin*, 182 Ariz. 11, 14, 893 P.2d 11, 14 (App. 1994) which holds that “[i]f a judgment or order is void, the [t]rial [c]ourt has no discretion but to vacate it” or any of the other Arizona decisions cited in the Opening Brief for the identical proposition. **OB at 11-12.** The Oxford Investors also assert that the Motion to Vacate was filed “seven months” after Order 41 (**AB at 8**), but the time between January 21 and July 22, 2011 is actually less than six months, to the extent such is relevant as to the vacation of a *void* order. *See* Ariz.R.Civ.P. 60(c).

41 was actually filed by the Receiver with the Trial Court on January 10, 2011. R 316. Nor do the Oxford Investors distinguish or contest any of the numerous cases cited by the Opening Brief that in order to satisfy due process, interested parties must receive notice advising them precisely of the action to be taken against them, so that they can protect their interests. OB at 11-17. Nonetheless, the Oxford Investors argue the Receiver was not required to provide notice to the 173 members of Partners or any of their 5 member managers that Order 41 would judicially confirm their priority over all of them because the Receiver had previously acted as the manager of Partners and he was aware of his own actions.³

AB 7, 8 and 16.

³ The Oxford Investors also argue that the affidavit testimony of Partners' manager, Steve Casselman, that neither he nor the other member managers were aware of the Receiver's first-out agreement, is "inadmissible hearsay." AB at 15-16. While arguably not to Rule 56 standards, Casselman was certainly competent to testify as to his own knowledge, what had been discussed between the managers and communicated to Partners' 173 members. This affidavit at least created a strong inference that none of Partners' current managers or members had ever been advised of the Receiver's first-out agreement – *especially where unrebutted by any testimony from the Receiver or other evidence.*

Although not directly relevant to any issue on this appeal, the Oxford Investors' other objection to Casselman's affidavit is that his opinion that the first out provision "wiped out" the interest of Partners in the property is without legal basis. However, "most courts have permitted the owner or officer of a business to testify to the value or projected profits of the business, without the necessity of qualifying the witness as an accountant, appraiser or similar expert." Fed.R.Evid. 701 Advisory Committee Notes to 2000 amendments, adopted in Ariz.R.Evid. 701; *see also, e.g., Atkinson v. Marquart*, 112 Ariz. 304, 307, 541 P.2d 556, 559 (1975) ("It is well established that an owner may estimate the value of his real or personal property whether he qualifies as an expert or not."); *Acheson v. Shafter*, 107 Ariz. 576, 578, 490 P.2d 832, 834 (1971) (same); *United Cal. Bank v. Prudential Ins. Co.*, 140 Ariz. 238, 304, 681 P.2d 390, 456 (App. 1983) ("An owner of property has, by definition, knowledge of the components of the value that are useful in ascertaining value..."). The Oxford Investors sole citation in opposition to Casselman's affidavit, *Villas at Hidden Lakes Condominiums Association v.*

However, the Oxford Investors cite no authority that a court order may be validly obtained without notice to interested parties if a prior representative is somehow aware of the impact of the order sought to be obtained. Nor do the Oxford Investors contest that “a receiver is the agent only of the court appointing him; he represents the court rather than the parties.” *Ledbetter v. Farmer’s Bank & Trust Co.*, 142 F.2d 147, 150 (4th Cir. 1944); *City of Santa Monica v. Gonzales*, 43 Cal. 4th 905, 930, 182 P.3d 1027, 1043 (2008) (“As an officer of the court, a receiver is not an agent of any particular party to the action, but represents all persons interested in the property”); 65 *Am.Jur.2d* Receivers § 266 at 815.

Rather, the Oxford Investors’ sole supporting authority as to notice is *United Student Aid Fund, Inc. v. Espinosa*, _____ U.S. _____, 130 S.Ct. 1367 (2010). But *Espinosa* provides the Oxford Investors no help. It did not involve a partnership or an LLC, the knowledge of a prior manager or any imputed knowledge at all. Rather, it involved *actual* notice to a corporate lender:

Espinosa’s plan listed his student loan debt as his only specific indebtedness. App. 15-18. The plan proposed to repay only the principal on that debt, stating that the remainder – the accrued interest – would be discharged once Espinosa repaid the principal. *Id.*, at 26.

Guepel Constr. Co., Inc., 174 Ariz. 72, 847 P.2d 117 (App. 1992) is inapposite. *Villas at Hidden Lakes* simply rejected a condominium association president’s introduction of computer generated accounting records where his affidavit did “not lay a foundation for either the admission in evidence of the exhibits or the admission of his conclusions based upon the exhibits” on a summary judgment motion. 174 Ariz. at 82, 847 P.2d at 127.

As the Federal Rules of Bankruptcy Procedure require, the clerk of the Bankruptcy Court mailed notice and a copy of Espinosa's plan to petitioner United Student Aid Fund, Inc. (United), the creditor to whom Espinosa owed the student loan debt. *Id.*, at 34; *see* Rules 2002(b),(g),(2), 3015(d). In boldface type immediately below the caption, the plan stated: "WARNING IF YOU ARE A CREDITOR YOUR RIGHTS MAY BE IMPAIRED BY THIS PLAN." *Id.*, at 23. The plan also noted the deadlines for filing a proof of claim or an objection to the plan. *Id.*, at 26-27.

United received this notice, and, in response, filed a proof of claim for \$17,832.15, an amount representing both the principal and the accrued interest on Espinosa's student loans. *Id.*, at 35. United did not object to the plan's proposed discharge of Espinosa's student loan interest without a determination of undue hardship, nor did it object to Espinosa's failure to initiate an adversary proceeding to determine the dischargability of that debt.

130 S.Ct. at 1374. Because United had received actual notice of Espinosa's plan and that plan "proposed to repay only the principal on that debt, stating that the remainder – the accrued interest – would be discharged once Espinosa repaid the principal," the Supreme Court held that "United received *actual* notice of the filing and contents of Espinosa's plan [and that] [t]his more than satisfied United's due process rights." *Id.* at 1374, 1378 (emphasis in original).

Espinosa is wholly inapposite to the type of notice provided to interested parties here. Petition 41 provided no indication whatsoever that any interested parties' rights in the Westgate Property would be effected. *It failed to provide the slightest clue that the resulting order would judicially confirm a priority of some*

Landmarc Investors over others. None of Partners' 173 members were advised of this priority in any other manner either. *Espinosa* did not involve notice to a partnership or LLC or any entity to whom knowledge was allegedly imputed by some former agent.

Petition 41 would inevitably affect the rights of 173 Landmarc investors in the Westgate Property. Petition 41 provided no such notice to them – or any of the 5 managers who represented their interests at the time of Petition 41. *Espinosa* is irrelevant. Order 41 is void for lack of due process.

III. ORDER 41 WAS ESSENTIAL TO THE OXFORD INVESTORS' PRIORITY IN THE WESTGATE PROPERTY.

In essence, the Oxford Investors argue Order 41 to be immaterial because the original order of appointment vested the Receiver with the power to “[e]nter into contracts” (R 12 at ¶ 3), such that “the Receiver had the power by Court Order to enter into the Westgate Operating Agreement.” AB at 19-20. But the original order of appointment *also* stated that:

IT IS FURTHER ORDERED that this Court shall retain jurisdiction for all purposes. The Receiver is hereby authorized, empowered, and directed to apply to this Court for the issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Court.

R 12 at 9. Courts owe a duty “to interpret an ambiguity in an order in a manner that makes the judgment more reasonable, effective, conclusive, and brings the

judgment into harmony with the facts and the law.” 56 Am.Jur.2d Motions, Rules and Orders § 48 at 79; *Culbertson v. Bd. of Cnty. Comm’rs of Salt Lake*, 2001 UT 108, 114, 44 P.3d 642, 648 (2001); *Park City Utah Corp. v. Ensign Co.*, 586 P.2d 446, 450 (Utah 1978); *c.f. American Asphalt & Grading Co. v. CMX, LLC*, 227 Ariz. 117, 118, 253 P.3d 1240, 1241 (2011) (Maricopa Superior Court’s “150-day order” could not be construed as consistent with Ariz. R. Civ. P. 38.1(d)); *Pima County Juvenile Action No. 18635 v. Fisher*, 125 Ariz. 430, 432, 610 P.2d 64, 66 (1980) (custody order could not be construed in a manner consistent with law).

Moreover, “court orders are construed in the same manner as other written documents and contracts.” *Taylor v. Mandel*, 402 Md. 109, 125, 935 A.2d 671, 680 (App. 2007); 56 Am.Jur.2d at 79. Both principles are fatal to the Oxford Investors’ argument that the original order of appointment permitted the Receiver to enter into contracts without further court approval.

Initially, an open grant of authority to a receiver to enter into contracts with no accountability nor any requirement that he seek court approval for such contracts would be contrary to law. “Property in receivership remains under the court’s control and continuous supervision.” *City of Santa Monica*, 43 Cal.4th at 930, 182 P.3d at 1043. Moreover, “a receiver has no right or power to make a contract binding the property or fund in his custody without the authority or approval of the court.” *Nulaid Farmers Ass’n v. LaTorre*, 252 Cal.App.2d 788,

793, 60 Cal.Rptr. 821, 824 (App. 1967); *see also*, authorities cited at **OB 18-20**. The Oxford Investors cite no authority for the proposition that a court can appoint a receiver with “blank check” authority to enter to whatever contracts he wishes and without court approval. Partners do not believe any such case exists. As such, the Trial Court’s order of appointment cannot reasonably be construed to have permitted the Receiver to enter into contracts without court approval.

Applying contract rules of construction, it is likewise clear the order of appointment required the receiver to obtain court approval for his contracts. In this respect, “[t]he court will adopt a construction given to a contract by the parties themselves unless such construction does violence to the express terms of the writing, especially where such interpretation is extended over a long period of time.” *Assoc. Students of Univ. of Ariz. v. Ariz. Bd. of Regents*, 120 Ariz. 100, 104-105, 584 P.2d 564, 568-69 (App. 1978). *Accord.*, *United California Bank*, 140 Ariz. at 266, 681 P.2d at 418 (“The acts of the parties themselves, before disputes arise, by the best evidence of the meaning of doubtful contractual terms”).

Here, it is crystal clear that both the parties and the Court understood that the order of appointment required the Receiver to obtain court approval of his contracts. The record reflects that the Receiver filed scores of petitions with the Court seeking approval for various contracts and other actions. Indeed, the Receivers’ counsel – the draftsmen of the order of appointment (**R 12 at 1**) -

themselves sought approval for the Westgate operating agreement by Petition 41. **R 316.** There is no indication that the Court ever rejected any petition on the basis court approval was unnecessary. Obviously, the Court and all parties understood that the order of appointment required the Receiver to obtain judicial approval of his contracts. Order 41 was not legally immaterial.⁴

IV. THE OXFORD INVESTORS HAD NO PRE-EXISTING PRIORITY IN THE WESTGATE PROPERTY.

Apparently recognizing that Arizona law required the Receiver to treat “all creditors of the same class ... on equal basis,” *Sisk v. White*, 50 Ariz. 103, 106, 69 P.2d 242, 244 (1937), the Oxford Investors argue that “the Receiver did not *grant* the First Out Right, but merely recognized that before the receivership Landmarc had granted that right.” (Emphasis in original) **AB at 19.** Indeed, the Oxford Investors even contend that the Receiver “merely recognized the pre-existing right that had previously been granted by Landmarc to [them] in order to induce them to participate in the Westgate Loan at its inception.” **AB at 7.** Even if any of this could provide a basis for the Court to refuse to vacate a void order,⁵ it is all belied by either the underlying facts or the pertinent law.

⁴ Similarly, the Oxford Investors suggest that Order 41 only “ratifi[ed] the Receiver’s prior execution of the Westgate Operating Agreement.” **AB 8.** While the Oxford Investors do not explain the distinction, whether the Trial Court approved or ratified the operating agreement, it created a potential collateral estoppel, obligating Partners to have Order 41 vacated, either by the Trial Court or on appeal, to avoid the priority created by the operating agreement and Order 41.

⁵ Contesting that the Trial Court could not properly resolve the underlying factual

A. *No First Out Priority Was Provided to the Oxford Investors to Induce Their Participation.*

The record reflects that the Oxford Investors completed their Landmarc investment on December 26, 2007. **R 458 at Exh. B at 1.** Those agreements afforded the Oxford Investors no priority over other Landmarc Investors. *Id.* Peterson did not sign his letters until January 29, 2008. **R 508.** Peterson averred that his “letters were *not* written ‘[in order to induce] the Oxford Investors to acquire participation interest in the [Westgate Loan]’ ...”. **R 521-525 at Peterson Declaration (“Peterson”) at ¶ 9.6** According to Peterson, “the Oxford Investors *had already made* their full investment.” (emphasis added) *Id.* “The Oxford

disputes without some evidentiary hearing, the Oxford Investors argue that “Rule 60(C) [sic] expressly provides the procedure for the Court to follow” (**AB at 21**), but provide no description of what that “procedure” is. The text of Rule 60(c) provides no procedure either. Even on a motion pursuant to Rule 60(c)(1), “[t]he moving party need only demonstrate that it has enough evidence to formulate a colorable defense. *State ex rel. Ariz. Dep’t of Revenue v. Capitol Castings, Inc.*, 205 Ariz. 258, 261, 69 P.3d 29, 32 (App. 2003), vacated on other grounds, 207 Ariz. 445 (2004) (citations omitted). But, as stated, “[i]f a judgment or order is void, the trial court has no discretion but to vacate it.” *Martin*, 182 Ariz. at 14, 893 P.2d at 14. In any event, the Trial Court had no legal basis to reject Partners’ evidential showing based upon nothing more than Peterson’s letter and the arguments of the Oxford Investors’ counsel.

⁶ In addition to substantive objections addressed below, the Oxford Investors argue that Peterson’s affidavit violated Rule 7.1 such that “the trial judge could have properly ignored the affidavit as it was submitted for the first time in Partners’ Reply, not in response to the matters raised in Respondents [sic] Response, all in violation of Rule 7.1...” **AB at 22.** The argument is baseless. The Oxford Investors’ response repeatedly argued that “[i]n order to induce [them] to acquire a participation interest in the loan, Landmarc, through its senior vice president, Jeffrey Peterson, agreed in writing...that in the event of a default under the Loan, [they] would be paid first (the ‘First Out’ right). **R 498 at 2, 6, 7, 8.** Peterson’s affidavit was directly responsive to this argument. Rule 7.1(a) explicitly permits that “[a]ffidavits submitted in support of any answering memorandum or memorandum in reply shall be filed and served together with *that* memorandum...” (Emphasis added).

Investors never bargained for, nor received, any priority of any type over the other Landmarc Investors at the time of their investments, or their execution of contractual documentation.” *Id.* at ¶4.

There is simply no evidence that the Oxford Investors were provided any priority in any loan in order to induce their investments. Peterson’s letters came a month after the Oxford Investors had completed their agreements. Peterson swears they had no priority.

B. *Peterson’s Letters Did Not Modify the Oxford Investor’s Contracts.*

The Oxford Investors’ contracts provided that they “constituted the entire agreement among the parties [and] supersede any prior agreement or understanding among them.” R 458 at Exh. B at ¶ 21. Those contracts afforded the Oxford Investors no priority over any other Landmarc investors. *Id.* Moreover, the Oxford Investors’ agreements further prohibited any modifications unless contained “in writing[s] executed by both parties.” *Id.* Finally, “to effectively modify a contract, whether implied-in-fact or express, there must be: (1) an offer to modify the contract, (2) assent to or acceptance of that offer, and (3) consideration.” *DeMasse v. ITT Corp.*, 194 Ariz. 501, 506, 984 P.2d 1138, 1144 (1999); *Stovall v. Williams*, 100 Ariz. 1, 4, 409 P.2d 711, 713 (1966).

Here, it is uncontested that there was no modification signed by both parties; only Peterson signed his letters. R 508. Although the Oxford Investors properly

note that “[a] contracting party may waive provisions in a contract which are solely for his benefit,” (*Nelson v. Cannon*, 126 Ariz. 381, 384, 616 P.2d 56, 59 (App. 1980)), there is nothing in this record to show that the two signature requirement was for the Oxford Investors’ benefit and not Landmarc’s. Presumably, it was for both of their benefit.

More problematic for the Oxford Investors, it is uncontested that there was no consideration for any modification. **Peterson at ¶ 13.** The Oxford Investors do not contest that consideration is legally required in order to modify a contract, (*see DeMasse*, 194 Ariz. at 506, 984 P.2d at 1144; *Stovall*, 100 Ariz. at 4, 409 P.2d at 713), or argue that they provided consideration. A party’s failure to address an argument “can be considered a confession of error.” *In re: 1996 Nissan Sentra*, 201 Ariz. 114, 117, 32 P.3d 39, 42 (App. 2001). Accordingly, the Oxford Investors concede that any attempted modification failed for lack of consideration. *DeMasse*, 194 Ariz. at 506, 984 P.2d at 1144; *Stovall*, 100 Ariz. at 4, 409 P.2d at 713.

Finally, Peterson avers that his letters were never intended to modify the Oxford Investors’ agreements, and that although the language of his letters was imprecise, all that he “ever intended to state was that Landmarc would not short sell any of the loans in which the Oxford Investors had interests, and that they

would have a priority if Landmarc did.” **Peterson at ¶ 8.** His testimony was competent for this purpose.

“Whether a writing has been adopted as an integrated agreement is a question of fact *to be determined in accordance with all relevant evidence.*” RESTATEMENT (SECOND) OF CONTRACTS § 209, cmt. c. (emphasis added). The Arizona cases have repeatedly permitted extrinsic evidence to establish what the contract actually was. *See, e.g., Crone v. Amado*, 69 Ariz. 389, 397-98, 214 P.2d 518, 523 (1950) (whether contract part oral and part written); *Kroeger v. Union Indemnity Co.*, 40 Ariz. 467, 475-6, 14 P.2d 258, 261 (1932) (which contract the bond secured); *Arok Constr. Co. v. Indian Constr. Serv.*, 174 Ariz. 291, 298, 848 P.2d 870, 877 (App. 1993) (terms of an oral agreement); *Chu v. Ronstadt*, 17 Ariz. App. 486, 490, 498 P.2d 560, 564 (1972) (whether contract was actually formed). “The parol evidence rule ... is not applicable ... where there is no integration of the agreement or contract.” *United States Fidelity and Guaranty Co. v. Olds Bros. Lumber Co.*, 102 Ariz. 366, 368-9, 430 P.2d 128, 130-131 (1967). Accordingly, Peterson’s testimony was competent to explain the import of his letters – and whether they were intended to constitute any part of the contract.

A contract prohibiting modification except in a writing executed by both parties, plus a letter signed by one party *does not equal* an integrated agreement. Peterson’s testimony was admissible to show what the contract was. Again his

testimony demonstrates that there was no modification of the Oxford Investors' agreement⁷ – and that they had no priority. The Oxford Investors obtained no priority in the Westgate property until the Receiver agreed to it – something he was precluded by Arizona law from so doing. *Sisk*, 50 Ariz. at 106-7, 69 P.2d at 244.

V. **THE TRIAL COURT COULD NOT PROPERLY HAVE DECLINED TO VACATE A VOID ORDER BECAUSE PARTNERS LABELED THEIR REQUEST AS A “MOTION” AND NOT A “PETITION.”**

The Oxford Investors argue that Partners' failure to designate their motion to vacate as a “petition,” to label them as “respondents” and to provide notice of other unknown people “alone supported the Court's denial of Partners' motion.” **AB at 12.** The argument is without merit.

When construing rules of court “care must be taken not to elevate form over substance.” *Bryan v. Riddell*, 178 Ariz. 472, 477, 875 P.2d 131, 136 (1994). Even when counsel engages in an inadvertent failure to follow a court order, “the spirit of the rules and the opinions of [the Arizona Supreme] court are clear that cases should be tried on their merits if it is at all possible.” *Goodman v. Cushman*, 92 Ariz. 276, 279, 376 P.2d 394, 395 (1962); *see also*, *State of Arizona, Div. of*

⁷ Additionally, despite the Oxford Investors' arguments as to Landmarc's broad powers, Peterson had no right under the Landmarc operating agreement to modify the Oxford Investors' agreement to provide them any after-the-fact priority anyway. The operating agreement prohibited that “without the consent of all Members, neither the Manager or any other Member shall have authority to: ... [d]o any act in contravention of this Agreement.” **R 458 at Exh. A ¶¶ 6.6 and 6.6.1.** It further provided that “[e]xcept as otherwise provided in Sections 10 and 4.1.2 and 4.1.3 hereof, Cash Available For Distribution if any shall be available for distribution to the Members ... Prorata.” *Id.* at ¶ 4.1.1. None of the excepted paragraphs provided for such priority. *Id.*

Finance v. Indust. Comm'n of Arizona, 159 Ariz. 553, 556, 769 P.2d 461, 464 (App. 1989) (administrative law judge “is required to apply procedural rules to achieve substantial justice”).

Like in *Bryan*, “[t]he situation here called for something less than the effective dismissal of plaintiff’s case.” *Bryan*, 178 Ariz. at 477, 875 P.2d at 136. By the time of Partners’ motion to vacate, the record reflects there had been 457 filings in this action, including no less than 48 petitions, and orders on most of them. **Electronic Index of Record Case No. CV2009-020595**. The Court’s requirement that motions be designated as petitions and opposing parties labeled respondents was contained in an order regarding Petition 2. **R 23**. While the undersigned should have located that order and adhered to its procedures, there is no showing that Partners’ failure to do so was anything but inadvertent.

Moreover, there is no showing that Partners’ failure to designate their motion as a petition and call the Oxford Investors respondents caused any prejudice. To be sure, the Oxford Investors were the only parties whose rights were potentially to be affected by the motion to vacate. They received notice together with all other persons on the master service list. **R 458 at 10-11**. The Oxford Investors responded to the motion. **R 498**. Again, “[t]he situation here called for something less than the effective dismissal of plaintiff’s case.” *Bryan*, 178 Ariz. at 477, 875 P.2d at 136.

CONCLUSION

Order 41 was void. The Trial Court had no discretion but to vacate it. This matter must be reversed.

DATED this 5th day of April, 2012.

**MARISCAL, WEEKS, McINTYRE
& FRIEDLANDER, P.A.**

By: /s/ Russell Piccoli

Russell Piccoli

Of Counsel

Attorneys for Defendant/Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 14, Arizona Rules of Civil Procedure, the undersigned counsel for Defendant/Appellant Landmarc Capital Partners, LLC, hereby certifies that the text of this Reply Brief uses proportionately spaced type of 14 points, is double-spaced using a roman font (*i.e.*, "Times New Roman"), and contains 4,913 words.

DATED this 5th day of April, 2012.

**MARISCAL, WEEKS, McINTYRE
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CERTIFICATE OF SERVICE

Pursuant to Rule 15, Arizona Rules of Civil Appellate Procedure, the undersigned counsel for Defendant/Appellant Landmarc Capital Partners, LLC hereby certifies that, on the 5th day of April, 2012, he caused the original and six copies of this Reply Brief to be mailed to:

Philip G. Urry, Clerk of the Court
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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

State of Arizona ex rel. Lauren Kingry,
Superintendent of the Arizona Department of
Financial Institutions,

Plaintiff,

vs.

Landmarc Capital & Investment Company,

Defendant.

No. CV2009-020595

OXFORD INVESTORS' *AMENDED*
OBJECTIONS TO PETITION 54

June Behrendt, Beverly Clarke, Bennett Grimm, Karen Lamb, Stephen Leshner, Michael Macken, Robert Rader, Richard Russell, Rhonda Kaye Solheim Family Trust U/A 05/09/77, John K. Solheim and Kathleen Smythe De Urquieta (collectively referred to as the “**Oxford Investors**”) submit the following objections to Petition 54:

1. With regard to the Receiver’s recommendation to “set a briefing schedule” (Petition @ p.48) relating to the “First Out Right” issue, the Oxford Investors instead request that the Court schedule a Rule 16 Pretrial Conference in order to set deadlines for disclosures, discovery and dispositive motions for those parties affected by the Oxford Investors’ claimed “First Out Right” (Petition ¶49). Such disclosures and discovery are needed given the number of parties, loans and different interests

claimed.

2. With regard to the Receiver's footnote 41 (Petition @ p.46) suggesting that by reason of entering into an Agreement with Partners to transfer the account servicing of the Hubbard\Desert Bear Loan #07111834 from the Receiver to Fidelity National Title, that Rhonda Solheim Family Trust ("Solheim") may have waived her "First Out Right" relating to this loan, Solheim denies that she waived such right, and there is nothing in the transfer agreement which so states. That agreement (attached) merely instructs the servicing agent how much and to whom payments are to be sent, but it does not address the rights of the parties in the event of a default, nor does it address the "First Out Right" which is only triggered in the event of a default.

3. With regard to Exhibit "E", Column "L" to Petition 54, Code 9c should be inserted for all investors in the Espinoza loan (Loan #07061120) just as 9c was inserted for all other loans implicated by the Oxford Investors "First Out Right".

4. With regard to the Objection to Petition 54 filed by Landmarc Capital Partners, LLC ("Partners") which claims that the Court has no jurisdiction to decide Petition 54 by reason of a pending appeal in 1CA-CV 11-0739, the Oxford Investors dispute such claim. Partners' objection is based on the false premise that "the identical issue [raised in Petition 54 regarding the "First Out Right"] is pending in the Court of Appeals". Apparently Partners believes that the decision by the Court of Appeals in 1CA-CV 11-0739 will somehow finally resolve the "First Out Right" which will then be binding on all parties going forward. In reality, that cannot happen. The parties to 1CA-CV 11-0739 are NOT the same as the Oxford Investors filing this Objection, and thus they will not be bound by the appellate decision. Also, the trial Court's denial of Partners' Motion to Vacate Order Re Petition No. 41 can be affirmed on appeal for multiple reasons, other than a final determination of the "First Out Right" which was given to the Appellees in that

appeal. Petition 41 and the above appeal involve the rights of members under an Operating Agreement of LCI-Westgate, LLC, a limited liability company which owns a property which is NOT the subject of Petition 54. Since the issues on appeal and in Petition 54 are different and the appeal will not bind the Oxford Investors in any event, the Superior Court retains jurisdiction over Petition 54, and the resolution of the parties rights implicated by Petition 54 should not be delayed any further.

DATED: May 3, 2012

RAMRAS LAW OFFICES, P.C.

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Copy of the foregoing e-mailed
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2009-020595

(Rev. May 3, 2012)

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1157-001(85963)

**AGREEMENT TO TRANSFER SERVICING OF LOAN
TO NEW SERVICING AGENT**

This Agreement is made and entered into on the date set forth below by and between Landmarc Capital & Investment Company ("Landmarc") by and through its receiver (the "Receiver") appointed by the Arizona Superior Court (the "Receivership Court") in the case of *State of Arizona v. Landmarc Capital & Investment Company*, cause number CV2009-020595 (the "Receivership Action"), and the Beneficial Owners of the loan (the "Loan") identified below:

Landmarc Loan #: 07111834

Original Principal Amount: \$290,000.00

Interest Rate: 15%

Loan Status: 180 days late

Current Principal Balance: \$290,000.00

Paid to Date: 6/1/10

Next Due Date: 7/1/10

Impound Amount: \$-0- ("Impounds")

Other Funds Landmarc's Records Show That it Holds in Trust on this Loan for the benefit of the Beneficial Owners: \$25,874.51 ("Funds")

Trust Account Shortage, if any: \$ -0-

Unreimbursed expenses incurred by Landmarc regarding the Loan: \$ 0 ("Expenses")

Accrued late charges owed: \$ 34,503.73 ("Accrued Late Charges")

Accrued Unpaid interest owed: \$15,330.01 ("Accrued Interest")

Modifications to the Original Loan: Yes, the first dated 2/09 and the second dated 6/10

Borrower: Desert Bear Ventures & Investments, Inc., an Arizona corp.
Kids Playland & Preschool, Inc., an Arizona corp.
P.O. Box 13132
Phoenix, Arizona 85002

Guarantor: Charles Hubbard
111 East Dunlap Avenue
Phoenix, Arizona 85020

Beneficial Owner(s): See Exhibit "1"

New Servicing Agent: Fidelity National Title
Karen Hagland, Account Servicing Manager
60 East Rio Salado Parkway, 11th Floor
Tempe, Arizona 85281

RECITALS

- A. Landmarc originated and is currently servicing the Loan.
- B. On June 24, 2009, Landmarc was placed in receivership in the Receivership Action and by order of the Receivership Court the Receiver, as agent of the Court, was ordered to take exclusive jurisdiction over all of Landmarc's assets and to assume control of its business.
- C. On October 5, 2009, the Receivership Court entered its *Order Approving Procedures for Transferring to New Servicing Agent Loans in which Ownership is not in Dispute, Re: Petition No. 4*, which authorized the Receiver to enter into this agreement to transfer the Loan to a new servicing agent, provided the Receiver determined that the Loan meets certain conditions set forth in the Court's order.
- D. The Beneficial Owners have requested an accounting of the funds held by Landmarc in trust for this loan and of the unreimbursed expenses incurred by Landmarc and the Beneficial Owners acknowledge that these accountings have been generated from the computer data of Landmarc and have not been audited or verified by the Receiver and may not be accurate.
- E. The Receiver and the Beneficial Owners wish to transfer the servicing of the Loan to the New Servicing Agent, and the New Servicing Agent is willing to take over such function.

TERMS

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the parties contained herein, together with other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. The Receiver has provided the Beneficial Owners with an accounting of the trust funds previously received and disbursed by Landmarc under the above Loan and of the unreimbursed expenses which have been incurred by Landmarc under the above Loan.
2. Upon execution of this Agreement, the Receiver shall transfer the Loan to the New Servicing Agent for servicing in accordance with the terms of this Agreement. In that regard, it shall deliver to the New Servicing Agent:
 - a. a copy of Landmarc's Loan/restated history report;
 - b. the original Promissory Note evidencing the Loan;
 - c. the original Guarantee;
 - d. a copy of the recorded Deed of Trust and other documents securing the Promissory Note including any assignment of rents;
 - e. a copy of the recorded Assignments of Beneficial Interest transferring the beneficial interest in the Promissory Note and Deed of Trust to the Beneficial Owners;
 - f. the original Loan agreement;
 - g. the original Loan modification agreement, dated February 27, 2009;
 - h. the original Loan modification agreement, dated February 1, 2010;
 - i. a check for the amount of the Funds and Impounds Landmarc is holding regarding the Loan, less the Trust Shortage, if any, set forth above.

3. If required by the New Servicing Agent, the Beneficial Owners shall execute New Servicing Agent's standard form account servicing agreement (the "Standard Agreement"). If there is any conflict between the terms of this Agreement and the terms of the Standard Agreement, the terms of this Agreement shall prevail.

4. Upon execution of this Agreement, the Receiver shall notify the Borrower by first class mail addressed to the Borrower at the address for the Borrower shown above that the servicing for this loan has been transferred and that all future payments and communications regarding the Loan must be directed to the New Servicing Agent. The Receiver shall simultaneously send copies of such notice to the Beneficial Owners and to the New Servicing Agent.

5. Payments received from the Borrower or income or other proceeds from the security for the Loan, shall be applied and disbursed by the New Servicing Agent and any successor, less its unpaid expenses and account servicing fees, as follows:

- a. To interest accruing after the effective date of this Agreement and then to Accrued Interest, other than default interest, as follows: to the Beneficial Owners until (i) Rhonda Solheim IRA ("Solheim") has received 13% per annum on the unpaid principal balance of Solheim's participation interest of \$150,000; and (ii) Landmarc Capital Partners, LLC ("Partners") has received 15% per annum on the unpaid principal balance of Partners' participation interest of \$140,000;
- b. To principal which shall be applied to the Beneficial Owners in proportion to their respective percentage interests as reflected on Exhibit "1" annexed hereto;
- c. To all unpaid interest, including Accrued Interest and default interest, to the Receiver of his successor;
- d. To Accrued Late Charges to the Receiver of his successor; and
- e. All remaining funds to the Receiver or his successor.

6. The Beneficial Owners hereby, on their own behalf and on behalf of their attorneys, employees, partners, agents, predecessors, successors, assigns, and legal representatives, release and forever discharge the Receiver and the Receiver's employees, agents, successors, assigns and legal representatives from any and all claims of any kind or nature arising out of the above Loan.

7. To the extent the Beneficial Owners have any claims against Landmarc relating to or arising out of the Loan, the Beneficial Owners shall file applicable proof(s) of claim in the Receivership Action in accordance with the procedures established by the Receivership Court.

8. The Beneficial Owners agree to indemnify and hold harmless the Receiver and its employees, agents, successors, assigns, and legal representatives from any claim or liability that may arise by reason of the transfer of the Loan to the New Servicing Agent as provided herein, or the future servicing of the Loan by the New Servicing Agent or its successor.

9. To the extent that Landmarc has previously been designated as the agent and/or attorney-in-fact for any of the Beneficial Owners under the Loan, or if the Beneficial Owners agreed to grant such a power of attorney to Landmarc, Landmarc and the Beneficial Owners hereby jointly terminate and rescind any such agency, power or agreement, and all power and authority thereby given, or intended thereby to be given to Landmarc.

terminate and rescind any such agency, power or agreement, and all power and authority thereby given, or intended thereby to be given to Landmarc.

10. All funds received and disbursed by New Servicing Agent must be deposited to and disbursed from its trust account. New Servicing Agent shall also provide quarterly accountings to the Receiver of all funds received and disbursed under the Loan.

11. The Beneficial Owners shall not modify any terms of the Loan that directly or indirectly adversely affects the interests of Landmarc without the written approval of the Receiver.

12. The New Servicing Agent shall notify the Receiver of any default, modification, foreclosure, or satisfaction and release under the Loan.

13. The servicing of the Loan may be transferred from the New Servicing Agent to another servicing agent only with the written consent of the Receiver.

DATED: MARCH 30, 2010

(TS)

Landmarc:

Landmarc Capital & Investment Company

By: Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions, its Receiver

By: *Thomas J. Giallanza*

Thomas J. Giallanza, Deputy Receiver

Beneficial Owners:

Landmarc Capital Partners, LLC

By: *Steve Casselman*

~~Thomas J. Giallanza, Deputy Receiver of Landmarc Capital Investment Company, Inc. as Manager of Landmarc Capital Partners~~

~~14555 N. Scottsdale Road, Suite 340
Scottsdale, Arizona 85254~~

*Steve Casselman,
as authorized investor
manager of Landmarc
Capital Partners, LLC.
8485 E. McDonald Dr. #319
Scottsdale, AZ 85250*

Rhonda Solheim, IRA Custodian

By: *Rhonda Solheim*

~~Rhonda Solheim, IRA-Custodian~~ **BENEFICIARY**
c/o Oxford Investment Partners, LLC
2390 East Camelback Road, Suite 202
Phoenix, Arizona 85016

NEW SERVICING AGENT ACCEPTANCE

New Servicing Agent hereby (i) accepts the Loan for servicing as of the date set forth below; (ii) advises that the account servicing number assigned for this transaction is set forth; (iii) agrees to be bound by the provisions hereof and to perform its obligations as set forth herein in accordance with the Agreement.

Fidelity National Title

By: _____
Karen Haglund, Account Servicing Manager
60 East Rio Salado Parkway, 11th Floor
Tempe, Arizona 85281
480-214-4535
kmhagland@fnf.com

Accepted this ____ day of _____, 2010
Account Servicing #: _____

EXHIBIT "1"
Beneficial Owners

Beneficial Owner's Name	Address	% Undivided Interest
Landmarc Capital Partners, LLC	14555 North Scottsdale Road, Suite 340 Scottsdale, Arizona 85254	48.276%
Rhonda Solheim, IRA	c/o Oxford Investment Partners, LLC 2390 East Camelback Road, Suite 202 Phoenix, Arizona 85016	51.724%

1157-007(97979)

GALLAGHER & KENNEDY, P.A.
2575 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

1 John R. Clemency (Bar No. 009646)
Julie Rystad (Bar No. 019978)
2 GALLAGHER & KENNEDY, P.A.
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3 Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
4 Facsimile: (602) 530-8500
Email: john.clemency@gknet.com
5 julie.rystad@gknet.com

6 Attorneys for Plaintiff Monterey Capital Co., LLC

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

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

11 Plaintiff,

12 v.

13 LANDMARC CAPITAL & INVESTMENT
COMPANY,

14 Defendant.
15

CV2009-020595

**OBJECTION TO RECEIVER'S
PETITION 54**

(Assigned to the Honorable Eileen Willett)

16 Through its undersigned counsel, Monterey Capital Co., LLC ("Monterey"), a
17 loan participant of Defendant Landmarc Capital & Investment Company ("Landmarc")
18 and a claimant in this case pursuant to Proof of Claim No. 8079 filed with the Receiver,
19 objects to the Receiver's Petition 54 to the extent that it requests the Court to grant an
20 equitable lien or any other interest to any third party in the Loan in which Monterey holds
21 a participation interest, or the Property in which Monterey held a security interest (and
22 now owns fee title to as tenant in common with Landmarc). This Objection to Receiver's
23 Petition 54 (this "Objection") is supported by the following Memorandum of Points and
24 Authorities, and the entire case file herein.
25
26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **BACKGROUND**

3 1. Monterey is a participant with respect to a single loan made by Landmarc,
4 pursuant to a Loan Participation Agreement, dated December 27, 2007, and amended by
5 a First Amendment to Loan Participation Agreement, dated May 14, 2008 (the
6 "Amendment," and together with the Loan Participation Agreement, the "Participation
7 Agreement"). Pursuant to the Participation Agreement, Monterey purchased a 50%
8 participation interest at origination of a \$14,500,000 loan (Receiver's Loan No.
9 07121849)(the "\$14.5MM Loan") made by on or about December 27, 2007 by Landmarc
10 to Presidio West 197, LLC ("Presidio West 197"), a Delaware limited liability company.
11 The Participation Agreement and the Amendment are Exhibits A and B to Monterey's
12 Proof of Claim ("Monterey's Proof of Claim") filed as Exhibit 1 to the *Petition for Order*
13 *Compelling Receiver to Execute and Record Releases Clearing Title to Real Property*
14 ("Monterey's Petition to Clear Title") filed July 22, 2011.

15 2. As reflected in Petition 54, the \$14.5MM Loan was the third loan made by
16 Landmarc secured by the collateral property.¹ Landmarc made its first loan in the
17 amount of \$9,500,000 (Receiver's Loan No. 06100775) on October 20, 2006 (the
18 "\$9.5MM Loan"). Landmarc made its second loan in the amount of \$14,200,000
19 (Receiver's Loan No. 07030964) on April 17, 2007 (the "\$14.2MM Loan"), which loan
20 refinanced the \$9.5MM Loan. The third loan was the \$14.5MM Loan, which was made
21 concurrently with a smaller, \$2,800,000 loan on a 37-acre portion of the collateral
22 property, and those loans together refinanced the \$14.2MM Loan.

23 3. Monterey's participation in the \$14.5 MM Loan and its interest in the 197
24 acres of vacant land (the "Property") that secured the \$14.5MM Loan are evidenced by
25 among other things, the Participation Agreement, and an Assignment of Deed of Trust,
26

¹ The first and second loans may have included some additional acreage, but that distinction is not relevant for purposes of this discussion.

1 by Landmarc in favor of Monterey, recorded December 31, 2007 in the Official Records
2 of Coconino County, Arizona at Document Number 3471147; and an Assignment of
3 Absolute Assignment of Leases and Rents (Participation Interest Partial Assignment),
4 dated December 27, 2007, executed by Landmarc in favor of Monterey, and recorded on
5 December 31, 2007 in the Official Records of Coconino County, Arizona at Document
6 No. 3471149.

7 4. As indicated in Petition 54, the Property has since been foreclosed by
8 trustee's sale on or about July 21, 2009,² and is now owned by Monterey and Landmarc
9 as tenants in common.

10 5. The Participation Agreement between Landmarc and Monterey is not the
11 standard form of participation agreement used by Landmarc, and attached as Exhibit A to
12 Petition 54, and differs in a number of material ways from Landmarc's standard form of
13 agreement.

14 6. Pursuant to the terms of the Participation Agreement, Landmarc
15 represented and warranted to Monterey that it owned the \$14.5MM Loan and related loan
16 documents "free and clear" of any other interests or encumbrances. *See* Participation
17 Agreement, § 4(j).

18 7. Further, Landmarc agreed that it would not grant security interests or
19 participation interests in the \$14.5MM Loan without Monterey's prior, written consent
20 and a first option to acquire any such participation interest. Specifically, the Participation
21 Agreement provides:

22 Landmarc and Monterey shall not sell, pledge, assign, subparticipate, or
23 otherwise transfer its [sic] interest under the Loan to a party that is not
24 under common control with a party to this Agreement without first

25 ² Petition 54 alleges that TBM claims Monterey's trustee's sale of the Property were erroneous and speculates about
26 the two trustee's sale guarantees obtained by Monterey in its sale. However, these allegations and conclusions are
not supported by any fact or law. Accordingly, Monterey does not respond to these allegations and speculations in
this Objection, but reserves the right to respond.

1 obtaining the prior written consent of the other party, which consent shall
2 be at the sole and absolute discretion of the other party; provided, however,
3 that, notwithstanding the foregoing, Landmarc expressly consents to any
4 such assignment or subparticipation by Monterey to any affiliate of
5 Monterey. Landmarc and Monterey shall have a right of first refusal on
6 any bona fide offer made to purchase, subparticipate, or otherwise acquire
7 the other party's Participation Interest in the Loan by a third party;
8 provided, however, that the foregoing shall not apply to any sale,
9 subparticipation or other transfer by Monterey to any affiliate of Monterey.

10 *See* Participation Agreement, § 12.

11 8. Landmarc further agreed to indemnify Monterey for any misdeeds by it in
12 connection with the Loan:

13 "Landmarc hereby agrees to indemnify and hold Monterey harmless for,
14 from and against any and all loss, cost liability, damages, penalties, actions,
15 suits, and expenses which may be imposed upon, asserted against, paid or
16 incurred by Monterey in connection with the Loan, the Collateral or the
17 Loan Documents to the extent that the same arises from bad faith, willful
18 misconduct, or negligence on the part of Landmarc or from any breach by
19 Landmarc of its representations, warranties or other obligations under this
20 Agreement."

21 *See* Participation Agreement, § 11.

22 9. As described in Monterey's Petition to Clear Title and the Receiver's
23 Petition 54, in violation of the express terms of the Participation Agreement, Landmarc
24 did subsequently sell a number of other participation interests in the \$14.5MM Loan to
25 certain LP Lenders and grant security interests in the \$14.5MM Loan to certain WCF
26 Lenders.³ Monterey never consented to or authorized those additional participation
interests and security interests in the \$14.5MM Loan, nor was it offered the right of first
refusal required under the Participation Agreement. In fact, Monterey didn't become
aware of the transfers made and security interests granted by Landmarc until its
foreclosure on the Property by trustee's sale in July 2009.

³ Capitalized terms not otherwise defined in this Objection shall have the meanings ascribed to them in Petition 54.

1 10. Landmarc's sale of additional participation interests in the \$14.5MM Loan
2 to various LP Lenders, and its pledge of the \$14.5MM Loan as security to various WCF
3 Lenders, were willful and intentional breaches of the Participation Agreement made in
4 bad faith. Accordingly, Landmarc is obligated under the Participation Agreement to
5 indemnify Monterey for, among other indemnifiable costs and expenses, Monterey's
6 costs and expenses incurred in connection with this Objection.

7 **RECEIVER'S REQUESTED RELIEF SHOULD BE DENIED**

8 11. In Petition 54, the Receiver alleges the following interests in the \$14.5MM
9 Loan:

Name	Percentage	Nature of Interest
MONTEREY	50.0% ⁴	Participant
LCPARTNER	16.36%	Participant
TBM	11.16%	Warehouse Lender
LDMPENS	9.61%	Participant
COHEN1	3.66%	Participant
DVHMGMT	3.45%	Participant
LDMACCEPT	2.22%	Participant
DESERTTRAI	2.16%	Participant
GUBINWARE	1.38%	Warehouse Lender

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20 12. With respect to the participants in the \$14.5MM Loan (each, a
21 "Participant"), the Receiver seeks an order from the Court granting an "equitable lien" in
22 the \$14.5MM Loan to each Participant who does not have a "perfected security interest
23 and no recorded assignment or deed conveying a participation interest or title interest" in
24 the loan (specifically, COHEN1, DESERTTRAI, LDMPENS, LDMACCEPT). Petition
25 54, ¶ 14. For the reasons set forth in this Objection, the Receiver's requested relief
26

⁴ Note that Exhibit E to Petition 54 uses rounded percentages, which numbers should not be used in any final determination regarding interests because they result in overallocation.

1 should be denied. Pursuant to the LP Agreements, each Participant acquired an
2 *ownership* interest in a loan. See LP Agreement, Recital B (“Landmarc desires to sell
3 and Participant desires to purchase participations in the Loan and Deed of Trust”).

4 13. The ownership interests of the Participants arises under their LP
5 Agreements with Landmarc (the Receiver does not indicate that any of the Participants to
6 not have signed LP Agreements). To grant the Participants, or any participants for that
7 matter, the “equitable liens” requested by Landmarc would be to grant them rights above
8 and beyond those granted (or intended) by nature of their LP Agreements and participant
9 relationship with Landmarc.

10 14. Furthermore, if the relief sought by the Receiver in Petition 54 is granted,
11 the relative rights of the Participants would be modified, but not clearly defined. Petition
12 54 does not make clear what rights the proposed equitable lien holders would have
13 against Monterey and Landmarc/the Receiver. By nature of their participation interests,
14 these claimants have, and should have, only rights that attach to Landmarc’s proceeds of
15 the Loan and the Property and should not have voting, management, foreclosure or other
16 rights with respect to the Loan and the Property. They should have no right to recorded
17 interests in the Property which continue to cloud title. Such a result would be consistent
18 with the Landmarc’s LP Agreements, and would preserve the contractual relationship
19 also between Monterey and Landmarc. As the Receiver generally points out, participants
20 who signed standard Landmarc LP Agreements, agreed that Landmarc alone would
21 control servicing and any enforcement or foreclosure on the subject loans. The LP
22 Agreement provides, that Landmarc “may take any remedial action with respect to the
23 Loan or avail itself of any remedy existing” and would have the “sole right and authority
24 to act on behalf of Participant . . . in any foreclosure proceedings.” See LP Agreement,
25 Sections 12, 20(b).⁵ This relationship is markedly different than the contractual
26

⁵ Nothing in the LP Agreements prohibits Landmarc from performing its obligations through an agent.

1 relationship between Landmarc and Monterey. Under their Participation Agreement,
2 Landmarc and Monterey agreed that Landmarc would initially service the loan with
3 certain limitations on its right to modify or waive any provisions of the loan documents,
4 but in the Amendment, the parties agreed that Monterey would have the “sole right . . . to
5 bring an enforcement action against the Borrower or the Guarantors, including, without
6 limitation, an action to foreclose the Collateral.” See Amendment, Section 2. Monterey
7 has exclusively managed the \$14.5MM Loan (now REO) since July 2009.

8 15. Monterey should not be forced to have numerous “partners” that it never
9 agreed to or contemplated through the imposition of equitable liens, particularly where
10 those partners would have no corresponding obligations to Monterey under any
11 participation agreement.

12 16. There is no doubt that Landmarc is insolvent, and prior to the Receiver’s
13 appointment apparently made preferential payments to participants and creditors in order
14 to conceal its insolvency. The Receiver has a fiduciary duty to treat all claimants fairly
15 and not favor certain claimants over others. To grant the “equitable liens” requested by
16 the Receiver would be to favor the recipients of those liens over others by granting them
17 rights above and beyond those established by contract and by law, and would prejudice
18 the rights of creditors, including Monterey to recover on their claims.

19 17. In addition to its 50% interest in the \$14.5MM Loan, Monterey has
20 contractual claims against Landmarc for recovery of its expenses incurred to manage and
21 maintain the Property and for recovery of its fees and costs in this action. The current
22 value of the Property securing the \$14.5MM Loan is far less than the outstanding debt,
23 meaning that a portion of Monterey’s debt is almost certainly an unsecured claim. To
24 grant unsecured claimants the equitable liens that the Receiver requests would prejudice
25 Monterey and other similarly situated claimants in this case.

26 18. For the foregoing reasons, the relief the Receiver requests should be denied.

1 19. As more specifically set forth in Monterey's Petition to Clear Title,
2 following the trustee's sale of the Property, Monterey became aware that Landmarc failed
3 to release the 2nd LCI DOT, which secured the \$14.2MM Loan that was repaid with the
4 proceeds of the \$14.5MM Loan. In addition, Landmarc recorded several interim
5 assignments of interests of beneficial interest in the Property in connection with each of
6 the \$9.5MM Loan, the \$14.2MM Loan and the \$14.5MM Loan. In Petition 54, the
7 Receiver confirms that all of the participation interests in the \$9.5MM Loan and
8 \$14.2MM Loan have been repaid:

9 "Landmarc refinanced [the \$9.5MM Loan] with a new loan for \$14.2
10 million"

11

12 "The Receiver has completed his investigation of the funding of the second
13 two Presidio Loans [the \$2.8MM Loan and \$14.5MM Loan] and has
14 determined that each Lender with an interest in the 2nd LI DOT [\$14.2MM
15 Loan] , had their interest in that loan replaced by an interest of equivalent
16 value (in the face amount) in one or both of the second two Presidio Loans,
17 or some other loan, or was paid cash for the interest, or a combination of
18 these."

19 Petition 54, §§ 33(c)(2), 33(e). Under these circumstances, the Receiver's continued
20 refusal to record releases on the Property, as requested by Monterey in its Petition to
21 Clear Title, is unreasonable, and Monterey should be awarded its fees and costs in this
22 action.

23 20. While some of the participants in the \$9.5MM and \$14.2MM Loans have
24 replaced those participation interests with interests in the \$14.5MM Loan, this does not
25 change the fact that their prior participation claims were satisfied. That they now do not
26 like their decisions to accept an interest in the \$14.5MM Loan in satisfaction of their

1 interests in the prior loans, does not change the analysis, and should not be used as
2 grounds for them to obtain rights superior to their contractual rights.

3 **CONCLUSION**

4 WHEREFORE, Monterey respectfully requests that the Court enter an Order in
5 the form attached as Exhibit 1:

6 A. Denying Petition 54 with respect to the \$14.5MM Loan and the Property;

7 B. Clarifying that each Participant: (i) has an ownership interest in the
8 \$14.5MM Loan to the extent of its written agreement with Landmarc; (ii) that such
9 interest is an interest in personal property and each Participant has not right to record or
10 refuse to release any interest in the Property; and (iii) that such personal property interest
11 attaches only to Landmarc's interest in the proceeds from disposition of the Property and
12 that such Participants have no management, voting, or foreclosure rights regarding the
13 Property.

14 B. Granting Monterey its costs, pursuant to A.R.S. § 12-341 and the terms of
15 the Participation Agreement.

16 C. Granting Monterey is attorneys' fees in this action, pursuant to A.R.S. § 12-
17 341.01 and the terms of the Participation Agreement.

18 F. Granting Monterey such other and further relief as the Court deems just.
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RESPECTFULLY SUBMITTED this 19th day of April, 2012.

GALLAGHER & KENNEDY, P.A.

By Julie Rystad
John R. Clemency
Julie Rystad
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Plaintiff Monterey
Capital Co., LLC

COPIES of the foregoing were served
this 19th day of April, 2012, via first-class,
U.S. mail to the party listed below.

Landmarc Receiver
P.O. Box 14050
Scottsdale, AZ 85267

Angie Renteria

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EXHIBIT 1
[Proposed Form of Order]

1 John R. Clemency (Bar No. 009646)
Julie Rystad (Bar No. 019978)
2 GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
3 Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
4 Facsimile: (602) 530-8500
Email: john.clemency@gknet.com
5 julie.rystad@gknet.com

6 Attorneys for Plaintiff Monterey Capital Co., LLC

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

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

11 Plaintiff,

12 v.

13 LANDMARC CAPITAL & INVESTMENT
14 COMPANY,

15 Defendant.

CV2009-020595

**ORDER GRANTING
OBJECTION TO RECEIVER'S
PETITION 54**

(Assigned to the Honorable Eileen Willett)

16 THIS MATTER CAME BEFORE THE COURT pursuant to the *Receiver's*
17 *Claims Report on the Loan Participant Lender Claims and The Deferred WCF Lender*
18 *Claims* ("Petition 54") made by Plaintiff, and the *Objection to Receiver's Petition 54*
19 made by party in interest, Monterey Capital Co., LLC ("Monterey"), and good cause
20 appearing:

21 IT IS HEREBY ORDERED:

22 A. Denying Petition 54 with respect to the \$14,500,000 loan in which
23 Monterey is a participant (the "\$14.5MM Loan") and the property securing the \$14.5MM
24 Loan (the "Property");

25 B. Each participant in the \$14.5MM Loan other than Monterey (each, a
26 "Participant"): (i) has an interest in the \$14.5MM Loan only to the extent of its written

3027008v1

Exhibit D

1 agreement with Landmarc Capital & Investment Company (“Landmarc”); (ii) such
2 interest is an interest in personal property and each Participant has no right to record or
3 refuse to release any interest in the Property; and (iii) such personal property interest of
4 each Participant attaches only to Landmarc’s interest in the proceeds from disposition of
5 the Property and each such Participant has no management, voting, or foreclosure rights
6 regarding the Property.

7 B. Granting Monterey its attorneys’ fees and costs in this matter, pursuant to
8 A.R.S. § 12-341, A.R.S. § 12-341.01, and the terms of the Loan Participation Agreement
9 between Landmarc and Monterey, which fees and costs may first be subtracted from the
10 net proceeds of any disposition of the Property before distribution of any proceeds to the
11 participants.

12 DATED this ____ day of April 2012.

13 _____
14 Honorable Eileen Willet
15 Judge, Maricopa County Superior Court
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GALLAGHER & KENNEDY PA.
2575 E. CAMELBACK RD., STE 1100
PHOENIX, AZ 85016-9225

Landmarc Receiver
P.O. Box 14050
Scottsdale, Arizona 85267

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APR 23 2012
WARFIELD CPAS

Exhibit D



UNITED STATES POSTAGE
02 1P
00031 51280
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MAILED FROM ZIP CODE 85016
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Schedule of Receiver's Final Recommendations Regarding Loan Participation Lender Claims

Claim No.	Claimant	LCI Loan No.	Name of Borrower	Current Status	LCI %	Claimed %	Fee	ABI	Receiver's Recommendations			Possibly Adverse POC
									Approved %	Codes		
										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
6882	AHCOPEN02	06080604	Rosales (1st DOT)	REO	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
7001	BALFOUR1	06040324	Mitchell	REO	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5b	
7001	BALFOUR1	06070546	Bos	Current	80.121%	80.12%	0.0%	0.0%	80.12%	1h	4b9c	
7000	BALFOUR2	06060435	Cabriales	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5a	8035
8545	BALL	06110811	Feneck	REO	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5b	
8545	BALL	06070550	Garcia	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	
7012	BECKER	07010883	Rodriguez	Current	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	6633
7012	BECKER	07030938	Hernandez	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
7013	BEHRENDT	08031896	141 Route 69, LLC	FCLS/BK	5.4%	5.4%	0.0%	5.4%	5.4%	1b	8d9c	
7013	BEHRENDT	07061120	Espinoza	Current	14.7%	14.7%	0.0%	14.7%	14.7%	1b	4b9c	
7028	BLOCH	06080584	Martinez	Current/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	6529
7076	CHOPRA	08021878	We Did Our Part, LLC	REO	8.6%	8.6%	0.0%	8.6%	8.6%	1b	8c9c	
7076	CHOPRA	08031896	141 Route 69, LLC	FCLS/BK	15.1%	15.1%	0.0%	15.1%	15.1%	1b	8d9c	
8543	CJINVESTOR	07061120	Espinoza	Current					NA	3a	na	
8543	CJINVESTOR	6050388	Delgado	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	NA	3a	na	
7085	CLARKE	08031896	141 Route 69, LLC	FCLS/BK	1.5%	1.5%	0.0%	1.5%	1.5%	1b	8d/9c	
7085	CLARKE	07061120	Espinoza	Current	7.4%	7.4%	0.0%	7.4%	7.4%	1b	4b9c	
7095	COHEN	LC050120	Ramsey	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
7096	COHEN1	06080566	Saffer	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	
7096	COHEN1	07030984	Durlin	REO	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5b	
7096	COHEN1	07041034	Rodriguez	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	
7096	COHEN1	06030283	Barela	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
7096	COHEN1	06120859	Germain	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
7096	COHEN1	07020932	The Retreat at Buffalo Ridge, LLC	Sold/Trans	61.7%	61.7%	100.0%	100.0%	61.7%	1a	8a	
7096	COHEN1	07051065	Quintana	REO/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	5a	
7110	CRAIGOW	06050372	Horning	REO	11.1%	11.1%	0.0%	11.0%	11.1%	1h	8c	8035
6327	CROSSTIMB	06020170	Sharp	REO	100.0%	100.0%	99.0%	0.0%	99.0%	1a	6b	
7125	DEEM	07020907	Johnson	Current/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	6642

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									Approved %	Codes		
										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
7125	DEEM	07020912	Duenez (2nd DOT)	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5a	
7126	DEEM1	07051074	Fera	REO/Trans	31.7%	31.7%	0.0%	31.7%	0.0%	1b	na	6713
7126	DEEM1	06120837	Garcia	FCLS	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5d	
7126	DEEM1	06120846	Bone	FCLS/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
7126	DEEM1	LC050737	Brown	REO/Trans	100.0%	100.0%	90.0%	0.0%	90.0%	1a	6a	
7126	DEEM1	LC051007	Craig	REO/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	5a	
8535	DEERLODGE	LC050733	Holland	REO/Trans	100.0%	100.0%	99.0%	100.0%	100.0%	1a	6a	
7129	DESERTTRAI	08031896	141 Route 69, LLC	FCLS/BK	0.6%	0.6%	0.0%	0.6%	0.6%	1b	8d9c	Oxford Group
7129	DESERTTRAI	06080631	Garcia	Charged Off					NA	3c	na	
7129	DESERTTRAI	051140	Penny	Sold	100.0%	100.0%	0.0%	0.0%	100.0%	1h	8b	
7129	DESERTTRAI	06010122	Hapsburg (2nd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	8d	
7129	DESERTTRAI	060101483R	Young	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
7129	DESERTTRAI	06030207	Poirier/Westend Investments, LLC	REO	4.8%	4.8%	0.0%	0.0%	4.8%	1h	8c	
7129	DESERTTRAI	06030257	Luna	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	8035
7129	DESERTTRAI	06040293	Reagan	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1a	8c	8035
7129	DESERTTRAI	060403362N	Acevedo (2nd DOT)	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	
7129	DESERTTRAI	06050394	Ireland	REO	41.1%	41.1%	0.0%	0.0%	41.1%	1h	8c	
7129	DESERTTRAI	06060443	Granados	FCLS/FA	59.5%	59.5%	0.0%	100.0%	59.5%	1b	4b	
7129	DESERTTRAI	07030977	Bassett	Sold	100.0%	100.0%	0.0%	0.0%	100.0%	1h	8b	
7129	DESERTTRAI	07061112	Rios	REO	20.7%	20.7%	0.0%	20.7%	20.7%	1h	8c	
7129	DESERTTRAI	07081204	Frazier	Sold/CB	13.3%	13.3%	0.0%	0.0%	13.3%	1h	4b	8142/8548/8549
7129	DESERTTRAI	07091799	Callahan	REO	15.0%	15.0%	17.7%	15.0%	15.0%	1a	8c	8035
7129	DESERTTRAI	07111845	Hubbard (2nd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	6480
7129	DESERTTRAI	07121849	Presidio West 37, LLC	REO	13.4%	13.4%	0.0%	0.0%	13.4%	1h	8c	7094
7129	DESERTTRAI	08011873	CBI Developers, Inc	REO	7.8%	7.8%	0.0%	0.0%	7.8%	1h	8c	8035/8429
7129	DESERTTRAI	08081970	CBI Developers, Inc	REO	1.1%	1.1%	0.0%	0.0%	1.1%	1h	8c9c	
7129	DESERTTRAI	08081976	4405 Speedway, LLC	Current	1.5%	1.5%	0.0%	4.4%	1.5%	1br	4b9c	
7129	DESERTTRAI	08091983	Wilcox	Paid Off	100.0%	100.0%	0.0%	0.0%	100.0%	1h	7b	

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									Approved %	Codes		
										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
7129	DESERTTRAI	LC040302	Smith	Current	50.0%	50.0%	0.0%	50.0%	50.0%	1b	4b	
7129	DESERTTRAI	LC040912	O'Neal	FCLS	50.0%	50.0%	0.0%	50.0%	50.0%	1b	8d	7557
7129	DESERTTRAI	LC050509	Melvin Harter Ministries, Inc	REO/Sale	33.3%	33.3%	0.0%	0.0%	33.3%	1h	8c	
7129	DESERTTRAI	LC050627	Gutierrez (2nd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
7129	DESERTTRAI	LISBON	Gad (2nd DOT)	Charged Off					NA	3c	na	8035
7129	DESERTTRAI	WESTERN	Western Fiduciary, LLC	Sold	100.0%	100.0%	0.0%	0.0%	100.0%	1h	8b	
7129	DESERTTRAI	06100774	Pribyl	Sold/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	8a	8035
7129	DESERTTRAI	07020923	Gronau	Sold/Trans	9.5%	9.5%	0.0%	0.0%	9.5%	1h	8a	
7137	DOUCET	LC050310	Mejias	Current	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	
7148	ELKHORN	08021881	2405 University & 4044 16th St, LLC	Current	77.7%	77.7%	0.0%	77.7%	77.7%	1b	4b	
7149	ELLIOTT	06110795	Morquecho	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
8533	EMPIRE	07081208	Thompson	REO	50.0%	0.0%	0.0%	0.0%	0.0%	na	na	6765
8533	EMPIRE	07081204	Frazier	Sold/CB	10.6%	10.6%	0.0%	0.0%	10.6%	1h	4b	8142/8548/8549
8533	EMPIRE	07091799	Callahan	REO	25.2%	25.2%	0.0%	0.0%	25.2%	1h	8c	8035
8533	EMPIRE	07051054	Buck	REO/Trans	100.0%	100.0%	0.0%	0.0%	100.0%	1h	8b	
7288	FRIEDMAN	LC050509	Melvin Harter Ministries, Inc	REO/Sale	11.1%	11.1%	0.0%	0.0%	11.1%	1h	8c	
7288	FRIEDMAN	06030254	Baltierrez (1st DOT)	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	8035
7288	FRIEDMAN	06090669	Brinton (1st DOT)	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	5b	
7293	FULLER	08041909	Phx Jewish Comm. Nursing Home	Paid Off/Trans	16.7%	16.7%	0.0%	16.7%	16.7%	1b	7a	
7306	GDOUCET	LC050223	Meza	Paid Off	100.0%	100.0%	0.0%	100.0%	100.0%	1h	8b	
7329	GREENBERG1	06040336	Acevedo (1st DOT)	FCLS	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
7337	GRIMM	08021878	We Did Our Part, LLC	REO	14.3%	14.3%	0.0%	14.3%	14.3%	1b	8c9c	
7341	HAGEN	07041012	Gilder	REO/Trans	44.4%	100.0%	100.0%	100.0%	100.0%	1a	5a	
7021	HARVANENTR	06070554	Murray	Charged Off	100.0%	100.0%			NA	3c	na	
7356	HAYDEN	08031896	141 Route 69, LLC	FCLS/BK	1.4%	1.4%	0.0%	1.4%	1.4%	1b	8d9c	Oxford Group
7356	HAYDEN	07091799	Callahan	REO	9.3%	9.4%	10.8%	9.0%	9.4%	1a	8c	8035
7356	HAYDEN	06050406	Zuniga, D	Charged Off	100.0%	100.0%			NA	3c	na	
7356	HAYDEN	07020919	Asuncion	Charged Off	100.0%	100.0%	0.0%	0.0%	NA	3c	na	8035

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									Approved %	Codes		
										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
7356	HAYDEN	07041012	Gilder	Charged Off	55.6%	55.6%	0.0%	0.0%	NA	na	na	
7356	HAYDEN	06040343	Lucero (2nd DOT)	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	8c	
7356	HAYDEN	07020932	The Retreat at Buffalo Ridge, LLC	Sold	38.3%	38.3%	0.0%	0.0%	38.3%	1h	8b	
7356	HAYDEN	07030953	Lehman	Sold	12.3%	12.3%	0.0%	0.0%	12.3%	1h	8b	
7356	HAYDEN	07121849	Presidio West 37, LLC	REO	13.6%	13.6%	0.0%	0.0%	13.6%	1h	8c	7094
7356	HAYDEN	08011873	CBI Developers, Inc	REO	5.4%	5.4%	0.0%	0.0%	5.4%	1h	8c	8035/8429
7356	HAYDEN	08061942	Loyola-Sauza	REO	100.0%	100.0%	0.0%	100.0%	100.0%	1h	8c	8035
7356	HAYDEN	SOUNDBITES	Sound Bites Restaurant, LLC	Sold	54.9%	54.9%	0.0%	0.0%	54.9%	1h	8b	
7356	HAYDEN	06040340	Newton	Sold/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	8a	
7356	HAYDEN	06050370	Garcia	Sold/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	8a	
7356	HAYDEN	06070508	Honeycutt	Sold/Trans	40.8%	40.8%	41.0%	0.0%	40.8%	1a	8a	
7356	HAYDEN	06070544	Robinson	Sold/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	8a	8035
7356	HAYDEN	07020915	Monte Vista Home Solutions, LLC	Sold/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	8a	
7356	HAYDEN	07020923	Gronau	Sold/Trans	90.5%	90.5%	0.0%	0.0%	90.5%	1h	8a	
7365	HAYDEN	07051082	Slavin	Paid Off/Trans	19.8%	19.8%	0.0%	0.0%	19.8%	3a	na	
7371	HIGBEE	06110619	Ozuna	Charged Off					NA	3c	na	
7380	HOOKERS	08021678	We Did Our Part, LLC	REO	5.7%	5.7%	0.0%	5.7%	5.7%	1b	8c9c	
7380	HOOKERS	08031896	141 Route 69, LLC	FCLS/BK	3.0%	3.0%	0.0%	3.0%	3.0%	1b	8d9c	
7392	HUMPHED	LC050509	Melvin Harter Ministries, Inc	REO/Sale	2.8%	2.8%	0.0%	0.0%	2.8%	1h	8c	
8539	HUNGRY	07030964	Presidio West, LLC	Paid Off/Trans	1.1%	1.1%	0.0%	0.0%	NA	3a	na	
7408	JAMIESON	06070546	Bos	Current	19.9%	19.9%	0.0%	0.0%	19.88%	1h	4b9c	
7418	JOYCEP	06070532	Totten	REO/Trans	100.0%	99.0%	99.0%	0.0%	99.0%	1a	6a	
8537	JUTZI	08021883	Amec Mid-City Animal Hospital, LLC	Current	9.2%	9.2%	0.0%	9.2%	9.2%	1h	4b	
7421	KAY01	06043433RD	Lucero (3rd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
7421	KAY01	06090653	Saenz	FCLS/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
7421	KAY01	07121867	Molina	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
7421	KAY01	08041909	Phx Jewish Comm. Nursing Home	Paid Off/Trans	11.9%	11.9%	0.0%	11.9%	11.9%	1b	7a	
7421	KAY01	LC040904	Christenson	Paid Off/Trans	94.7%	94.7%	0.0%	94.7%	94.7%	1b	7a	

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										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
7421	KAY01	LC050540	Potter	Paid Off/Trans	22.3%	22.3%	0.0%	22.3%	22.3%	1b	7a	
7432	KEPEPDO	06080563	Rodriguez	FCLS	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	
8469	KEPESENTRU	06060492	Aragon	REO	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	06080580	Duran	REO	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	06120832	Garcia (2nd DOT)	Current	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	07010880	Gant	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	9e	
8469	KEPESENTRU	07020936	Olivos	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	9e	8035
8469	KEPESENTRU	07030976	Carrione	FCLS	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	07051057	Morquecho	FCLS/FA	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	08121995	Queen	Current	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	6855
8469	KEPESENTRU	LC050219	Taylor (2nd DOT)	Def	53.3%	53.3%	0.0%	53.3%	53.3%	1b	9e	
8469	KEPESENTRU	LC050404	Valencia (2nd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	LC050913	Phelps	FA	100.0%	100.0%	0.0%	100.0%	100.0%	1b	9e	
8469	KEPESENTRU	QUAIL	Reeves	REO	81.9%	81.9%	100.0%	0.0%	81.9%	1a	9e	
7436	KEPESR	LC050219	Taylor (2nd DOT)	Def	46.7%	46.7%	0.0%	46.7%	46.7%	1b	9e	
7438	KHAN	06080593	Corrales	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
7451	KRIEG	08061938	Aragon	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
7453	KRONOS	06050401	Careaga	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
7455	KRUGLICK	06100753	Cantu	REO	100.0%	100.0%	0.0%	66.7%	100.0%	1h	5b	
7976	LCPARTNER	07051066	Arp	REO	97.5%	97.5%	0.0%	79.1%	97.53%	1h	9b	8434
7976	LCPARTNER	07061120	Espinoza	Current	48.5%	48.8%	0.0%	48.5%	48.5%	1b	4b9c	Oxford Group
7976	LCPARTNER	07091799	Callahan	REO	0.0%	0.0%	9.1%	9.1%	0.0%	3a	na	8035
7976	LCPARTNER	08021878	We Did Our Part, LLC	REO	20.8%	20.8%	0.0%	20.8%	20.8%	1b	8c9c	Oxford Group
7976	LCPARTNER	08021885	Diaz	Sold	70.7%	70.7%	0.0%	75.8%	70.7%	1b	8b	6811/8432
7976	LCPARTNER	08031896	141 Route 69, LLC	FCLS/BK	36.3%	36.3%	0.0%	55.9%	36.3%	1b	8d9c	
7976	LCPARTNER	08041902	Porter, Michael	REO	12.5%	12.5%	0.0%	12.5%	12.48%	1b	8c9c	Oxford Group
7976	LCPARTNER	08041903	Two Six Seven Investments, LLC	REO	28.0%	28.0%	0.0%	28.0%	28.04%	1b	8d9c	Oxford Group
7976	LCPARTNER	08021884	Martos	Current/Trans	0.0%	0.0%	0.0%	0.0%	NA	3a	na	

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										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
7976	LCPARTNER	06050368	Arellano	Sold	100.0%	100.0%	0.0%	30.9%	100.0%	1h	8b	
7976	LCPARTNER	06060443	Granados	FCLS/FA	40.5%	40.5%	0.0%	40.5%	40.5%	1i	4b	
7976	LCPARTNER	06070533	Betzold	Sold	100.0%	100.0%	0.0%	0.0%	100.0%	1h	8b	
7976	LCPARTNER	06080610	Sisneros	Current	100.0%	100.0%	0.0%	100.0%	100.0%	1h	4b	
7976	LCPARTNER	06090690	Garza	Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
7976	LCPARTNER	07071137	Cadenas	FCLS/FA	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	
7976	LCPARTNER	07071142	Galvez	FCLS/FA	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
7976	LCPARTNER	07081200	Hernandez	Loan Sold	100.0%	100.0%	0.0%	100.0%	100.0%	1b	8b	6762
7976	LCPARTNER	07081784	Onofre	REO	11.4%	11.4%	0.0%	0.0%	11.4%	1h	8c	
7976	LCPARTNER	07111829	Stewart	Sold	5.2%	5.2%	0.0%	0.0%	7.8%	1hr	8b	
7976	LCPARTNER	08021881	2405 University & 4044 16th St, LLC	Current	22.3%	22.3%	0.0%	0.0%	22.3%	1h	4b	
7976	LCPARTNER	08051918	May	Sold	87.9%	87.9%	0.0%	0.0%	87.9%	1h	8b	8035
7976	LCPARTNER	08051927	Porter 20, LLC	Current	85.4%	85.4%	0.0%	80.3%	85.4%	1h	4b	
7976	LCPARTNER	08061945	Miesel	FCLS	96.0%	96.0%	0.0%	10.1%	96.0%	1h	8d	
7976	LCPARTNER	08061947	Surprise Prep School, LLC	Current	39.0%	39.0%	0.0%	32.3%	39.0%	1h	4a	
7976	LCPARTNER	08081970	CBI Developers, Inc	REO	90.1%	90.1%	57.7%	57.7%	90.1%	1h	8c9c	
7976	LCPARTNER	08081976	4405 Speedway, LLC	Current	53.9%	53.9%	0.0%	53.9%	54.4%	1br	4b9c	
7976	LCPARTNER	EMP09-004	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-008	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-009	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-012	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-013	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-015	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-016	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-017	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-018	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-019	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-020	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035

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A	B	C	D	E	F	G	H	I	J	K	L	M
7976	LCPARTNER	EMP09-021	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-022	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-023	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-024	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-025	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-026	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-027	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-028	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-029	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-030	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-031	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-036	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-037	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	EMP09-038	Empire Acceptance, Inc	Def	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	8035
7976	LCPARTNER	LC051022	Vela	FCLS	100.0%	100.0%	0.0%	100.0%	100.0%	1h	8d	
7976	LCPARTNER	LC051114	Saldate	Current	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	
7976	LCPARTNER	07081788	Gutierrez	Charged Off	100.0%	100.0%	0.0%	100.0%	NA	3c	na	
7976	LCPARTNER	06010124	Fagan	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5f	
7976	LCPARTNER	06010134	Aaron	Current/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1i	4ad	
7976	LCPARTNER	06030252	Camacho	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1i	5a	
7976	LCPARTNER	07041032	Velazquez	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	07051074	Fera	REO/Trans	68.3%	68.3%	0.0%	68.3%	100.0%	1b	5a	6713
7976	LCPARTNER	07051090	Nevarez	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	07061130	MSI Westgate, LLC	REO/Trans	32.5%	32.5%	0.0%	0.0%	32.5%	1a	5e	8035/8533
7976	LCPARTNER	07071161	Sema	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	07071175	Lopez	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	07111830	Alvarez	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	07111834	Hubbard (1st DOT)	Def/Trans	48.3%	48.3%	0.0%	48.3%	48.3%	1b	4a	6480

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										J	K	
A	B	C	D	E	F	G	H	I	J	K	L	M
7976	LCPARTNER	07121866	Escalante	Sold/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	8a	
7976	LCPARTNER	08021886	5171 Highway 65, LLC	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	08031890	Terhune	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	08041911	Canjura	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	08051920	6900 Camelback, LLC	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	08061935	Aguilar	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	08071957	Ashgaalin Holdings, LLC	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	08091988	Pebler Brothers Construction, Inc	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	
7976	LCPARTNER	EMP08-002	Empire Acceptance, Inc	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	8035
7976	LCPARTNER	EMP09-032	Empire Acceptance, Inc	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	8035
7976	LCPARTNER	EMP09-033	Empire Acceptance, Inc	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	8035
7976	LCPARTNER	EMP09-034	Empire Acceptance, Inc	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	8035
7976	LCPARTNER	EMP09-035	Empire Acceptance, Inc	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	5f	8035
8401	LDMACCEPT	08031896	141 Route 69, LLC	FCLS/BK	1.2%	1.2%	0.0%	1.2%	1.2%	1b	8d9c	Oxford Group
8401	LDMACCEPT	08051927	Porter 20, LLC	Current	1.4%	1.4%	0.0%	1.4%	1.4%	1b	4b	
8401	LDMACCEPT	07091794	Jefferson	Paid Off/Trans	8.5%	8.5%	0.0%	8.5%	8.5%	1b	7a	
8401	LDMACCEPT	08021877	Brown	Def/Trans	31.9%	31.9%	0.0%	32.0%	31.9%	1b	4a	
8401	LDMACCEPT	08061947	Surprise Prep School, LLC	Current/Trans	2.9%	2.9%	0.0%	3.0%	2.9%	1b	4a	
8401	LDMACCEPT	LC050111	Lujan	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	7a	
8401	LDMACCEPT	LC050425	Soldier	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
8401	LDMACCEPT	06070507	DMH Investments L.L.C.	REO	57.1%	57.1%	57.0%	0.0%	57.14%	1a	8c	
8401	LDMACCEPT	06070493	Wilson	REO/Trans	34.1%	34.1%	100.0%	0.0%	34.1%	1a	5a	
8401	LDMACCEPT	LC050540	Potter	Paid Off/Trans	77.7%	77.7%	0.0%	77.7%	77.7%	1b	7a	
8529	LDMPENS	08031896	141 Route 69, LLC	FCLS/BK	19.7%	19.7%	0.0%	21.0%	19.8%	1b	8d9c	Oxford Group
8529	LDMPENS	08051927	Porter 20, LLC	Current	3.6%	3.6%	0.0%	3.6%	3.6%	1b	4b	
8529	LDMPENS	08081970	CBI Developers, Inc	REO	1.0%	0.9%	0.9%	0.9%	1.0%	1h	8c9c	
8529	LDMPENS	06070493	Wilson	REO/Trans	65.9%	65.9%	0.0%	0.0%	65.9%	1a	5a	
8529	LDMPENS	08061947	Surprise Prep School, LLC	Current/Trans	11.8%	11.8%	0.0%	11.8%	11.8%	1b	4a	

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8529	LDMPENS	0602165	Hoegner	Charged Off	100.0%	100.0%				NA	3c	na	
8529	LDMPENS	06080624	Hernandez	Charged Off	100.0%	100.0%				NA	3c	na	8425
8529	LDMPENS	06100787	Olguin	Charged Off	100.0%	100.0%	100.0%	100.0%		NA	3c	na	
8529	LDMPENS	06110808	Brinton (2nd DOT)	Charged Off	100.0%	100.0%	26.4%	26.4%		NA	3c	na	
8529	LDMPENS	06120827	De La Rosa (2nd DOT)	Charged Off	100.0%	100.0%				NA	3c	na	
8529	LDMPENS	08051918	May	Sold	12.1%	12.1%	0.0%	12.1%	12.1%	1h	8b		8035
8529	LDMPENS	06120839	Niebla	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		
8529	LDMPENS	07061117	Hyatt	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		6732
8529	LDMPENS	07091794	Jefferson	Paid Off/Trans	91.5%	91.5%	0.0%	91.5%	91.5%	1b	7a		
8529	LDMPENS	07101812	Avena/Villa	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		6780
8529	LDMPENS	08021877	Brown	Def/Trans	68.1%	68.1%	0.0%	68.1%	68.1%	1b	4a		
8529	LDMPENS	08031893	Booth	Paid Off/Trans	100.0%	100.0%	0.0%	0.0%	100.0%	1b	7a		
8529	LDMPENS	08041907	Thorsby	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		
8529	LDMPENS	08041915	McGowan	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		6826
8529	LDMPENS	LC041009	Twyman	FCLS/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		7571
8529	LDMPENS	LC050203	Williams	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		
8529	LDMPENS	LC050307	Zingale, J	REO/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		8035
8529	LDMPENS	LC050506	Morales	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		
8529	LDMPENS	LC050928	Miner	REO/Trans	100.0%	100.0%	100.0%	0.0%	100.0%	1a	5a		
7988	LESHNER	07061120	Espinoza	Current	14.7%	14.7%	0.0%	14.7%	14.7%	1b	4b9c		
8022	MACKEN1	08021878	We Did Our Part, LLC	REO	14.3%	14.3%	0.0%	14.3%	14.3%	1b	8c9c		
8022	MACKEN1	08041902	Porter, Michael	REO	33.3%	33.3%	0.0%	33.3%	33.26%	1b	8c9c		
8547	MANNY	07121849	Presidio West 37, LLC	REO	2.5%	2.5%	0.0%	0.0%	2.5%	1h	8c		7094
8032	MANNY	06080603	Shields	Charged Off						NA	3c	na	
8542	MILVERTON	05120066	Ramsey	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	NA	3a	na	
8071	MOCK	LC031202	Marion (2nd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b		
8085	MUI	06060474	Smith	Current/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a		
8087	MURRAYR	06050387	Vega	REO/Trans	100.0%	100.0%	99.0%	0.0%	100.0%	1a	6a		

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										F	G	
A	B	C	D	E	F	G	H	I	J	K	L	M
8135	PETERSEN01	06060459	Seaman	Current/BK	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
8137	PETERSON	LC050831	Chournos	REO/Trans	100.0%	100.0%	100.0%		100.0%	1a	5a	7872/7873
8137	PETERSON	LC050836	Chournos	REO/Trans	100.0%	100.0%	100.0%		100.0%	1a	5a	7872/7873
8536	PORTELGIN	02120070	Gary	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	NA	3a	na	
8536	PORTELGIN	06050402	Vasquez	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	NA	3a	na	
8536	PORTELGIN	LC050904	Mando	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	NA	3a	na	
8155	RADER	07061120	Espinoza	Current	14.7%	14.7%	0.0%	14.7%	14.7%	1b	4b9c	
8161	REDSTAG	08021883	Amec Mid-City Animal Hospital, LLC	Current/Trans	20.8%	20.8%	0.0%	20.8%	20.8%	1b	4a	
8180	ROTHBERG	06050415	Blumenstein	REO/Trans	100.0%	100.0%	99.0%	0.0%	99.0%	1a	6a	
8183	RRUSSELL	08021878	We Did Our Part, LLC	REO	17.1%	17.1%	0.0%	17.1%	17.1%	1b	8c9c	
8183	RRUSSELL	08021883	Amec Mid-City Animal Hospital, LLC	Current/Trans	50.0%	50.0%	0.0%	50.0%	50.0%	1b	4a	
8185	RUBINTR	06070508	Honeycutt	Sold	59.2%	59.2%	59.0%	0.0%	59.2%	1h	8b	
8185	RUBINTR	06060432	Jimenez	Sold	100.0%	100.0%	0.0%	100.0%	100.0%	1h	8b	6455
8189	RUSSO	06050372	Horning	REO	14.1%	14.1%	0.0%	14.1%	14.1%	1h	8c	8035
8231	SINGER	06080608	Munoz	FA/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
8242	SNEED	06050372	Horning	REO	4.7%	4.7%	0.0%	4.7%	4.7%	1h	8c	8035
8244	SOLHEIMJ	08031896	141 Route 69, LLC	FCLS/BK	0.6%	0.6%	0.0%	0.6%	0.6%	1b	8d9c	
8245	SOLHEIMR	08041902	Porter, Michael	REO	38.8%	38.8%	0.0%	38.8%	38.76%	1b	8c9c	
8245	SOLHEIMR	08041903	Two Six Seven Investments, LLC	REO	46.7%	46.7%	0.0%	46.7%	46.73%	1b	8d9c	
8245	SOLHEIMR	08031896	141 Route 69, LLC	FCLS/BK	15.1%	15.1%	0.0%	15.1%	15.1%	1b	8d9c	
8245	SOLHEIMR	07111834	Hubbard (1st DOT)	Def/Trans	51.7%	51.7%	0.0%	51.7%	51.7%	1b	4a	6480
8552	SPAULD01	08021884	Martos	Current/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
8278	STATION	06030207	Poirier/Westend Investments, LLC	REO	3.2%	3.2%	0.0%	0.0%	3.2%	1h	8c	
8278	STATION	FLORENCE	Florence Ironhorse Rodeo Cons. LLC	Current	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	
8534	STILLRIVER	05120086	Mata	REO	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5b	
8314	TARCHENSKI	06090652	Rosales (2nd DOT)	REO/Trans	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
8314	TARCHENSKI	06070548	Hensley (2nd DOT)	Lost to First	100.0%	100.0%	100.0%	100.0%	100.0%	1a	5a	
8352	URQUIETA	08021878	We Did Our Part, LLC	REO	17.1%	17.1%	0.0%	17.1%	17.1%	1b	8c9c	

Schedule of Receiver's Final Recommendations Regarding Loan Participation Lender Claims

Claim No.	Claimant	LCI Loan No.	Name of Borrower	Current Status	Receiver's Recommendations							
					LCI %	Claimed %	Fee	ABI	Approved %	Codes		Possibly Adverse POC
										F	G	
8362	VANBLADEL	08041902	Porter, Michael	REO	15.5%	15.5%	0.0%	15.5%	15.50%	1b	8c9c	
8540	WALKERTON	08021883	Amec Mid-City Animal Hospital, LLC	Current/Trans	8.3%	8.3%	0.0%	8.3%	8.3%	1b	4a	
8541	WHITEFISH	08021883	Amec Mid-City Animal Hospital, LLC	Current/Trans	11.7%	11.7%	0.0%	11.7%	11.7%	1b	4a	
8380	WHITETRUST	LC041106	Magee (2nd DOT)	Def	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4b	
9000	WILDWEST	05070498	Gutierrez	REO/Trans	100.0%	100.0%	95.0%	0.0%	100.0%	1a	6a	
9000	WILDWEST	06120855	Leslie	REO	100.0%	100.0%	0.0%	0.0%	100.0%	1h	4b	
8538	WILLOWDALE	LC050632	Decausmaker	Paid Off/Trans	100.0%	100.0%	0.0%	100.0%	NA	3a	na	
8400	WISS	07121849	Presidio West 37, LLC	REO	7.9%	7.9%	0.0%	0.0%	7.9%	1h	8c	7094
8400	WISS	06080578	Hernandez	Current/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
8400	WISS	06010143	Bloom	Def/Trans	100.0%	100.0%	0.0%	100.0%	100.0%	1b	4a	
8403	WISSZ	LC040904	Christenson	Paid Off/Trans	5.3%	5.3%	0.0%	5.0%	5.3%	1b	7a	
8405	WOLFSD	LC050509	Melvin Harter Ministries, Inc	REO/Sale	33.3%	33.3%	0.0%	0.0%	33.3%	1h	8c	
8405	WOLFSD	08061947	Surprise Prep School, LLC	Current/Trans	2.4%	2.4%	0.0%	2.4%	2.4%	1b	4a	
8406	WOLFSP	LC050509	Melvin Harter Ministries, Inc	REO/Sale	19.4%	19.4%	0.0%	0.0%	19.5%	1h	8c	
8406	WOLFSP	08061947	Surprise Prep School, LLC	Current/Trans	4.9%	4.9%	0.0%	4.9%	4.9%	1b	4a	

Column	Explanation
A	Claim Number of the LP Lender
B	Lender Code used by Landmarc (See paragraph 12 of Petition No. 54)
C	Landmarc's Loan Number
D	Name of Borrower (Only the last name of individual borrowers is shown)
E	Current Status of Loan
F	Percentage of Ownership per Landmarc's records
G	Percentage of Ownership Claimed by Claimant
H	Fee Title percentage held on 6/24/09
I	Percentage of Beneficial Interest Assigned to Claimant by a duly recorded Assignment as of 6/24/09
J	Percentage Recommended by the Receiver for Court Approval
K	Approval Code explaining the basis of the recommendation (See Exhibit G)

Schedule of Receiver's Final Recommendations Regarding Loan Participation Lender Claims

Claim No.	Claimant	LCI Loan No.	Name of Borrower	Current Status	LCI %	Claimed %	Fee	ABI	Receiver's Recommendations			Possibly Adverse POC
									Approved %	Codes		
A	B	C	D	E	F	G	H	I	J	K	L	M

- L Disposition Code explaining the proposed disposition (See Exhibit G)
- M Potentially Adverse Proof of Claim (See sections 33-50 of Petition No. 54)

Current Status Codes

- Current Loan is current
- REO Loan foreclosed; title to security acquired in name of LCI or beneficial owners
- FCLS Foreclosure pending
- Trans Transferred
- Def Loan in default, foreclosure not yet started
- FA Forbearance Agreement
- BK Lift stay or other resolution in pending bankruptcy required
- Sold REO or Note sold
- Sold/CB REO sold with a carryback
- Sale Sale of the REO is pending

Approval Codes for Loan Participant Lender Claims
Column K

1. Approve for the percentage indicated as Approved % for one or more of the following reasons:
 - a. Fee title vested in the Claimant or an LLC at the Receivership Date by a duly recorded deed that was equal to or greater than the Approved %.
 - b. Beneficial interest vested in the Claimant at the Receivership Date by a duly recorded Assignment that was equal to or greater than the Approved %.
 - c. [not used]
 - d. [not used]
 - e. Loan proceeds from payoff of the loan or sale of the underlying security were held in Landmarc's Trust Account at the Receivership Date for the benefit of the Claimant in the Approved %.
 - f. Claimant held an interest pursuant to a *Notice of Lis Pendens* recorded prior to the Receivership Date.
 - g. Some claimed interests are approved and some are deferred.
 - h. Claimant entitled to an equitable lien in the loan or REO or proceeds for the Approved %.
 - i. Beneficial interest confirmed in Order No. 25.
 - r. Percentage interest of Claimant has been recalculated due to short funding or other factors.
 - v. [Not used]
2. Defer action on part or all of the Claimant's claimed interest for one or more of the following reason (although the Receiver has made a recommendation for an Approved % interest, this is contingent on the Court ultimately confirming the interest being deferred):
 - a. [not used]
 - b. [not used]
 - r. Percentage interest of Claimant has been recalculated due to short funding or other factors.
 - v. [Not used]
3. Disapprove the claimed interest in its entirety for one or more of the following reasons:
 - a. The records of Landmarc indicate that the claimed interest in this loan was repurchased from the Claimant or paid off.
 - b. The records of Landmarc indicate that the Claimant did not at any time hold the claimed interest in this loan.
 - c. Any interest of the Claimant in this loan or REO was wiped out by the foreclosure of a senior lien.

Disposition Codes for Loan Participant Lender Claims
Column L

4. The loan is eligible for transfer to a new servicing agent or the Claimant:
 - a. Previously transferred for the Approved % pursuant to *Order No. 4* or was transferred prior to the receivership.
 - b. Will be transferred for the Approved %.
 - c. Previously transferred but distributions on the Approved % for this claimant are being held by Receiver but will be released to claimant.
 - d. Previously transferred pursuant to *Order No. 25*.
 5. The REO is eligible for transfer to the Claimant:
 - a. Previously transferred for the Approved % pursuant to *Order No. 9* or was transferred prior to the receivership.
 - b. Will be transferred for the Approved %.
 - c. Approved % in the REO confirmed or will be transferred to a LLC.
 - d. Upon completion of the foreclosure the Approved % will be transferred.
 - e. Previously transferred for the Approved % and confirmed by the Court under *Order No. 41*.
 - f. Previously transferred pursuant to *Order No. 28*.
 6. The interest held by the Receiver is eligible for sale to the Claimant (and transfer of control/management of the REO):
 - a. Receivership interest previously sold pursuant to *Order No. 24*.
 - b. Receivership interest will be sold pursuant to *Order No. 24*.
 7. The loan payoff proceeds ("Proceeds") are eligible for transfer:
 - a. Approved % of the Proceeds previously transferred to Claimant pursuant to *Order No. 8*.
 - b. Approved % of the Proceeds will be transferred to Claimant.
 - c. Approved % of the Proceeds will be transferred to the Claimant's assignee.
 8. The net sale proceeds from the sale of the REO ("Proceeds") are eligible for transfer:
 - a. Approved % of the Proceeds was previously transferred to Claimant.
 - b. Approved % of the Proceeds will be transferred to Claimant.
 - c. Property to be sold and the Approved % of the Proceeds (or that portion confirmed at the time) will be transferred to the Claimant.
 - d. Upon completion of the foreclosure, the REO will be sold and the Approved % of the Proceeds will be transferred to the Claimant.
 9. To be determined later by subsequent order of the Court
 - a. Confirmation of an ownership or security interest in the loan or REO has been deferred until later.
 - b. Claim of a borrower or other creditor may need to be resolved before disposition of the confirmed interest.
 - c. Co-ownership, bankruptcy, or other issues may require further investigation and action by the Court before a final disposition can be made.
 - d. Resolution of the Approved % has been deferred until later.
 - e. Claim of the Receiver against this claimant will need to be resolved before disposition of the confirmed interest.
- # The interest has been assigned to the Receiver & will be distributed to the assignee.

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