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5 Attorneys for the Receiver

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

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

10 v.)

11 LANDMARC CAPITAL &)
INVESTMENT COMPANY,)
12 Defendant.)

Cause No. CV2009-020595

PETITION NO. 28

PETITION FOR ORDER CONFIRMING
TITLE OR AUTHORIZING THE
RECEIVER TO CONVEY FEE TITLE TO
LANDMARC CAPITAL PARTNERS, LLC
IN CERTAIN REAL PROPERTIES
BENEFICIALLY OWNED BY PARTNERS
WITH RECORDED ASSIGNMENTS AS
OF THE RECEIVERSHIP DATE

(Assigned to Judge Sam Myers)

15
16 Lauren Kingry, as the court appointed Receiver, respectfully petitions the Court as

17 follows:

18 1. On June 24, 2009 (“Receivership Date”), this Court entered its *Order*
19 *Appointing Receiver and Order to Show Cause*, which appointed the Superintendent of the
20 Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment
21 Company (“Landmarc”). On July 10, 2009, this Court entered its *Order Appointing*
Permanent Receiver and Injunction. On February 27, 2010, the Court entered its *Order*

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

7 2. As of the Receivership Date, many of the loans previously made by Landmarc
8 and beneficially owned by Landmarc Capital Partners, LLC (“Partners”) were in the process
9 of foreclosure or thereafter defaulted and became the subject of a foreclosure. This petition
10 seeks to confirm or convey the fee title to Partners of the real estate acquired in those
11 foreclosures (“REO”) where the beneficial ownership of Partners in those loans and the
12 resulting REO is not in dispute, and is reflected in the records of Landmarc and in an
13 Assignment of Deed of Trust to Partners which was properly recorded as of the Receivership
14 Date.

15 **Transfer to Partners of REO Beneficially Owned by Partners But Titled to Landmarc**

16 3. Attached as Exhibit “A” is a listing of owned real restate (“REO”) which are
17 beneficially owned by Partners but which are currently titled to Landmarc or the Deputy
18 Receiver. In the case of each of these REO:

19 a. The records of Landmarc show that 100% of the beneficial interest in the
20 loan for which the REO was security was held by Partners on the Receivership Date;
21

1 b. There was an Assignment of Deed of Trust duly recorded as of the
2 Receivership Date assigning to Partners 100% of the beneficial interest in the loan and
3 deed of trust for which the REO was security;

4 c. Because of the borrower's default, after the Receivership Date the
5 Receiver foreclosed on the loan and the Trustee issued the Trustee's Deed to
6 Landmarc or the Deputy Receiver;

7 d. The Receiver has no actual knowledge of a failure or inadequacy of
8 consideration by Partners or the existence of an adverse claim of ownership or security
9 interest in the REO.

10 4. Accordingly the Receiver requests that the Court authorize him to transfer to
11 Partners fee title to the REO listed in Exhibit "A".

12 **Confirmation of Title in Partners of REO Beneficially Owned by and Titled to Partners**

13 5. Attached as Exhibit "B" is a list of eight REO properties where title was
14 transferred at the trustee sale to Partners after the Receivership Date. In the case of each of
15 these REO:

16 a. The records of Landmarc show that 100% of the beneficial interest in the
17 loan for which the REO was security was held by Partners on the Receivership Date;

18 b. There was an Assignment of Deed of Trust duly recorded as of the
19 Receivership Date assigning to Partners 100% of the beneficial interest in the loan or
20 deed of trust for which the REO was security;

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1 c. Because of the borrower's default, after the Receivership Date the
2 Receiver foreclosed on the loan and the Trustee issued the Trustee's Deed to Partners;
3 and

4 d. The Receiver has no actual knowledge of a failure or inadequacy of
5 consideration by Partners or the existence of an adverse claim of ownership or security
6 interest in the REO.

7 6. Accordingly the Receiver requests that the Court enter an order confirming the
8 title vested in Partners to the REO listed in Exhibit "B" and authorizing the Receiver to direct
9 the Trustee of deeds of trust for loans meeting the above criteria to issue the Trustee's Deed
10 to Partners.

11 **Empire Loans Beneficially Owned By Partners**

12 7. Between December 2008 and June 2009, Landmarc made approximately 46
13 secured loans to Empire Acceptance, Inc., an Arizona corporation owned by David Crantz
14 and controlled by Crantz and Jeffrey Peterson. As of the Receivership Date there were 30
15 such loans on the books and records of Landmarc ("Empire Loans") and each was secured by
16 a recorded deed of trust on residential property. According to the records of Landmarc, as of
17 the Receivership Date all of these 30 Empire Loans were beneficially owned by Partners.
18 However, Landmarc only recorded an Assignment of Deed of Trust to Partners on four of the
19 Empire Loans (see Exhibit "C" attached to this petition).

20 8. The Receiver has investigated the source and use of funds relating to the
21 Empire Loans and determined that the Receiver had claims against Empire arising out of the

1 Empire Loans¹. Since Empire was insolvent² and had no valuable assets other than the
2 properties securing the Empire Loans (“Empire Properties”), the Receiver demanded and
3 obtained from Empire, deeds transferring to Landmarc all of the fee title to the 30 Empire
4 Properties.

5 9. In the case of each of the four Empire Properties identified in Exhibit “C”
6 (“Property”):

7 a. The Receiver has determined based on the loan balance and the market
8 value of the Property that there is no equity in the Property for the benefit of Landmarc
9 or its creditors;

10 b. The records of Landmarc show that 100% of the beneficial interest in the
11 loan for which the Property is security was held by Partners on the Receivership Date;

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13
14 ¹ The Receiver discovered an organized plan to deceive Landmarc’s creditors, the public and government
15 regulators. For example, the amount of the loans made by Landmarc to Empire were significantly greater than
16 the actual amount of money that Empire expended to acquire the property only a few days earlier. First,
17 Empire would acquire a property at a trustee sale. Next, an “Exterior-Only Inspection Residential Appraisal
18 Report” would be performed which acknowledged that the appraisal was done under the “extraordinary
19 assumption that the interior will be remodeled, including the kitchen, baths, new flooring, new AC (if
20 necessary) new windows (if necessary)”. The Appraisal Report would also use identical comparable properties
21 for many of the Empire transactions. Based upon this Appraisal Report, Landmarc would fund a loan to
Empire for significantly more than Empire paid for the property only a few weeks earlier. For example, two
properties were acquired by Empire for \$74,377 in late December 2008. A \$143,000 loan to Empire was
funded by Landmarc on January 9, 2009 based upon one of the above described Appraisal Reports. Landmarc
received \$26,740 in fees upon the closing of the loan to Empire and based upon on the total purchase price of
the property only weeks earlier, the actual loan-to-value of this loan was 192% (\$143,000/\$74,377).
Landmarc then sold the loan on January 9, 2009 to Partners for \$143,000 without disclosing the true facts to
any of the investors in Partners and without insuring that Empire had completed the interior remodeling
contemplated in the Appraisal Report.

² Empire’s January 31, 2009 unaudited financial statements show that Empire had total assets of
approximately \$1,094,000, total liabilities of approximately \$1,746,000 and a negative net worth of
approximately \$(652,000).

1 c. There was an Assignment of Deed of Trust duly recorded as of the
2 Receivership Date assigning to Partners 100% of the beneficial interest in the loan and
3 deed of trust for which the Property is security;

4 d. Landmarc holds fee title to the Property; and

5 e. The Receiver has no actual knowledge of a failure or inadequacy of
6 consideration by Partners or the existence of an adverse claim of ownership or security
7 interest in the Property.

8 10. Accordingly, the Receiver recommends that the Court authorize the Receiver to
9 convey to Partners fee title to each of the properties identified in Exhibit "C". Conveyance of
10 fee title to Partners will extinguish the deed of trust under the merger of title doctrine but the
11 Receiver is unaware of any subordinate liens that would justify the expense to Partners of a
12 foreclosure action.

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

14 1. Authorizing the Receiver convey to Partners fee title to the four properties
15 identified in Exhibit "A".

16 2. Confirming the title vested in Partners to the REO listed in Exhibit "B".

17 3. Authorizing the Receiver, in the case of loans in foreclosure, to direct the
18 Trustee under the deed of trust to issue the Trustee's Deed Upon Sale to Partners where the
19 following criteria are met:

20 a. The records of Landmarc show that 100% of the beneficial interest in the
21 loan was held by Partners on the Receivership Date;

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b. There is an Assignment of Deed of Trust properly recorded as of the Receivership Date assigning to Partners 100% of the beneficial interest in the loan and deed of trust; and

c. The Receiver has no actual knowledge of a failure or inadequacy of consideration by Partners or the existence of an adverse claim of ownership or security interest in the loan or promissory note.

4. Authorizing the Receiver to convey to Partners fee title to the four properties identified in Exhibit "C".

5. Authorizing the Deputy Receiver to execute all deeds, instructions and other documents necessary to carry out this order.

Respectfully submitted this 27th day of July, 2010.

GUTTILLA MURPHY ANDERSON

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

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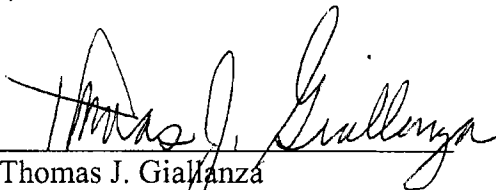
Verification

I, Thomas J. Giallanza, do hereby declare as follows:

I am the Court appointed Deputy Receiver in the action entitled *State of Arizona ex rel. v. Landmarc Capital & Investment Company*, pending before the Arizona Superior Court for Maricopa County, cause number CV2009-020595; I have read the foregoing Petition, and know the contents thereof; that the matters and things contained therein are true in substance and in fact, to the best of my information, knowledge and belief, except as to those matter and things alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 27, 2010, in Scottsdale, Arizona.


Thomas J. Giallanza
Deputy Receiver

Partners' REO Titled to LCI But Beneficially Owned by Partners on 6/24/09

Account	Borrower	Recorded Assignments & Deeds		Beneficial Owners of Loan		Property Address	PrinBal
		Detail	Per LCI Database	LCP %			
08051920	6900 Camelback, LLC	Assignment of 100% from LCI to LCP rcd 7/7/08 in No. 2008-595770 MCR; TDUS to TG as DR of LCI rcd 5/6/10 in No. 2010-388348 MCR.	LCPartners (100.00)	100%	6900 East Camelback Road #1100 Scottsdale, AZ 85251	993,000	
07041032	Velazquez	Assignment of 100% from LCI to LCP rcd No. 2007-1298601 MCR and No. 2008-140313 MCR; TDUS to LCI rcd 12/23/09.	LCPartners (100.00)	100%	3320 North 79th Avenue Phoenix, AZ 85033	120,000	
07051090	Nevarez	Assignment of 100% from LCI to LCP rcd No. 2008-300695 MCR; TDUS to TG as DR of LCI rcd 3/25/10.	LCPartners (100.00)	100%	7568 West Elm Street Phoenix, AZ 85033	155,522	
08071957	Ashgaalin Holdings, LLC	Assignment of 100% from LCI to LCP rcd No. 2008-20285 NCR; TDUS to LCI rcd 11/20/09.	LCPartners (100.00)	100%	APN 107-21-013B & 107-22-003B Joseph City, AZ 86032	895,000	

**REO Titled to Partners Following Trustee Sale Post Receivership Where Partners Held
Beneficial Interest on 6/24/09**

Account	Borrower	Recorded Assignments & Deeds		Beneficial Owners of Loan			Property Address	PrinBal	Status
		Detail		Per LCI Database	LCP %				
07071161	Serna	Assignment of 100% from LCI to LCP rcd 4/14/09 in No. 2009-0331670 MCR; TDUS to LCP rcd 1/29/10.		LCPartners (100.00)	100%		4210 North 92nd Lane, Phx	151,450	REO
07121866	Escalante	Assignment of 100% to LCP rcd 7/2/08 as No. 2008-0585518 MCR; TDUS to LCP rcd 5/29/09 No. 2009-0483213 MCR.		LCPartners (100.00)	100%		1915 East Hidalgo Avenue, Phoenix	82,500	Sold
08021886	5171 Highway 64, LLC	Assignment of 100% from LCI to LCP 2009-3514171 CoconinoCR.; TDUS to LCP rcd 6/29/09.		LCPartners (100.00)	100%		5171 North Highway 64 Williams, AZ 86046	422,500	REO
08061935	Aguilar	Assignment of 100% from LCI to LCP rcd No. 2008-628831 MCR; TDUS to LCP rcd 6/15/10 in No. 2010-0505808 MCR.		LCPartners (100.00)	100%		5601 South 7th Ave Phoenix, AZ 85041	480,000	REO
06010124	Fagan	Assignment of 100% from LCI to LCP rcd No. 2008-201548 MCR; TDUS to LCP rcd 10/31/08		LCPartners (100.00)	100%		253 East Laredo Avenue Gilbert, AZ 85296	223,300	REO
07071175	Lopez	Assignment of 100% from LCI to LCP rcd No. 2008-1054351 MCR; TDUS to LCP rcd 6/26/09.		LCPartners (100.00)	100%		1108-1114 South 35th Avenue Phoenix, AZ 85009	303,000	REO

**REO Titled to Partners Following Trustee Sale Post Receivership Where Partners Held
Beneficial Interest on 6/24/09**

Account	Borrower	Recorded Assignments & Deeds		Beneficial Owners of Loan			PrinBal	Status
		Detail	Per LCI Database	LCP %	Property Address			
08031890	Terhune	Assignment of 100% LCI to LCP No. 2008-0301469 MCR; TDUS to LCP rcd 2/25/10.	LCPartners (100.00)	100%	4324 North 126th Drive Litchfield Park, AZ 85340	120,000	REO	
08091988	Pebler Brothers Construction, Inc.	Assignment of 100% LCI to LCP rcd No. 2008-964076 MCR; TDUS to LCP rcd 3/4/2010.	LCPartners (100.00)	100%	13017 East Chandler Heights Blvd Chandler, AZ 85249	882,000	REO	

REO Acquired from Empire and Beneficially Owned by Partners on 6/24/09

Account	Borrower	Recorded Assignments & Deeds		Beneficial Owners of Loan			PrinBal
		Detail	LCP %	Per LCI Database	LCP %	Property Address	
EMP08-002	Empire Acceptance Inc.	Assignment of 100% from LCI to LCP rcd in No. 2009-00013709 MCR	100.00%	LCPartners (100.00)	100%	4741 North 48th Drive Phoenix, AZ 85031	58,500
EMP09-032	Empire Acceptance Inc.	Assignment of 100% from LCI to LCP rcd in No. 2009-0440806 MCR.	100.00%	LCPartners (100.00)	100%	5513 West Catalina Drive Phoenix, AZ 85031	59,800
EMP09-033	Empire Acceptance Inc.	Assignment of 100% LCI to LCP rcd in No. 2009-0440934 MCR.	100.00%	LCPartners (100.00)	100%	5540 West Lewis Avenue Phoenix, AZ 85035	72,000
EMP09-034	Empire Acceptance Inc.	Assignment of 100% from LCI to LCP rcd in No. 2009-0458402 MCR.	100.00%	LCPartners (100.00)	100%	6419 West Rose Lane Glendale, AZ 85031	65,000
EMP09-035	Empire Acceptance Inc.	Assignment of 100% from LCI to LCP rcd in No. 2009-0458400 MCR.	100.00%	LCPartners (100.00)	100%	3617 West Minnezona Avenue Phoenix, AZ 85019	70,850