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5 Attorneys for the Receiver

6 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

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

10 Plaintiff,

11 v.

LANDMARC CAPITAL & )  
INVESTMENT COMPANY, )

12 Defendant. )  
13 )  
14 )

Cause No. CV2009-020595

PETITION NO. 59

PETITION FOR APPROVAL OF )  
SETTLEMENT AGREEMENT WITH )  
LEONARD GREY )

(Assigned to Judge Eileen Willett)

15 Lauren W. Kingry, as the court appointed Receiver, respectfully petitions the Court as  
16 follows:

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

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

6 2. Pursuant to the Receiver’s investigation into the business activities of  
7 Landmarc, the Receiver discovered that Leonard A. Grey of Leonard A. Grey, C.P.A., P.C.  
8 (collectively “Grey”) provided accounting services to Landmarc. Specifically, from 2003 to  
9 2008, Grey prepared audited and financial statements for Landmarc.

10 3. The Receiver's investigation into the audits and financial statements of  
11 Landmarc, prepared by Grey and filed with the Arizona Department of Financial Institutions,  
12 uncovered that Landmarc's the audits and financial statements may not have been prepared in  
13 accordance with generally accepted accounting principles and standards.

14 4. Grey has denied any wrongdoing, but has agreed to settle any claims that  
15 Landmarc may have against him. Specifically, Grey has agreed to pay \$977,566.00 to the  
16 Receivership Estate in settlement of all claims, known or unknown, which could be made by  
17 the Landmarc Receivership Estate against Grey. The \$977,566.00 represents the limits of  
18 Grey's professional malpractice insurance after the costs of Grey's legal fees and costs are  
19 deducted from the policy<sup>1</sup> .  
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<sup>1</sup> Grey has a \$1M professional liability insurance policy.

1           5.       The \$977,566.00 is an approximated settlement amount as of November 28,  
2 2011. As set forth in the attached settlement agreement, Grey and the Receiver have agreed  
3 that the exact amount paid to the Receivership Estate will be \$977,566.00 less costs and legal  
4 fees incurred by Grey's legal counsel until the approval of the Settlement Agreement. The  
5 \$977,566.00 will be delivered to the Receiver within 10 days from the Receivership Court's  
6 approval of this Agreement and after all costs and legal fees incurred by Grey's legal counsel  
7 from the date of this Agreement are documented to the Receiver<sup>2</sup>.

8           6.       The Receiver believes that the Settlement Agreement is fair and in the best  
9 interests of the receivership estate for the following reasons. First, the proposed settlement  
10 results in a monetary recovery for the receivership estate of approximately 97.7% of the limits  
11 of Grey's professional liability insurance policy and the Receiver believes that collecting  
12 additional amounts from Grey's personal assets is very problematic. Also, as Grey incurs  
13 further defense costs during the course of litigation, the recoverable amount under his  
14 insurance policy is reduced. Second, the settlement avoids any of the litigation risks the  
15 Receiver might face, including the argument that Landmarc's claims may be barred by  
16 applicable statutes of limitations, any argument that Grey's liability is not covered by his  
17 insurance policy and the uncertainty of litigation against Grey which could result in a  
18 monetary damages award less than \$977,566.00. Finally, this settlement eliminates the  
19 necessity of Landmarc incurring additional legal fees in the prosecution of its claims against  
20 Grey.

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<sup>2</sup> Unless there is opposition to Petition No. 59, the Receiver does not believe the final settlement payment will be materially less than \$977,566.00.

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

1. Approving the Settlement Agreement attached hereto as Exhibit "A".
2. Granting such other relief as may be appropriate or required under the

Settlement Agreement.

Respectfully submitted this 19<sup>th</sup> day of December, 2011.

GUTTILLA MURPHY ANDERSON

/s/Ryan W. Anderson  
Ryan W. Anderson  
Attorneys for the Receiver

1157-001(114911)

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between, Lauren Kingry, as Receiver of Landmarc Capital & Investment Company, in his capacity as Receiver ("Receiver"), by and through Deputy Receiver, Thomas J. Giallanza ("Deputy Receiver") and Leonard A. Grey and Leonard A. Grey, C.P.A., P.C, (collectively referred to herein as "Grey"). The parties hereto are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

### Recitals

Whereas, on June 24, 2009, the Maricopa County Superior Court in the matter *State of Arizona vs. Landmarc Capital & Investment Company*, Cause No. CV2009-020595 entered its *Order Appointing Receiver and Order to Show Cause* which appointed the Superintendent of the Arizona Department of Financial Institutions as Receiver of Landmarc Capital & Investment Company ("Landmarc"). On July 10, 2009, this Court entered its *Order Appointing Permanent Receiver and Injunction* ("Receivership Action");

Whereas, on February 27, 2010, the Court entered its *Order placing Hayden Investments, LLC, Desert Trails Holdings, LLC and Arizona Valuation Company, LLC in Receivership*. On May 12, 2010, the Court entered its *Amended Order Appointing Permanent Receiver and Injunction* (collectively "Receivership Estate").

Whereas, the Receiver has investigated the business activities of Landmarc and discovered that Grey provided accounting services to Landmarc including the preparation of various audits and financial statements for Landmarc;

Whereas, the Receiver has asserted it has claims against Grey for damages arising from professional malpractice; negligence; breach of contract; breach of fiduciary duty; negligent misrepresentation; failure to perform accounting services in accordance with generally accepted accounting principles ("GAAP") and generally accepted auditing standards ("GAAS"); the failure to fully and fairly disclose all relevant facts; failure to provide true portrayal of financial condition; failure to detect inaccuracies in financial statements and the failure to reflect outstanding liabilities and improperly listing assets ("Receiver's Allegations"); and

Whereas, without admitting the truth or validity of any claim or defense, the parties desire to settle all claims that the Receiver may be entitled to assert against Grey.

### Terms

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Grey shall pay to the Receiver the approximate sum of \$977,566.00 representing Grey's Errors and Omissions Insurance Policy limits, less costs and attorney fees which could increase during the process of obtaining Receivership Court approval of this Settlement. Therefore, the Parties agree that the exact amount paid to the Receivership Estate will be \$977,566.00 less costs and legal fees incurred by Grey's legal

counsel from the date of this Agreement. ("Settlement Funds") The Settlement Funds will be delivered by wire transfer to the Receiver within 10 days from the Receivership Court's approval of this Agreement as set forth below and all costs and legal fees incurred by Grey's legal counsel from the date of this Agreement will be documented to the Receiver.

2. Upon the execution of this Agreement, the Receiver shall file a petition in the Receivership Action seeking the approval of this Agreement and the provisions contained therein are conditioned upon the approval of the Agreement by the Court in the Receivership Action and the Agreement shall not become effective until and unless so approved.

3. The Receiver hereby, on behalf of the Receivership Estate and on behalf of its attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges Grey and Grey's attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims, known or unknown, of any kind or nature arising out of the Receiver's Allegations, including without limitation any claims that were made or could have been made against Grey in the Receivership Action.

4. Grey hereby, on his own behalf and on behalf of his attorneys, employees, partners, agents, predecessors, successors, assigns, assignors, and legal representatives, releases and forever discharges the Receivership Estate, the Receiver and its attorneys, employees, agents, predecessors, successors, assigns, assignors, executors, administrators, and legal representatives from any and all claims of any kind or nature arising out of the Receiver's Allegations, including without limitation any claims that were made or could have been made in the Receivership Action.

5. The parties hereto acknowledge that this Agreement is being made by each party of its own free choice, without any inducement offered in any way other than the express agreements contained in this Agreement. The parties further state that in entering into this Agreement, each party has had the opportunity to consult with an attorney of that party's own choice regarding the benefits and detriments of entering into this Agreement.

6. The parties agree that the Tolling Agreement dated December 17, 2010 is extended for a period of thirty (30) days after a final order of the Receivership Court is entered regarding the Receiver's petition to approve this Settlement Agreement as set forth in paragraph 2 above.

7. This Agreement contains the full and complete agreement of the parties hereto, and all prior negotiations and agreements pertaining to the subject matter hereof are merged into this Agreement. No amendment, waiver, or discharge in any provision of all or any part of the Agreement shall be valid unless such amendment, waiver or discharge is in writing and duly executed by all parties to this Agreement, or their authorized agents.

8. This Agreement may not be amended or modified except in writing, signed by the parties to be bound thereby, or signed by their respective attorneys of

record in the Litigation, which writing has been approved by the Court in the Receivership Action.

9. The parties hereto warrant and represent that none of them has sold, assigned, granted, or otherwise transferred to anyone not a party hereto, any right, privilege, or cause of action, or any part thereof, arising out of or otherwise connected with the subject matter or terms of this Agreement.

10. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

11. This Agreement is entered into in the State of Arizona, and shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Arizona. Any dispute concerning the interpretation of this Agreement shall be submitted to and decided exclusively in the Receivership Action.

12. The person signing this Agreement on behalf of any party to this Agreement, hereby warrants and represents that the person is authorized to sign this Agreement and make the promises and grant the releases contained herein on behalf of the respective entity and that such person has the power to bind the respective entity.


13. This Agreement may be executed in counterparts by one or more of the undersigned, and all such counterparts so executed shall together be deemed to constitute one final Agreement, as if one document had been signed by all parties hereto. Each such counterpart shall be deemed to be an original, binding the parties subscribed thereto, and multiple signature pages affixed to a single copy of the Agreement shall be deemed to be a fully executed original Agreement.

14. In the event of any future litigation between the parties to this Agreement in which the enforcement of this Agreement is sought, the prevailing party or parties with respect to issues relating to the Agreement shall be entitled to recover their reasonable attorneys' fees and costs from the other party or parties.

15. All parties to this Agreement have read this Agreement and fully understand and comprehend its meaning and binding effect.

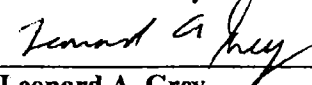
Dated: DECEMBER 16, 2011

Lauren Kingry, as Receiver of Landmarc  
Capital & Investment Company,

  
By: Thomas J. Gallanza, Deputy  
Receiver

Dated: \_\_\_\_\_

Leonard A. Grey

  
Leonard A. Grey

Leonard A. Grey, CPA, P.C.

Dated: \_\_\_\_\_

*Leonard A. Grey*  
By: Leonard A. Grey

1157-002(114012