

**B309949**

**Immediate Stay**

**Requested: February 1,  
2021 at 5:00 p.m.**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**BRADFORD D. LUND,**  
*PETITIONERS,*  
v.

**SUPERIOR COURT OF LOS ANGELES COUNTY,**  
*RESPONDENT,*

**FIRST REPUBLIC TRUST COMPANY, L. ANDREW GIFFORD,  
ROBERT WILSON, AND DOUGLAS STRODE, AS TRUSTEES,  
*REAL PARTIES IN INTEREST***

SUPERIOR COURT OF LOS ANGELES COUNTY · CASE NO. BP129815

RELATED CASE NOS: BP055495, BP119204, BP119205, BP129184  
HON. PAUL T. SUZUKI, JUDGE DEPT. 003 · TELEPHONE NO. (213) 633-0253

**REQUEST FOR AN IMMEDIATE STAY OF ALL PROCEEDINGS  
BEFORE THE HON. PAUL T. SUZUKI; MEMORANDUM OF POINTS  
AND AUTHORITIES; DECLARATION OF SANDRA SLATON**

**THE PITET FIRM, PC**  
JOSEPH P. BUSCH III (SBN 70340)  
100 BAYVIEW CIRCLE, STE 210  
NEWPORT BEACH, CA 92660  
T: (949) 502-7755  
[JBUSCH@OCTRIALS.COM](mailto:JBUSCH@OCTRIALS.COM)

SANDRA SLATON (*PRO HAC VICE  
PENDING*)  
6720 N SCOTTSDALE ROAD, STE 285  
SCOTTSDALE, AZ 85253  
T: (480) 483-2178  
[SLATON@HORNESLATON.COM](mailto:SLATON@HORNESLATON.COM)

**HORNE SLATON, PLLC**

ATTORNEYS FOR PETITIONER

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Petitioner, Bradford D. Lund (“Mr. Lund”) requests an immediate stay of all proceedings before the Hon. Paul T. Suzuki pending this Court’s resolution of the instant writ petition in which Petitioner seeks review of the denial of the CCP § 170.6 peremptory challenge. This immediate request is presented because of facts that occurred subsequent to the filing of the Writ Petition on January 19, 2021.

The emergency in this case exists because of the presently pending Writ Petition before this Court. Mr. Lund filed a timely and proper California Code of Civil Procedure § 170.6 peremptory challenge against Judge Cowan. Presently, based upon the Writ Petition, the Lund Trust Cases<sup>1</sup> do not have a judicial officer. However, because of events that began on January 22, 2021, Mr. Lund needs the ability to file an *Ex Parte Application for Temporary Restraining Order* to stop the sale of the Eagle South Fork Ranch. In the event Mr. Lund files his *Ex Parte Application*, without this Court’s emergency intermittent stay pending its consideration of Petitioner’s Writ, it will automatically be sent

---

<sup>1</sup> In re Lillian B. Disney Trust fbo Bradford D. Lund (case no. BP 055495); In re Sharon D. Lund Residuary Trust fbo Michelle A. Lund (case no. BP 119204); In re Sharon D. Lund Residuary Trust fbo Bradford D. Lund (BP 119205); In re Bradford Disney Lund 1992 Trust (case no. BP 129814); and In re Sharon D. Lund 1986 Irrevocable Trust fbo Bradford D. Lund (case no. BP 129815).

back to Judge Suzuki for a ruling. If that were to happen, Petitioner would have then waived his right to his Peremptory challenge pursuant to Code of Civil Procedure §170.6(a)(2).

*National Fin'l Lending, LLC v. Superior Court* (2013) 222 Cal.App.4th 262, 270.

Further, if this Court were to subsequently grant Petitioner's Writ, then any order previously issued by Judge Suzuki would be deemed void. Pursuant to Code of Civil Procedure § 170.4: "a disqualified judge shall have no power to act in any proceeding after his or her disqualification or after the filing of a statement of disqualification until the question of his or her disqualification has been determined." (*Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 776).

Mr. Lund asserts that facts after January 19, 2021 create the emergency for this immediate stay that, by definition, could not have been requested when the Writ Petition was originally filed.

The new facts are: On January 22, 2021, the Trustees<sup>2</sup>, through Douglas Strode, sent a letter to Mr. Lund (and Michelle Lund), that they were again going to sell the Eagle South Fork Ranch ("ESF Ranch"). (Declaration of Sandra Slaton ("Slaton Dec."), ¶ 5). The Trustees' Letter indicated that the Trustees had

---

<sup>2</sup> L. Andrew Gifford, Robert L. Wilson, Douglas Strode, and First Republic Trust Companies ("FRTC").

received an unsolicited \$35 million cash offer from a second qualified, unrelated third party buyer. (Slaton Dec., ¶ 6).

The Trustees' letter offered Mr. Lund and Michelle Lund the opportunity to personally purchase the ESF Ranch for an all-cash price of \$34.125 million.<sup>3</sup> (Slaton Dec., ¶ 7). However, the Trustees' opportunity was for Mr. Lund to *personally* purchase the ESF Ranch with his own funds. The previous agreement of June 4, 2019 agreement allowed the Sharon D. Lund Residuary Trust fbo Bradford D. Lund (the "BRT") to purchase his one-half interest in the ESF Ranch. (Slaton Dec., ¶ 8).

The Trustees' letter set a deadline of January 29, 2021 at 5:00 p.m. for Mr. Lund (or Michelle Lund) to purchase ESF. (Slaton Dec., ¶ 9). The Trustees demanded Mr. Lund make the decision whether he wanted to buy the ESF Ranch for \$34.125 million in only five (5) business days. (Slaton Dec., ¶ 10 and 11). The Trustees informed Mr. Lund (and Michelle) that if a signed contract were not received, his opportunity to purchase would terminate forever and the Trustees would proceed with the sale to the third-party buyer. (Slaton Dec., ¶ 12). It is the Petitioner's position that this Ranch has been in the family for approximately 40 years and has tremendous sentimental value and it was

---

<sup>3</sup> This price is the \$35 million minus the 2.5% real estate agent commission that would not need to be paid if Mr. Lund (or Michelle Lund) purchased the ESF Ranch.

always intended that Petitioner (with his siblings) be able to have its use and enjoyment for their lifetime. (Slaton Dec., ¶ 13). Pursuant to the Petitioner's Petition For Instructions, the Trustees' attempted sale of this property is a violation of their fiduciary duties owed to him. (Slaton Dec., ¶ 14). Once this Ranch is sold it will, of course, be gone forever. (*Ibid.*). The Trustees sale of ESF Ranch will, upon information and belief, result in their collection of a two percent commission as well, personally enriching them. (Slaton Dec., ¶ 15).

The January 22, 2021 letter was sent directly from one Trustee, on behalf of all Trustees, to Mr. Lund via email and U.S. mail. (Slaton Dec., ¶ 16). The Trustees also copied Mr. Lund's trust and estates attorney, Douglas Wiley, and Michelle Lund's attorney, David Nelson. (Slaton Dec., ¶ 17).

Mr. Lund's lead counsel was not informed of the letter until January 28, 2021. (Slaton Dec., ¶ 19).<sup>4</sup> On January 28, 2021, Mr. Lund's lead counsel, Ms. Slaton, sent an email requesting the Trustees' cease and desist from the sale of the ESF Ranch.

---

<sup>4</sup> The Trustees' Letter was not sent to Mr. Lund's litigation counsel, or his lead attorney, Ms. Slaton. Opposing counsel, Hayward Kaiser and Andrew Spitser, failed to personally forward the letter to any of Mr. Lund's counsel, or to the Court. Although, Trustee Strode himself sent the letter to Mr. Lund's trust counsel, Mr. Wiley, counsel undersigned only became aware of the letter in the afternoon of January 28, 2021. (Slaton Dec., ¶ 18).

(Slaton Dec., ¶ 20). Ms. Slaton reminded the Trustees that the Wyoming Complaint regarding the sale of ESF Ranch was not final because of the time for post-trial motions and Mr. Lund's ability to file a Notice of Appeal. (Slaton Dec., ¶ 21).

Additionally, Ms. Slaton reminded the Trustees that there were presently two Petitions for Instructions pending in the California court. (Slaton Dec., ¶ 22). First, the Trustees filed a Petition for Instructions regarding the sale of ESF Ranch in September, 2020. (Slaton Dec., ¶ 23). Mr. Lund filed an Objection to the Trustees' Petition for Instructions. (Slaton Dec., ¶ 24). Second, Mr. Lund also filed his own Petition for Instructions regarding the sale of ESF Ranch in January, 2021. (Slaton Dec., ¶ 25).

The Trustees' attorneys have yet to answer the January 28, 2021 email as of the time of this filing. (Slaton Dec., ¶ 26). Therefore, Mr. Lund must seek an *Ex Parte* Application for Temporary Restraining Order to prevent the sale of the ESF Ranch. (Slaton Dec., ¶ 27).

**Wherefore**, Mr. Lund prays that this Court enter an immediate intermittent stay of any and all proceedings before the Hon. Paul T. Suzuki so that the case can temporarily be assigned to another judge to decide the application for the temporary restraining order until after this Court has decided Mr. Lund's Writ Petition regarding the § 170.6 Peremptory Challenge.

**Respectfully submitted** this 29th day of January, 2021.

**THE PITET FIRM, PC  
HORNE SLATON, PLLC**

**By:** \_\_\_\_\_ /s/ Sandra Slaton  
**JOSEPH P. BUSCH, III, ESQ.**  
**SANDRA SLATON, ESQ.**

Attorneys for Petitioner  
Bradford D. Lund

## **DECLARATION OF SANDRA SLATON**

I, Sandra Slaton, do hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice in Arizona. I have been admitted to practice law in this Court, *pro hac vice*. I am lead counsel of record for Beneficiary/Petitioner, Bradford D. Lund (“Mr. Lund”) in the Lund Trust Matters<sup>5</sup> and any appeals of those cases including the present Writ Petition.
2. I have firsthand, personal knowledge of the facts recited herein and, if called and sworn as a witness, I would and could competently testify thereto.
3. I have represented Mr. Lund in the California Lund Trust Matters, and am also Mr. Lund’s attorney in the Wyoming cause of action.
4. I was just recently made aware of the Trustees’ attempt to sell Eagle South Fork Ranch (“ESF Ranch”) on January 28, 2021.
5. On January 22, 2021, the Trustees<sup>6</sup>, through Douglas Strode, sent a letter to Mr. Lund (and Michelle Lund), that they

---

<sup>5</sup> In re Lillian B. Disney Trust fbo Bradford D. Lund (case no. BP 055495), In re Sharon D. Lund Residuary Trust fbo Michelle A. Lund (case no. BP 119204), In re Sharon D. Lund Residuary Trust fbo Bradford D. Lund (case no. BP 119205), In re Bradford Disney Lund 1992 Trust (case no. BP 129814), In re Sharon D. Lund 1986 Irrevocable Trust fbo Bradford D. Lund (case no. BP 129815).

<sup>6</sup> L. Andrew Gifford, Robert L. Wilson, Douglas Strode, and First Republic Trust Companies (“FRTC”).

were again going to sell the Eagle South Fork Ranch (“ESF Ranch”). (Trustees’ Letter, 1/22/2021, attached as **Exhibit 1**).

6. The Trustees’ Letter indicated that the Trustees had received an unsolicited \$35 million cash offer from a second qualified, unrelated third party buyer. (**Exh. 1**).

7. The Trustees’ letter offered Mr. Lund and Michelle Lund the opportunity to personally purchase the ESF Ranch for an all-cash price of \$34.125 million.<sup>7</sup> (**Exh. 1**). However, the Trustees’ opportunity was for Mr. Lund to *personally* purchase the ESF Ranch with his own funds.

8. The previous agreement, of June 4, 2019 agreement, allowed the Sharon D. Lund Residuary Trust fbo Bradford D. Lund (the “BRT”) to purchase his one half interest in the ESF Ranch. (June 4, 2019 Email, attached hereto as **Exh. 2**).

9. The Trustees’ letter set a deadline of January 29, 2021 for Mr. Lund (or Michelle Lund) to purchase ESF. (**Exh. 1**).

10. The Trustees demanded that Mr. Lund make the decision as to whether he wanted to personally buy the ESF Ranch for \$34.125 million in only five business days. (**Exh. 1**).

---

<sup>7</sup> This price is the \$35 million minus the 2.5% real estate agent commission that would not need to be paid if Mr. Lund (or Michelle Lund) purchased the ESF Ranch.

11. The Trustees letter indicated that Mr. Lund was required to sign and return the purchase and sale contract by 5:00 p.m. on January 29th. (**Exh. 1**).

12. The Trustees informed Mr. Lund (and Michelle) that if a signed contract were not received, Mr. Lund's opportunity to purchase would terminate and the Trustees would proceed with the sale to the third-party buyer. (**Exh. 1**).

13. The ESF Ranch has been in the Lund Family for approximately 40 years and has tremendous sentimental value and it was always intended that Petitioner (with his siblings) be able to have its use and enjoyment for their lifetime.

14. Pursuant to Mr. Lund's Petition for Instructions, the Trustees' attempted sale of this property is a violation of their fiduciary duties owed to him. Once the ESF Ranch is sold it will, of course, be gone forever.

15. The Trustees sale of the ESF Ranch, will, upon information and belief, result in their collection of a two percent (2%) commission as well, personally enriching them.

16. The January 22, 2021 letter was sent directly from one Trustee, on behalf of all Trustees, to Mr. Lund via email and U.S. mail. (**Exh. 1**).

17. The Trustees also copied Mr. Lund's trust and estates attorney, Douglas Wiley, and Michelle Lund's attorney, David Nelson. (**Exh. 1**).

18. The Trustees' Letter was not sent to Mr. Lund's litigation counsel, or his lead attorney, Ms. Slaton. Opposing counsel, Hayward Kaiser and Andrew Spitser, failed to personally forward the letter to any of Mr. Lund's counsel, or to the Superior Court where the Trustees' Contested Petition for Instructions, together with Mr. Lund's own Petition For Instructions is presently pending.

19. I, as Mr. Lund's lead counsel, was not informed of the letter until January 28, 2021.

20. On January 28, 2021, I sent an email, on Mr. Lund's behalf, requesting the Trustees' cease and desist from the sale of the ESF Ranch. (Email, 1/28/2021, attached hereto as **Exhibit 3**).

21. I reminded the Trustees that the Wyoming Complaint regarding the sale of ESF Ranch was not final because of the time for post-trial motions and Mr. Lund's ability to file a Notice of Appeal.

22. Additionally, I reminded the Trustees that there were presently two Petitions for Instructions pending in the California court.

23. First, the Trustees filed a Petition for Instructions regarding the sale of ESF Ranch in September, 2020. (Trustees' Petition for Instructions Regarding Sale of Real Property, attached hereto as **Exhibit 4**).

24. Mr. Lund filed an Objection to the Trustees' Petition for Instructions. (Mr. Lund's Objections to Trustees' Petition for Instructions, attached hereto as **Exhibit 5**).

25. Mr. Lund also filed his own Petition for Instructions regarding the sale of ESF Ranch in January, 2021. (Mr. Lund's Petition for Instructions Regarding Sale of Real Property, attached hereto as **Exhibit 6**).

26. The Trustees' attorneys have yet to answer the January 28, 2021 email at the time of this filing.

27. Mr. Lund must seek an *Ex Parte* Application for Temporary Restraining Order to prevent the sale of the ESF Ranch.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 29th day of January, 2021 at Paradise Valley, Arizona.

By: /s/ Sandra Slaton  
Sandra Slaton

## **EXHIBIT 1**

**Douglas M. Strode**  
2021 Shipway Lane  
Newport Beach, CA 92660  
Phone: (949) 631-8859  
Mobile: (213) 247-2519  
Email: dougstrode@gmail.com

January 22, 2021

Via Email & USPS

Dear Brad and Michelle:

This letter provides an update and offer regarding the Eagle South Fork property in Wyoming ("ESF").

On September 11, 2020, the Trustees provided you notice that the Trustees had received an offer from a qualified, unrelated third party buyer ("Buyer 1") to purchase ESF for an all-cash price of \$35,000,000. After learning of Brad's Wyoming lawsuit and lis pendens, Buyer 1 informed the Trustees that he no longer intended to pursue the purchase of ESF.

After the Wyoming Court dismissed Brad's Wyoming lawsuit and lis pendens, the Trustees received a letter of intent from a second qualified, unrelated third party buyer ("Buyer 2") to purchase ESF for an all-cash price of \$35,000,000. The Trustees have not yet entered into a letter of intent or purchase agreement with Buyer 2.

Before entering into a sale of ESF with Buyer 2, and without any current or future obligation to do so, the Trustees now are providing each of you personally the opportunity to purchase ESF for an all-cash price of Thirty Four Million, One Hundred Twenty-Five Thousand Dollars (\$34,125,000) (the "Purchase Price"<sup>1</sup>), on the terms set forth in the attached Contract to Buy and Sell Real Estate (the "Contract").<sup>2</sup>

If you wish to purchase ESF on the terms set forth in the Contract, please sign and return the Contract to me by email or otherwise so that I receive it no later than 5:00 p.m. PT on January 29, 2021 (the "Deadline"). If I do not receive a signed Contract from either of you by the Deadline, your opportunity to purchase ESF will immediately terminate, and we will proceed with the sale of ESF to Buyer 2 and/or any other qualified third party buyer that may come forward. If both of you return signed copies of the Contract by the Deadline, the Trustees will advise you of that fact and of the Trustees' plans on how to proceed.

---

<sup>1</sup> The Purchase Price of \$34,125,000 represents the \$35 million offered by Buyer 2, less the \$875,000 of 2.5% real estate agent commission that will be paid if the property is sold to Buyer 2, but which will not be paid if the property is sold to either of you.

<sup>2</sup> A separate, substantively identical Contract for each of you is attached with only the name of the Buyer changed. If you intend to sign the Contract, please sign the Contract that has your name as Buyer. Transmission of the signed Contract via email is acceptable.

For a Contract to be effective it must be executed by both Buyer and Seller as they are identified in the Contract form.

Attached for your reference is a copy of the most recent appraisal of ESF with a valuation date of December 31, 2019, prepared before any expression of interest by Buyer 1 or Buyer 2. The appraisal will not be included in the mailed version of this correspondence.

To avoid disrupting a sensitive potential buyer, please do not disclose Buyer 2's offer to anyone other than your attorneys.

Sincerely,

*Douglas M Strode*

Douglas M. Strode  
On Behalf of the Trustees

cc: Douglas Wiley, Esq.  
David Nelson, Esq.

**CONTRACT TO BUY AND SELL REAL ESTATE**  
**(Eagle Southfork)**

- I.** This Contract to Buy and Sell Real Estate (this "Contract") is among Bradford D. Lund ("Buyer"), on the one hand, and Canyon Oaks Estates, LLC, a California limited liability company, Crossing Elk I, LLC, a Wyoming limited liability company, and Crossing Elk II, LLC, a Wyoming limited liability company (collectively, "Seller"), on the other hand. Subject to the provisions of this Contract, Buyer agrees to buy and Seller agrees to sell the parcels of real property known as Lots 1 through 14 and part of Lot 15 according to that certain Plat No. 591 recorded in the Teton County Clerk's Office, and Riparian Parcel A and B, Eagle Southfork, which property is further identified as PIDNs 22-40-17-10-2-01-001 through 22-40-17-10-2-01-015, and 22-40-17-10-2-03-001 and 22-40-17-10-2-03-002 with all improvements thereon, easements, and other appurtenances and all fixtures of a permanent nature currently on such real property, and including all personal property described herein (hereinafter "Property"). The real estate that is part of the Property is legally described on **Exhibit A**. The Property does not include the approximately one (1) acre parcel that is a part of Lot 15 of Plat No. 591 that is owned by the Teton County Scenic Preserve Trust, and which is PIDN 22-40-17-10-2-01-016. Notwithstanding any other provision herein, the obligation hereunder of each respective Seller entity is solely and severally (and not jointly) as to the portion of the Property that is owned by such respective Seller entity. The "**Effective Date**" of the Contract shall be the date on which this Contract has been (1) executed by Buyer and Seller and (2) the Seller deposits the Contract with the Closing Agent.
- II. PURCHASE TERMS.** Buyer agrees to buy the Property for a purchase price of **Thirty Four Million, One Hundred Twenty-Five Thousand Dollars (\$34,125,000.00)** (the "Purchase Price"), to be paid in immediately available United States Dollars. **THIS IS A CASH OFFER AND IS NOT SUBJECT TO ANY CONDITION OR CONTINGENCY RELATING TO BUYER OBTAINING FINANCING;** provided, however, that Buyer may obtain financing, at Buyer's cost.
- III. CLOSING COSTS.**
- A. Buyer shall pay the following closing costs in cash on the Closing Date:
1. Recording fees for the special warranty deed.
  2. The premium for any mortgagee's title policy and any endorsements or extended coverage.
- B. Seller shall pay the following additional closing costs in cash on the Closing Date from the sale proceeds otherwise payable to Seller:
1. Recording fee for any mortgage releases, and the cost of deed and bill of sale preparation.
  2. Fees for the owner's standard title insurance policy as described in **Section V(B)** below.
  3. Unpaid real property taxes for the year 2020.
- C. The ("Closing Agent") shall be either Jackson Hole Title and Escrow or Wyoming Title and Escrow to be determined by Seller at its sole discretion. Closing Agent's fee shall be paid by Buyer and Seller in equal amounts in cash on the Closing Date.
- D. Real property taxes for the year of closing based on the most recent assessment and mill rate shall be apportioned between Buyer and Seller through the Closing Date.
- E. Buyer and Seller shall deliver to Closing Agent any additional instruments, duly executed and acknowledged by the appropriate party, as may be reasonably required by the Closing Agent relative to the completion of the transaction provided for in this Contract.

**IV. ITEMS INCLUDED IN PURCHASE PRICE.** The Purchase Price and "Property" shall include all of Seller's interest in fixtures and personal property located on the Property as of the Effective Date, including but not limited to, all of the following, if they exist on the Property: all lighting, heating, mechanical and plumbing fixtures, all outdoor plants, built-in appliances, permanently attached floor coverings, storm windows, doors, screens, garage door openers and controls, smoke/fire detection devices, curtains and drapes and rods and blinds and other window treatments. The Property being transferred shall also include any mineral estate or water rights related to the Property that is owned by Seller, and any other appurtenances, in each case, without warranty of any kind.

**V. TITLE.**

- A. Within ten (10) days after Effective Date, Closing Agent shall provide Seller and Buyer with a copy of a title commitment for the Property (the "Title Commitment"), together with copies of the Schedule B items noted thereon.
- B. If Buyer is dissatisfied with any matter shown on the Title Commitment, Buyer may deliver written notice (a "Title Objection Notice") to Seller and Closing Agent of its objection within seven (7) days after Buyer's receipt of the Title Commitment (the "Unpermitted Exceptions"). If any amendment, revision or supplement to the Title Report is issued, a copy thereof shall be promptly delivered by Escrow Agent to Buyer, together with a legible copy of any new matter referred to in any amendment or supplement to the Title Commitment. Buyer shall have three (3) days after receipt of any amendment, revision or supplement of the Title Commitment or until the Closing Date, whichever first occurs, to object to any new and material matters shown thereon by providing a supplemental Title Objection Notice to Seller and Escrow Agent. If Buyer fails to provide a Title Objection Notice within the time periods prescribed in this Section V(B), Buyer shall be deemed to have accepted the Title Commitment and any supplement thereto.
- C. If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer within five (5) days following the date of receipt of the Title Objection Notice ("Seller's Cure Period") that either (i) one or more of the Unpermitted Exceptions has been, or will be at or prior to the Closing Date, removed from the Title Commitment, or (ii) Seller is unable or unwilling to have one or more of the Unpermitted Exceptions removed. If Seller fails to respond to the Title Objection Notice within Seller's Cure Period, Seller shall be deemed to be unwilling to cause the removal of the Unpermitted Exceptions, except for any monetary liens and encumbrances (other than taxes not yet due and payable and monetary liens and encumbrances caused by Buyer), which Seller shall remove. If Seller fails to cure any objection of Buyer or fails to respond to the Title Objection Notice within Seller's Cure Period, Buyer may elect within five (5) days following Seller's Cure Period to either: (A) terminate this Contract by written notice delivered to Seller and Closing Agent, in which event thereafter neither party shall have any further right, obligation or liability under this Contract except for the rights, obligations and liabilities that expressly survive termination; or (B) waive the objection by written notice to Seller and Closing Agent and proceed to close the Escrow. If Buyer fails to timely make any of these elections, Buyer will be deemed to have elected option (B) above. All matters to which Buyer has not objected, or to which Buyer has waived or is deemed to have waived its objections under this Section V are referred to in this Contract as the "Permitted Exceptions."
- D. As a condition to Closing, Closing Agent shall be irrevocably committed to issue as of the Closing Date to Buyer, as the insured, an extended coverage owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price and consistent with this Section V.

## **VI. CLOSING; POSSESSION; RELATED MATTERS.**

- A. Closing will be conducted by the Closing Agent.
- B. The Closing shall occur shall occur on a date that is thirty-five (35) calendar days following the Effective Date (the "Closing Date"), or earlier as otherwise mutually agreed in writing between the parties. If the Closing does not occur on or before March 15, 2021 for any reason this Contract shall be deemed terminated, any money, deed, bill of sale deposited with the Closing Agent shall be returned to the party making the deposit.
- C. Seller shall execute and deliver to Closing Agent a special warranty deed in form and substance consistent with Exhibit B attached hereto.
- D. Seller shall execute and deliver to Closing Agent, a bill of sale, in form and substance consistent with Exhibit C attached hereto conveying said Property.
- E. Prior to the Closing Date, Closing Agent shall provide Seller and Buyer with a preliminary settlement statement with an estimate of all credits and prorations set forth in this Contract.
- F. On or before 12:01 PM on the Closing Date, Buyer shall deliver to Closing Agent the Purchase Price plus a sufficient amount of cash to pay Buyer's obligations under Section III as estimated in the preliminary settlement statement.
- G. On the Closing Date, the Closing Agent shall cause the special warranty deed to be recorded in Teton County and the bill of sale to be delivered to Buyer.
- H. Upon confirmation of recording of the special warranty deed, the Closing Agent immediately: (1) shall disburse to the Seller the Purchase Price less those amounts which are Seller's obligations as specified in Section III; (2) to the Buyer any excess sum deposited by the Buyer to cover Buyer's estimated obligations under Section III, if any; and (3) to the Seller and the Buyer a final closing statement reflecting the disbursement of all funds held by the Closing Agent.
- I. Possession shall be delivered to Buyer on the Closing Date.

## **VII. CONDITION OF PROPERTY; BROKERAGE; AS-IS.**

- A. Notwithstanding any other term of this Contract, Buyer acknowledges that Buyer is familiar with the Property and that Buyer has had the opportunity to conduct due diligence and investigation with respect to the Property.
- B. Each of Buyer and Seller represent to the other that no real estate broker or real estate agent represented such party in relation to the Contract or the Property.
- C. **BUYER HEREBY ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS, WHERE IS BASIS WITH ALL FAULTS" AND THAT, OTHER THAN THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE IN THIS CONTRACT AND THE DEED AND BILL OF SALE DELIVERED AT CLOSING, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO, THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (1) ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF, (2) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE CONDITIONS, UNDER-GROUND WATER RESERVOIRS, AND LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND FAULTING, (3) WHETHER OR NOT AND THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM**

(SURFACE OR UNDER-GROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD, (4) DRAINAGE ISSUES, CONDITIONS OR PROBLEMS, AND RIPARIAN ACCRETION OR EROSION, (5) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING, (6) THE ZONING OR OTHER LAND USE RESTRICTIONS TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT, (7) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC SERVICE, (8) USAGES OF ADJOINING PROPERTY OR ANY ENCROACHMENTS FROM OR ONTO ADJOINING PROPERTY, (9) ACCESS TO THE PROPERTY OR ANY PORTION THEREOF, (10) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF, THE PROPERTY, OR ANY PORTION THEREOF, OR ANY INCOME, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, OR CLAIMS ON OR AFFECTING, OR PERTAINING TO, THE PROPERTY OR ANY PART THEREOF, (11) THE PRESENCE OF HAZARDOUS MATERIALS IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY, (12) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS, (13) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS, (14) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE LAND OR IMPROVEMENTS, (15) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY, (16) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY, (17) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (BUYER AFFIRMING THAT BUYER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE), (18) THE ACREAGE OF THE PROPERTY, (19) THE EXISTENCE AND EFFECT OF ANY MINERAL RIGHTS OR WATER RIGHTS AS TO THE PROPERTY OR THE RIGHTS OF THIRD PARTIES IN RELATION TO SAME, OR (20) THE TRUTH, ACCURACY OR COMPLETION OF THE DUE DILIGENCE MATERIALS, OR ANY OTHER DOCUMENT OR AGREEMENTS PROVIDED OR MADE AVAILABLE TO BUYER, IF ANY. BUYER ACKNOWLEDGES THAT IT WILL COMPLETE ANY PHYSICAL AND FINANCIAL EXAMINATIONS AT BUYER'S SOLE COST AND EXPENSE, RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER AND WILL ACQUIRE THE PROPERTY SOLELY ON THE BASIS OF SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY, IF ANY, INCLUDING, WITHOUT LIMITATION, ANY DUE DILIGENCE MATERIALS, WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER SHALL NOT BE LIABLE FOR ANY FAILURE TO INVESTIGATE THE PROPERTY, NOR SHALL SELLER BE BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN

STATEMENTS, REPRESENTATIONS, APPRAISALS, ENVIRONMENTAL ASSESSMENT REPORTS, OR OTHER INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF THAT HAS BEEN FURNISHED BY SELLER OR BY ANY, ATTORNEY, REPRESENTATIVE, EMPLOYEE, SERVANT, APPRAISER, OR OTHER PERSON ACTING ON SELLER'S BEHALF, IF ANY. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE AMOUNT OF THE PURCHASE PRICE REFLECTS, AND THE PROPERTY IS BEING SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO, THE FOREGOING DISCLAIMERS, WHICH SHALL SURVIVE THE CLOSING AND ANY EARLIER TERMINATION OF THIS CONTRACT.

- XII. TIME IS OF THE ESSENCE.** Time is and shall be of the essence of this Contract and all its provisions. Any extension of the time for performance under this Contract by either party must be in writing and signed on behalf of Seller and Buyer. No extension will be deemed a waiver of this Paragraph with respect to other performance by either party.

**XIII. CONSENTS AND ACKOWLDGEMENTS; MISCELLANEOUS.**

- A. All prior representations and statements made in the negotiations of this sale that have been relied upon by either party have been incorporated herein, and there are no oral agreements or representations between Buyer or Seller to modify the terms and conditions of this Contract. This Contract represents the entire agreement of the parties hereto and supersedes all prior oral or written agreements and understandings between them with respect to the subject matter hereof. This Contract cannot be modified except in writing signed by all parties hereto.
- B. This Contract may be executed in multiple copies and by their signatures hereon each party acknowledges receipt of a signed copy at the time of signing. Facsimile or electronic transmission of any signed counterpart of this Contract and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original counterpart of this Contract.
- C. This Contract and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California, including all matters of construction, validity, performance, and enforcement, without giving effect to the principles of conflict of laws. The parties hereto irrevocably elect as the sole judicial forum for the adjudication of any matters arising under, in connection with, or related to this Contract, and consent to the jurisdiction of, the courts of the State of California, Los Angeles County. This Contract shall be construed as a whole and in accordance with its fair meaning and without regard to, or taking into account, any presumption or other rule of law requiring construction against the party preparing this Contract or any part hereof. This Contract, and any subpart herein, shall not be construed against or in favor of any party by virtue of which party drafted the Contract or any portion thereof.
- D. Unless otherwise specified in this Contract, all "days" shall be calendar days. The time in which any act under the purchase agreement is to be performed, shall be computed by excluding the date of execution and including the last day. If the last day is a Saturday, Sunday, or legal holiday, then the time for performance shall be the next subsequent business day.
- E. Notices under this Contract may be given by email, U.S. Mail, personal delivery or overnight delivery to the parties and their attorneys at the following addresses. In order to be effective, a notice must also be given by email at the following email addresses if notice is given by

any method other than email.

If to Seller:     Canyon Oaks Estates, LLC  
c/o Doug Strode  
2021 Shipway Lane  
Newport Beach, CA 92660  
Email: [dougstrode@gmail.com](mailto:dougstrode@gmail.com)

And with a copy to:     Holland & Hart LLP  
Attn: Matt Kim-Miller  
P.O. Box 68, 25 S. Willow Street, Suite 200  
Jackson, WY 83001  
Email: [mwkimmiller@hollandhart.com](mailto:mwkimmiller@hollandhart.com)

If to Buyer:     To the address set forth below Buyer's signature block below  
[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed.

**BUYER:**

Name: Bradford D. Lund

Signed on January \_\_\_\_, 2021

Mailing and Email Address of Buyer:

---

---

**SELLER:**

Canyon Oaks Estates, LLC, California limited liability company,  
successor by conversion of Canyon Oaks Estates, L.P., a California limited partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Signed on January \_\_\_\_, 2021

Crossing Elk I, LLC, a Wyoming limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Signed on January \_\_\_\_, 2021

Crossing Elk II, LLC, a Wyoming limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Signed on January \_\_\_\_, 2021

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL ESTATE THAT IS PART OF THE PROPERTY**

**PARCEL 1**

Lots 1 through 15, Eagle Southfork Subdivision, Teton County, Wyoming, according to that plat recorded in the Office of the Teton County Clerk on June 8, 1985 as Plat Number 591.

**EXCEPTING THEREFROM** a tract of land being a portion of Lot 15 of Eagle Southfork, a Subdivision, located in the Northwest Quarter of the Northwest Quarter and Lots 1, 2, and 3 of Section 10, Township 40 North, Range 117 West, 6th P.M., Teton County, Wyoming more particularly described as follows:

The Southernmost one acre of that part of said Lot 15 designated as an easement for the "Wilson-Fall Creek County Road No. 22-2" on the plat of Eagle Southfork, a subdivision of record in the Office of the Clerk of Teton County; Said Tract being sixty feet in width with the bearing of the northerly boundary equal to North 79° 40' East.

**PARCEL 2 (RIPARIAN PARCEL A)**

A parcel of land being a portion of the riparian lands appurtenant to Lots 1 and 2 of Section 10, T.40 N., R. 117 W., 6th P.M., Teton County, Wyoming, described as follows:

**BEGINNING** at the NE Corner of EAGLE SOUTHFORK subdivision, recorded as Plat No 591 in the Office of the Clerk of Teton County, Wyoming marked by a steel stake with chromed cap inscribed PE & LS 2612, along with other markings.

**THENCE**, S 89°59'43" E, a distance of 2056.7 feet, more or less, along that boundary line established by deed in Book 157 of Photo, Pages 683-686, to the thread of the Snake River;

**THENCE**, S 25°03' E, a distance of 201.5 feet, along the thread of the Snake River, to a point;

**THENCE**, S 14°27' E, a distance of 275.1 feet, along the thread of the Snake River, to a point;

**THENCE**, S 01°03' W, a distance of 178.1 feet, along the thread of the Snake River, to a point;

**THENCE**, S 79°38'33" W, a distance of 1823.2 feet, more or less, to a point of intersection with the right bank meander line of the Snake River, said meander line being coincident with the east line of Lot 15 of said EAGLE SOUTHFORK subdivision;

**THENCE**, N 11°19'07" W, a distance of 302.25, along the right bank meander line of the Snake River and the east line of Lot 15 of said EAGLE SOUTHFORK subdivision, to Angle Point 3, marked by a BLM brass cap monument;

**THENCE**, N 24°20'21" W, a distance of 446.82 feet, along the right bank meander line of the Snake River and the east line of Lot 15 of said EAGLE SOUTHFORK subdivision, to Angle Point 4;

**THENCE**, N 43°42'14" W, a distance of 112.25 feet, along the right bank meander line of the Snake River and the east line of Lot 15 of said EAGLE SOUTHFORK subdivision, to the easterly most corner of Lot 6 of said EAGLE SOUTHFORK subdivision, said point being witnessed by a steel stake with

chromed cap inscribed PE & LS 2612, along with other markings, lying N 43°38'22" W, a distance of 25.00 feet, from the true corner;

THENCE, N 43°38'22" W, a distance of 150.00 feet, along the right bank meander line of the Snake River and the east line of Lot 6 of said EAGLE SOUTHFORK subdivision, to Angle Point 5 and the easterly corner common to Lots 5 & 6 of said EAGLE SOUTHFORK subdivision, marked by a BLM brass cap monument;

THENCE, N 09°41'15" E, a distance of 62.68 feet, along the right bank meander line of the Snake River and the east line of Lot 5 of said EAGLE SOUTHFORK subdivision, to the NE Corner of said EAGLE SOUTHFORK subdivision and the point of BEGINNING.

Basis of Bearings for this description is S11°43'24" E along the right bank meander line of the Snake River between Angle Point 1 and the SE corner of EAGLE SOUTHFORK subdivision, recorded as Plat #591 in the Office of the Clerk of Teton County, Wyoming, as shown on said Plat #591.

Courses along the thread of the Snake River described hereon are a general representation of the actual thread of the Snake River and are approximate in nature. The actual centerline (thread) of the Snake River is the boundary line.

#### PARCEL 3 (RIPARIAN PARCEL B)

A parcel of land being a portion of the riparian lands appurtenant to Lots 2 and 3 of Section 10, T.40 N., R. 117 W., 6th P.M., Teton County, Wyoming, described as follows:

BEGINNING at the SE Corner of EAGLE SOUTHFORK subdivision, recorded as Plat No. 591 in the Office of the Clerk of Teton County, Wyoming marked by a steel stake with chromed cap inscribed PE & LS 2612, along with other markings;

THENCE, N 11°43'24" W, a distance of 452.33 feet, along the right bank meander line of the Snake River, said meander line being coincident with the east line of Lot 15 of said EAGLE SOUTHFORK subdivision, to Angle Point 1, marked by a BLM brass cap monument;

THENCE, N 06°36'24" E, a distance of 264.38 feet, along the right bank meander line of the Snake River and the east line of Lot 15 of said EAGLE SOUTHFORK subdivision, to Angle Point 2, marked by a BLM brass cap monument;

THENCE, N 11°19'07" W, a distance of 139.03 feet, along the right bank meander line of the Snake River and the east line of Lot 15 of said EAGLE SOUTHFORK subdivision, to a point;

THENCE departing said right bank meander line and said east line of Lot 15, N 79°38'33" E, a distance of 1823.2 feet, more or less, to a point of intersection with the thread of the Snake River;

THENCE, S 08°53' W, a distance of 422.0 feet, along the thread of the Snake River, to a point;

THENCE, S 14°46' W, a distance of 616.4 feet, more or less, along the thread of the Snake River, to a point of intersection with the westerly projection of the south line of said EAGLE SOUTHFORK subdivision;

THENCE, S 83°58'03" W, a distance of 1490.7 feet, along the westerly prolongation of the south line of said EAGLE SOUTHFORK subdivision, to the SE corner of said EAGLE SOUTHFORK subdivision and the POINT OF BEGINNING.

Basis of Bearings for this description is S11°43'24" E along the right bank meander line of the Snake River between Angle Point 1 and the SE corner of EAGLE SOUTHFORK subdivision, recorded as Plat No. 591 in the Office of the Clerk of Teton County, Wyoming, as shown on said Plat No. 591.

Courses along the thread of the Snake River described hereon are a general representation of the actual thread of the Snake River and are approximate in nature. The actual centerline (thread) of the Snake River is the boundary line.

PIDN: 22-40-17-10-2-01-001, 22-40-17-10-2-01-002, 22-40-17-10-2-01-003, 22-40-17-10-2-01-004, 22-40-17-10-2-01-005, 22-40-17-10-2-01-006, 22-40-17-10-2-01-007, 22-40-17-10-2-01-008, 22-40-17-10-2-01-009, 22-40-17-10-2-01-010, 22-40-17-10-2-01-011, 22-40-17-10-2-01-012, 22-40-17-10-2-01-013, 22-40-17-10-2-01-014, 22-40-17-10-2-01-015, 22-40-17-10-2-03-001, 22-40-17-10-2-03-002

**EXHIBIT B**  
**SPECIAL WARRANTY DEED FORM**

\_\_\_\_\_  
GRANTOR, for Ten Dollars (\$10.00) and other good  
and valuable consideration in hand paid, receipt of which is hereby acknowledged, CONVEYS AND  
SPECIALLY WARRANTS against all who claim by, through or under the Grantor, but none other, to  
\_\_\_\_\_  
GRANTEE, whose mailing address is \_\_\_\_\_, the  
following real estate situated in the County of Teton, State of Wyoming:

As described on Exhibit A,

PIDNs: \_\_\_\_\_

together with and including all improvements thereon and all appurtenances and hereditaments thereunto  
belonging; subject to all covenants, conditions, restrictions, easements, encumbrances, reservations, and  
rights-of-way of record or that would be shown by an accurate survey.

WITNESS the due execution and delivery of this Special Warranty Deed this \_\_\_\_ day of \_\_\_\_\_, 2021.

**EXHIBIT C**

**BILL OF SALE FORM**

KNOW ALL PERSONS THESE PRESENTS, that \_\_\_\_\_,  
GRANTOR, in consideration of One Dollar (\$1.00), lawful money of the United States, in hand  
paid by \_\_\_\_\_, GRANTEE, the receipt of  
which is hereby acknowledged, does hereby grant, bargain, sell, transfer and deliver unto said  
GRANTEE all personal property of Grantor physically located as of the date of this Bill of Sale at  
the real property legally described on Exhibit A attached hereto.

TO HAVE AND TO HOLD all and singular the personal property to GRANTEE, and  
GRANTEE'S assigns for their own use forever.

This transfer is made without representation, warranty or guaranty by, or recourse against,  
GRANTOR of any kind whatsoever; provided, however that GRANTOR warrants the transferred  
property to be free of liens and encumbrances, or any interest of any other person or entity therein.  
Further, any implied warranties of quality, fitness or merchantability are hereby disclaimed.

WITNESS the due execution and delivery of this Bill of Sale this \_\_\_\_\_ day of \_\_\_\_\_.

## **EXHIBIT 2**

## **EXHIBIT 3**

## Matt Monaco

---

**From:** Sandra Slaton  
**Sent:** Thursday, January 28, 2021 2:43 PM  
**To:** Kaiser, Hayward; Spitser, Andrew  
**Cc:** Douglas Wiley (dwiley@polsinelli.com); Joseph Busch III; Matt Monaco; dfrommer@akingump.com  
**Subject:** URGENT-PLEASE READ NOW-CEASE AND DESIST DEMAND

Dear Hayward and Andrew-

I have just become aware this afternoon, January 28, 2021, of your client's, Doug Strode's, letter to Mr. Lund announcing that the Trustees had a new offer on the Wyoming Ranch for \$35,000,000 and that in order to stop the sale Mr. Lund had to make a decision as to whether to purchase the Ranch for that amount by 5:00 p.m. tomorrow, January 29, 2020, with an attached proposed contract. Although the letter is dated January 22, 2020, it was not sent to me, or any other co-counsel for Mr. Lund, we believe both of you knew about it together with the proposed sale. We further believe that as the attorneys for the Trustees both of you purposely chose not to send the letter to any of Mr. Lund's counsel.

I remind you that the Wyoming case was not even dismissed until January 13, 2021, and has not become final for purposes of filing post-trial motions and a notice of appeal.

I further remind you of your own Petition For Instructions asking the Court for instructions on the Trustees' desire to sell the Ranch which is now pending in the Los Angeles County Superior Court, to which we have responded. I also remind you of Mr. Lund's own Petition For Instructions now pending in the Los Angeles County Superior Court on Mr. Lund's request that the Ranch not be sold for the reasons set forth therein.

Yet, despite all of this, with your knowledge as Trustees' counsel, your clients sent a separate letter to Mr. Lund, not his counsel, giving him Eleventh Hour notice of the proposed sale. In the letter Mr. Strode does not even give Mr. Lund the identity of the buyer.

Please be advised that Mr. Lund considers your actions, together with the Trustees' actions as described above to be yet another breach of fiduciary duty against him. We are demanding through this email that you and the Trustees immediately cease and desist with the proposed sale of the Wyoming Ranch until the Los Angeles County Superior Court rules on the Petitions For Instructions now pending before it and until all post-trial and appellate proceedings terminate in Wyoming on the dismissal of the law suit and quashing of the lis pendens concerning the Ranch. Please also immediately advise and give notice to any proposed buyer of Mr. Lund's position in this matter and that he intends to exhaust all of his remedies as beneficiary under the Trust in connection with the sale of the Ranch.

In the event that we do not hear from you by 5:00 p.m. today, Mr. Lund has authorized us to go forward with any and all emergency remedies available under the law.

Thank you, Sandra Slaton, on behalf of Bradford Lund

Sandra Slaton  
Horne Slaton, PLLC  
[6720 N. Scottsdale Road, Suite 285](http://6720N.ScottsdaleRoad.Suite285)

Scottsdale, AZ 85253

Office: [\(480\) 483-2178](tel:(480)483-2178)

Cell: [\(480\) 518-2154](tel:(480)518-2154)

[slaton@horneslaton.com](mailto:slaton@horneslaton.com)

All Communications are privileged and confidential. If you receive this email in error, please destroy it immediately and contact our office at [\(480-483-2178\)](tel:(480)483-2178)

## **EXHIBIT 4**

1 MITCHELL SILBERBERG & KNUPP LLP  
2 HAYWARD J. KAISER (SBN 66365), [hjk@msk.com](mailto:hjk@msk.com)  
3 ANDREW C. SPITSER (SBN 255917), [acs@msk.com](mailto:acs@msk.com)  
4 AARON D. JOHNSTON (SBN 328627), [adj@msk.com](mailto:adj@msk.com)  
2049 Century Park East, 18<sup>th</sup> Floor  
Los Angeles, CA 90067  
Telephone: (310) 312-2000  
Facsimile: (310) 312-3100

5 Attorneys for First Republic Trust Company,  
6 L. Andrew Gifford, Robert L. Wilson, and Douglas  
7 M. Strode, Trustees of the Sharon D. Lund Residuary  
Trust fbo Bradford D. Lund

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

12 | IN RE

**SHARON D. LUND RESIDUARY  
TRUST fbo BRADFORD D. LUND**

CASE NO. BP 119205

[Also Filed in Case No. BP 119204]

# **TRUSTEES' PETITION FOR INSTRUCTIONS REGARDING SALE OF REAL PROPERTY**

[Prob. Code §§ 17200 *et seq.*; 16226]

**RESERVED (Ok'd by Carmen)**

DATE: December 1, 2020  
TIME: 1:30 P.M.  
DEPT: 20  
Judge: Hon. David J. Cowan

1 Petitioners, First Republic Trust Company (“FRTC”), L. Andrew Gifford, Robert L.  
2 Wilson, and Douglas M. Strode (collectively, the “Trustees”), co-trustees of the Sharon D. Lund  
3 Residuary Trust fbo Bradford D. Lund (the “BRT”) and of the Sharon D. Lund Residuary Trust  
4 fbo Michelle A Lund (“MRT”), hereby submit their Petition for Instructions Regarding Sale of  
5 Real Property (the “Petition”).<sup>1</sup>

6

7 **I. INTRODUCTION AND SUMMARY**

8 1. Under the April 8, 2019 Settlement Agreement (“Original Settlement Agreement”  
9 or “OSA”), the parties agreed that, if the Court were to approve the OSA, the Trustees would  
10 have sole and absolute discretion to devise methodologies to divide all assets then held jointly by  
11 the MRT and the BRT. To avoid future disputes between Bradford, on the one part, and the  
12 Trustees or Michelle, on the other part, which have plagued the parties in the past as to jointly-  
13 owned assets, the parties to the OSA agreed the Trustees would have discretion to remove such  
14 joint ownership through the non-pro rata division or sale to third parties of all such jointly-owned  
15 assets, with the divisions or sales completed at or around October 2019, the then-contemplated  
16 Effective Date of the OSA.

17 2. Given the circumstances at the time, the Trustees determined it was imprudent for  
18 either the MRT or the BRT to hold 100% of a parcel of real property known as Eagle South Fork  
19 (“ESF”), which is owned 50% by the BRT and the MRT. ESF consists of approximately 110  
20 acres of non-income producing real property concentrated in one market: Wilson, Wyoming.  
21 Accordingly, the Trustees determined that they would avoid joint ownership by allowing  
22 Bradford and Michelle, who have sufficient personal assets, to bid for the purchase of 100% of  
23 ESF with the property going to the highest bidder individually, unless a third party made a higher  
24 offer; and, if neither wanted ESF, by selling ESF to a third party prior to the Effective Date via a  
25 marketing and auction process managed by a firm specializing in luxury real estate. Neither

26

27 <sup>1</sup> Members of the Lund family are referred to by their first names “for purposes of clarity, not out  
of disrespect.” *Young v. McCoy*, 147 Cal. App. 4th 1078, 1081 n.2. (2007).

1 Bradford nor Michelle submitted a bid, because neither wanted ESF. Bradford suggested that the  
2 Trustees market and sell ESF to a third party, but did not provide a mechanism to consummate a  
3 sale and avoid joint ownership by the then contemplated OSA Effective Date. Therefore, the  
4 Trustees planned to market ESF for sale to a third party through their proposed marketing and  
5 auction process, to ensure a completed sale by the Effective Date of the OSA.

6       3. Apparently believing that his nominated Replacement Trustees (under the OSA)  
7 would not find it imprudent for the BRT to hold 100% of ESF, at least until it could be marketed  
8 and sold – a process he thought would take 12-18 months – Bradford suggested that, if the Court  
9 approved the OSA, the BRT should acquire the MRT’s 50% ownership interest in ESF at a price  
10 equal to 50% of the appraised value of ESF. After considering this suggestion, the Trustees – in  
11 their sole and absolute discretion – adopted this approach as the methodology to avoid joint  
12 ownership of ESF, subject to the conditions that: (1) if a third party made a higher offer, the  
13 Trustees could accept it; and (2) the transfer would occur only if the Court were to approve the  
14 OSA (including Bradford’s choice of Replacement Trustees), and only after such approval. The  
15 Trustees’ chosen methodology was the subject of emails and letters starting on May 10, 2019 and  
16 ending on June 4, 2019 (“June 4, 2019 Email Chain,” culminating in the “June 4, 2019 Email”).

17       4. Thus, the Trustees’ June 4, 2019 methodology was premised upon the following  
18 key elements: (1) Bradford and Michelle had indicated that they did not want ESF and preferred  
19 that the Trustees sell it to a third party; (2) the Court first had to approve the OSA and the  
20 appointment of Bradford’s nominated Replacement Trustees for the BRT; (3) the transfer to the  
21 BRT of the MRT’s 50% ownership interest in ESF would occur at about October 2019, the  
22 contemplated Effective Date; and (4) no third party would make a higher offer prior to the  
23 transfer from MRT to BRT.

24       5. By its September 27, 2019 Further Rulings, the Court expressed its very serious  
25 concerns about whether it could approve the OSA (in particular, Bradford’s chosen Replacement  
26 Trustees), and appointed a guardian *ad litem* (“GAL”) for Bradford to facilitate a revised  
27 settlement agreement the Court could approve. Thereafter, Bradford repeatedly demonstrated

1 that he did not consider himself bound by OSA or the June 4, 2019 Email Chain. Bradford  
2 repeatedly notified the Trustees and the Court that he considered the OSA null and void and  
3 withdrew his joinder in the Trustees' petition to approve the OSA, which joinder was required by  
4 the OSA. By these actions, Bradford is estopped from claiming the Trustees are bound by the  
5 June 4, 2019 Email Chain, even assuming *arguendo* that chain created an enforceable agreement  
6 (which it did not).

7       6. Since the June 4, 2019 Email, other circumstances have changed. Nearly sixteen  
8 months have passed; and nearly a year has passed since the anticipated Effective Date of the  
9 OSA. In accordance with the Court's instructions, the Trustees, Michelle, and the GAL  
10 negotiated a Revised Settlement Agreement ("RSA"); and, on June 16, 2020, the Trustees  
11 petitioned the Court to approve the RSA rather than the OSA. Petitions to approve the OSA and  
12 the RSA remain pending. If the OSA is rejected, Bradford's claim based on the June 4, 2019  
13 Email Chain evaporates and should be withdrawn, since the June 4, 2019 Email is contingent on  
14 the OSA being approved. If the Court approves the RSA, under its terms, the Trustees may sell  
15 ESF to a third party and Bradford should withdraw any claim based on the June 4, 2019 Email. If  
16 the Court rejects both the OSA and the RSA, Bradford should withdraw any claim based on the  
17 June 4, 2019 Email. Otherwise, Bradford's claim that ESF not be sold to a third party will  
18 disrupt any effort to sell ESF, and the Trustees will find themselves continuing to manage a non-  
19 productive real estate investment jointly owned by the MRT and the BRT, when the beneficiaries  
20 do not get along and Bradford and the Trustees do not get along.

21       7. The obvious solution to this dilemma is to sell ESF to a third party. In the 16  
22 months since the June 4, 2019 Email, increasing demand for property in the Wilson and Jackson,  
23 Wyoming, has pushed the real estate market considerably higher. The Trustees have received a  
24 bona fide offer from a qualified, independent third party buyer (the "Buyer") to acquire 100% of  
25 ESF for \$35 million cash, with a proposed close before the end of 2020.

26       8. Thus, on September 11, 2020, the Trustees notified Bradford and Michelle of the  
27 offer, and indicated they intended to pursue it. On September 14, 2020, Michelle withdrew any  
28

1 consent to the June 4, 2020 Email and indicated her willingness to proceed with the third party  
2 sale. On September 15, 2020, the day after arguing to the Court that the OSA, and thereby the  
3 June 4, 2019 Email (even assuming it were an agreement) was null and void, Bradford first  
4 threatened to request from this Court an *ex parte* injunction to stop the proposed sale based on the  
5 June 4, 2019 Email. Instead, after judge-shopping and ignoring the Los Angeles forum selection  
6 clause in the OSA and this Court’s exclusive jurisdiction over these trust matters, Brad’s attorney  
7 filed a complaint and a lis pendens on ESF in Jackson, Wyoming, to specifically enforce the  
8 purported “agreement” in the June 4, 2019 Email Chain and to prevent any sale of ESF.

9        9. Unless dismissed forthwith,<sup>2</sup> the practical effect of the Wyoming case forecloses  
10 the Trustees from listing, marketing, and closing the sale of ESF in a real estate market attractive  
11 to sellers and would require: (a) the BRT and the MRT to hold unproductive real property until  
12 such time, if ever, that Bradford no longer wants it, contrary to the terms of the BRT and  
13 Sharon's intent; (b) the BRT and the MRT to pay the expenses of maintaining and operating ESF;  
14 (3) the MRT and the BRT to forego the opportunity to monetize their interests in an unproductive  
15 asset for which there currently is a very active sellers' market; and (4) the MRT to sell its interest  
16 in ESF to the BRT well below its current fair market value as represented by the LOI, thus  
17 imposing an inequitable forfeiture on the MRT and giving an inequitable windfall to the BRT.  
18 As stated more fully below, the Trustees believe that Bradford's actions impede the Trustees'  
19 unfettered right to sell ESF to a qualified third-party buyer, are inequitable, and require this  
20 petition for instructions to remedy the situation.

21 In support of this Petition, the Trustees respectfully allege as follows:

## II. FACTUAL BACKGROUND

24           10. **Purpose of Petition.** This Petition is being filed for instructions with regard to the  
25 Trustees' proposed sale of trust-owned real property consisting of approximately 110 acres

<sup>2</sup> At or about the same time as filing this Petition, the Trustees will file in Wyoming a motion to dismiss the Wyoming action on the grounds that this Court has exclusive jurisdiction, the OSA contains an exclusive California jurisdiction clause, and Wyoming is an inconvenient forum.

located in Wilson, Wyoming (in proximity to Jackson) known as Eagle South Fork and Bradford's unsupported and meritless claim that the June 4, 2019 Email Chain prevents the Trustees from marketing or selling ESF.

4           11. **The Sharon D. Lund Family Trust.** Sharon Disney Lund (“Sharon”), as trustor  
5 and trustee, established the Sharon D. Lund Family Trust on April 11, 1989, and amended it on  
6 two occasions: (1) First Amendment executed on March 12, 1991; and (2) Second Amendment  
7 executed on October 1, 1992. True and correct copies of the original declaration of trust and both  
8 amendments are attached hereto collectively as **Exhibit 1**, and are incorporated herein by this  
9 reference.

10           12. **Establishment of the BRT and the MRT.** Sharon died on February 16, 1993, a  
11 resident of Los Angeles County. Under the terms of the Sharon D. Lund Family Trust, as  
12 amended, three separate subtrusts were created from the residuary trust estate upon Sharon's  
13 death, one for each of Sharon's three children: the Sharon D. Lund Residuary Trust fbo Victoria  
14 D. Lund (the "VRT"); the Sharon D. Lund Residuary Trust fbo Michelle A. Lund (the "MRT");  
15 and the BRT. *See* Ex. 1, Art. II ¶ D(4) [original trust and First Amendment; renumbered to ¶ D  
16 (5) in Second Amendment]; Art. VIII ¶ B. In September 2002, Victoria D. Lund died without  
17 issue and the remainder of the VRT was added equally to the BRT and the MRT. *Id.*, Art. III ¶  
18 D, as amended.

19           13. **The Current Trustees.** FRTC, L. Andrew Gifford (“Gifford”), Robert L. Wilson  
20 (“Wilson”), and Douglas M. Strode (“Strode”) are the duly appointed and currently acting co-  
21 trustees of the BRT and the MRT.

22        14. **Principal Place of Trust Administration.** The principal place of administration  
23 of the BRT and the MRT is Los Angeles, California. The usual day-to-day activity of the BRT  
24 and the MRT is carried on in Los Angeles County. See Prob. Code § 17002(a).

25        15. **The Property.** The BRT and the MRT each own 50% of ESF, through equal 50%  
26 membership interests in Canyon Oaks Estates, LLC (“COE”), a California limited liability  
27 corporation, which owns approximately 40 acres of ESF (which are platted for potential

1 subdivision into 15 lots); through Crossing Elk I LLC, a Wyoming LLC, which is owned 100%  
2 by COE, and which owns a 35 acre riparian parcel of ESF; and through Crossing Elk II LLC, a  
3 Wyoming LLC, which is owned 100% by COE, and which owns another 35 acre riparian parcel  
4 of ESF (collectively, the “LLCs”). Gifford, Wilson, Strode, and Hamilton Kipp of FRTC are the  
5 co-managers of the LLCs, and authorized to act on behalf of COE, which is the sole member of  
6 Crossing Elk I LLC and Crossing Elk II LLC, and are authorized to act on behalf of the LLCs.  
7 Bradford and Michelle are not members or managers of the LLCs.

8       16. **The OSA.** On April, 8, 2019, after a decade of acrimonious litigation, the  
9 Trustees, Bradford, Michelle, and other parties entered into an April 8, 2019 Settlement  
10 Agreement (the “OSA”). A true and correct copy of the OSA is attached hereto as **Exhibit 2**, and  
11 is incorporated herein by this reference.

12       17. **Petitions to Approve and Appoint.** The OSA was conditioned on Court approval  
13 of the Trustees’ petition to approve the OSA and Court approval of Bradford’s petition to appoint  
14 Replacement Trustees to replace the Trustees of the BRT and of the Lillian B. Disney Trust fbo  
15 Bradford. The OSA required the Trustees to file a petition seeking Court approval of the OSA,  
16 which they did on April 30, 2019; and required Bradford to join the Trustees’ petition to approve  
17 the OSA, which he did on October 1, 2019. A true and correct copy of Bradford’s Joinder is  
18 attached hereto as **Exhibit 3**, and is incorporated herein by this reference.

19       18. **Plans to Divide.** To avoid future disputes pertaining to the joint management of  
20 assets jointly owned by both BRT and MRT, the parties agreed to develop plans to divide such  
21 co-owned assets. Paragraph 4.1 of the OSA provides:

22              Because of the history of disputes between THE LUND PARTIES,  
23 on the one part, and THE TRUSTEES and/or Michelle, on the other  
24 part, THE LUND PARTIES, THE TRUSTEES, and Michelle agree  
it would reduce the possibility of future disputes and would be in the  
best interests of the BRT (and its sub-trusts), the MRT (and its  
subtrusts), THE TRUSTEES, the Replacement Trustees, THE  
LUND PARTIES (including Bradford), and Michelle for there to be  
no joint management of any assets or property, after the Effective  
Date, between the BRT and the MRT or between the BDL QSSTs  
and the MAL QSSTs. Accordingly, THE LUND PARTIES, THE  
TRUSTEES, and Michelle agree that THE TRUSTEES will prepare

1 and implement a plan to avoid such joint management such that,  
2 upon the Effective Date, the aggregate value of all jointly owned  
3 assets will be divided as equally as possible on a non-pro rata basis  
4 between Bradford/the BRT/the BDL QSSTs, on the one hand, and  
Michelle/the MRT/the MAL QSSTs, on the other hand (as set forth  
in this Section IV, the ‘Plan to Divide’).

5       19. **ESF Plan to Divide.** The plan to divide ESF was dealt with in Paragraph 4.3.3 of  
6 the OSA, which provides:

7              Because of the particular nature of the Eagle South Fork property  
8 and its connection to the Lund family, the Eagle South Fork  
9 property will not be part of the Joint Assets separated into the Joint  
10 Asset Buckets. Instead, on or before the date of the Initial  
11 Presentation (defined below), THE TRUSTEES, with input from  
12 Bradford and Michelle to be considered in the Trustees' sole and  
13 absolute discretion, will propose a methodology by which joint  
ownership of Eagle South Fork will be avoided after the Effective  
Date (the ‘Eagle South Fork Plan’). If any disagreements arise  
regarding the Eagle South Fork Plan, Mediator Lesley Green will  
resolve the dispute, and her resolution will be final and binding.

14       20. **June 4, 2019 Email Chain.** Thereafter, the parties exchanged a series of letters  
15 and emails regarding what methodology the Trustees would employ, in their sole and absolute  
16 discretion, with input from Bradford and Michelle which the Trustees considered, to avoid joint  
17 ownership of ESF if the Court approved the OSA. That exchange culminated in a June 4, 2019  
18 Email from the Trustees’ counsel (the “June 4, 2019 Email”). A true and correct copy of the  
19 letter and email chain leading to the June 4, 2019 email (“the June 4, 2019 Email Chain”) is  
20 attached hereto as **Exhibit 4**, and is incorporated herein by this reference.

21       21. **May 10, 2019 Methodology.** Initially, on May 10, 2019, the Trustees proposed a  
22 methodology whereby: (1) Bradford and Michelle, each of whom had sufficient personal assets,  
23 would be given the opportunity to submit competing bids to purchase 100% of ESF with their  
24 personal assets if they wanted to own it; (2) if neither wanted to bid, ESF would be marketed and  
25 sold, by auction if necessary, at which Bradford and Michelle could bid, before the Effective Date  
26 of the OSA; and (3) if a credible third party cash offer was received for a higher price, the  
27 Trustees would accept it unless Bradford or Michelle made an even higher offer.

1           22. **May 21, 2019 Email.** Bradford did not endorse the May 10, 2019 methodology the  
2 Trustees initially proposed, and, on May 21, 2019, Bradford provided input in an email to the  
3 Trustees making clear neither Michelle nor he wanted ESF and instead wanted the Trustees to  
4 market and sell it on the open market to a third party. Bradford's May 21, 2019 email provided  
5 in full:

6           We are pleased to inform you, on behalf of the Trustees, that the  
7 Eagle South Fork issue is resolved from the perspective of both  
8 Michelle and Bradford. As you referenced, neither of them desire to  
9 purchase the property. Mr. Nelson, on behalf of Michelle, and I  
10 (together with co-counsel) on behalf of Bradford have agreed that  
11 this property should be placed on the open market for sale with a  
12 broker and not auctioned off. Of course, there is also no need to  
13 'bid' on the property since neither of the owners want it. Mr.  
14 Nelson has authorized us to also advise you that Michelle agrees that  
15 the Trustees will be prohibited from buying the property themselves  
16 or through agents (or straw men for the purchase). (Even though  
17 Mr. Nelson stated that Michelle does not have a problem with this,  
18 he understands why we would and, therefore, agrees to this  
19 term). Michelle, through Mr. Nelson, and Bradford, through myself  
20 and co-counsel, also agree to continue owning Eagle South Fork  
21 together until sold. The property should be immediately listed with  
22 a broker in the area near the property. Bradford and Michelle will  
23 mutually agree to a broker, but if they cannot agree, Bradford  
24 proposes that a blind list of several brokers (two from each side or  
25 so) be submitted to Judge Green and she will choose the broker.

26           23. **May 24, 2019 Email.** On May 24, 2019, the Trustees explained that they would  
27 not adopt a methodology that might result in joint ownership and management of ESF after the  
28 Effective Date if the OSA were approved, and instead intended to adopt a methodology that  
would result in a sale of ESF to a third party by the Effective Date, by negotiation or by auction  
conducted by an auctioneer specializing in luxury real estate.

29           24. **May 29, 2019 Email.** On May 29, 2019, Bradford provided more input to the  
30 Trustees. Bradford indicated he still wanted to market and sell ESF, but acknowledged the  
31 appraiser had opined that the property should be marketed for 12-18 months to achieve the best  
32 price, which was past the expected Effective Date if the OSA were approved. Therefore, to avoid  
33 a "fire sale" at too low a price, and to avoid joint ownership after the Effective Date, Bradford  
proposed that the Trustees adopt a methodology whereby the BRT would buy out the MRT's

1 50% interest in ESF at 50% of the appraised value. The clear implication was that the BRT  
2 would market ESF for sale thereafter.

3 25. **The June 4, 2019 Email.** In response, on June 4, 2019, the Trustees, in their  
4 discretion, adopted a methodology consistent with Brad's counsel's May 29, 2019 email, and sent  
5 the June 4, 2019 Email to Bradford and Michelle, which provides in full as follows:

6 Dear All

7 The Trustees have now had an opportunity to consider the May 29,  
8 2019 email input of Bradford's counsel, Ms. Slaton, and the May 30,  
9 2019 email input of Michelle's counsel, Mr. Nelson, regarding the  
10 plan to divide the ESF Property as that term is defined in Doug  
11 Strode's May 10, 2019 letter. After such consideration, and  
12 pursuant to Section 4.3.3 of the Settlement Agreement, the Trustees,  
13 in their discretion, have decided to adopt the plan for division of the  
14 ESF Property as outlined in Ms. Slaton's May 29, 2019 email and as  
15 approved by and clarified in Points 1 and 2 of Mr. Nelson's May 30,  
16 2019 email. Thus, if and when the Court grants the Petitions to  
17 Approve and to Appoint, the Trustees promptly will take the steps  
18 necessary and appropriate to cause the BRT to purchase the MRT's  
19 50% interest in the ESF Property for \$9,760,000 (i.e., 50% of the  
appraised value). Since the MRT will not be selling and the BRT  
will not be purchasing the personal property owned by either  
Bradford or Michelle that is located at ESF, the provisions of  
paragraph 10 of Mr. Strode's May 10, 2019 letter will apply, subject  
to Point 2 of Mr. Nelson's letter. If, prior to the Court's approval of  
the Petitions to Approve and to Appoint, the Trustees receive any  
credible third party offer to purchase the ESF Property for a cash  
price above the appraised value, the Trustees will bring such offer to  
the parties' attention.

20 Thank you for your input.

21 Regards.

22 Hayward J. Kaiser, on behalf of the Trustees

24 26. **No Binding Contract.** The June 4, 2019 Email Chain did not create a binding  
25 contract for the BRT to buy the MRT's 50% interest in ESF; it did not create a binding obligation  
26 for the BRT to hold ESF forever or for any period of time because of Bradford's after-the-fact  
27 assertion of an emotional attachment to it or otherwise; and it did not prevent the MRT or the

1 BRT from selling ESF to a third party at a higher price, which is what both Bradford and  
2 Michelle wanted on June 4, 2019. Rather, without a ready third party buyer, it was the  
3 methodology the Trustees had determined to follow in their sole and absolute discretion if and  
4 after the Court approved the OSA under the circumstances then prevailing in June 2019. The  
5 Trustees did not give up their right to change such methodology in their sole and absolute  
6 discretion, including without limitation, if circumstances changed, as they did: (1) when the  
7 Court’s decision whether to approve the OSA was delayed for over a year, in no small part  
8 because of the litigation tactics of Bradford; (2) when the COVID-19 pandemic hit and caused a  
9 spike in the real estate prices in Wilson and Jackson, Wyoming; (3) and when the Trustees  
10 received a cash offer from a qualified, independent third party to buy ESF for \$35 million, nearly  
11 \$15.5 million more than the 2019 appraised value, which is expected to close by the end of 2020.

12       **27. Price Was the Only Issue.** The June 4, 2019 Email Chain makes plain that neither  
13 Bradford nor Michelle wanted ESF or to keep it in the family, and that Bradford preferred to have  
14 the Trustees market ESF for sale and sell it to a third party. But to avoid what Bradford called a  
15 “fire sale,” *i.e.*, a sale at too low a price, which had to be completed before the then contemplated  
16 Effective Date of the OSA to avoid joint ownership and management by the Trustees of the MRT  
17 and Bradford’s nominated BRT Replacement Trustees under the OSA, Bradford was willing to  
18 have the BRT buy out the MRT’s 50% interest in ESF if and after the Court approved the OSA so  
19 the BRT would have more time to market and sell ESF at a fair price. Bradford never suggested  
20 that he wanted the Trustees or his nominated Replacement Trustees to be obligated to hold ESF  
21 forever, or for any particular period of time, for sentimental reasons or otherwise, and nothing in  
22 the June 4, 2019 Email Chain so states.

23       **28. Higher Third Party Offer As Condition Subsequent.** The June 4, 2019 Email  
24 Chain also implies that, if the Trustees received an all cash offer from a qualified third party  
25 buyer before Court approval of the OSA, then Bradford and Michelle could provide further input  
26 and, whether or not they did so, the Trustees could alter their proposed methodology, accept the  
27 third party offer, and maximize the proceeds to the MRT and the BRT. Since neither Bradford  
28

1 nor Michelle wanted ESF, but preferred to sell it to a third party, neither Bradford nor Michelle  
2 objected to that concept.

3           29. **No Court Approval of OSA.** On September 27, 2019, the Court issued its Initial  
4 Rulings and Further Rulings (“Rulings”) expressing very serious concerns about whether it could  
5 approve the OSA (in particular, as to Brad’s recommended Replacement Trustees) and appointing  
6 a GAL to facilitate a new agreement that the Court could approve. A true and correct copy of the  
7 Rulings is attached hereto as **Exhibit 5**, and is incorporated herein by this reference.

8           30. **Bradford's Attempts to Void the OSA.** Shortly after the Rulings, Bradford  
9 breached the OSA and has continued to breach it by filing numerous notices that the OSA was  
10 null and void and by withdrawing his Joinder to the petition to approve the OSA. As one  
11 example, a true and correct copy of Bradford's first notice that the OSA is null and void is  
12 attached hereto as **Exhibit 6**, and is incorporated herein by this reference.

13           31. **Bradford's MSJ.** On April 14, 2020, Bradford filed a motion for summary  
14 judgment (the “MSJ”) seeking a determination that the OSA is null and void. On September 24,  
15 2020, the Court issued its Ruling on Motion for Summary Judgment, denying the MSJ, and ruled  
16 that Bradford’s reasons for claiming the OSA is null and void were invalid as a matter of law. A  
17 true and correct copy of the Court’s September 24, 2020 Ruling is attached hereto as **Exhibit 7**,  
18 and is incorporated herein by this reference.

19           32. **The Offer to Purchase ESF.** On September 11, 2020, the Trustees notified  
20 Bradford and Michelle that they had received an all cash \$35 million offer to purchase ESF from  
21 a qualified, third party Buyer, and that they intended to pursue the sale. A true and correct copy  
22 of the September 11, 2020 notice is attached hereto as **Exhibit 8**, and is incorporated herein by  
23 this reference.

24           33. **The LOI**. On September 13, 2020, the Trustees and the Buyer executed a Letter of  
25 Intent (the “LOI”) for the sale of ESF for \$35 million cash. A true and correct copy of the LOI,  
26 redacted to exclude the Buyer’s name and other potentially sensitive information, is attached  
27 hereto as **Exhibit 9**, and is incorporated herein by this reference.

1           34. **Hearing on the OSA and the RSA.** On September 14, 2020, the Court held a  
2 hearing on Bradford's MSJ and whether to approve the OSA, the RSA, or neither, and took all  
3 such matters under submission, with a ruling expected on or after October 30, 2020. At that  
4 hearing, Bradford argued that the OSA was null and void and changed circumstances made it a  
5 nullity. A true and correct copy of the Reporter's Transcript of the September 14, 2020 hearing is  
6 attached hereto as **Exhibit 10**, and is incorporated herein by this reference.

7           35. **Michelle's Withdrawal From the June 4, 2019 Email.** On September 14, 2020,  
8 Michelle responded to the Trustees' September 11, 2020 notice, withdrew her "consent" to the  
9 June 4, 2019 Email, and provided input that she wanted the proposed sale of ESF to the third  
10 party buyer to proceed. A true and correct copy of Michelle's notice is attached hereto as  
11 **Exhibit 11**, and is incorporated herein by this reference.

12           36. **Bradford's Opposition to the Contemplated Sale.** The next day, on September  
13 15, 2020, despite arguing for a year, including at the Court hearing the day before on September  
14 14, 2020, that the OSA was null and void, Bradford objected to the contemplated sale and  
15 demanded that the Trustees cease and desist from selling ESF because of the June 4, 2019 Email,  
16 which by its terms was not an enforceable agreement but an expression of the Trustees' then-  
17 existing plan, subject to their sole and absolute discretion, and which – even if it were an  
18 agreement – was contingent on the Court approving the OSA. Bradford also based his objection  
19 on his newly-alleged purported sentimental attachment to the Property, a sentiment never  
20 previously expressed in the June 4, 2019 Email Chain or otherwise. A true and correct copy of  
21 Bradford's September 15, 2020 letter is attached hereto as **Exhibit 12**, and is incorporated herein  
22 by this reference. The Trustees believe that Bradford visited ESF only 11 or 12 times during the  
23 last 20 years.

24           37. **Bradford's Allegations of Conflict of Interest.** On September 17, 2020, Bradford  
25 demanded the Trustees of the BRT sue themselves as the Trustees of the MRT based on the June  
26 4, 2019 Email, and further requested that the Trustees remove themselves as Trustees from either  
27 the BRT or the MRT because of Bradford's absurdly concocted alleged conflict of interest. A

1 true and correct copy of Bradford's September 17, 2020 letter is attached hereto as **Exhibit 13**,  
2 and is incorporated herein by this reference.

3       38. **Bradford's Threatened TRO.** On September 17, 2020, Bradford's counsel gave  
4 the Trustees notice of his intent to make an *ex parte* request to this Court, the Honorable David  
5 Cowan presiding, for a temporary restraining order to prevent the sale of ESF. However, later on  
6 September 17, 2020, Bradford counsel withdrew the notice. A true and correct copy of the *ex*  
7 *parte* notice is attached hereto as **Exhibit 14**, and is incorporated herein by this reference. A true  
8 and correct copy of the cancellation of Bradford's *ex parte* notice is attached hereto as **Exhibit**  
9 **15**, and is incorporated herein by this reference. On September 17, 2020, Bradford's counsel  
10 acknowledged to the Trustees' counsel that the \$35 million price was fair and adequate and that  
11 the Trustees would be perfectly free to sell ESF but for Bradford's argument based on the June 4,  
12 2019 Email Chain.

13       39. **Bradford's Efforts to Avoid Judge Cowan.** After the Rulings, Bradford sought  
14 in many different ways to disqualify or prevent the Honorable David Cowan from being the  
15 judicial officer assigned to the Lund Cases or from otherwise presiding over and deciding issues  
16 in the Lund Cases, and all such efforts were unsuccessful. Thus, Bradford plainly does not want  
17 Judge Cowan to decide any of his claims based on the June 4, 2019 Email Chain.

18       40. **Bradford's Wyoming Complaint.** Therefore, in another obvious attempt to judge  
19 shop, on September 21, 2020, Bradford filed against the Trustees, Michelle, and the Buyer as a  
20 "Doe" a civil Complaint for Breach of Contract/Specific Performance in the District Court of the  
21 Ninth Judicial District, Teton County, Wyoming (the "Wyoming Case"), seeking determinations:  
22 (1) that the Trustees and Michelle had breached the alleged "contract" set forth in the June 4,  
23 2019 Email Chain; (2) that the June 4, 2019 Email Chain should be specifically enforced such  
24 that the MRT's interests in the LLCs must be sold to the BRT and the BRT must pay the MRT  
25 only \$9.76 million therefor (\$7.74 million less than the value of MRT's interest in ESF per the  
26 LOI); and (3) that any sale of ESF to a third party buyer either be enjoined or rescinded. A true  
27  
28

1 and correct copy of the Wyoming Complaint, without exhibits, is attached hereto as **Exhibit 16**,  
2 and is incorporated herein by this reference.

3       41. **Lis Pendens.** Also on September 21, 2020, Bradford filed in the Wyoming Case a  
4 lis pendens to cloud the title to ESF and to disrupt any potential sale. A true and correct copy of  
5 the Wyoming lis pendens is attached hereto as **Exhibit 17**, and is incorporated herein by this  
6 reference.

7       42. **Motion to Dismiss.** At or about the same time as filing this Petition, the Trustees  
8 will file a motion to dismiss the Wyoming Case based on forum non conveniens and because,  
9 among other things: (1) this Probate Court has exclusive jurisdiction over the administration of  
10 the trusts which own ESF and to decide Bradford's claims in the Wyoming Case pertaining to the  
11 Trustees' rights to sell trust property such as ESF; and (2) Paragraph 9.9 of the OSA, Court  
12 approval of which Bradford's claims depend on, provides that "any dispute or controversy  
13 between the parties arising out of or relating to this Agreement, whether in contract, tort, or  
14 otherwise, shall be resolved in a court of competent jurisdiction located in the venue of Los  
15 Angeles, California."

16

### 17           **III. THIS PETITION FOR INSTRUCTIONS SHOULD BE GRANTED**

18       43. **The Financial Benefits of the Offered Sale.** The \$35 million cash purchase price  
19 offered to the Trustees for ESF is an excellent price. A February 11, 2020 appraisal of ESF  
20 valued the Property as of December 31, 2019 if sold as a single large tract property at  
21 \$19,600,000. The independent, third party offer of \$35 million represents a 79% increase over  
22 that 2019 appraised value. Even in the context of the COVID-19 crisis, which somewhat  
23 paradoxically has created a seller's market in certain upscale resort areas such as Wilson and  
24 Jackson, Wyoming, the offered price represents a very substantial premium of \$15.4 million over  
25 the 2019 appraised value.

26       44. **The Trustees' Duties to the MRT and the BRT.** The Trustees owe a duty to both  
27 the MRT and the BRT to maximize the value of trust assets, and the opportunity to obtain \$15.4  
28

1 million above the 2019 appraised value on the sale of ESF is an opportunity that the Trustees  
2 should not be forced to forego. Indeed, the Buyer is in a very small class of potential buyers who  
3 can afford to pay \$35 million in cash for ESF with the opportunity to close by the end of 2020.

4           **45. Bradford's Wishes Do Not Control and Negatively Affect the BRT and the**  
5           **MRT.** Bradford cannot dispute, and has not disputed, that a sale for \$35 million would be a boon  
6 for both the BRT and the MRT. Because of Bradford's legal actions initiated in Wyoming, on  
7 September 24, 2020, the Buyer, who was a party to the LOI, notified the Trustees that the Buyer  
8 was withdrawing from further negotiations for ESF. The withdrawal notification states: "The  
9 buyer's interest was legitimate and sincere, and we believe was a strong market offer based on  
10 comps. Our intent was to complete said deal based on the agreed upon terms in the LOI. The  
11 current legal situation makes this untenable for the buyer, and we will not be responding as  
12 planned to your last draft of the LOI . If something changes, we would appreciate a heads up, but  
13 the buyer is not willing to step into the current legal morass." This notice from the Buyer makes  
14 undeniably clear that, absent Bradford's claim based on the June 4, 2019 Email Chain and the  
15 litigation initiated by Bradford in Wyoming, which the Trustee's believe are unfounded in law  
16 and fact, the Buyer was prepared to purchase ESF on the terms of the LOI. Moreover, if the  
17 Trustees' authority to sell ESF is clarified, the Buyer might resume interest in purchasing ESF.  
18 Thus, unless this Court issues the instructions requested herein, the Trustees are in effect  
19 foreclosed from listing, marketing, and closing the sale of ESF to any bona fide third party buyer  
20 in a real estate market that is attractive to sellers, to the significant financial detriment to the MRT  
21 and BRT. The practical effect of Bradford's claims and his Wyoming case requires: (a) the BRT  
22 and the MRT to hold unproductive real property until such time, if ever, that Bradford no longer  
23 wants it; (b) the BRT and the MRT to pay the expenses of maintaining and operating ESF; (3) the  
24 MRT and the BRT to forego the opportunity to monetize their interests in an unproductive asset  
25 for which there is currently a very active sellers' market; and/or (4) the MRT to sell its interest in  
26 ESF to the BRT at a deep discount to its current fair market value as represented by the LOI, thus  
27 imposing an inequitable forfeiture on the MRT and giving an inequitable windfall to the BRT.

1           46. **The Disentanglement Benefits of the Contemplated Sale.** All parties agreed in  
2 the OSA that all jointly-held assets should be disentangled to avoid future disputes over  
3 management between Bradford, those affiliated with him, and any new trustees, if any, for the  
4 BRT, on the one hand, and Michelle, those affiliated with her, and the Trustees of the MRT, on  
5 the other hand. (Ironically, this dispute over the sale of ESF illustrates in graphic detail the  
6 necessity of such disentanglements, regardless of the Court’s decision on the OSA and the RSA.)  
7 The Trustees reasonably and prudently continue to pursue options to effectuate such  
8 disentanglements, and the sale of ESF will be a significant step towards that goal.

9           47. **The Diversification Benefits of the Contemplated Sale.** The Trustees believe  
10 that it would be imprudent and an unreasonable exercise of their fiduciary duty to cause either the  
11 BRT or the MRT to own 100% of the ESF property. After the QSST Plan to Divide was  
12 completed, the assets of the BRT total approximately \$215.3 million, which includes  
13 approximately \$12.5 million in other non-income producing investment real estate. Based on the  
14 LOI, its market value is approximately \$35 million. If the BRT were to acquire 100% of ESF,  
15 then the BRT real estate holdings in unproductive real property would total \$47.5 million, or  
16 22%, of the BRT’s total value, with 74% of those real estate holdings concentrated in one market,  
17 potentially exposing the Trustees to future claims by Bradford or contingent beneficiaries for lack  
18 of diversification. It is for that very reason that the Trustees’ June 4, 2019 Email specified that  
19 the transaction would not take place until Court approval of the OSA, after which Bradford’s  
20 nominated BRT Replacement Trustees would be approved and accountable for the decision to  
21 acquire 100% of ESF and after which the OSA’s releases of the Trustees would be operative to  
22 protect the outgoing BRT Trustees. In exercising their broad discretion on allocation, investment,  
23 and diversification of assets, the Trustees have decided that such a concentration of real estate  
24 assets, particularly under present circumstances, would be imprudent. There is no legitimate  
25 argument that such a decision by the Trustees is an abuse of discretion. Moreover, Bradford has  
26 stated that he wants to replace FineMark with City National Bank (“CNB”) as one of his  
27 nominated Replacement Trustees for the BRT if the OSA is approved, and it is questionable

whether CNB, or any responsible professional trustee, would be willing to serve in that role with 100% of ESF in the BRT.

3           48. **The Trustees' Position.** The Trustees believe that consummation of the proposed  
4 sale on the terms embodied in the LOI would have been highly beneficial to the BRT and the  
5 MRT, and that losing that sale is a loss to the BRT and the MRT. Without the instructions  
6 requested herein, the Trustees are foreclosed from selling ESF, even if the Court approves the  
7 OSA.

8           49. **Beneficiaries' Current Positions.** Currently, Michelle, the primary beneficiary of  
9 the MRT, consents to and supports the contemplated sale transaction, but Bradford, the primary  
10 beneficiary of the BRT, actively opposes it.

11           **50. Power to Sell Trust Assets Under the MRT and the BRT.** Under Article VII of  
12 the BRT and the MRT, the Trustees have all rights, powers, and privileges that the absolute  
13 owner of property would have to sell assets of the MRT and the BRT for fair and adequate  
14 consideration. The MRT/BRT does not mention ESF at all, contains no requirement that the ESF  
15 not be sold, and places no restrictions on a sale of ESF. If Sharon had wanted the Trustees to  
16 keep ESF “in the family,” she would have said so in her trust.

17        51. **Power to Sell Under the Law.** Moreover, the Trustees indisputably have the  
18 power to dispose of ESF in any manner consistent with their fiduciary duty. “The trustee has the  
19 power to acquire or dispose of property, for cash or on credit, at public or private sale, or by  
20 exchange.” Cal. Prob. Code §16226; *see also* 60 Cal. Jur. 3d Trusts § 194 (“A trustee has the  
21 power to acquire or dispose of property, for cash or on credit, at public or private sale, or by  
22 exchange.”); *Church v. Church*, 40 Cal. App. 2d 696, 700 (1940) (“A trustee can properly sell  
23 trust property if such sale is necessary or appropriate to enable the trustee to carry out the  
24 purposes of the trust, unless such sale is forbidden in specific words by the terms of the trust or it  
25 appears from the terms of the trust that property was to be retained in specie in trust.”).

26           **52. No Power to Challenge Sale Where Trustees Exercise Ordinary Care.** Any  
27 challenge to a trustee's discretionary decision to sell (or not sell) trust property must be rejected

1 where, as here, the trustee “exercised ordinary care in applying the skills and knowledge  
2 ordinarily possessed by [such trustees] engaged in the trust business under similar circumstances  
3 to the administration of the present estate, and that the evidence sufficiently shows that the  
4 [trustee] met this standard.” *Estate of Beach*, 15 Cal. 3d 623, 629-30 (1975). Trustees have  
5 broad discretion to consider all relevant factors with respect to the potential sale of trust property.  
6 See, e.g., BRT, Art. VII.

7        53. **Need for Instruction.** Because of Bradford's claims objecting to a sale of ESF, in  
8 the Wyoming Case or otherwise, the Trustees reasonably expect that a condition to any closing of  
9 any current or future ESF purchase and sale agreement will be the Court's granting of this  
10 Petition. Accordingly, the Trustees likely will be unable to close escrow without the Court  
11 granting this Petition or rejecting the OSA. Absent the instructions prayed for herein, the  
12 Trustees likely will be unable to market and sell ESF to any buyer, including possibly the Buyer  
13 who was a party to the LOI, because Bradford will throw up legal hurdles to impede the sale,  
14 which will dissuade brokers from listing ESF for sale and will dissuade qualified buyers from  
15 offering to buy a property clouded by the threat of litigation.

16        54. **Relevant Statutory Provisions.** Consistent with the terms of the BRT and the  
17 MRT, Probate Code Section 16226 provides that the Trustees have the power to dispose of trust  
18 property, for cash, at a private sale. And Probate Code Section 17200(a) authorizes the Trustees  
19 to petition the Court concerning the internal affairs of a trust. Proceedings concerning the  
20 internal affairs of a trust expressly include: “passing upon the acts of the trustee” –  
21 §17200(b)(5); “[i]nstructing the trustee” – §17200(b)(6); and “[g]ranting powers to the trustee” –  
22 §17200(b)(8). Respected treatises concur. *See, e.g.,* CEB, CAL. TRUST ADMIN. § 15.26 (“A  
23 trustee who wants court guidance on an issue concerning administration of the trust (including  
24 how to protect against potential liability), or a beneficiary who wants an issue resolved a  
25 particular way, may petition the probate court concerning the trustee’s actions and ask the court  
26 to instruct the trustee. This approach is typically used in disputes regarding the handling of the  
27 trust when the beneficiary wants the trustee to take a course of action with which the trustee

1 disagrees.”) (citations omitted); Hartog & Kovar, CAL. TRUST LIT. §8.16 (“Circumstances can  
2 arise in the course of administering a trust in which the trustee is unsure how to proceed with  
3 respect to a particular matter. In some cases, such as the management or disposition of trust  
4 assets, the trustee may risk being sued for breach of trust by disgruntled beneficiaries if the  
5 results of the trustee’s action are not to their liking. In this situation, the trustee can request the  
6 court to instruct the trustee on how to proceed.”). Here the Trustees of the BRT, which owns a  
7 50% in interest in ESF, believe it is the best interest of the BRT and the MRT to list, market, and  
8 sell ESF, particularly while market conditions favoring sellers exist, and the beneficiary of the  
9 BRT wishes to stop any such sale, for alleged reasons that only benefit him alone, to the  
10 detriment of the BRT and the MRT.

11       **55. Proposed Instruction.** After considering all appropriate factors, the Trustees have  
12 determined that the most prudent course of conduct at this time is to seek instructions from the  
13 Court under Probate Code Section 17200(b), as follows:

- 14           a. Instructing the Trustees that the June 4, 2019 Email Chain does not preclude the  
15           Trustees from marketing or selling ESF now or even if the Court approves the  
16           OSA;
- 17           b. Instructing and authorizing the Trustees to market and sell ESF to the buyer  
18           under the LOI or another third party buyer for a fair and adequate  
19           consideration; and
- 20           c. For such other and further orders as the Court deems appropriate.

21       **56. Notice.** The names and addresses of the persons entitled to notice are as follows:

23 Bradford Disney Lund 6638 North 66th Place Paradise Valley, AZ 85253-4461	Beneficiary
25 Michelle Ann Lund 25 Ocean Heights Dr Newport Coast, CA 92657-1302	Contingent Beneficiary
27 Joseph P. Busch, III, Esq. The Petit Firm, LLP	Attorneys for Bradford D. Lund

1	100 Bayview Circle Newport Beach, CA 92660-2983	
2	Douglas Wiley, Esq. Polsinelli Shughart PC One E. Washington, Suite 1200 Phoenix, AZ 85004	Attorneys for Bradford D. Lund
3	Sandra L. Slaton, Esq. Horne Slaton PLLC 6720 N. Scottsdale Road, Suite 285 Scottsdale, AZ 85253	Attorneys for Bradford D. Lund
4	Rex S. Heinke, Esq. Dario J. Frommer, Esq. Jessica M. Weisel, Esq. Akin Gump Strauss Hauer & Feld LLP 1900 Avenue of the Stars, Suite 600 Los Angeles, CA 90067	Attorneys for Bradford D. Lund
5	Margaret Lodise, Esq. Sacks Glazer Franklin & Lodise 350 S. Grand Avenue, Suite 3500 Los Angeles, CA 90071	Guardian <i>ad Litem</i> for Bradford D. Lund
6	David C. Nelson, Esq. Loeb & Loeb LLP 10100 Santa Monica Boulevard, 22nd Floor Los Angeles, CA 90067-4164	Attorneys for Contingent Beneficiary Michelle A. Lund
7	Sharon D. Lund Foundation (aka The Lund Foundation) 725 W. Town & Country Road, Suite 520 Orange, CA 92868	Contingent Beneficiary
8	Edward S. Renwick, Esq. Hanna and Morton LLP 444 South Flower Street, Suite 2530 Los Angeles, CA 90071-2916	<b><u>REQUEST FOR SPECIAL NOTICE</u></b> Attorneys for the Sharon D. Lund Foundation
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	James Toma, Supervising Deputy Attorney General State of California Department of Justice 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013	Attorney General
4	Lauriann Wright, Esq. Abigail McLaughlin, Esq. Wright Kim Douglas 130 S. Jackson Street Glendale, CA 91205	Attorneys for James P. Dew and Sherry L. Lund, Successor Co-Trustees
7	Michael Seibert LA Fiduciary Partners, LLC 149 S. Barrington Avenue, Suite 927 Los Angeles, CA 90049	730 Expert

10        57. **Request for Special Notice.** The only request for special notice filed in this matter  
 11 was filed by Hanna and Morton, LLP, attorneys for the Sharon D. Lund Foundation.

12                  **IV. CONCLUSION**

13        58. **Conclusion.** For all the foregoing reasons, the Trustees pray for, and this Court  
 14 should enter, orders and instructions as set forth hereinabove, and such other or further relief or  
 15 instruction as the Court deems appropriate with respect to the Property and the Trustees'  
 16 contemplated sale.

17        DATED: September 28, 2020

MITCHELL SILBERBERG & KNUPP LLP

20        By: /s/ Hayward J. Kaiser

21        Hayward J. Kaiser

22        Attorneys for First Republic Trust Company,  
 23        L. Andrew Gifford, Robert L. Wilson, and  
 24        Douglas M. Strode, Trustees of the Sharon D.  
 25        Lund Residuary Trust fbo Bradford D. Lund

## VERIFICATION

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I have read the foregoing **TRUSTEES' PETITION FOR INSTRUCTIONS**  
**REGARDING SALE OF REAL PROPERTY** and know its contents.

- 4  I am a party to this action. The matters stated in the foregoing document are true of my  
5 own knowledge, except as to the matters which are stated on information and belief, and as  
6 to those matters I believe them to be true.

7  I am  an Officer  a partner  a \_\_\_\_\_ of \_\_\_\_\_, a party to this action, and am  
8 authorized to make this verification for and on its behalf, and I make this verification for  
9 that reason.  I am informed and believe and on that ground allege that the matters stated  
10 in the foregoing document are true.  The matters stated in the foregoing document are  
11 true of my own knowledge except as to those matters which are stated on information and  
believe, and as to those matters I believe them to be true.

10  I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from  
11 the county of aforesaid where such attorneys have their offices, and I make this verification  
for and on behalf of that party for that reason. I am informed and believe and on that  
ground allege that the matters stated in the foregoing document are true.

Executed on September 27, 2020, at Santa Barbara, California.

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

15 L. Andrew Gifford, Co-Trustee of the  
16 Sharon D. Lund Residuary Trust fbo  
17 Bradford D. Lund and of the Sharon D.  
Lund Residuary Trust fbo Michelle A.  
Lund

Print Name



Signature

Signature

## VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing TRUSTEES' PETITION FOR INSTRUCTIONS REGARDING SALE OF REAL PROPERTY and know its contents.

- I am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to the matters which are stated on information and belief, and as to those matters I believe them to be true.

I am  an Officer  a partner  a \_\_\_\_\_ of \_\_\_\_\_, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.  I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.  The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on September 28, 2020, at Newport Beach, California.

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

Douglas M. Strode, Co-Trustee of the  
Sharon D. Lund Residuary Trust fbo  
Bradford D. Lund and of the Sharon D.  
Lund Residuary Trust fbo Michelle A.  
Lund

Print Name

Signature

## VERIFICATION

2 | STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I have read the foregoing **TRUSTEES' PETITION FOR INSTRUCTIONS**  
**REGARDING SALE OF REAL PROPERTY** and know its contents.

- 4  I am a party to this action. The matters stated in the foregoing document are true of my  
5 own knowledge, except as to the matters which are stated on information and belief, and as  
to those matters I believe them to be true.

6  I am  an Officer  a partner  a \_\_\_\_\_ of First Republic Trust Company, Co-  
7 Trustee of the Sharon D. Lund Residuary Trust fbo Bradford D. Lund, Co-Trustee of the  
Shardon D. Lund Residuary Trust fbo Michelle A. Lund, Co-Trustee of the Lillian B.  
8 Disney Trust fbo Bradford D. Lund, Former Trustee of the Sharon Disney Lund 1986 and  
9 1992 Trust, a party to this action, and am authorized to make this verification for and on its  
0 behalf, and I make this verification for that reason.  I am informed and believe and on  
1 that ground allege that the matters stated in the foregoing document are true.  The  
2 matters stated in the foregoing document are true of my own knowledge except as to those  
3 matters which are stated on information and belief, and as to those matters I believe them  
4 to be true.

5  I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from  
6 the county of aforesaid where such attorneys have their offices, and I make this verification  
7 for and on behalf of that party for that reason. I am informed and believe and on that  
8 ground allege that the matters stated in the foregoing document are true.

Executed on September 24, 2020, at Los Angeles, California.

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

First Republic Trust Company, Co-Trustee  
of the Sharon D. Lund Residuary Trust fbo  
Bradford D. Lund and of the Sharon D.  
Lund Residuary Trust fbo Michelle A.  
Lund, co-trustee of the Lillian B. Disney  
Trust fbo Bradford D. Lund and former  
trustee of the 1986 Trust and the 1992  
Trust

By: Michael Laubenstein  
Its: Senior Trust Officer

**Print Name**

 Signature

## **VERIFICATION**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I have read the foregoing TRUSTEES' PETITION FOR INSTRUCTIONS  
REGARDING SALE OF REAL PROPERTY and know its contents.

- 5  I am a party to this action. The matters stated in the foregoing document are true of my  
own knowledge, except as to the matters which are stated on information and belief, and as  
to those matters I believe them to be true.

6  I am  an Officer  a partner  a \_\_\_\_\_ of \_\_\_\_\_, a party to this action, and am  
authorized to make this verification for and on its behalf, and I make this verification for  
that reason.  I am informed and believe and on that ground allege that the matters stated  
in the foregoing document are true.  The matters stated in the foregoing document are  
true of my own knowledge except as to those matters which are stated on information and  
belief, and as to those matters I believe them to be true.

7  I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from  
the county of aforesaid where such attorneys have their offices, and I make this verification  
for and on behalf of that party for that reason. I am informed and believe and on that  
ground allege that the matters stated in the foregoing document are true.

13 Executed on September 30, 2020, at Chino Hills, California.

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

16 Robert L. Wilson, Trustee of the Sharon  
D. Lund Residuary Trust fbo Bradford D.  
17 Lund and of the Sharon D. Lund  
Residuary Trust fbo Michelle A. Lund

**Print Name**

**Signature**

## **EXHIBIT 5**

1           **THE PITET FIRM, PC**  
2           JOSEPH P. BUSCH III (SBN 70340)  
3           [jbusch@grobatypitet.com](mailto:jbusch@grobatypitet.com)

4           100 Bayview Circle, Suite 210  
5           Newport Beach, CA 92660  
6           Tel: (949) 502-7755

7           **HORNE SLATON, PLLC**  
8           SANDRA SLATON (*pro hac vice*)  
9           [slaton@herneslaton.com](mailto:slaton@herneslaton.com)  
0           MATTHEW J. MONACO (*pro hac vice*)  
1           [monaco@herneslaton.com](mailto:monaco@herneslaton.com)  
2           6720 North Scottsdale Road, Suite 285  
3           Scottsdale, Arizona 85253  
4           Tel: (480) 483-2178

5           **AKIN GUMP STRAUSS HAUER & FELD LLP**  
6           DARIO J. FROMMER (SBN 161248)  
7           [dfrommer@akingump.com](mailto:dfrommer@akingump.com)  
8           1999 Avenue of the Stars, Suite 600  
9           Los Angeles, CA 90067  
0           Tel: (310) 229-1000

1           Attorneys for Beneficiary and Petitioner,  
2           Bradford D. Lund

3           **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
4           **FOR THE COUNTY OF LOS ANGELES**

5           **IN RE**

6           **SHARON D. LUND RESIDUARY**  
7           **TRUST fbo BRADFORD D. LUND**

8           **CASE NO. BP 119205**

9           [Also filed in BP 119204]

0           **BENEFICIARY BRADFORD D. LUND'S**  
1           **OBJECTIONS TO TRUSTEES' PETITION**  
2           **FOR INSTRUCTIONS REGARDING**  
3           **SALE OF REAL ESTATE**

4           Trial Date: TBD  
5           Hearing Date: January 4, 2021  
6           Time:  
7           Dept:

1 Beneficiary and Objector Bradford D. Lund (“Mr. Lund”), the sole lifetime beneficiary of  
the Sharon D. Lund Residuary Trust f/b/o Bradford D. Lund (the “BRT”), hereby objects to the  
2 Trustees’ Petition for Instructions Regarding Sale of Real Property filed herein on September 28,  
2020 (the “PFI”). Objector is informed and believes, and on that basis alleges, the following:

1       **1. Mr. Lund’s Right To Object To Trustees’ PFI Regarding Sale of Real**  
2 **Property.** Mr. Lund as a beneficiary has a right to object to and respond to the Trustees’ PFI.  
3 *Estate of Nicholas* (1986), 177 Cal.App.3d 1071, 1079-80 (Trustee of trust filed Petition for  
4 Instructions to sell a herd of cattle, beneficiary objected); *see also Estate of Heggstad* (1993) 16  
5 Cal.App.4th 943, 947 (beneficiary objected to Trustees’ Petition for Instruction regarding  
disposition of trust property).

6       **2. Mr. Lund’s Objection To Trustees’ Claim That His Wishes Do Not Control**  
7 **And Negatively Affect The BRT And MRT.** As previously stated, Mr. Lund has a right to object  
to the Trustees’ PFI. Similarly, Mr. Lund has a right to assert that the Trust does not permit the  
8 sale of the ESF Ranch. “A trustee … owes a duty of impartiality to all who have an interest in the  
trust and must deal impartially with among the several beneficiaries. [Citation.]” *Estate of*  
*Nicholas* (1986) 177 Cal.App.3d 1071, 1089. There, the beneficiary claimed an interest in the  
9 breeding cattle the Trustees were attempting to sell and approval by the other two beneficiaries was  
1 not substantial evidence to justify the granting of the petition for instructions. *Ibid.* In the present  
0 case, Mr. Lund objects to the sale because of the sentimental value of the ESF Ranch and his  
1 assertion that the ESF Ranch was never meant to be sold, but rather to be held for the use and  
1 enjoyment of the beneficiaries for the rest of their lives. The sentimental value of the ESF Ranch  
1 to Mr. Lund cannot be calculated into dollars and cents. Indeed, there are pieces of property, both  
2 real and personal, that no sum of money can replace. Mr. Lund’s father, William Lund passed  
1 away. William Lund , deceased, was the original purchaser of the ESF Ranch and intended that his  
3 children (Mr. Lund, Michelle, and the late Victoria) would have that Ranch to use and enjoy for  
1 their entire lives. Receiving \$17.5 million dollars within the BRT does nothing to replace that type  
4 of gift.

1       **I. BACKGROUND AND SUMMARY**

5       **OBJECTIONS TO TRUSTEES’ PETITION FOR INSTRUCTIONS**

3. In the PFI, the Trustees (Wilson, Gifford, Strode, and First Republic Trust Company  
1 (“FRTC”)) seek instruction regarding their ability as co-managers of Canyon Oaks Estates, LLC  
2 (“COE”) to sell approximately 110 acres of land in Wyoming known as Eagle South Fork Ranch  
2 (“ESF Ranch”) owned by COE and two of its subsidiaries.

4. The ESF Ranch located in Teton County, Wyoming, was purchased by the late  
3 William Lund, father of Mr. Lund and Michelle Lund, approximately 40 years ago. William  
4 purchased the ESF Ranch so that his children (Mr. Lund, Michelle, and Victoria) could use and  
enjoy the property for the rest of their lives.

5. Before Sharon Lund passed away, William Lund sold the ESF Ranch to Sharon,  
5 who then placed the ESF Ranch into the Lund Family Trust so that the beneficiaries of that trust  
6 (Mr. Lund, Michelle, and the late Victoria (collectively, the “beneficiaries”) could use and enjoy  
the ESF Ranch. After Sharon Lund passed away, the Lund Family Trust converted into the Sharon  
7 D. Lund Residuary Trust for the benefit of each child (Mr. Lund, Michelle, and Victoria). Since  
8 the time that Sharon acquired the ESF Ranch, the ESF Ranch has been held in trust so that the  
Lund children could use and enjoy the property.

6. Historically, the Trustees of the Residuary Trusts had always understood the  
9 sentimental and special relationship between the ESF Ranch to the Lund children. The Trustees  
1 had a policy and practice of consulting with the beneficiaries (Mr. Lund, Michelle, and Victoria)  
0 about the disposition of ESF Ranch. (*See* 4/8/1996 Trustee Meeting Minutes, attached as **Exhibit**  
1 **1**). On or about April 8, 1996, at a Trustee Meeting, the late William Lund brought information to  
1 the Trustees that a neighboring landowner was interested in purchasing 35 acres of the property for  
1 \$2 million dollars. The Trustees all “agreed that the Trustees should consult with the beneficiaries  
2 respecting their wishes in this regard ....” (**Exh. 1**, p. 3 ¶ 6).

7. Over the years, the Trustees at the time discussed portioning out the acreage on the  
3 ESF Ranch so that the beneficiaries (Mr. Lund, Michelle, and Victoria) would each be able to have  
1 the use and enjoyment of their individual homes on the highly desirable property. For example, in  
4 1998, the Trustee Meeting Minutes read in pertinent part regarding the portioning out of the  
1 property into three 35 acre lots: “The end result of this activity is to end up with three highly  
5

#### OBJECTIONS TO TRUSTEES’ PETITION FOR INSTRUCTIONS

desirable residential lots (one for each beneficiary) and to dedicate some portion of the balance for  
1 scenic easements, taking a charitable deduction as a consequence thereof.” (2/19/1998 Trustee  
Meeting Minutes, p. 3 ¶ 4, attached as **Exhibit 2**):

2       8. Again, in 2004, the Trustees at the time discussed converting ESF Ranch from a 14-  
unit subdivision into three 35 acre lots (one for each beneficiary) – donating a portion for  
3 conservation easements. (11/17/2004 Trustee Meeting Minutes, p. 4, attached as **Exh. 3**).

4       9. Even though the ESF Ranch was technically owned by the Trust, for approximately  
nearly 40 years it has been part of the Lund family. The overriding goal was to have the  
5 beneficiaries of the trusts have their own large plots with homes for them to use and enjoy. Now  
the Trustees have totally forgotten that goal. However, in the weeks before a final decision by the  
6 Court on the OSA (which included the resignation of the Trustees from the BRT) was expected,  
the Trustees decided to sell the ESF Ranch that Mr. Lund, his Arizona family, and Michelle Lund  
7 have used and enjoyed for nearly 40 years to benefit themselves. Only the Trustees stand to  
benefit from the sale of ESF Ranch as they would earn nearly \$750,000 in Real Estate Fees<sup>1</sup>.  
8 While the MRT and BRT would gain the cash from the sale, that cash is wholly unneeded because  
both the BRT and MRT have sufficient assets. Furthermore, Michelle herself would never realize  
9 any gain from the sale as her MRT has already made all principal distributions. The only benefit to  
1 the MRT would be realized by some future beneficiary of Michelle’s testamentary power of  
0 appointment.

1       10. Mr. Lund filed a Petition for the removal of the Trustees in 2015. That Petition is  
1 still pending and is part of the Fifth Amended Petition. That Petition seeks the removal of the  
1 Trustees for serious fiduciary violation and their hostility towards Mr. Lund. The Trustees’ action  
2 of attempting to sell the ESF Ranch as set forth herein is further evidence of their hostility and  
1 breach of fiduciary duties towards Mr. Lund.

3       II. **OBJECTIONS TO THE PFI**

4       11. **Eagle South Fork Ranch.** ESF is presently divided into 14 residential lots, one

1       1 <sup>1</sup> The Trustees’ receive two percent (2%) of the sale price of all of the real estate owned by  
the Residuary Trusts that is sold.  
5

common site and 2 riparian parcels. Only two of the lots have substantial improvements. Lot 9 is  
1 approximately 0.99 acres and has a 3,745 square foot main residence with a 795 square foot  
2 garage. The main residence was built in 1987 and reconfigured in 2006 when the new garage was  
3 built. Lot 8 is approximately 1.87 acres and has a utility structure consisting of a 2,871 square foot  
barn, a 578 square foot garage, a 660 square foot guest apartment, and an 845 square foot  
caretaker's quarters.

12. **Ownership of the ESF Ranch.** The Lund Family Trust created COE in the 1990's  
4 to hold all of the Lund Family Trust assets. COE was created so that each of the beneficiaries (Mr.  
Lund, Michelle, and Victoria) would receive 1/3 of the assets by each holding 1/3 ownership of  
5 COE. At some point in time The Lund Family Trust transferred the ownership interest in the ESF  
Ranch to COE.<sup>2</sup>

13. **The Settlement Among Mr. Lund, The Trustees, And Michelle Lund.** On April  
8, 2019, Mr. Lund, the Trustees, and Michelle all signed and executed a global settlement  
7 agreement (the "OSA") which completely resolved and settled all litigation among the parties.  
Included in the OSA was a specific plan to divide all jointly owned assets between the BRT and  
8 MRT so that neither Mr. Lund, nor his sister, owned any property together following the  
settlement. Included in that plan to divide was a specific plan for the division of ESF Ranch.

14. **ESF Plan to Divide.** Paragraph 4.3.3 of the OSA specifically provided: "Because  
0 of the particular nature of the ESF property and its connection to the Lund family, the Eagle South  
1 Fork property will not be part of the Joint Assets separated into the Joint Asset Buckets." (PFI  
1 Exhibit 2) (emphasis added). Indeed, by this language, specifically drafted by the Trustees'  
1 attorneys, and signed and verified by the Trustees themselves, the Trustees understood and realized  
2 the sentimental value that ESF Ranch had to both Mr. Lund and Michelle. Furthermore, the  
1 Trustees through separate plans were going to divide ESF Ranch "with the input of Bradford and  
3 Michelle to be considered...." (PFI Exhibit 2, ¶ 4.3.3) (emphasis added).

4  
1  
2 The Residuary Trusts (the BRT and MRT) eventually created Lund Family Partnerships  
so that COE held real estate and the partnerships held more "liquid" assets. Currently, COE  
1 owns 100% of the ESF Ranch and the BRT and MRT each own 50% of COE.  
5

15. **ESF Ranch Division Methodology.** On May 10, 2019, the Trustees indicated in a  
1 letter sent to both Mr. Lund and Michelle their plan for the division of the ESF Ranch. The first  
2 option was for either Mr. Lund or Michelle to purchase 100% of the ESF Ranch by submitting  
3 competing bids for the property. If that plan were not agreed upon, ESF Ranch would be marketed  
4 and sold, but the option for Mr. Lund or Michelle to bid on ESF Ranch at that time would not be  
5 removed. The Trustees agreed that if a third-party offered a higher price after the property was  
6 marketed than that offer would be accepted unless Mr. Lund or Michelle made a higher offer.  
7 Thus, the Trustees by their own plan, still demonstrated they understood the sentimental value that  
8 ESF Ranch held.

5       **Mr. Lund and Michelle's Plan to Divide ESF Ranch.** Neither Mr. Lund, nor  
6 Michelle, wanted to purchase the ESF Ranch with their own assets. For Mr. Lund this would have  
7 been a personal outlay of funds of more than \$19.5M for the purchase of the ESF Ranch. Because  
8 of the exorbitant amount of personal money that it would cost Mr. Lund to purchase the ESF  
9 Ranch, he decided that the best option was to sell the ESF Ranch by placing it on the open market.  
10 (Michelle agreed to this option as well). (*See* May 21, 2019 Email from S. Slaton to H. Kaiser,  
11 attached hereto as **Exhibit 4**). Therefore, Mr. Lund and Michelle both agreed that they would  
12 continue to own the property together to allow the Trustees to market and sell the ESF Ranch on  
13 the open market, rather than at a fire-sale auction. The Trustees indicated that they would not  
14 accept the agreement between Mr. Lund and Michelle and would go forward with the fire-sale  
15 auction. The Trustees claimed that they refused to accept this option because they would not agree  
16 to any result where Mr. Lund and Michelle had joint ownership and management of a property  
17 after the Effective Date of the OSA.

2       **Mr. Lund and Michelle's Agreement.** Based upon the Trustees' refusal to follow  
3 the beneficiaries original plan to receive the highest and best price on the open market, Mr. Lund  
4 and Michelle came to an agreement allowing Mr. Lund's BRT to purchase the ownership interest  
5 of Michelle's MRT. Contrary to the Trustees' statement regarding Mr. Lund's reasons for  
6 suggesting this offer, Mr. Lund had suggested this offer because it allowed Mr. Lund to keep the  
7 ESF Ranch in his possession without having to use his personal assets to buy the property. Indeed,  
8

## OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS

the BRT, which is valued at approximately \$200 million, would purchase and pay the costs for the  
1 ESF Ranch, but Mr. Lund as the beneficiary would still maintain his use and enjoyment of such.

18. **The Trustees' Acceptance.** On June 4, 2019, the Trustees, through their attorneys,  
2 accepted the offer of Mr. Lund and Michelle. Indeed, the plan for division of the ESF Property  
3 was set and the BRT would pay \$9.76 million to the MRT for the MRT's interest in COE. The  
4 Trustees stated that this transfer would happen after the approval of the OSA. Notably,  
5 approximately 115 days later, Judge Cowan approved the plans for division of the assets in his  
6 Further Ruling. (Further Ruling, 9/27/2019, p. 4:22-5:2 ("The Court does, however, approve those  
7 parts of the petition for approval that relate to the payment of termination fees to the FRTC  
8 Trustees and their resignation as trustees of the Residuary Trust, as well as the plan to divide  
9 Bradford's and Michelle's entangled trust assets.")).

19. **Mr. Lund's Objection that the June 4, 2019 Email was Not a Binding Contract.**  
Contrary to the Trustees' argument that the June 4, 2019 Email was not a binding contract (PFI ¶  
7 26), the June 4, 2019 Email contains all of the necessary elements for a binding agreement.  
California Civil Code § 1550 defines the essential elements of a contract as: (1) parties capable of  
8 contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or consideration. (*See*  
9 *also Marshall & Co. v. Weisel* (1966) 242 Cal.App.2d 191, 196). The June 4, 2019 Email contains  
1 all of the elements: (1) all of the parties are capable of contracting, there has never been any  
0 indication that any party was incapable of making a contract. (2) All of the parties consented to the  
1 contract. Indeed, Mr. Lund and Michelle entered into an agreement between themselves which  
1 they presented to the Trustees. The Trustees, in their sole and absolute discretion, agreed to the  
1 proposal provided by Mr. Lund and Michelle. (3) There is a lawful object, the ESF Ranch and its  
2 division from being a jointly held asset. (4) Consideration is included, the BRT would pay \$9.76  
1 million to the MRT and receive the MRT's 50% ownership in COE making the BRT the sole  
3 owner of the ESF Ranch. The MRT would provide its ownership interest in COE To the BRT for  
1 the receipt of \$9.76 million dollars. Therefore, there is a lawful and binding agreement created by  
4 the June 4, 2019 email. This lawful and binding contract predates the approval by Judge Cowan of  
1 the plan to divide the entangled trust assets, as well as any future determination that the OSA was  
5

## OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS

not approved. The Trustees' argument, that circumstances arose which in turn gave them the right  
1 to change their plan to divide, must be rejected. The delay in the acceptance of the OSA (and  
2 future disapproval of it by the Court) did nothing to change the binding agreement that had been  
3 reached prior to any action by the Court. The Trustees breached that agreement before any  
4 disapproval of the OSA by the Court. Moreover, the COVID-19 pandemic did not create a reason  
5 for the BRT or MRT to need a quick influx of cash necessitating a quick and immediate sale of the  
6 ESF Ranch. (PFI, ¶¶ 26, 43). Finally, the Trustees, by their own attorneys' email creating a valid  
7 and binding agreement, indicated that if they received a higher all-cash offer, they would bring that  
to the attention of the beneficiaries, not immediately accept it and notify the beneficiaries afterward  
(PFI, Exhibit 4, p. 131-32). Indeed, the June 4, 2019 Email reads in pertinent part: "If prior to  
Court approval of the Petitions to Approve and to Appoint, the Trustees receive any credible third  
party offer to purchase the ESF Property for a cash price above the appraised value, ***the Trustees  
will bring such offer to the parties' attention.***" (PFI, Exhibit 4, p. 132).

20. Finally, the Trustees' claim that the \$35 million offer was nearly \$15.5 million more  
than the 2019 appraised value is a misrepresentation and completely false. The ESF Ranch had  
always been appraised at two different values, as a single large-tract residence, and as the highest  
and best use. The highest and best use appraisal was approximately \$32 million as of December  
31, 2018. As the Trustees admit, that price continues to climb. So, the truth is that the \$35 million  
may have been a price that was simply equal to the appraised value at the time. Therefore, there is  
no truth to the Trustees' misrepresentation that the \$35 million offer was a "boon" to the BRT and  
MRT of a "79% increase" to the appraised value. The Trustees admit that the COVID-19 crisis  
had created "a seller's market" for upscale resort areas such as the location of the ESF Ranch.  
(PFI, ¶ 43). The \$35 million price is merely an increase of approximately \$3 million over the  
December 31, 2018 appraised value.

21. **Mr. Lund's Objection To Trustees' Claim That Price Was the Only Issue.**  
Contrary to the Trustees' argument that "price was the only issue" (PFI ¶ 27), there is no indication  
that any such argument represents the truth. Indeed, the only inference that can be drawn from the  
subsequent offer for the BRT to purchase the MRT's ownership interest, is that both Mr. Lund and

## OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS

1 Michelle agreed that the Trustees’ “fire-sale” auction was not sufficient to receive the best possible  
2 price for the ESF Ranch which had been in the family for over 40 years. Indeed, after Mr. Lund  
3 and Michelle received the Trustees’ rejection, both agreed that Mr. Lund’s BRT could purchase the  
land for the single, large-tract residential appraised value. This agreement between Mr. Lund and  
Michelle would keep the ESF Ranch in the Lund family and prevent any “fire-sale” of such  
property.

22. **Mr. Lund’s Objection To Higher Third Party As Condition Subsequent.** The  
4 Trustees admit that their argument is drawn from an “implied” condition in the June 4, 2019 email.  
5 However, as quoted above, there is no condition subsequent in the June 4, 2019 email. Instead, the  
6 Trustees merely indicated to Mr. Lund and Michelle that they would inform them of any  
7 subsequent offer. The Trustees did not take this course of action, instead, the Trustees unilaterally  
8 accepted the “third-party” offer and notified Mr. Lund (and Michelle) after they had done so. Even  
9 the most liberal reading of the statement in the June 4, 2019 email that the Trustees would bring  
the offer to the attention of Mr. Lund and Michelle does not indicate that the Trustees could accept  
the higher offer without first bringing it to Mr. Lund’s attention.

23. **Mr. Lund's Objection to No Court Approval of OSA.** As stated above, the  
9 Further Rulings issued on September 27, 2019 indicated that the plans to divide Mr. Lund's and  
1 Michelle's entangled trust assets would be approved. Therefore, at the time of the Trustees'  
0 acceptance of the offer to purchase, the only ruling in existence was a ruling that the plans to  
1 divide would be accepted.

1       24. **Mr. Lund’s Objection to his Attempts to Void the OSA and his MSJ.** Mr. Lund  
2 attempts to void the OSA and his MSJ were based upon the argument that the OSA had a specific  
3 condition precedent which automatically voided the OSA: The imposition of a guardian ad litem  
4 over Mr. Lund. Mr. Lund never challenged the Court’s rulings on the division of property, nor did  
5 Mr. Lund ever quit attempting to settle the matter. Instead, it was the Trustees who held two  
6 different and conflicting positions. The Trustees asserted that the Further Rulings were not final  
7 rulings so they could not be challenged on appeal, and that the Further Rulings were a clear  
8 indication that the OSA would not be approved.

25. **Mr. Lund Challenges The Sale of the ESF Ranch.** Contrary to the Trustees' arguments regarding Mr. Lund challenging the sale of the ESF Ranch (PFI, ¶¶ 36-42), Mr. Lund has asserted lawful actions regarding the sale of the ESF Ranch. Mr. Lund first attempted to have the Trustees place the sale of the ESF Ranch on hold so that the parties could present the conflict and disagreement to Judge Lesley Green (retired) the mediator who got the parties to agree to a global settlement. Indeed, the OSA specifically stated that: "If any disagreements arise regarding the Eagle South Fork Plan, Mediator Lesley Green will resolve the dispute, and her resolution will be final and binding." (PFI, Exhibit 2 ¶ 4.3.3, p. 12-13). When the Trustees refused to allow Judge Green (Retired) to resolve the dispute, Mr. Lund, as required by law, notified the Trustees that he may seek an *ex parte* temporary restraining order. (Rule 3.1203, California Rules of Court ("A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice."). Mr. Lund withdrew that notice when he realized that he could bring an action in the State of Wyoming concerning the sale of Wyoming real property. Wyoming is the state where the *res* is located and where the property was being sold. Mr. Lund filed a good faith complaint in Wyoming and a *lis pendens*. The Trustees have moved to dismiss that complaint but no ruling on the Trustees' motion has been entered. The complaint was filed in Wyoming before the Court in California had ruled on whether it would approve the OSA or the RSA. Oral argument is scheduled on January 7, 2021 on the Trustees' Motion To Dismiss the Wyoming matter. Even if it is dismissed, this Court should still deny the Trustees' Petition For Instruction for all of the reasons set forth herein.

26. The Trustees' assertion that the Wyoming matter was a form of Mr. Lund's forum shopping is not true. A *lis pendens* on real property accomplishes the same result as a temporary restraining order, therefore, Mr. Lund chose the most efficient alternative and did not need to pursue both remedies in different courts.

27. As for the Trustees' arguments concerning Judge Cowan, Mr. Lund readily admits that he believes Judge Cowan was biased and prejudiced and has also had conflicts of interests preventing his fair adjudication over Mr. Lund's matter. He stated so in writing, which is a matter

of public record, and sought his removal from the case on three occasions. Mr. Lund's most recent  
1 requests for Judge Cowan's recusal occurred on October 30, 2020 and November 9, 2020. Finally,  
2 Judge Cowan did transfer this matter back to the probate division and is no longer presiding over  
the case.

28. Mr. Lund does not call this forum shopping (*see*, PFI ¶ 39) but calls what has  
3 transpired a quest for fairness, justice and for due process of law. Mr. Lund incorporates his recent  
4 recusals of October 30, 2020 and November 9, 2020 as if set forth in their entirety. He stands by  
them.

29. **The Wyoming Action Was Filed In Good Faith:** Mr. Lund's position is that the  
5 Trustees breached their June 4, 2019 written agreement in writing which created a valid contract.  
Under Wyoming law, just as under California law, the June 4, 2019 written email correspondence  
6 is a valid contract. *Frost Const. Co. v. Lobo, Inc.* (Wyo. 1998) 951 P.2d 390, 394. Mr. Lund has  
alleged that the contract was breached and requested specific performance of that contract.  
7 Furthermore, now that the Court has rejected the OSA, Mr. Lund also relies on the doctrine of  
8 promissory estoppel which establishes that the Trustees should honor the agreement that the BRT  
purchase MRT's ownership interest as set forth therein. California recognizes promissory  
9 estoppel. *US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901. Promissory  
1 estoppel is a doctrine incorporated in the law of contracts which requires: "(1) a promise clear and  
0 unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3)[the] reliance  
1 must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured  
1 by his reliance." *Ibid.* Wyoming law follows essentially the same requirements to assert  
1 promissory estoppel. *Redland v. Redland* (Wyo. 2012) 288 P.3d 1173, 1193; *see also Birt v. Wells*  
2 *Fargo Home Mortg., Inc.* (Wyo. 2003) 75 P.3d 640, 651. Unquestionably, an unambiguous  
1 promise was made that the BRT would purchase the MRT's interest in the ESF Ranch. Moreover,  
3 Mr. Lund detrimentally relied on this promise in two separate ways. First, Mr. Lund did not, and  
1 has not, objected to the distribution of QSST assets because he believed that his trust (the BRT)  
4 would also become the sole owner of the ESF Ranch. Second, Mr. Lund assumed he would have a  
1 right of first refusal on any later offer received for a higher price.  
5

## OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS

Further, in Wyoming a lis pendens must be filed based upon an action within the state of  
1 Wyoming, not on an extraterritorial action. *Ludvik v. James S. Jackson Co., Inc.* (Wyo. 1981) 635  
P.2d 1135, 1141. Therefore, Mr. Lund properly recorded a lis pendens regarding the Wyoming  
2 complaint.

### III. THE PETITION FOR INSTRUCTIONS SHOULD BE DENIED

#### 30. Mr. Lund's Objection To the Financial Benefits Claimed By The Trustees.

While the \$35 million offer for ESF Ranch may be a substantial amount of money, there is no  
4 indication that such price is the proper market price for the ESF Ranch. Indeed, the Trustees claim  
that the \$35 million is an increase if the property is sold as a single tract property, but all  
5 indications are, that such is not the purpose of the sale. Even though Mr. Lund has been provided  
with no notice of the actual identity of the purchaser, it appears that the purchaser will not be  
6 maintaining the lot as a large-tract residential property, but rather as a multi-lot subdivision. The  
7 2018 appraisal of the property stated that the value of the land in that situation would be over \$32  
million. (2018 Appraisal, attached as **Exhibit 3**). It should be noted that the Trustees have not  
8 attached any appraisal at all to their PFI. This glaringly represents that the Trustees do not want  
the Court to be aware of the value of this land. Moreover, the land has appreciated in value since  
9 its purchase, and will only continue to appreciate. The BRT and MRT both have substantial assets  
1 and have no problem paying both the beneficiaries and the costs together with the taxes on the  
0 ESF. Therefore, there is no need to sell the ESF Ranch.

31. The value of ESF Ranch has increased over the years. Each year, the Trustees  
1 commission an appraisal for ESF Ranch. They then report its value as the average between ESF  
1 Ranch's value as a single, large-tract residential property and the value as subdivided lots. For  
2 example, as of December 31, 2010, ESF Ranch was appraised at \$19,852,500. By December 31,  
1 2015, ESF Ranch's appraised value had increased to \$23.6 million. By December 31, 2018, that  
3 value had again increased to \$25,730,000.

32. The Trustees contend that the value of the ESF Ranch is 19,600,000 which is a  
4 complete misrepresentation. Such value is based upon only the valuation as a single, large-tract  
1 residential property for ESF. That same appraisal would contain a valuation of \$31,940,000 as  
5

subdivided. In or about June of this year, the Trustees provided Objector with a real estate  
1 portfolio valuation that showed the value of ESF to be \$26,425,000. Using simple arithmetic, that  
2 would place the value of ESF as subdivided lots at \$33,270,000. [X = (\$26,425,000 x 2) -  
\$19,600,000] Contrary to their assertion in paragraph 43 of their PFI, the alleged offering price  
3 represented an increase of only 5% over the 2019 appraised value. After costs associated with the  
4 sale, it is presumed that the actual amount realized could be less than the appraised value. In any  
event, the appraisals show that the value of ESF continues to increase annually. Presumably, the  
5 value of ESF will continue to increase for the decades that will take place between now and  
Michelle's passing. And until that time occurs, both Brad and Michelle will have the ability to  
continue to use ESF for their recreational enjoyment.

33. **The Trustees' Duties to the BRT and MRT.** The Trustees owe duties of loyalty  
6 and to preserve trust property to both the BRT and MRT. *City of Atascadero v. Merrill Lynch,*  
7 *Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445 462. Those duties are breached when the  
8 Trustees fail to preserve trust property by a sale, which will, by definition, remove the sentimental  
value. Upon the sale, of course, Mr. Lund will no longer have the ability to use and enjoy the  
property.

34. An undeniable benefit will be to the Trustees based upon their Real Estate fee. The  
1 Trustees will receive 2% of the purchase price. The MRT will receive the cash, but Michelle the  
0 beneficiary will receive no benefit at all. The MRT has made all of its principal distributions so  
1 the only benefit will be to some contingent beneficiary that receives the MRT through Michelle's  
1 testamentary power of appointment. Moreover, as Michelle is only 50 years old, her testamentary  
1 power of appointment will result in a beneficiary that is some individual (a sibling), or some  
2 charity, decades in the future.

35. Currently, the MRT only pays Michelle income in the amount of \$60,000 per year  
3 trended forward based upon the Consumer price index. This translates to approximately \$120,000  
1 per year in income which Michelle receives from the MRT. Because Michelle only gets \$5,000 a  
4 month trended forward by the CPI since 1989, the remaining assets of the MRT are sufficient to  
1 generate that amount. Assuming the MRT was worth approximately \$200M, Michelle received  
5

## OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS

approximately 48% of that amount, leaving approximately \$104M in the MRT. This June, based  
1 upon the mandatory distribution of the QSST assets, Michelle received another approximately  
\$22M worth of assets, leaving roughly \$82M in the MRT. Assuming the MRT's share of ESF  
2 through COE was \$16M, that still leaves \$68M to generate the \$120,000 owed to Michelle as  
income per year. Even if the return on \$68M were 1%, that would still be \$680,000. Therefore,  
3 the MRT clearly has sufficient assets to pay both the income to Michelle as well as the costs of the  
ESF Ranch.

4       36. Contrary to the distributions to Michelle, the present Trustees on Mr. Lund's BRT  
are continuing to refuse to disburse to him these same mirror distributions. Therefore, just as  
5 Michelle, Mr. Lund will personally receive no benefit from the sale of the ESF Ranch. The only  
personal benefit from the sale of the ESF Ranch will be to the Trustees themselves in the form of  
6 commission which will go directly into their own pockets.

7       37. **Mr. Lund's Objection To Trustees' Claim Of Disentanglement.** The Trustees'  
argument is based upon the fact that the parties agreed to disentangle assets in the now rejected  
8 OSA. Such argument does not carry any weight and should be rejected. For the time being, until  
the Trustees are removed or replaced, there is no need to disentangle trust assets. Michelle, who  
9 will receive no benefit at all, for some reason has removed her agreement to allow the BRT to  
1 purchase the ownership interest from the MRT. The Trustees take that removal of the agreement  
0 to mean that such is an illustration in graphic detail why a disentanglement needs to occur.  
1 However, if the Trustees truly were continuing to ensure a disentanglement, the simplest option  
1 would have been to complete the transfer from the MRT to the BRT, thereby leaving the asset  
1 completely untangled.

2       38. **The Trustees' "Diversification of Assets" Argument Is A Red Herring.** The  
1 Trustees' argument for diversification must also be rejected. Indeed, the BRT and MRT have  
3 jointly owned ESF since their creation approximately 27 years ago (it was jointly held among the  
1 BRT, MRT, and VRT until Victoria died). Furthermore, the Trustees admit that the BRT is worth  
4 (post QSST distribution) approximately \$215 million. The costs of owning the ESF Ranch are  
1 approximately \$150,000 per year. The BRT only pays income in the amount of approximately  
5

## OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS

\$120,000 per year to Mr. Lund. Therefore, even assuming the BRT only earns 1% on its assets per  
1 year, the addition of the \$150,000 per year to pay for the ESF Ranch would not even affect the  
2 growth of the BRT (1% of \$215 million is \$2.15 million which is greater almost ten (10) times  
3 greater than \$270,000). Moreover, the BRT contains a specific provision which reads in pertinent  
4 part: “The Trustees shall not be required to sell any of such assets merely for the sake of  
5 diversifying trust investments, or for the sake of obtaining funds to purchase assets that produce  
more income.” (BRT, § VII(A)). Therefore, there is no need for the Trustees to diversify the  
holdings of either the BRT or MRT. Not only is there no term in the Trusts which supports the  
Trustees’ argument for diversification, the Trusts actually mandates the opposite of the Trustees’  
false “diversification of assets” argument.

39. **The Trustees’ Power To Sell Is Not Absolute.** While the BRT (and MRT) contain  
a provision that the Trustees have “all rights, powers, and privileges that the absolute owner of  
property would have” (PFI ¶ 50), such power does not give absolute discretion. Instead, the  
Trustees only discretion which is subject to court review. *Estate of Nicholas* (1986) 177  
Cal.App.3d 1071, 1086. Indeed, the ESF Ranch was added to the Trust after its creation, and  
therefore, has no specific mention in the Trust. However, just as Sharon Lund indicated that the  
stock in Retlaw Inc. or The Walt Disney Company, or any of its successors did not have to be sold  
to diversify assets, a reasonable inference would be the same for the ESF Ranch. Retlaw and The  
Walt Disney Company are companies started by Sharon’s father and clearly hold significant  
sentimental and emotional value. Similarly, ESF Ranch was purchased by the beneficiaries’ father,  
William Lund, sold to their mother, Sharon Lund, with the intent and purpose that the ESF Ranch  
would be available for the beneficiaries to use and enjoy for the rest of their lives. Sharon  
accomplished this purpose by adding the ESF Ranch to the Lund Family Trust which eventually  
was converted into the Residuary Trust. While there is specific law on the sale of trust assets by  
trustees, that law requires that the trustee can sell the property if it is “necessary or appropriate” to  
allow the trustee to be able to carry out the purpose of the trust. (PFI ¶ 51 (quoting *Church v.*  
*Church* (1940) 40 Cal.App.2d 696, 700). Moreover, the purpose of the would not be served by  
selling the ESF Ranch. As explained above, the purpose of the Trust purchasing the ESF Ranch in

## OBJECTIONS TO TRUSTEES’ PETITION FOR INSTRUCTIONS

the first place was to ensure that it stayed in the family. What the Trustees want to do is the exact opposite of that purpose. Further, there is not even any economic necessity or requirement that the ESF Ranch be sold. Neither the BRT nor the MRT need cash to meet their needs.

**40. Mr. Lund Asserts That the Trustees Have Not Exercised Ordinary Care.** Mr. Lund objects to the PFI because the Trustees have not exercised ordinary care. Indeed, the Trustees have a clear conflict of interest regarding the sale. As the Trustees of the BRT, they owe the beneficiary a duty of loyalty and to protect his wishes. Mr. Lund has made it clear that his wishes are to keep the ESF Ranch. As the Trustees of the MRT, they owe a duty of loyalty to Michelle, who apparently has undergone a 180 turn and decided that she no longer wants the ESF Ranch and that Mr. Lund cannot use his BRT to purchase the MRT's ownership interest. The interests and position of Michelle and Mr. Lund are competing with each other. These are not beneficiaries to the same trust, but beneficiaries of mirror trusts. The Trustees are wearing too many hats on in this sale. The Trustees, however, are presiding over both of the Trusts with different interests. *Estate of Nicholas, supra*, 177 Cal.App.3d at p. 1089. The Trustees present no cogent reason why Michelle's wishes should be favored over Mr. Lund's. The financial interest together with their service on two Trusts with different interests are glaring conflicts which should color every one of their arguments.

41. **Conclusion:** For the foregoing reasons, Mr. Lund requests that this Court enter an order:

- a. Denying the Trustees' PFI in its entirety; and
  - b. For such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

Dated: January 7, 2021

THE PITET FIRM P.C.  
HORNE SLATON PLLC

By:/s/ Sandra Slaton  
Sandra Slaton, Esq.

Attorneys for BRADFORD D. LUND

## **OBJECTIONS TO TRUSTEES' PETITION FOR INSTRUCTIONS**

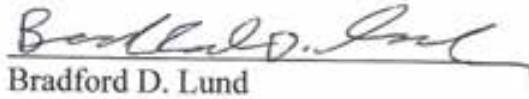
1  
2                   **VERIFICATION**

3       I, Bradford D. Lund, says:

4       I am the beneficiary of the above referenced trust and am a party to the action. I have  
5 read the foregoing document which bears the title: **Beneficiary Bradford D. Lund's**  
6 **Objections To Trustees' Petition for Instruction Regarding Sale of Real Property.** I  
7 assert that the contents of that document are true and correct based upon my own personal  
8 knowledge, except those statements made upon information and belief which I believe to be  
true.

9       I declare under penalty of perjury pursuant to the laws of the State of California that  
10 the foregoing is true and correct.

11      Executed on January 7, 2021 at Paradise Valley, Arizona.

12  
13                     
14                   Bradford D. Lund

## **EXHIBIT 6**

**THE PITET FIRM, PC**  
Joseph P. Busch III (SBN 70340)  
[jbusch@octrials.com](mailto:jbusch@octrials.com)  
100 Bayview Circle, Suite 210  
Newport Beach, CA 92660  
Tel: (949) 502-7755

**HORNE SLATON, PLLC**  
Sandra Slaton (*pro hac vice*)  
[slaton@horneslaton.com](mailto:slaton@horneslaton.com)  
6720 North Scottsdale Road, Suite 285  
Scottsdale, Arizona 85253  
Tel: (480) 483-2178

**AKIN GUMP STRAUSS HAUER & FELD LLP**  
DARIO J. FROMMER (SBN 161248)  
[dfrommer@akingump.com](mailto:dfrommer@akingump.com)  
1999 Avenue of the Stars, Suite 600  
Los Angeles, CA 90067  
Tel: (310) 229-1000

Attorneys for Beneficiary & Petitioner,  
Bradford D. Lund

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

In re

THE SHARON D. LUND RESIDUARY  
TRUST fbo BRADFORD D. LUND

Case No. BP119205

[Concurrently filed in Case Nos. BP 119204]

**BRADFORD D. LUND'S PETITION FOR  
INSTRUCTIONS REGARDING SALE OF  
REAL PROPERTY**

(Prob. Code § 17200 Petition, subd. (b)(6))

Hearing Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Dept.: \_\_\_\_\_  
Judge: \_\_\_\_\_

1       Beneficiary/Petitioner, Bradford D. Lund (“Mr. Lund”), hereby submits his Petition for  
2 Instructions Regarding Sale of Real Property (the “Petition”) and alleges, on information and belief,  
3 as follows

4 **I. INTRODUCTION**

5       1. Through this Petition, Mr. Lund seeks instructions from the Court that the Trustees<sup>1</sup>  
6 should not sell the Eagle South Fork Property (hereinafter “ESF Ranch” or “ESF”) because of the  
7 unequivocal history of this property within the context of its relationship to the Lund family,  
8 including Mr. Lund, as illustrated by the intent of his deceased father, William Lund (“William”),  
9 together with his mother, Sharon Lund, also deceased, that the Ranch remain in the family.

10      2. The ESF Ranch was purchased by William approximately 40 years ago. William  
11 intended to maintain the ESF Ranch as a property for the use and enjoyment of the Lund Family  
12 (Mr. Lund, his twin sister Michelle Lund (“Michelle”), and their older sister Victoria Lund  
13 (“Victoria”), since deceased). At some point, William sold the ESF Ranch to Sharon. Sharon held  
14 the ESF Ranch and at some point, before her death in 1993, transferred the property into the Lund  
15 Family Trust. The Lund Family Trust transferred ownership of the ESF Ranch to Canyon Oaks  
16 Estates, LP.<sup>2</sup> As will be explained below, (a) COE now owns directly or through its wholly owned  
17 companies the entirety of the ESF Ranch, and (b) the Bradford Residuary Trust (“BRT”) and  
18 Michelle Residuary Trust (“MRT”) each have a 50 percent interest in COE.

19      3. Historically, after the death of Sharon in 1993 the then Trustees (William Lund,  
20 Ronald Gother, Robert Wilson, and US Trust) always understood the sentimental and special  
21 relationship between the ESF Ranch and the Lund children. The Trustees (at the time) had the  
22 policy and practice of consulting with the beneficiaries (Mr. Lund, Michelle, and Victoria) about  
23 disposition of the ESF Ranch. For example, on or about April 8, 1996, at a Trustees’ Meeting, the  
24 William informed the other trustees at the time of a neighboring landowner that was interested in

25  
26      

---

<sup>1</sup> L. Andrew Gifford, Robert Wilson, Douglas Strode, and First Republic Trust Company (“FRTC”)  
27 (collectively, the “Trustees”) as trustees of the Sharon D. Lund Residuary Trust fbo Michelle A.  
28 Lund (the “MRT”) and the Sharon D. Lund Residuary Trust fbo Bradford D. Lund (the “BRT”).

<sup>2</sup> In 2019 the Trustees converted Canyon Oaks Estates, LP into a limited liability company and it is  
now known as Canyon Oaks Estates, LLC (“COE”).

1 purchasing 35 acres of the property for \$2 million dollars. The trustees at the time all “agreed that  
2 [they] should consult with the beneficiaries respecting their wishes in this regard....” (Trustee  
3 Meeting Minutes, 4/8/1996, p. 3 ¶ 6, attached hereto as **Exhibit 2**).

4       4. Over the years, the Trustees at the time discussed portioning out the acreage on the  
5 ESF Ranch so that the beneficiaries (Mr. Lund, Michelle, and Victoria) would each be able to have  
6 the use and enjoyment of their own individual homes on highly desirable residential property. For  
7 example, in 1998, the Trustee Meeting Minutes read in pertinent part regarding the portioning out of  
8 the property into three 35 acre lots: “The end result of this activity is to end up with three highly  
9 desirable residential lots (one for each beneficiary) and to dedicate some portion of the balance for  
10 scenic easements, taking a charitable deduction as a consequence thereof.” (Trustee Meeting  
11 Minutes, 2/19/1998, p. 3 ¶ 4, attached as **Exhibit 3**).

12       5. Again, in 2004, the Trustees at the time discussed converting ESF from a 14-unit  
13 subdivision into three 35 acre lots (one for each beneficiary) – donating a portion for conservation  
14 easements. (Trustee Meeting Minutes, 11/17/2004, p. 4, attached as **Exhibit 4**). This demonstrated  
15 that the trustees at the time were still considering splitting the ESF Ranch into separate livable plots  
16 for the use and enjoyment of Sharon’s children.

17       6. Even though the ESF Ranch was technically owned by the Lund Family Trust  
18 and its successors, for approximately 40 years it has been part of the Lund family. The  
19 overriding goal was to have the ESF Ranch available for the use and enjoyment of the  
20 children of William and Sharon. Now the current Trustees have totally forgotten that goal.  
21 However, in the weeks before a final decision by the Court on the OSA (defined below and  
22 which included the resignation of the Trustees from the BRT) was expected, the Trustees  
23 decided to sell the ESF Ranch that Mr. Lund, his Arizona family, and Michelle Lund have  
24 used and enjoyed for nearly 40 years to benefit themselves. Only the Trustees stand to  
25 benefit from the sale of ESF Ranch as they would earn nearly \$750,000 in Real Estate  
26 Fees<sup>3</sup>. While the MRT and BRT would gain the cash from the sale after the payment of any

---

27       28       <sup>3</sup> The Trustees’ receive two percent (2%) of the sale price of all of the real estate owned by the  
Residuary Trusts that is sold.

1 capital gains taxes, that cash is wholly unneeded because both the BRT and MRT have  
2 sufficient assets. Furthermore, Michelle herself would never realize any gain from the sale  
3 as her MRT has already made all principal distributions to which she is entitled. The after  
4 tax benefit to the MRT would be realized by some future beneficiary of Michelle's  
5 testamentary power of appointment.<sup>4</sup>

6 **II. FACTUAL BACKGROUND**

7       **7. Purpose of Petition.** This Petition, pursuant to Prob. Code § 17200(b)(6), is being  
8 filed for instruction regarding the Trustees' attempted sale of property ultimately owned by the BRT  
9 and the MRT, consisting of approximately 110 acres located in Teton County, Wyoming known as  
10 ESF Ranch and Mr. Lund's objection to that sale as the beneficiary of the BRT.

11       **8. The Sharon D. Lund Family Trust.** Sharon, as trustor and trustee, established the  
12 Sharon D. Lund Family Trust on April 11, 1989, and amended it on two occasions: (1) First  
13 Amendment executed on March 12, 1991; and (2) Second Amendment executed on October 1,  
14 1992. True and correct copies of the original declaration of trust and both amendments are attached  
15 hereto collectively as **Exhibit 1** and are incorporated herein by this reference.

16       **9. Establishment of the BRT and MRT.** Sharon died on February 16, 1993. Under  
17 the terms of the Sharon D. Lund Family Trust, as amended, three separate subtrusts were created  
18 from the residuary trust estate upon her death, one for each of Sharon's three children: The Sharon  
19 D. Lund Residuary Trust fbo Victoria Lund (the "VRT"), the MRT, and the BRT. (Ex. 1, Art. II ¶  
20 D (4) [original and First Amendment; renumbered to ¶ D (5) in Second Amendment]; Art. VIII ¶  
21 B). In September, 2002, Victoria died without issue and without exercising her power of  
22 appointment, and the remainder of the VRT was added equally to the BRT and MRT. (Ex. 1, Art.  
23 III ¶ D, as amended).

24       **10. The Current Trustees.** FRTC, L. Andrew Gifford, Robert L. Wilson, and Douglas  
25 M. Strode, are the duly appointed and currently acting co-trustees of the BRT and MRT.

---

27       **4** Under the terms of the MRT, Michelle has a testamentary power of appointment to a sibling or  
28 that sibling's issue or to a charitable organization.

1       11.    **Principal Place of Trust Administration.** The principal place of administration of  
2 the BRT and MRT is Los Angeles, California. The usual day-to-day activity of the BRT and MRT  
3 is carried out in Los Angeles County. See Prob. Code § 17002(a).

4       12.    **The Property.** The BRT and MRT each own 50% of ESF, through equal 50%  
5 membership interests in COE, which owns approximately 40 acres of ESF (which are platted for  
6 potential subdivision into 15 lots), through Crossing Elk I LLC, a Wyoming LLC, which is owned  
7 100% by COE, and which owns a 35 acre riparian parcel of ESF, and through Crossing Elk II LLC,  
8 a Wyoming LLC, which is owned 100% by COE, and which owns another 35 acre riparian parcel  
9 of ESF (collectively, the “LLCs”). Gifford, Wilson, Strode, and Hamilton Kipp of FRTC are the  
10 co-managers of the LLCs, and authorized to act on behalf of COE, which is the sole member of  
11 Crossing ELK I and II.

12       13.    **The Global Settlement Agreement and Petition to Approve.** On April 8, 2019,  
13 after over ten years of acrimonious litigation, Mr. Lund, the Trustees, and Michelle stood unified  
14 before the court after signing and executing a Global Settlement Agreement (the “OSA”). The OSA  
15 was conditioned upon Court approval of the OSA together with Mr. Lund’s petitions to appoint  
16 replacement trustees for the BRT and Lillian B. Disney Trust fbo Bradford D. Lund. On April 30,  
17 2019, the Trustee submitted their petition to approve the OSA, and on May 1, 2019, Mr. Lund  
18 joined in the request to approve the Petition to Approve.

19       14.    **Plans to Divide.** The OSA contained a specific section which dealt with the division  
20 of jointly owned assets held by both the BRT and MRT, section 4 of the OSA. Included in the  
21 plans to divide was a specific paragraph directly on the ESF Ranch, paragraph 4.3.3. That  
22 paragraph reads in pertinent part:

23              Because of the particular nature of the Eagle South Fork property and its connection  
24 to the Lund family, the Eagle South Fork property will not be part of the Joint Assets  
25 separated into the Joint Asset Buckets. Instead, on or before the date of the Initial  
26 presentation (defined below), THE TRUSTEES, with input from Bradford and  
27 Michelle to be considered in the Trustees’ sole and absolute discretion, will propose a  
methodology by which joint ownership of Eagle South Fork will be avoided after the  
Effective Date (the “Eagle South Fork Plan”). If any disagreement arises regarding  
the Eagle South Fork Plan, Mediator Lesley Green will resolve the dispute, and her  
resolution will be final and binding.

1 Everybody who signed the OSA understood the sentimental nature of the ESF Ranch. Indeed, it  
2 was described as having a “particular nature” and a “connection to the Lund Family” in the OSA.  
3 (OSA, ¶ 4.3.3, attached as **Exhibit 5**).

4       15.     **The Trustees’ Eagle South Fork Plan.** On May 10, 2019, the Trustees, through  
5 Strode, sent a letter to both Mr. Lund and Michelle detailing their methodology for the disposition  
6 of ESF. The Trustees proposed: (1) Mr. Lund and Michelle would be given the opportunity to  
7 submit competing bids to purchase 100% of ESF with their own personal assets if they wanted to  
8 own it; (2) if neither wanted to bid, ESF would be marketed and sold, by auction if necessary, at  
9 which Bradford and Michelle could bid, before the Effective Date of the OSA; and (3) if a credible  
10 third party cash offer was received for a higher price, the Trustees would accept it unless Bradford  
11 or Michelle made an even higher offer. (May 10, 2019 Letter from D. Strode, attached as **Exhibit**  
12 **6**).

13       16.     **Mr. Lund and Michelle Do Not Agree To Trustees’ Plan.** Both Mr. Lund and  
14 Michelle rejected the Trustees “fire sale” of the ESF Ranch and requested that the Trustees place  
15 the Ranch on the open market and attempt to receive the highest and best possible price for the  
16 property. Both Mr. Lund and Michelle agreed that if the ESF Ranch was not sold before the  
17 Effective Date of the OSA, they would not object to jointly owning the ESF Ranch until the sale  
18 was complete. Despite the beneficiaries’ willingness to work together the Trustees rejected the  
19 proposal submitted by Mr. Lund and Michelle. (May 21, 2019 Email from S. Slaton to H. Kaiser,  
20 attached as **Exhibit 7**).

21       17.     **Mr. Lund and Michelle’s New ESF Plan.** Because the Trustees refused to properly  
22 market and sell ESF, Mr. Lund and Michelle agreed that the BRT would purchase the MRT’s  
23 ownership interest in COE, making the BRT the sole owner of ESF Ranch. On June 4, 2019, the  
24 Trustees, through their attorney, in their sole and absolute discretion accepted the proposal sent by  
25 Mr. Lund and Michelle (through Mr. Lund’s attorney). The Trustees’ email stated:

26              The Trustees have now had an opportunity to consider the May 29, 2019 email input  
27 of Bradford’s counsel, Ms. Slaton, and the May 30, 2019 input from Michelle’s  
counsel, Mr. Nelson, regarding the plan to divide the ESF Property as that term is  
defined in Doug Strode’s May 10, 2019 letter. After such consideration, and pursuant

1 to Section 4.3.3 of the Settlement Agreement, the Trustees, in their discretion, have  
2 decided to adopt the plan for division of the ESF Property as outlined in Ms. Slaton's  
3 May 29, 2019 email and as approved by and clarified in Points 1 and 2 of Mr. Nelson's  
4 May 30, 2019, email. Thus, if and when the Court grants the Petitions to Approve and  
5 to Appoint, the Trustees promptly will take the steps necessary and appropriate to  
6 cause the BRT to purchase the MRT's 50% interest in the ESF Property for \$9,760,000  
7 (i.e., 50% of the appraised value). Since the MRT will not be selling and the BRT will  
not be purchasing the personal property owned by either Bradford or Michelle that is  
located at ESF, the provisions of paragraph 10 of Mr. Strode's May 10, 2019 letter  
will apply, subject to Point 2 of Mr. Nelson's letter. If, prior to the Court's approval  
of the Petitions to Approve and to Appoint, the Trustees receive any credible third  
party offer to purchase the ESF Property for a cash price above the appraised value,  
the Trustees will bring such offer to the parties' attention.

8 (May 29, 2019 and May 30, 2019 Emails, attached as **Exhibit 8**). The Trustees accepted the  
9 agreement between Mr. Lund and Michelle, in their sole and absolute discretion. (June 4, 2019 Email,  
10 attached as **Exhibit 9**).

11 18. **September 11, 2020 Trustees' Letter.** On September 11, 2020, after the Court had  
12 determined that the OSA was still pending and rejected Mr. Lund's Motion for Summary Judgment  
13 that the OSA was void, the Trustees sent the following letter to both Mr. Lund and Michelle:

14 Brad and Michelle:

15 Please be advised that the Trustees, on behalf of the BRT and the MRT, have received  
16 an offer from a qualified, unrelated third party buyer to purchase the Eagle South Fork  
property for an all-cash price of \$35,000,000. We intent to pursue such a transaction  
and, if successful, we anticipate finalizing a purchase and sale agreement and closing  
on the sale before the end of the year.

18 To avoid disrupting a sensitive potential buyer, please do not disclose this offer to  
19 anyone other than your attorneys.

20 (September 11, 2020 Letter, attached as **Exhibit 10**).

21 19. **The Trustees' Bad Faith.** Instead of alerting both Mr. Lund and Michelle to a  
22 potential purchaser for a higher price, the Trustees decided to accept the offer to purchase and  
23 entered a letter of intent with the purchaser on September 13, 2020. That Letter of Intent was for  
24 the Sale of ESF Ranch for \$35 million cash. However, neither Mr. Lund, nor Michelle, was  
25 provided any notice of who the buyer was. Indeed, the Trustees redacted the copy of the letter of  
26 intent submitted to this Court with their September 28, 2020 Petition for Instructions so that not  
27 even this Court would have any knowledge of the purchaser. Furthermore, the June 4, 2019 Email  
28 stated that the Trustees would "bring such offer" to the attention of Mr. Lund and Michelle, not

1 accept the offer and move forward with the sale.

20. **Mr. Lund's Assertion To Stop The Sale.** On September 14, 2020, the Court held a  
3 hearing on Mr. Lund's Motion for Summary Judgment and whether to approve the OSA. All such  
4 matters heard at the September 14, 2020 hearing were taken under submission. On that same day,  
5 Michelle, through her attorney Mr. Nelson, removed and withdrew her consent to the beneficiaries'  
6 ESF Ranch plan to divide. Mr. Lund, through his attorneys, contacted the Trustees, through their  
7 attorneys, and objected to the Sale. Mr. Lund asserted that the Trustees should cease and desist the  
8 sale because of the June 4, 2019 agreement. Furthermore, Mr. Lund's attorneys asserted the  
9 sentimental value of the property. The Trustees refused to cease and desist and instead insisted that  
10 they would move forward. Even though the OSA was still pending and required any disagreement  
11 to be taken to the Hon. Lesley Green, the retired probate judge who negotiated the OSA, the  
12 Trustees refused to submit the matter to Judge Green.

21. **The Trustees Have An Undeniable Conflict of Interest.** The Trustees owe a duty  
to the beneficiaries of the trusts and to the trusts themselves. It is the undeniable duty of the  
Trustees to place the interest of the trust before their own, and to place the interests of their  
beneficiaries before their own. “A trustee … owes a duty of impartiality to all who have an interest  
in the trust and must deal impartially with among the several beneficiaries. [Citation.]” *Estate of*  
*Nicholas, supra*, 177 Cal.App.3d at p. 1089. However, here the Trustees have chosen to deal with  
the beneficiaries of the Trust not impartially but favoring one to the detriment of the other. The  
Trustees are well aware of the sentimentality and connection the Lund family has with the ESF  
Ranch. However, the Trustees have chosen to earn a 2% Real Estate commission (approximately  
\$700,000) for the sale of the ESF Ranch, rather than to keep the longtime family property in the  
control of the Trusts. Here, the Trustees are wearing too many hats concerning the sale of the  
property. There is no benefit other than an increase in cash to the BRT and MRT. Neither Mr.  
Lund nor Michelle will receive any benefit from the sale as the BRT and MRT are only required to  
pay \$60,000 of income per year to the beneficiaries trended forward based upon the consumer price  
index of 1989 (currently the income payment is approximately \$120,000 to each beneficiary). The  
Trustees are the only party that will receive any benefit as they will undoubtedly take a 2% Real

1 Estate fee for the sale of the ESF Ranch, meaning they will receive approximately \$700,000.

2 Therefore, the Trustees have a genuine conflict of interest.

3       22.     **Mr. Lund Properly Asserted His Claims In Wyoming.** Mr. Lund in determining  
4 his ability to contest the sale, chose to file an action in the Teton County, Wyoming court. After  
5 thorough research Mr. Lund concluded that he was required to file an action within the state of  
6 Wyoming to file a valid lis pendens. *Ludvik v. James S. Jackson Co., Inc.* (Wyo. 1981) 635 P.2d  
7 1135, 1141. There, the Wyoming Supreme Court determined that the legislature did not intend to  
8 expand the common-law doctrine of lis pendens and provide for a lis pendens to be based upon a  
9 suit filed outside of the State of Wyoming. Therefore, Mr. Lund sought his breach of  
10 contract/specific performance action in Wyoming. Prior to the filing of the Wyoming complaint,  
11 pursuant to California law, Mr. Lund informed and provided notice to the Trustees that he may seek  
12 an *ex parte* temporary restraining order in California. Pursuant to California Rules of Court, Rule  
13 3.1203, Mr. Lund provided such notice. However, Mr. Lund withdrew that notice when no *ex parte*  
14 application for a temporary restraining order would be sought.

15       23.     **The Trustees' Motion to Dismiss and Supplement.** The Trustees have filed a  
16 Motion to Dismiss in the Wyoming case, on the erroneous arguments of lack of subject matter  
17 jurisdiction and *forum non conveniens*. Mr. Lund responded to the Motion to Dismiss and Trustees'  
18 Motion to Expunge the Lis Pendens. Michelle joined in the Trustees' Motions.

19       24.     **Denial of the OSA.** On November 12, 2020, Judge Cowan determined, based on the  
20 law, that the OSA could not be approved. Judge Cowan made this decision because Mr. Lund had  
21 withdrawn his joinder, therefore, the OSA was without Mr. Lund's consent. Judge Cowan  
22 concluded that without Mr. Lund's consent to the OSA, the OSA was missing an essential element,  
23 the consent to settlement by a party. Thus, the Petition to Approve the OSA was now moot.

24       25.     **The Trustees' Attempt to Dismiss the Wyoming Action.** Because of Judge  
25 Cowan's final ruling denying approval of the OSA, the Trustees contend that there is no valid cause  
26 of action in Wyoming. However, Mr. Lund responded to the Trustees' Supplement asserting  
27 Promissory Estoppel. Mr. Lund contends that a clear and definite promise was made, the promise  
28 that the BRT would purchase the MRT's ownership interest in COE, and that Mr. Lund had not

1 objected to the distribution of property held jointly by the MRT and MRT that was made in June,  
2 2020 because of his belief that the BRT would also own 100% of COE. In other words, Mr. Lund  
3 detrimentally relied on the promise that his trust would own 100% of ESF Ranch by not objecting to  
4 the June, 2020 distribution of Qualified Subchapter S Trust assets. Moreover, Mr. Lund was  
5 promised that he would be notified of any potential sale and that he would have a right of first  
6 refusal. The Trustees never gave Mr. Lund that right of first refusal. California also recognizes  
7 promissory estoppel and defines it in the same way as Wyoming. *US Ecology, Inc. v. State of*  
8 *California* (2005) 129 Cal.App.4th 887, 901.

9 **III. THIS PETITION FOR INSTRUCTIONS SHOULD BE GRANTED**

10 26. **There Is No Current Offer To Purchase ESF Ranch.** The Trustees have made  
11 clear that the purported purchaser of ESF has withdrawn its Letter of Intent. Currently, there is no  
12 bona fide offer to purchase the property. Moreover, the Trustees have not marketed ESF for sale to  
13 garner the highest and best price for the ESF Ranch. The \$35 million cash price was withdrawn by  
14 the purported purchaser because of the litigation over the property in Wyoming.

15 27. **There is No Financial Benefit To Mr. Lund From The Sale of The ESF Ranch.**  
16 The \$35 million cash price, which has since been withdrawn because of the litigation, does not  
17 provide any benefit to Mr. Lund. The BRT is only required to pay Mr. Lund \$60,000 per year of  
18 income (trended forward by the 1989 Consumer Price Index). The Trustees have made it clear that  
19 they will not be making any of the required principal Birthday Distributions<sup>5</sup> to Mr. Lund. The  
20 BRT is currently worth approximately \$200 million. The addition of \$17.5 million in cash before  
21 taxes does not benefit Mr. Lund at all because there is no increase to his income distributions based  
22 upon the total value of the Trust. Therefore, Mr. Lund will not only lose his ability to use and enjoy  
23 the ESF Ranch, he also will receive no financial benefit from the sale.

24 28. **There is No Financial Benefit To Michelle From The Sale Of The ESF Ranch.**

---

25 26 <sup>5</sup> The BRT requires the Trustees to distribute: (1) 20% of the Trust principal to Mr. Lund on his 35th  
27 birthday; (2) 20% of the then remaining trust principal to Mr. Lund on his 40th birthday, and (3)  
28 20% of the then remaining trust principal to Mr. Lund on his 45th birthday. The Trust also gives  
the Trustees discretion to withhold these distributions if they feel that Mr. Lund does not have the  
financial maturity to handle the substantial trust distributions. To date, the Trustees have  
continuously refused to make the Birthday Distributions to Mr. Lund.

1 Michelle has already received all principal distributions from the MRT. Currently, Michelle is only  
2 entitled to the income distributions from the MRT which are valued at \$60,000 per year trended  
3 forward based upon the 1989 Consumer Price Index. At present, Michelle receives approximately  
4 \$120,000 per year in income distributions. The MRT, having already made all of the principal  
5 distributions to which Michelle is entitled, is worth approximately \$82 million (\$200 million – 48%  
6 for the birthday distributions - \$22 million for the QSST distributions). Additionally, if the value of  
7 ESF is removed from the MRT, the MRT currently has approximately \$68 million in value.  
8 Assuming that the return on the \$68 million was only 1% (which it is not, it is much higher), the  
9 MRT would still be able to generate enough income to cover the \$120,000 payment to Michelle  
10 every year. Since the only benefit would be to some remainder beneficiary appointed by Michelle  
11 through her exercise of her testamentary power of appointment, Michelle will never receive any  
12 financial benefit from the sale. However, Michelle will lose her ability to use and enjoy the  
13 property if the Trustees are permitted to sell.

14.     **29. Mr. Lund Has Used And Enjoyed The ESF Ranch For Years.** Mr. Lund has  
15 consistently used and enjoyed the ESF Ranch throughout the last 40 years. The only reason Mr.  
16 Lund has not regularly used and enjoyed the ESF Ranch over the past few years is because of the  
17 treatment that Mr. Lund, and his family, have suffered since this litigation began in 2009. Recently,  
18 the hostility of the Trustees has created a situation where Mr. Lund has chosen not to partake in the  
19 benefit of being able to travel to the ESF Ranch as regularly as he used to. The caretakers follow  
20 the lead of the Trustees and treat Mr. Lund with the same hostility. However, if the Trustees  
21 changed, Mr. Lund would again immediately resume his regular trips to Wyoming to enjoy the ESF  
22 Ranch.

23.     **30. The Trustees Have Never Before Attempted To Sell The ESF Ranch.** Prior to  
24 the attempt to sell the ESF Ranch in September, 2020, there was never any prior sale that was  
25 contemplated by the Trustees. While the Trustees have a duty to maximize value of trust assets, this  
26 does not mean that the Trustees should arbitrarily sell sentimental property that has been in the  
27 family for over 40 years.

28.     **31. The Trustees Have Admitted The Sentimental Nature and Connection of The**

1       **ESF Ranch.** The Trustees, through their verification on the Petition to Approve the OSA have  
2 admitted that the ESF Ranch has a “particular nature” and a “connection to the Lund family.” In  
3 signing the Verifications, the Trustees have admitted that these statements are “true” of their own  
4 knowledge. Clearly, by specifically carving out a special plan for the division of ESF because its  
5 “particular nature” and “connection” to the Lund’s the Trustees fully understood the sentimental  
6 nature of the property.

7       32.      **The Trustees Misrepresentation of the Appraised Value of the ESF Ranch.** The  
8 Trustees have represented that the sale of ESF Ranch for \$35 million is a “boon” for both the BRT  
9 and MRT. However, the Trustees base this “boon” on the appraised value being \$19,600,000.  
10 However, the ESF Ranch has always had two different appraised values: (1) the value as a single  
11 large-tract residential property; and (2) the value at its highest and best use. The last appraisal that  
12 Mr. Lund has is for the appraised value as of December 31, 2018 which establishes that the value as  
13 a single large-tract residential property was \$19,520,000 and as subdivided the value was  
14 approximately \$31,940,000. The Trustees have always reported to the beneficiaries the value as the  
15 average between the two appraised values. For instance, in 2018 the value was reported as  
16 \$25,730,000. That value increased to \$26,425,000 in 2019. That average value had increased  
17 nearly \$6 million dollars since 2010. Using simple arithmetic, the value of the ESF Ranch as  
18 subdivided lots would be \$33,270,000 ( $X = (\$26,425,000 \times 2) - \$19,600,000$ ). Therefore, the  
19 alleged offering price is an increase of only 5% over the 2019 appraised value. Notably, that  
20 offering price is the gross price from which the costs of sale including the Trustees’ commission  
21 must be subtracted. Thus, the net to both trusts will be substantially less than \$35 million after  
22 capital gains taxes are paid. Finally, the appraised value has continued to increase annually and  
23 shows no sign that the increase in value will stop. Waiting until after the death of Mr. Lund or  
24 Michelle to occur will result in additional returns to both trusts.

25       33.      **There Is No Need To Disentangle Jointly Owned Assets.** The Trustees purported  
26 reason for selling the ESF Ranch was to disentangle jointly owned assets held by both the BRT and  
27 MRT. However, that was required in OSA because of the logistics of separate trustees for the BRT  
28 and MRT. The OSA has now been disapproved of and the Petition to Approve it has been denied.

1 Therefore, there is no need to disentangle the ESF Ranch because it is a jointly owned asset.

2       34.     **There Is No Need To Diversify The Assets Of The BRT And MRT.** The Trustees  
3 additionally contend that the sale of the ESF Ranch will diversify the assets of the BRT and MRT.  
4 However, since Sharon purchased the ESF Ranch it has always been a non-income producing asset  
5 held by the trusts for the benefit, use, and enjoyment of the beneficiaries. Furthermore, the BRT  
6 and MRT contain a specific clause which states: “The Trustees shall not be required to sell any of  
7 such assets merely for the sake of diversifying trust investments, or for the sake of obtaining funds  
8 to purchase assets that produce more income.” (Ex. 1, Art. VII ¶(A)). The Trustees claim for the  
9 need to diversify is simply wrong. Sharon specifically stated that there was no need to diversify  
10 trust assets.

11       35.     **Even If The BRT Purchases 100% Of ESF Ranch There Is No Need To Sell The**  
12 **Asset.** The BRT is worth more than \$200 million and is only required to pay approximately  
13 \$120,000 in income to Mr. Lund. Furthermore, the costs of ESF Ranch per year are about  
14 \$150,000. So, the combined expenses of paying Mr. Lund’s income distributions with paying  
15 100% of the costs of the ESF Ranch still leave the BRT with excess income every year. Even  
16 assuming only a 1% return on investments, the BRT will earn approximately \$2.15 million per year  
17 (\$215 million x 1% = \$2.15 million). Therefore, even if the BRT is the 100% owner there will be  
18 significant income (not principal) to pay the costs of the ESF Ranch as a non-income producing  
19 property.

20       36.     **The Trustees Do Not Have Absolute Discretion To Sell The Property.** While the  
21 BRT (and MRT) contain the provision that the Trustees have “all rights, powers, and privileges of  
22 the absolute owner of property would have”, that power does not give them absolute discretion.  
23 Instead, the discretion they have is still subject to review. Sharon indicated specifically in the Lund  
24 Family Trust, and its successor Residuary Trusts, that the stock held in Retlaw Inc. and The Walt  
25 Disney Company, or any of its successors did not have to be sold to diversify the assets. It stands to  
26 reason that the ESF Ranch, which was added to the Trust after its creation should be treated in the  
27 same way. Retlaw and The Walt Disney Company were the companies started by Sharon’s father,  
28 Walt Disney, and thus were highly sentimental and held a greater value with her. Similarly, the

1 ESF Ranch was a non-income producing property that was purchased by the father of Mr. Lund and  
2 Michelle. Therefore, there is no need to diversify and the Trustees' power to sell should only be  
3 used if the benefit to the Trusts outweighs the cost to the beneficiaries of losing the family property.

4       37.     **Notice.** The names and addresses of the persons entitled to notice are as follows:

5	Bradford Disney Lund 6638 N. 66th Place Paradise Valley, AZ 85253	Beneficiary
6	Michelle A. Lund 25 Ocean Heights Dr. Newport Coast, CA 92657	Contingent Beneficiary
7	David Nelson, Esq. Loeb & Loeb LLP 10100 Santa Monica Blvd, 22nd Floor Los Angeles, CA 90067	Attorney for Michelle A. Lund, Contingent Beneficiary
8	L. Andrew Gifford 2297 Featherhill Road Santa Barbara, CA 93108	Trustee
9	Robert L. Wilson 1478 Glen Pines Ct. Chino Hills, CA 91709	Trustee
10	Douglas Strode 2021 Shipway Lane Newport Beach, CA 92660	Trustee
11	First Republic Trust Company 111 Pine Street San Francisco, CA 94111	Trustee
12	Hayward Kaiser, Esq. Andrew Spitzer, Esq. Mitchell Silberberg & Knupp LLP 2049 Century Park East, 18th Floor Los Angeles, CA 90067	Attorneys for Trustees
13	Sharon D. Lund Foundation 725 W. Town & Country Rd., Suite 520 Orange, CA 92868	Contingent Beneficiary
14	Edward S. Renwick, Esq. Hanna and Morton LLP 444 South Flower Street, Suite 2530 Los Angeles, CA 90071	<b>Request for Special Notice</b> Attorneys for the Sharon D. Lund Foundation
15	James Toma Supervising Deputy Attorney General State of California Department of Justice 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013	Attorney General

16       38.     **Request for Special Notice.** The only request for special notice filed in this matter  
17 was filed by Hanna and Morton, LLP, attorneys for the Sharon D. Lund Foundation.

1           **IV. CONCLUSION**

2           39.       **Conclusion.** For all the foregoing reasons, Mr. Lund prays for and requests that this  
3 Court enter the following orders:

- 4           a.       Granting Mr. Lund's PFI directing the Trustees of the BRT and MRT not to  
5                   sell the ESF Ranch Property; and  
6           b.       For such other and further relief as the Court may deem just and proper.

7 Dated: January 7, 2021

THE PITET FIRM, PC  
HORNE SLATON, PLLC

9           By: /s/ Sandra Slaton  
10                   Sandra Slaton

11                   Attorneys for Bradford Lund, Beneficiary and  
12                   Petitioner

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **VERIFICATION**

I, Bradford D. Lund, says:

I am the beneficiary of the above referenced trust and am a party to the action. I have read the foregoing document which bears the title: **Bradford D. Lund's Petition for Instruction Regarding Sale of Real Property**. I assert that the contents of that document are true and correct based upon my own personal knowledge, except those statements made upon information and belief which I believe to be true.

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

Executed on January 7, 2021 at Paradise Valley, Arizona.

Bethel Delon  
Baptist Church

Bradford D. Lund

## PROOF OF SERVICE

STATE OF ARIZONA, COUNTY OF MARICOPA

I am employed in the County of Maricopa, State of Arizona, I am over the age of eighteen years and am not a party to this action; my business address is HORNE SLATON, PLLC, 6720 N. Scottsdale Road, Ste. 285, Scottsdale, AZ 85253, and my business email address is [monaco@horneslaton.com](mailto:monaco@horneslaton.com)

On January 29, 2021, I served a copy of the foregoing document(s) described as: Request For An Immediate Stay Of All Proceedings Before The Hon. Paul T. Suzuki; Memorandum Of Points And Authorities; Declaration Of Sandra Slaton on the interested parties in this action:

### **[SEE ATTACHED SERVICE LIST]**

- BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx, with delivery fees paid and provided for, and addressed to the persons at the addresses list in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

- BY ELECTRONIC MAIL: In accordance with Electronic Service Stipulation in this matter, I served the above-mentioned document electronically on the parties listed on the attached E-Service List at the mail addresses shown below and,

to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

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

Respectfully submitted January 29, 2021.

/s/ Matthew Monaco

Matthew J. Monaco, Esq.

## SERVICE LIST

### E-mail Addresses for E-Service

**Attorneys for Trustees:** L.  
**Andrew Gifford, Robert**  
**Wilson, Douglas Strode,**  
**First Republic Trust**

**Company**

Hayward Kaiser, Esq, Andrew  
Spitser, Esq. Karl De Costa,  
Esq.

MITCHELL SILBERBERG &  
KNUPP LLP  
11377 West Olympic Boulevard  
Los Angeles, CA, 90064

hjk@msk.com; kjd@msk.com;  
acs@msk.com

**Attorneys for Michelle A.**  
**Lund**

David C. Nelson, Esq.  
LOEB & LOEB LLP  
10100 Santa Monica Boulevard,  
22nd Floor  
Los Angeles, CA 90067-4164

dnelson@loeb.com

**Attorneys For Co-Trustees**

Sherry Lund and Jim Dew  
Lauriann Wright, Esq., Abigail  
McLaughlin, Esq.  
130 S Jackson St  
Glendale, CA 91205

lauriann@wkdlegal.com;  
abigail@wkdlegal.com

**Attorney General's Office**  
California Department of  
Justice  
Attn: Mr. James Toma, Esq.

james.toma@doj.ca.gov

300 South Spring Street, 13th  
Floor  
Los Angeles, CA 90067

**Trial Court Judge**  
The Hon. Paul T. Suzuki  
Dept. 3  
111 N. Hill Street  
Los Angeles, CA 90012

Via FEDEX Only