

**ROBB EVANS & ASSOCIATES LLC**  
**Temporary Receiver of**  
**Longboat Global Funds Management, LLC, et al.**

11450 Sheldon Street  
Sun Valley, California 91352-1121  
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**Commodity Futures Trading Commission v. Longboat Global Funds Management, LLC**  
**CASE No. 05-CV-2142 PJH**

**Notice of Motion and Motion for Approval of Temporary Receiver's**  
**Report of Assets for the Period November 1, 2006 Through May 23, 2007;**  
**and Proposed Order**

**Filed May 23, 2007**

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 9 Temporary Receiver

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 COMMODITY FUTURES TRADING )  
 13 COMMISSION, )

14 Plaintiff,  
 15 vs.

16 ROBERT JOSEPH BEASLEY,  
 17 LONGBOAT GLOBAL FUNDS  
 18 MANAGEMENT, LLC,

19 Defendants.

Case No.: No. 05-2142 PJH

NOTICE OF MOTION AND MOTION  
 FOR APPROVAL OF TEMPORARY  
 RECEIVER'S REPORT OF ASSETS  
 FOR THE PERIOD NOVEMBER 1,  
 2006 THROUGH MAY 23, 2007, AND  
 PROPOSED ORDER

Date: June 27, 2007  
 Time: 9:00 A.M.  
 Place: Courtroom 3, 17<sup>th</sup> Floor  
 450 Golden Gate Ave.  
 San Francisco, CA 94102  
 (Hon. Phyllis J. Hamilton)

**Oral Argument Not Requested**

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22  
 23 TO THE HONORABLE PHYLLIS J. HAMILTON, UNITED STATES  
 24 DISTRICT COURT JUDGE, AND TO ALL PARTIES AND THEIR  
 25 ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on June 27, 2007, at 9:00 a.m. in Courtroom  
 27 3 of the United States District Court for the Northern District of California located at  
 28

1 450 Golden Gate Avenue, 17<sup>th</sup> Floor, San Francisco, California 94102, Robb Evans  
2 & Associates LLC, Temporary Receiver in the above-captioned case, will present its  
3 Motion for Approval of the Temporary Receiver's Fourth Report of Assets. The  
4 Temporary Receiver is willing for this Motion to be considered without Oral  
5 Argument.

6 Pursuant to L.R. 66-5, the Temporary Receiver, Robb Evans and Associates  
7 LLC, submits this Report regarding assets of the receivership. This Report will be  
8 served on all parties and will be posted on the Temporary Receiver's website at  
9 <http://www.robbevans.com/html/longboat.html>, where it may be reviewed in its  
10 entirety. A copy of the report will be provided to any interested party upon receipt  
11 of a request, therefore, which may be directed to: Robb Evans & Associates LLC,  
12 Attn: Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352 telephone:  
13 (818) 768-8100, facsimile: (818) 768-8802. Any person or entity opposing this  
14 Motion must timely file with the Court and serve upon the Temporary Receiver,  
15 whose name and address appear in the upper left-hand corner of the first page of this  
16 Motion, a written opposition which complies in all respects with the rules of this  
17 Court. Failure to timely file an opposition may be deemed by the Court to be  
18 consent to the granting of the Temporary Receiver's Motion.

19  
20 Dated this 23<sup>rd</sup> day of May, 2007

21   
22 Linda J. Candler  
23 Attorney for Temporary  
24 Receiver, Robb Evans  
25 and Associates LLC  
26  
27  
28

**ROBB EVANS & ASSOCIATES LLC**  
**Temporary Receiver of**  
**Longboat Global Funds Management, LLC, et al.**

**TEMPORARY RECEIVER'S REPORT OF ASSETS**  
**November 1, 2006 through May 23, 2007**

***Introduction:***

This action was commenced on May 25, 2005 by the Commodity Futures Trading Commission (“CFTC”) against the Defendants. The CFTC’s Complaint alleges that the Defendants committed fraud by misrepresenting the condition and status of certain investments held by Piranha Capital, L.P., a commodity pool that Defendants operated, and failed to disclose Defendant Robert J. Beasley’s personal financial interest in those investments, in violation of certain provisions of the Commodity Exchange Act.

On August 19, 2005, Robb Evans & Associates LLC (“REA” or “Receiver”) was appointed as Temporary Receiver pursuant to a “Consent Order of Preliminary Injunction and Other Equitable Relief” (“Order”). Pursuant to the terms of the Order, REA was appointed as Temporary Receiver for Defendant Longboat Global Funds Management, LLC (“Longboat”) and any affiliates or subsidiaries solely with respect to matters involving Piranha Capital, L.P. (“Piranha”), and all of the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by Piranha with the full powers of an equity Receiver, except as limited by the terms of the Order.

This is the Temporary Receiver's Fourth Report of Assets. On December 14, 2005, the Temporary Receiver filed a Report of Assets and Petition for Instructions relating to a bank account held by Pershing LLC. On February 14, 2006, the Temporary Receiver filed its Second Report of Assets, which discussed properties in Montana purchased by Defendant Robert J. Beasley (Beasley) with funds loaned by Piranha Capital LP to Lewis and Clark Capital LLC and Diamond B LLC, entities controlled by Beasley. On November 30, 2006, the Receiver filed its Third Report, which detailed the Receiver's efforts to identify and collect other assets pledged as security for other promissory notes. That Report also discussed the Receiver's investigation of entities, which received loans from Piranha Capital, specifically, Pinnacle West LLC (Pinnacle), Plutus Alternative Strategies (Plutus), and Sunquest Development (Sunquest), now known as Branford Partners LLC (Branford). This Report will summarize the Receiver's efforts to identify assets of those identities. This Report will also discuss how the funds loaned by Piranha Capital to Plutus, Sunquest and Pinnacle West were actually spent.

### **Promissory Notes**

As set out in the prior reports, even before it started trading, Piranha Capital LP and Longboat Global Funds transferred funds to entities controlled by Beasley, and to Pinnacle West LLC (Pinnacle), Sunquest Development LLC (Sunquest) and Roth/DCM (Roth). Specifically, on March 16, 2001, promissory notes were executed to Piranha by Beasley entity and to Diamond B Quarterhouse Ranch LLC for \$1,200,000 by Beasley entity; Lewis and Clark Capital LLC in the amount of

\$800,000.00; and by D.C.M. Limited Partnership in the amount of \$133,250.00. The first promissory note to Piranha from Pinnacle West LLC in the amount of \$350,000.00 is dated February 1, 2001. There were at least 19 separate transfers to Pinnacle West, and it appears that loan documents were created for each transfer. The Receiver took the deposition of Jonathan Brake (Brake), the Principal of Pinnacle on May 10, 2007. Brake stated during his deposition that on some occasions, the notes were not created until after the funds had been transferred, and that he was not sure whether all the promissory notes actually related to funds loaned to Pinnacle. Brake also stated that some of the Pinnacle West notes that bore his signature were not actually signed by him. The Receiver is reviewing documents provided by Pinnacle West pursuant to a subpoena. Brake stated that he did not own any real estate and he confirmed that Pinnacle West no longer has any interest in the Aspens at Jordanelle real estate project.

The Loans Due and Owing are as follows:\*

<b>Note #</b>	<b>Date</b>	<b>Maker</b>	<b>Amount</b>	<b>Due Date</b>
Note #123103 1pcroll	Dec. 31, 2003	Sunquest	\$4,713,945.00	12/31/04
Note #123103 2pcroll	Dec. 31, 2003	Pinnacle	\$8,243,225.00	12/31/04
Note #09 1802 PO3	Sept.18, 2002	Plutus	\$1,625,000.00	1/18/03
Note #1009021 PO1	Sept. 1, 2002	Plutus	\$ 119,000.00	7/10/03
Amended Note	May 24, 2006	Lewis&Clark	\$3,885,944.70	9/30/06

\*Interest is accumulating on all notes from the due dates at the rate of interest established in the notes. As indicated in prior reports, the amounts listed as due and owing on the notes set out above include interest that has been capitalized and rolled into the notes.

**Description of the Borrowing Entities**

The Promissory notes were created based on funds advanced by Piranha Capital, LP over a continuous period of time. As set out in previous reports, Beasley caused Piranha to loan money to his wholly-owned entities to purchase property in Montana. He also approved loans by Piranha to Pinnacle West, LLC, a California Limited Liability Company owned and controlled by Brake. Loans were also made to Plutus Alternative Strategies to buy out a first deed of trust held by the Genesis L.A. Real Estate Fund in the Branford Project. Plutus Alternative Strategies is a Nevada Limited Liability Company owned and controlled by Boucher. Loans were also made to Sunquest Development, LLC. (Sunquest), a California Limited Liability Company, and related entities, Randall Roth Capital Corporation and D.C.M. Limited Partnership. The notes to Roth and D.C.M. were rolled into the Sunquest promissory note. Sunquest transferred its assets to a new entity, Sunquest Development II, a Nevada Limited Liability Company, on October 7, 2003. Sunquest II changed its name to Branford Partners on February 29, 2004. The relationship between Plutus, Sunquest/Branford and Pinnacle West is as follows: Plutus is the 99% owner of Branford/Sunquest. Plutus named Pinnacle West as the Manager of Branford. Boucher and Brake had signature authority over the Pinnacle West bank accounts. Pinnacle West's accounts were used to pay fees and expenses relating to Sunquest. As reported previously, Boucher also directed payments to non-Piranha investors from the Pinnacle West account. Boucher has stated that he loaned personal funds to

Pinnacle for this purpose. However, the Receiver has not been able to determine whether funds transferred to Pinnacle by ATC Trustees (Bahamas) Ltd, a Bahamian entity, or the Midas Fund, a Cayman Islands Fund, represented other investor funds or Boucher's personal funds. The Midas Fund had numerous investors, and ATC Trustees also managed funds for numerous investors.

The Receiver took the deposition of Beasley, which is discussed below. Beasley stated that all of the loans to Pinnacle West, Sunquest and Plutus, were made at Boucher's request. Boucher also confirmed in his deposition dated October 4, 2006 that the Piranha loans to Pinnacle were made at his recommendation.

**Deposition of Beasley**

The Receiver took the deposition of Beasley on January 25, 2007. Beasley stated that he and Boucher made the decision to set up Longboat Global Funds at the end of 1999 or early 2000. Beasley confirmed that he intended to repay amounts due on the Lewis and Clark notes out of the sale of real estate. He also confirmed that there were mortgages on all the Montana properties. Beasley stated he was making payments on a 26-foot Cobalt boat and paying his mortgage and car payments through loans from family members. He stated that he owns a company known as Old Montana Design in Kalispell, Montana that he started with a friend, and that the start-up capital came from loans from friends. He said this company was at a break-even point in terms of income and expenses right now. He stated he had no other sources of income.



Beasley stated that he and Boucher split the management and incentive fees charged to the Piranha fund. A Piranha Capital Profit and & Loss Statement dated January 4, 2006 shows total Management Fees of \$1,857,397.03 for the period December 31, 2002 – August 31, 2005. This was split with Boucher, according to Beasley. Beasley further stated that part of the 50% he received went to pay expenses of Longboat Global Funds and salaries of Longboat employees.

Beasley stated that the large majority of investors for the Piranha fund were provided to him by Boucher and his office, which was the Midas Resource or Research Group. Boucher's Midas Group managed the Midas Fund according to Beasley.

The Receiver questioned Beasley about the decision to invest in Pinnacle West notes. Beasley stated that it was Boucher's decision for Piranha to invest in the Pinnacle West notes and that he was told the loans were tied to a number of real estate projects and that the money was going to purchase property on which Piranha was to get a security interest. He stated that he never saw any recorded security interests. Beasley also stated that he delegated authority to Boucher to make investment decisions for Piranha. He claimed he did not know that Boucher had signatory authority over one of the Pinnacle West bank accounts. He also claimed that he was told by Boucher that Pinnacle West actually owned some real estate, including the project known as Aspens at Jordanelle. He stated he was unaware until recently that Pinnacle did not own these projects. The Receiver asked about an email dated August 11, 2004 requesting that Piranha loan an additional \$700,000 to Pinnacle so that Pinnacle could obtain a bridge loan to close on the Aspens project so that "Pinnacle

will own the property instead of an option to purchase.” Beasley confirmed that he had responded “I agree!!!” and stated that this was because the National Futures Association had questioned why the projects weren’t more securitized and this was a way to get it securitized.

Beasley was asked about payments from Piranha Capital to other investors. He confirmed that payment was made to one investor of the Midas Fund and that payments were made by Piranha to other non-Piranha investors at Boucher’s request for the purchase of real estate notes.

Beasley stated that no demand for payment was ever made for the Pinnacle West notes, and that all of these notes were extended at Boucher’s request. He also stated that the Sunquest loans were extended at Boucher’s request and that he never made a demand for payment on the Sunquest notes.

### **Security for the Notes**

Only one of the notes was actually secured by real estate. This was the loan to Plutus Alternative Strategies in the amount of \$1.6 million, which was to buy out a loan to the Sunquest/Branford project by the Genesis L.A. Real Estate Fund that held a First Deed of Trust on the real property purchased by Sunquest. Branford Partners LLC filed a Chapter 11 voluntary bankruptcy petition on December 26, 2006. (Case No. SV 06-12551-KT (USDC, CDCAL, San Fernando Valley Division). On March 1, 2007, Branford Partners LLC, (the “Debtor”) filed a Motion re Sale of Real Property and Related Assets and Requesting Orders Authorizing and Governing Sale Process and Procedures and Approving Sale. That Motion was approved by the Bankruptcy

Court on March 27, 2007. Pursuant to that Order, the Bid Deadline was April 26, 2007; the Stalking Horse Confirmation Hearing was set for May 8, 2007, and the Auction and Sale Hearing is set for May 29, 2007. There were four bids submitted ranging from \$18.5 million to \$19.2 million. Noble House, an investment company based in United Kingdom, which has reportedly indicated it was planning an IPO that would generate cash to repay all the Pinnacle West noteholders, did not submit a bid.

The Receiver has filed a Proof of Claim in the Bankruptcy proceeding, which is attached hereto as Exhibit 1. The Receiver's claim is based on an investment made by Piranha to buy out the Genesis L.A. Real Estate Fund Note. The Receiver has identified the wire transfers for this loan buyout, which are attached as Exhibit 2. Piranha's investment was pooled with two other investors, TJS Properties, LLC, and Alpine Road Advisors, LLC, and funded through Plutus Alternative Strategies LLC, the 99% owner of the Debtor. Following this buy-out of the Genesis Note, the security interest and Deed of Trust held by Genesis was assigned to Plutus Alternative Strategies, LLC and Plutus assumed Genesis' First Lien position. This assignment was recorded on September 17, 2002. This Assignment is attached as Exhibit 3. Promissory Notes to Plutus from Sunquest and to Piranha and from Plutus document these transactions.

The Receiver took a Bankruptcy Rule 2004 Examination of Boucher, the Principal of Plutus, on April 20, 2004. Boucher confirmed that this First Deed of Trust held by Plutus based on the Assignment by Genesis was removed in order to obtain funding from the California Environmental Redevelopment Fund (CERF). To

protect Plutus's First Lien position, a separate agreement was negotiated for payment of the Plutus note ahead of payment to the second lien holder. This agreement is set forth in the Second Amendment to the Operating Agreement of Sunquest Development II, LLC, dated December 29, 2003.

In addition to this direct investment in Branford, Piranha invested substantial sums of money with Pinnacle West LLC, an entity owned and controlled by Brake, which served as the Manager of Branford (Debtor). Piranha also invested substantial sums with Sunquest Development LLC, the predecessor entity to Branford. The Receiver's Proof of Claim also relates to these promissory notes. The Branford property was listed as a security for all three promissory notes; however, as set out above, only the Plutus note actually held a recorded security interest in the project. The Receiver filed a lawsuit against Branford, Sunquest Development, Sunquest Development II and Pinnacle West, on July 27, 2006. This matter was stayed by the filing of the bankruptcy action.

**Other Assets – Sale of Montana Properties**

The Montana properties not yet sold are 241 North Shooting Star Circle, Whitefish; 3248 Farm to Market Road, Kalispell; a portion of 1000 Kuhns Road, Whitefish; 980 Wagner Lane, Flathead River, Kalispell; and 2970 Sleeping Child Road, Hamilton. The Receiver has been advised that Defendant Beasley has let the listing agreements on some of these properties expire. The Receiver has asked Defendant Beasley for verification as to what properties are listed for sale, and at what prices. Due to Defendant Beasley's inability to get these properties sold, the Receiver has asked

Beasley for a Power of Attorney authorizing the Receiver to list these properties and negotiate the sales price.

The Receiver has caused a security interest in favor of Piranha to be recorded against all of these properties. However, the Receiver's lien is second to liens in favor of first mortgage holders. Due to the length of time it is taking to sell the remaining properties, the Receiver has asked Beasley for a Power of Attorney which would permit the Receiver to actively market the properties and work with the listing agent to secure a sale at a reasonable price.

As previously reported, two of the Montana properties have been sold. A 200-acre portion of the property located at 1000 Kuhns Road, Whitefish, Montana was sold on October 24, 2006 for a sales price of \$2,000,000. The net sales proceeds to the Receiver was \$250,000. The Settlement Sheet is attached as Exhibit 4. A first mortgage to the Whitefish Credit Union in the amount of \$1,596,213.46 was paid, as was a line of credit to in the amount of \$87,801.53 to First Interstate Bank. The property located at 741 Angel Point Road, Flathead Lake, Lakeside, Montana 59922 was sold on December 15, 2006 for a sales price of \$3,000,000. A first mortgage held by First Interstate Bank in the amount of \$2,238,167.40 was paid. The net sales proceeds paid to the Receiver was \$519,355.02. The Settlement Sheet for this property is attached as Exhibit 5.

Respectfully submitted,

/s/

Robb Evans & Associates LLC  
Temporary Receiver

# **EXHIBIT 1**

Form B10 (Official Form 10) (10/05)

<b>United States Bankruptcy Court</b>		<b>Central District of California</b>	<b>PROOF OF CLAIM</b>
Name of Debtor BRANFORD PARTNERS LLC		Case Number SV 06-12551 KT	
<p><b>NOTE:</b> This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p>			
Name of Creditor (The person or other entity to whom the debtor owes money or property): ROBB EVANS, TEMPORARY RECEIVER		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: c/o Thomas S. Arthur Frاندzel Robins Bloom & Csato, L.C. 6500 Wilshire Blvd., 17th Floor Los Angeles, California 90048-4920 Telephone number: (323) 852-1000		<b>This space is for Court use only.</b>	
Last four digits of account or other number by which creditor identifies debtor:			
Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____			
<p><b>1. Basis for Claim</b></p> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____			
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) Last four digits of your Social Security number: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)			
<b>2. Date debt was incurred:</b> 09/02; 12/03		<b>3. If court judgment, date obtained:</b>	
<p><b>4. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) \$ 7,691,784.00 (secured) \$ _____ (priority) \$ 7,691,784.00 (Total)</p> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
<p><b>5. Secured Claim.</b></p> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ 20+ million Amount of arrearage and other charges at time case filed included in secured claim, if any \$ 7,691,784.00		<p><b>7. Unsecured Priority Claim.</b></p> <input type="checkbox"/> Check this box if you have an unsecured priority claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries or commissions (up to \$10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Domestic support obligations under - 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8</small>	
<p><b>6. Unsecured Nonpriority Claim. \$ _____</b></p> <input type="checkbox"/> Check this box if (a) there is no collateral or lien securing your claim, or (b) your claim exceeds the value of the property securing it or (c) none or only part of your claim is entitled to priority.		<b>This space is for Court use only.</b>	
<p><b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.</p> <p><b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p> <p><b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>			
Date May 11, 2007 Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Andrew K. Alper, attorney for Robb Evans			
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.			

CCD-B10

EXHIBIT 1

ATTACHMENT TO POOF OF CLAIMS

Claimant Robb Evans, as Temporary Receiver of Longboat Global Funds Management, LLC (the "Receiver"), respectfully submits the following statement of his claims.

GENERAL BACKGROUND INFORMATION

The Commodity Futures Trading Commission has previously commenced an action, which is currently pending in the United States District Court for the Northern District of California, entitled *Commodity Futures Trading Commission v. Robert Joseph Beasley and Longboat Global Funds Management, LLC*, Case No. 05-CV-2142-PJH (the "CFTC Action"). In August 2005 the Court in the CFTC Action entered that certain Consent Order of Preliminary Injunction and Other Equitable Relief (the "Consent Order"), which, among other things, appointed the Receiver as a temporary receiver of the assets of Longboat Global Funds Management, LLC ("Longboat") with respect to matters involving Piranha Capital, L.P., a Florida limited partnership ("Piranha Capital"). Pursuant to the Consent Order, the Receiver has full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises, choses in action, books, records, papers and other property belonging to or in the possession of or control of Longboat with respect to Piranha Capital, and full power to sue and to marshal and collect assets of the receivership estate.

The Debtor, Branford Partners, is a Nevada limited liability company authorized to do business in California with an office in Manhattan Beach, California. The Debtor was formerly known as Sunquest Development II, LLC ("Sunquest II"), a Nevada limited liability company. The purported managing member of the Debtor is Pinnacle West LLC ("Pinnacle West"), a California limited liability company.

The Debtor's principal asset is approximately 32.5 acres of industrial land located at 12450 Branford Street, Los Angeles, California (the "Branford Property"), which consists of three parcels (for purposes of this claim, the parcels will hereinafter be referred to as Parcel 1, Parcel 2 and Parcel 3). When the Debtor was formed in approximately January 2003 (under its



former name, Sunquest II), it acquired Parcels 2 and 3. In October 2003 the Debtor acquired Parcel 1 from a California limited liability company called Sunquest Development, LLC ("Sunquest"). At that time, Pinnacle West was also the purported managing member of Sunquest.

CLAIM NO. 1

The Receiver's first claim is for \$1.6 million, plus interest thereon at the rate of 11% from September 17, 2002. The Receiver contends that this claim should be paid, in full, before payment of any other claims, except administrative expenses approved by the Court and a promissory note that is secured by a first deed of trust on the Branford Property.

The Receiver's claim evolved out of a series of events that began to unfold approximately seven years ago. In December 1999, Bert and Linda Fornaciari (the "Fornaciaris") delivered \$6 million to Sunquest (Sunquest II's predecessor) and became members of Sunquest. This money enabled the company to acquire Parcel 1 of the Branford Property. On or about December 17, 1999, Sunquest executed a promissory note (the "Fornaciari Note") in favor of the Fornaciaris in the sum of \$6 million. The Fornaciari Note was secured by a first deed of trust (the "Fornaciari Deed of Trust") on Parcel 1 of the Branford Property.

In addition to being secured lenders, the Fornaciaris became members of Sunquest with a 20% ownership interest in the company. The Sunquest operating agreement was amended on December 17, 1999, to document the admission of the Fornaciaris to the company. At the same time, a company called Midas Resource Group, a Bahamian corporation ("Midas"), became a member of Sunquest with a 5% ownership interest in the company. Mark Boucher ("Boucher") is Midas' principal. Boucher and the Fornaciaris' were neighbors.

In late 2000 Sunquest was attempting to obtain a construction loan (the "Genesis Loan") from Genesis L.A., Real Estate Fund, LLC, a Delaware limited liability company ("Genesis"). While the Genesis Loan was being negotiated, the members of Sunquest entered into a fourth amendment to the Sunquest operating agreement. In this amendment, the members of Sunquest acknowledged that Sunquest was negotiating the construction loan from Genesis and agreed

(among other things) that Sunquest would not acquire any additional real or personal property so long as the Genesis Loan was unpaid.

Genesis required the Fornaciaris to subordinate their loan as a condition to providing construction financing to Sunquest. On January 23, 2001, the Fornaciaris, Genesis and Sunquest entered into a comprehensive Subordination and Intercreditor Agreement (the "Subordination Agreement"), a copy of which is attached hereto as Exhibit 1. Pursuant to this agreement, the Fornaciaris agreed to subordinate the lien of the Fornaciari Deed of Trust to a new deed of trust in favor of Genesis (the "Genesis Deed of Trust"). Subordination Agreement, ¶ 3.

The Subordination Agreement did more than simply require the Fornaciaris to subordinate their security interest in the Branford Property. It required them to subordinate their right to payment as well. The Fornaciaris agreed that they would not "seek, take, receive, or accept, directly or indirectly, any payments of any kind (whether in cash or property)" on their loan (subject to certain exceptions, which the Receiver believes did not occur) so long as the Genesis Loan remained unpaid. Subordination Agreement, ¶ 4(a). Paragraph 5(a) of the Subordination Agreement requires the Fornaciaris to hold in trust for the benefit of the holder of the Genesis Loan any payments or distributions the Fornaciaris may receive from Sunquest or from "any other source whatsoever." In addition, Paragraph 5(b) of the Subordination Agreement provides that in the event of "any distribution, division, or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of [Sunquest], or the proceeds thereof, to creditors of [Sunquest], by reason of the liquidation, dissolution, or other winding up of [Sunquest's] business, or in the event of any sale, receivership, insolvency or bankruptcy proceedings by or against [Sunquest]," any payment or distribution of any kind payable with respect to the Fornaciari Loan "will be paid over to [Genesis] for application to the payment of the [Genesis Loan], whether due or not due, and no payments may be made upon or in respect of the [Fornaciari Loan] unless and until the [Genesis Loan] has been paid and satisfied in full."

The Fornaciaris also agreed that Genesis could assign its rights under the Subordination Agreement. Paragraph 25 of the agreement states that Genesis can assign or transfer its rights under the agreement, and that the assignee or transferee "shall be vested with all rights and powers given to [Genesis] in this Agreement."

It was not long before Sunquest defaulted on the Genesis Loan. By the Summer of 2002 Sunquest desperately needed money to cure the default. The Fornaciaris refused to put up any more money to cure the default.

In or about August 2002 Boucher entered into negotiations with Genesis to purchase the Genesis Loan through a shell company that Boucher had formed in 1998, but had never used, called Plutus Alternative Strategies, a Nevada limited liability company ("PAS"). Sunquest knew about, and consented to, these negotiations. In fact, Sunquest agreed that if PAS was successful in raising the funds needed to purchase the Genesis Loan, Sunquest would reimburse PAS within four months and that it would execute a promissory note (which the parties referred to as the "Pass Through Note") to document this agreement.

On or about August 15, 2002, PAS entered into an agreement with Genesis to purchase the Genesis Loan for \$2,587,000. PAS made an initial deposit \$115,000 (the "Initial Deposit") towards the purchase of the Genesis Loan. The Receiver believes this money came from a Piranha Capital account at Longboat.

On August 22, 2002, PAS obtained an additional \$100,000 (the "Additional Deposit") from the Piranha Capital account at Longboat that was applied towards the purchase of the Genesis Loan. On or about September 1, 2002, PAS executed a promissory note (the "Piranha Capital Deposit Note") in favor of Piranha Capital to repay this loan, a copy of which is attached hereto as Exhibit 2.

On September 13, 2002, PAS obtained an additional \$1,410,000 (the "Closing Deposit") from the Piranha Capital account at Longboat to fund the purchase of the Genesis Loan. These funds were wired to an account at Stewart Title of California ("Stewart Title") and were to be used to close an escrow that had been opened for the PAS/Genesis transaction.

On September 17, 2002, Sunquest executed the Pass Through Note in favor of PAS in the sum of \$2.7 million (this sum was based on the amount PAS paid for the Genesis Loan plus an amount to cover attorney's fees and other expenses incurred by PAS to arrange the transaction). A copy of the Pass Through Note is attached hereto as Exhibit 3. The note provides that PAS may sell some or all of the note to raise liquidity (paragraph 6) and that the note is secured by Parcel 1 of the Branford Property (paragraph 7).

The escrow at Stewart Title closed on September 17, 2002. One of the documents that was recorded when escrow closed was an Assignment of Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing (the "Genesis Assignment"). Pursuant to this document, Genesis assigned to PAS, among other things, all of Genesis' beneficial interests under the Genesis Deed of Trust and all of Genesis' right, title and interest under the Subordination Agreement. PAS acquired these rights, and nominally still holds them, for the benefit of Piranha Capital and the other parties who put up the money to purchase the Genesis Loan.

On September 18, 2002, Plutas executed a promissory note (the "Piranha Capital Closing Note") in the sum of \$1.5 million, a copy of which is attached hereto as Exhibit 4.<sup>1</sup> The total consideration that Piranha Capital contributed towards the purchase of the Genesis Loan was the sum of \$1.6 million as evidenced by the Piranha Capital Deposit Note (\$100,000) and the Piranha Capital Closing Note (\$1,500,000).<sup>2</sup>

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<sup>1</sup> Although the numbers are not exact, Evans believes that the consideration for this note was the Initial Deposit of \$115,000 and the Closing Deposit of \$1,410,000.

<sup>2</sup> On September 18, 2002, PAS executed two additional notes similar to the Piranha Capital Deposit Note and the Piranha Capital Closing Note. One note is payable to Alpine Road Advisors, a California limited liability company, and is in the sum of \$800,000. The other note is payable to another limited liability company called TJS Properties, LLC, and is in the sum of \$400,000. Alpine Road Advisors and TJS Properties are sometimes hereinafter referred to as the "Other Lenders." PAS pooled the money from Piranha Capital and the Other Lenders to purchase the Genesis Loan.

In the Piranha Capital Deposit Note and the Piranha Capital Closing Note, PAS acknowledged that the funds advanced by Piranha Capital (and the Other Lenders) enabled Sunquest, through its intermediary, PAS, to buy the Genesis Loan. Paragraph 4 of each note provides that the reason why PAS acted as an intermediary between Sunquest and Piranha Capital (and the Other Lenders) was to pool the financing of the purchase of the Genesis Loan and to provide Piranha Capital (and the Other Lenders) with the "first lien position" that PAS acquired by being the nominal purchaser of the Genesis Loan. Paragraph 6 of each note further provides that the obligations thereunder are secured by the Branford Property "by virtue of the fact that this is the security upon which the [Pass Through Note] essentially passes through and acts as collateral for this note." Thus, Sunquest and PAS intended that Piranha Capital (and the Other Lenders) would be secured by all of the collateral that had been assigned to PAS by Genesis pursuant to the Genesis Assignment, which included the beneficial interests under the Genesis Deed of Trust and all of the rights under the Subordination Agreement.

PAS and Sunquest formed a new entity shortly after PAS acquired the Genesis Loan with the money that had been provided by PAS and the Other Lenders. This entity was Sunquest II, the Debtor herein under its former name. The purpose of Sunquest II was to acquire Parcels 2 and 3 of the Branford Property, to construct a business park thereon, and to ultimately own, operate, lease and sell the project. PAS owned a 99% interest in Sunquest II. The remaining 1% was owned by Sunquest. In December 2002 the principals of Sunquest II entered into an operating agreement for Sunquest II (the "Sunquest II Operating Agreement"), a copy of which is attached hereto as Exhibit 5.

Approximately one year later, Sunquest and Sunquest II entered into an agreement whereby Sunquest would convey Parcel 1 of the Branford Property to Sunquest II, and Sunquest II would then develop all three parcels. Sunquest also agreed to convey its 1% interest in Sunquest II to Pinnacle West. Sunquest II agreed to assume the indebtedness of Sunquest to the Fornaciaris and agreed that the Fornaciaris Loan would be secured by all three of the Branford

Property parcels.<sup>3</sup> It was also agreed that the Fornaciaris and Pinnacle West would become members of Sunquest II.

In order to develop the Branford Property parcels, the members of the Debtor knew that they needed more money and would have to get additional financing. They also knew that no lender would provide the financing unless the lender had a first priority lien on all of the Branford Property. At that time, PAS was in first position because it had purchased the Genesis Loan (with Piranha Capital's money and the money from the Other Lenders) and the Fornaciaris had subordinated to that loan. PAS agreed that it would reconvey the Genesis Deed of Trust, provided that it would be paid first when the Branford Property was sold (which was consistent with the terms of the Subordination Agreement that required the Fornaciaris to subordinate their lien as well as their right to payment). The Fornaciari Trust agreed to subordinate the Fornaciari Deed of Trust to any new financing. With these agreements, Sunquest II could offer first lien priority to the new lender.

To accomplish all of this, PAS, the Fornaciari Trust and Pinnacle West entered into a second amendment (the "Second Amendment") to the Sunquest II Operating Agreement, which is dated as of December 29, 2003. A copy of the Second Amendment is attached hereto as Exhibit 6.

Paragraph 3 of the Second Amendment is entitled "Revised Distribution Provisions." This paragraph provides that the right of the Fornaciari Trust to receive payment on the Fornaciari Loan is subordinated to the right of Piranha Capital and the Other Lenders to repayment of their loans, plus interest. Paragraph 3(a)(i) of the Second Amendment defines "PAS Principal" as \$2,900,000. This sum represents the funds advanced by Piranha Capital and the Other Lenders to PAS so that it could purchase the Genesis Loan (plus incidental expenses).

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<sup>3</sup> By this time, the Fornaciaris had transferred their interests in the Fornaciari Loan and the Fornaciari Deed of Trust to their family trust (the "Fornaciari Trust").

Paragraph 3(a)(ii) defines "PAS Preferred Return" as a non-compounded cumulative return of the PAS Principal, plus interest at 11% per annum from September 17, 2002.

Paragraph 3(b) of the Second Amendment is entitled "Distributions of Operating Cash Flow." Paragraph 3(b)(i) provides that Operating Cash Flow shall be distributed *first* to PAS, until PAS has received the PAS Principal plus any PAS Preferred Return. Any remaining Operating Cash Flow is then to be distributed to the Fornaciari Trust to repay the Fornaciari Loan (plus its "preferred return" as defined in paragraph 3(a)(v) of the Second Amendment), and thereafter in accordance with the priorities otherwise set forth in the Sunquest II Operating Agreement. Second Amendment, ¶¶ 3(b)(ii) and 3(b)(iii).

It is significant that the term "Operating Cash Flow" is capitalized in the Second Amendment. Recital A of the Second Amendment provides that all capitalized terms not otherwise defined in the Second Amendment shall have the same meanings assigned to them in the Sunquest II Operating Agreement. "Operating Cash Flow" is not otherwise defined in the Second Amendment. It is, however, defined in the Sunquest II Operating Agreement. Paragraph 1.38 thereof provides:

Operating Cash Flow. Operating Cash Flow means for any Fiscal Year (or portion of the Fiscal Year), the gross cash receipts of every kind of [Sunquest II] for such period from operations, including any amounts drawn from the Working Capital *and the proceeds of any sale, transfer, disposition or refinancing of [Sunquest II's] assets* for such period (other than Capital Contributions and any casualty insurance proceeds that will be used to repair or replace [Sunquest II's] property), less cash expenses, debt service on all loans and additions to the Working Capital of [Sunquest II]. [Emphasis added.]

The members of Sunquest II (i.e., the members of the Debtor), including the Fornaciari Trust, have therefore agreed that PAS will receive the first payments out of any sale of the Branford Property, less cash expenses, debt service on loans (other than the Fornaciari Loan), and additions to working capital (other than the Fornaciari's additions to working capital), until

the "PAS Principal" and the "PAS Preferred Return" are paid in full. Until then, the Fornaciari Trust is not entitled to any payments on the Fornaciari Loan.

After the Second Amendment was entered into, Sunquest II obtained \$5 million in construction financing from the California Environmental Recovery Fund ("CERF"). The CERF loan is secured by a first deed of trust on the Branford Property. This loan could not have been obtained if Piranha Capital and the Other Lenders had not funded the purchase of the Genesis Loan in the first place, and PAS would not have reconveyed the Genesis Deed of Trust unless it had been given the preferred return set forth in the Second Amendment on behalf of Piranha Capital and the Other Lenders. Boucher has confirmed in his Rule 2004 examination that PAS agreed to the Second Amendment for the benefit of Piranha Capital and the Other Lenders. The fact that the Fornaciaris consented to and signed the Second Amendment is consistent with the Fornaciaris' earlier agreement to subordinate their right to payment in favor of Genesis or its assignee as set forth in the Subordination Agreement.<sup>4</sup>

The Receiver's first claim is therefore for the \$1.6 million that Piranha Capital advanced to enable PAS to purchase the Genesis Loan, as evidenced by the Piranha Capital Deposit Note and the Piranha Capital Closing Note. In addition, the Receiver is claiming accrued interest in the sum of \$821,333 (11% per annum from September 17, 2002) plus accruing interest thereafter at the rate of \$482 per day until paid. The Receiver also claims attorney's fees and costs. The Receiver contends that these sums should be paid out of the proceeds from the sale of the Branford Property, after payment of the CERF loan and administrative expenses approved by the Court, and before any sums are paid to the Fornaciari Trust or the Fornaciaris pursuant to the Fornaciari Loan or otherwise.

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<sup>4</sup> The Subordination Agreement was purportedly terminated the same day the Second Amendment became effective. The members of Sunquest II apparently believed that the Subordination Agreement was no longer necessary because PAS had agreed to reconvey the Genesis Deed of Trust, and the Second Amendment served the same purpose as the Subordination Agreement by setting forth the same subordination-to-payment obligations that had been in the Subordination Agreement.



CLAIM NO. 2

On or about December 31, 2003, Sunquest II executed a promissory note in favor of Piranha Capital in the sum of \$3,928,287 (the "Branford/Piranha Note").<sup>5</sup> A copy of the Branford/Piranha Note is attached hereto as Exhibit 7.

Principal and accrued interest under the Branford/Piranha Note was due and payable by December 31, 2004. The Receiver contends that the individual who signed the Branford/Piranha Note on behalf of Sunquest II, Jonathan Brake ("Brake"), was the duly authorized manager of Pinnacle West, and that, at that time, Pinnacle West was the duly authorized managing member of the Debtor. The Receiver also contends that the Debtor intended all of the obligations under the Branford/Piranha Note to be secured by the Branford Property.

The Debtor failed to pay the Branford/Piranha Note when it became due, and the note is now in default. The Branford/Piranha Note is an asset of the Longboat receivership estate as it pertains to Piranha Capital, and the Receiver is authorized to enforce the obligations under the note. The Receiver has demanded payment of the Branford/Piranha Note, but no such payments have been made. The Receiver is claiming principal in the sum of \$3,928,287. In addition, the Receiver is claiming accrued interest in the sum of \$1,342,164 (10% per annum from December 31, 2003) plus accruing interest thereafter at the rate of \$1,076 per day until paid. The Receiver also claims attorney's fees and costs.

CLAIM NO. 3

On December 31, 2003, Brake, on behalf of Pinnacle West, executed a promissory note in favor of Piranha Capital in the sum of \$6,869,354 (the "Pinnacle West/Piranha Note"), a copy of which is attached hereto as Exhibit 8.<sup>6</sup> Principal and accrued interest under the Pinnacle West/Piranha Note was due and payable by December 31, 2004. The Receiver contends that

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<sup>5</sup> The consideration for the Piranha Capital Deposit Note and the Piranha Capital Closing Note is not part of the consideration for the Branford/Piranha Note.

<sup>6</sup> The consideration for the Piranha Capital Deposit Note and the Piranha Capital Closing Note is not part of the consideration for the Pinnacle West/Piranha Note.

Piranha Capital and Pinnacle West intended all of the obligations under the Pinnacle West/Piranha Note to be secured by, among other collateral, whatever interest Pinnacle West may have in the Branford Property. Thus, whatever interest Pinnacle West may have in the Branford Property is subject to the Receiver's rights under the Pinnacle West/Piranha Note. The Receiver is therefore asserting this Claim No. 3 because it may affect property in which the Debtor may also have an interest.

Pinnacle West failed to pay the Pinnacle West/Piranha Note when it became due, and the note is now in default. The Pinnacle West/Piranha Note is an asset of the Longboat receivership estate as it pertains to Piranha Capital and the Receiver is authorized to enforce the obligations under the note. The Receiver has demanded payment of the Pinnacle West/Piranha Note, but no such payments have been made. The Receiver is claiming from Pinnacle West principal in the sum of \$6,869,354. In addition, the Receiver is claiming accrued interest in the sum of \$2,347,029 (10% per annum from December 31, 2003) plus accruing interest thereafter at the rate of \$1,882 per day until paid. The Receiver also claims attorney's fees and costs. Payment of all of these sums are secured by whatever interest Pinnacle West may have in the Branford Property.<sup>7</sup>

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<sup>7</sup> The sums set forth in this Claim No. 3 are not included in the total amount claimed by the Receiver in his Proof of Claim (i.e., \$7,691,784). If it should be determined later that the Debtor is responsible for any of the sums set forth in this Claim No. 3, the Receiver will amend his Proof of Claim accordingly.

# **EXHIBIT 2**

08/11/03 MON 15:28 FAX 310 3866848

SUMMIT LAW CORP

001

BUYER(S) FINAL CLOSING STATEMENT

Prepared by  
 STEWART TITLE OF CALIFORNIA, INC.  
 Escrow Division  
 505 North Brand Blvd., Suite 800  
 Glendale, California 91203  
 (818) 966-2829/ph (818) 244-8745/fax

Buyer(s): PLUTUS ALTERNATIVE STRATEGIES, LLC  
 Seller(s): GENESIS L.A. REAL ESTATE FUND, LLC  
 Lender:  
 Property: PURCHASE OF NOTE AND T/D  
 Closing Date: 09/17/2002 Proration Date: 09/17/2002  
 Escrow Officer: LESLIE LIM  
 File Number: 02225474

	DEBIT	CREDIT
PURCHASE PRICE	2,587,000.00	
DEPOSITS:		
Earnest Money/Deposit from Buyer		400,000.00
Earnest Money/Deposit from Buyer	Piranha	1,410,000.00
Additional Deposit from Buyer		75,000.00
Additional Deposit from Buyer		200,000.00
Additional Deposit from Buyer		600,000.00
MISCELLANEOUS ADJUSTMENTS:		
PAID TO SELLER OUTSIDE OF ESCROW	100k from Piranha 9/1/02	215,000.00
ESCROW CHARGES:		
Escrow Fee	1,819.00	
Bank Wire Processing Fee	75.00	
TITLE CHARGES:		
Endorsement Charges - ENDORSEMENT 104.1	150.00	
RECORDING FEE/TRANSFER CHARGES:		
Recording Fee 96 amount \$96.00	96.00	
SUBTOTALS:	2,589,140.00	2,900,000.00
BALANCE DUE TO BUYER:	310,860.00	
TOTALS:	2,900,000.00	2,900,000.00

EXHIBIT 2

001 00390

Longboat Global Advisors, LLC  
417 12<sup>th</sup> Street W., Ste. 213  
Bradenton, FL 34205  
Phone: 941-747-7711  
Fax: 941-747-7712

# FAX – WIRING INSTRUCTIONS

To: SEMONE / Community Bank Fax: 756-0013

---

From: Pam Patterson Date: 8/22/2001<sup>2001</sup>

---

Re: WIRING INSTRUCTIONS Pages: 1

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CC:

---

Urgent     For Review     Please Comment     Please Reply     Please Recycle

\*\*\*\*\***WIRING INSTRUCTIONS**\*\*\*\*\*

Please use this as my authorization to WIRE \$100,000.00 from Piranha Capital, LP #600522591 to the following account:

Genesis LA Real Estate Fund, LLC  
 Bank of America  
 Los Angeles Branch  
 ABA #121000358  
 Account Name: Genesis LA Real Estate Fund  
 Account #: 12573-26993

Thank you,



(PAM PATTERSON / OPERATIONS ADMINISTRATOR)

m Patterson

**From:** Mark Boucher [mboucher001@yahoo.com]  
**Sent:** Thursday, October 10, 2002 12:45 PM  
**To:** Pam Patterson  
**Subject:** Re: Status on Note - Genesis LA Real Estate Fund/Piranha Capital, LP - \$100K

Pam,

Note from PAS is in process and should be there in another week or so.

Also, I got a strange fax from Harry Schultz - does he have any investments other than in Midas?

Mark Boucher.

--- Pam Patterson <pam@longboatglobal.com> wrote:

>  
>  
> Mark,  
> I am working with Dave with Piranha, just wanted to  
> check on status of the  
> below note, we notified the Liccar accountant that  
> this note will be  
> effective as of September 1st, 2002.

>  
> Piranha Capital, LP  
> 8/23/02 - Date wire went out for \$100K

> To:  
> Genesis LA Real Estate Fund, LLC  
> Bank of America  
> Los Angeles Branch  
> ABA #121000358  
> Account Name: Genesis LA Real Estate Fund  
> Account # 12573-26993

>  
> Just let me know when I should expect  
> it.....Thanks Mark.  
> Pam

>  
> Pam Patterson / Operation Mgr.  
> Longboat Global Advisor's, LLC  
> 2 N. Tamiami Trail, Ste. 1200  
> Sarasota, FL 34236  
> Phone: 941-361-2101 / Fax: 941-361-2111  
> www.longboatglobal.com

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Faith Hill - Exclusive Performances, Videos & More  
<http://faith.yahoo.com>

# **EXHIBIT 3**

02-2182375

2

0400 98687

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

PLUTUS ALTERNATIVE  
STRATEGIES, LLC, 1005  
TERMINAL WAY, SUITE 110,  
RENO, NV 89252

ATTN: MARK BOUCHER

**ASSIGNMENT OF DEED OF TRUST AND SECURITY AGREEMENT  
WITH ASSIGNMENT OF RENTS AND FIXTURE FILING**

The undersigned, GENESIS L.A. REAL ESTATE FUND, LLC, a Delaware limited liability company ("**Assignor**"), hereby irrevocably sells, assigns, transfers, grants, conveys and sets over to PLUTUS ALTERNATIVE STRATEGIES, LLC, a Nevada limited liability company ("**Assignee**"), (i) the beneficial interest under the Deed of Trust, Security Agreement and Fixture Filing (Construction and Shared Appreciation Trust Deed), dated January 31, 2001, made by SunQuest Development, LLC, a California limited liability company ("**Borrower**"), as trustor, to Stewart Title Company, as trustee, in favor of Assignor, as beneficiary, recorded on February 2, 2001 in the Official Records of Los Angeles County, California, as Instrument No. 01-0184705, (ii) the Assignment of Leases and Rents dated January 31, 2001, by and between Borrower, as assignor, and Assignor, as assignee, recorded on February 2, 2001 in the Official Records of Los Angeles County, California as Instrument No. 01-0184706, (iii) the note secured thereby, (iv) on a non-exclusive basis, that certain Environmental Indemnity dated as of January 31, 2001, executed by Borrower, Roth Properties, LLC, a California limited liability company, DCM Limited Partnership, a California limited partnership, GJSQ, LLC, a California limited liability company, Randall H. Roth, an individual, and Gary Johnson, an individual, in favor of Assignor (Assignor shall retain a non-exclusive interest in such Environmental Indemnity), (v) its right, title and interest in the Subordination and Intercreditor Agreement dated January 31, 2001 executed by Assignor, Bert Fornaciari and Linda Fornaciari, as husband and wife, and Borrower, recorded on February 2, 2001 in the Official Records of Los Angeles County, as Instrument No. 01-0184707, and (vi) all other related loan documents.

Date: September, \_\_, 2002

GENESIS L.A. REAL ESTATE FUND,  
LLC, a Delaware limited liability company

By: Shamrock Capital Advisors, Inc., a  
Delaware corporation, its manager

By: [Signature]  
Name: [Signature]  
Its: V.P.



02 2182375

3

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Los Angeles )

On September 13, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared George Buchlar, personally known to me (or 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 within instrument.

WITNESS my hand and official seal.



Filicerpina Lambertio Yapchink  
Notary Public



LEAD SHEET

02-2182375

RECORDED/FILED IN OFFICIAL RECORDS  
 RECORDER'S OFFICE  
 LOS ANGELES COUNTY  
 CALIFORNIA  
 2:21 PM SEP 17 2002

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

FEE

D.T.T.

FEE \$ 30 - E

31  
4

CODE

20

D.A FEE Code 20 \$ 6-

CODE

19

CODE

9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

THIS FORM IS NOT TO BE DUPLICATED

EXHIBIT 3

# **EXHIBIT 4**

<b>A. Settlement Statement</b>		<b>B. Type of Loan</b>	
<b>Flathead County Title Company Final Statement</b>		1-5. Loan Type	
		6. File Number <b>181501-FT</b>	
		7. Loan Number	
		8. Mortgage Insurance Case Number	
<b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown, items marked "(POC)" were paid outside this closing; they are shown here for informational purposes and are not included in the totals.			
<b>D. Name of Borrower:</b> Hungry Horse Mtn. Development, LLC unknown, Whitefish, MT 59937			
<b>E. Name of Seller:</b> BW Ranchland LLC			
<b>F. Name of Lender:</b> Glacier Bank 202 Main Street Kalispell, MT 59903			
<b>G. Property Location:</b> No Known Number, Whitefish, MT 59937			
<b>H. Settlement Agent:</b> Flathead County Title Company Address: 120 First Ave. West/P.O. Box 188, Kalispell, MT 59901		<b>I. Settlement Date:</b> 10/24/2006  <b>Print Date:</b> 10/24/2006, 1:43 PM  <b>Disbursement Date:</b> 10/24/2006	
<b>Place of Settlement Address:</b> 120 First Ave. West/P.O. Box 188, Kalispell, MT 59901			
<b>J. Summary of Borrower's Transaction</b>		<b>K. Summary of Seller's Transaction</b>	
<b>100. Gross Amount Due From Borrower</b>		<b>400. Gross Amount Due To Seller</b>	
101. Contract Sales Price		401. Contract Sales Price	2,000,000.00
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400)		403. Total Deposits	
104.		404.	
105.		405.	
<b>Adjustments for items paid by seller in advance</b>		<b>Adjustments for items paid by seller in advance</b>	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
<b>120. Gross Amount Due From Borrower</b>		<b>420. Gross Amount Due To Seller</b>	<b>2,000,000.00</b>
<b>200. Amounts Paid By Or In Behalf of Borrower</b>		<b>500. Reductions in Amount Due to Seller</b>	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges (line 1400)	65,985.01
203. Existing loan(s) taken subject		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan - Whitefish Credit Union	1,596,213.46
205.		505. Payoff of second mortgage loan - Longboat Global Funds	250,000.00
206.		506. Payoff - First Interstate Bank	87,801.53
207.		507.	
208.		508.	
209.		509.	
<b>Adjustments for items unpaid by seller</b>		<b>Adjustments for items unpaid by seller</b>	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
<b>220. Total Paid By/For Borrower</b>		<b>520. Total Reduction Amount Due Seller</b>	<b>2,000,000.00</b>
<b>300. Cash At Settlement From/To Borrower</b>		<b>600. Cash At Settlement To/From Seller</b>	
301. Gross amount due from Borrower (line 120)		601. Gross amount due to Seller (line 420)	2,000,000.00
302. Less amounts paid by/for Borrower (line 220)		602. Less reductions in amounts due to Seller (line 520)	2,000,000.00
303.		603.	
The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.			
Settlement Agent:		Date:	

\* See Supplemental Page for details.

**EXHIBIT 4**

<b>L. Settlement Charges</b>		
	<b>Paid From Borrower's Funds at Settlement</b>	<b>Paid From Seller's Funds at Settlement</b>
<b>700. Total Sales/Broker's Commission based on price \$2,000,000.00 @ 2.0000% = \$40000.00</b>		
Division of Commission (line 700) as follows		
701. \$40,000.00 to Montana Land Office		
702.		
703. Commission paid at Settlement		40,000.00
704.		
<b>800. Items Payable in Connection with Loan</b>		
801. Loan Origination Fee		
802. Loan Discount		
803. Appraisal Fee		
804. Credit Report		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Premium		
807. Assumption Fee		
808.		
809.		
810.		
811.		
812.		
813.		
814.		
Supplemental Summary		
<b>900. Items Required by Lender to be Paid in Advance</b>		
901. Interest		
902.		
903. Hazard Insurance Premium for		
904.		
905.		
Supplemental Summary		
<b>1000. Reserves Deposited with Lender</b>		
1001. Hazard Insurance		
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes		
1005. Annual assessments		
1006.		
1007.		
1008. Aggregate Accounting Adjustment		
<b>1100. Title Charges</b>		
1101. Settlement or closing fee - Flathead County Title Company		150.00
1102. Abstract or title search		
1103. Title examination		
1104. Title Insurance Binder		
1105. Document Fee		
1106. Notary Fee		
1107. Attorney Fee		
(includes above item numbers: )		
1108. Title Insurance - See supplemental page for breakdown of individual fees and payees		3,994.00
(includes above item numbers: )		
1109. Lender's coverage \$1,900,000.00		
1110. Owner's coverage \$2,000,000.00 Premium: \$3,994.00		
1111.		
1112.		
1113. Reconveyance Fee-Purchase - Flathead County Title Company		128.00
1114.		
1115.		
1116.		
1117.		
<b>1200. Government Recording and Transfer Charges</b>		
1201. Recording fees:		
1202. City/county tax/stamps:		
1203. State tax/stamps:		
1204.		
1205.		
1206.		
<b>1300. Additional Settlement Charges</b>		
1301. Survey to Sands Surveying		13,000.00
1302. Pest Inspection to		
1303. Commission to Matt Buckmaster to Coldwell Banker		5,000.00
1304. Funds Held: 2006 taxes		3,698.01
1305. Courier and Handling Fee - Flathead County Title Company		15.00
1306.		
1307.		
1308.		
1309.		
1310.		
1311.		
1312.		
1313.		
1314.		
Supplemental Summary		
<b>1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)</b>		<b>65,985.01</b>

\* See Supplemental Page for details.

Supplemental Page HUD-1 Settlement Statement	File No. 181501-FT
<b>Flathead County Title Company</b> Final Statement	Loan No.
	Settlement Date: 10/24/2006
Borrower Name & Address: Hungry Horse Mtn. Development, LLC unknown, Whitefish, MT 59937	
Seller Name & Address: BW Ranchland LLC	

Section L. Settlement Charges continued	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
1108. Supplemental Summary	3,994.00	
a) Policy-Owner's Policy - Flathead County Title Company		3,994.00

The following Section is restated from the Settlement Statement Page 1			
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross amount due from Borrower (line 120)		601. Gross Amount due to Seller (line 420)	2,000,000.00
302. Less amounts paid by/for Borrower (line 220)		601. Less reductions in amounts due to Seller (line 520)	2,000,000.00
303.		603.	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and distributions made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

SELLER(S):

BW Ranchland LLC

\_\_\_\_\_  
By: Robert J. Beasley, Member

Flathead County Title Company

By \_\_\_\_\_  
Brandi Moore

EXHIBIT 4

# **EXHIBIT 5**

**SELLER'S CLOSING STATEMENT**  
Estimated

**Escrow Number:** 2060606009  
**Escrow Officer:** Sarah A. Tennant

**Title Order Number:** 2060606009  
**Date:** 12/15/2006 -10:56:25AM  
**Closing Date:** 12/15/2006

**Buyer/Borrower:** Michael H. Ankeny

**Seller:** Robert J. Beasley

**Property:** 741 Angel Point Rd, Lakeside, MT 59922

DESCRIPTION	DEBITS	CREDITS
<b>TOTAL CONSIDERATION</b>		3,000,000.00
<b>PRORATIONS/ADJUSTMENTS:</b>		
Property Tax @ 7.987.96 per 12 month(s) 12/15/2006 to 1/01/2007		372.04
<b>COMMISSION(S):</b>		
Listing Broker: Coldwell Banker Wachholz & Co.- LK	60,000.00	
Selling Broker: Riverbend Realty	90,000.00	
Other Broker: Montana Land Office	45,000.00	
<b>TITLE CHARGES</b>		
Owner's Premium for 3,000,000.00: Alliance Title & Escrow Corp.	4,441.25	
Reconveyance Fee: Alliance Title & Escrow Corp.	44.00	
<b>ESCROW CHARGES TO: Alliance Title &amp; Escrow Corp.</b>		
Escrow Fee	150.00	
<b>LOAN PAYOFF: First Interstate Bank</b>		
Payoff Thru 12/15/06	2,238,167.40	
Total Loan Payoff	2,238,167.40	
<b>LOAN PAYOFF: Robb Evans &amp; Associates LLC</b>		
Net Proceeds	519,355.02	
Total Loan Payoff	519,355.02	
<b>TAXES:</b>		
Property Tax to: Flathead County Treasurer 2006 Full Year Taxes #29-0386900	8,101.75	
<b>ADDITIONAL DISBURSEMENTS:</b>		
Survey, Seller Portion: Sands Surveying, Inc	1,303.90	
Tax Redemption: Flathead County Treasurer	8,758.72	
Water Right Transfer Fee: DNRC	50.00	
Sleeping Child Property Taxes: Ravalli County Treasurer	25,000.00	
<b>TOTALS</b>	<b>3,000,372.04</b>	<b>3,000,372.04</b>

\_\_\_\_\_  
Robert J. Beasley



**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 11450 Sheldon Street, Sun Valley, CA 91352.

On May 23, 2007, I served the foregoing document described as (1) **MOTION FOR APPROVAL OF TEMPORARY RECEIVER'S REPORT OF ASSETS FOR THE PERIOD NOVEMBER 1, 2006 THROUGH MAY 23, 2007** (2) **(Proposed) ORDER FOR APPROVAL OF TEMPORARY RECEIVER'S REPORT OF ASSETS FOR THE PERIOD NOVEMBER 1, 2006 THROUGH MAY 23, 2007** (3) **TEMPORARY RECEIVER'S REPORT OF ASSETS FOR THE PERIOD NOVEMBER 1, 2006 THROUGH MAY 23, 2007** (4) **PROOF OF SERVICE** on the interested parties in this action by electronic mail addressed as follows:

Allison Lurton, Esq. Gretchen L. Lowe, esq. Karen Kenmotsu, Esq. Commodity Futures Trading Commission 1155 21 <sup>st</sup> Street, NW Washington, DC 20581 <a href="mailto:alurton@cftc.gov">alurton@cftc.gov</a>	Robert Christie, Esq. Henderson & Lyman 175 West Jackson, Suite 240 Chicago, IL 60604 <a href="mailto:rchristie@henderson-lyman.com">rchristie@henderson-lyman.com</a>
Robert S. Lawrence, Esq. Collette, Erickson Farmer & O'Neill LLP 235 Pine Street, Suite 1300 San Francisco, CA 94104 <a href="mailto:rlawrence@collette.com">rlawrence@collette.com</a>	

(BY MAIL) I caused such envelope to be deposited in the mail at Sun Valley, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sun Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

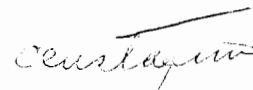
(BY EMAIL DELIVERY) I caused said documents to be emailed to the addressee(s) as listed above.

(BY FEDERAL EXPRESS) I caused an envelope to be hand-delivered to a representative of FEDEX at Sun Valley, California; whereupon said envelope is to be delivered by hand to a representative of the addressee on the next business day. I am readily familiar with the firm's practice of collection and processing correspondence for delivery with FEDEX for overnight delivery by next business day.

Executed on May 23, 2007, at Sun Valley, California.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Cherrie Eustaquio  
 Printed Name

  
 Signature