

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PINNACLE DEVELOPMENT PARTNERS LLC and GENE A. O'NEAL,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">CIVIL ACTION NO.</p> <p style="text-align: center;">06 CV 2431-JTC</p>
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**RECEIVER'S MOTION FOR APPROVAL OF  
INTERIM DISTRIBUTIONS PENDING FINAL  
RESOLUTION OF ALL DISPUTED CLAIMS**

S. Gregory Hays, the court-appointed Receiver for Pinnacle Development Partners, LLC, files this Motion for Approval of Interim Distributions Pending Final Resolution of All Disputed Claims, and shows as follows:

**BACKGROUND**

1.

Pursuant to the terms of an Order dated October 11, 2006 (the "Receivership Order"), S. Gregory Hays was appointed as Receiver for Pinnacle Development Partners, LLC ("Pinnacle") and its assets, including all assets of partnerships or other entities controlled by Pinnacle (the "Receiver Estate"). The Receivership

Order grants the Receiver broad authority over the organization, management, control and disposal of the assets of Pinnacle Development Partners LLC (“Pinnacle”), including the properties owned by the various partnerships formed by Pinnacle (Pinnacle and its assets are collectively referred to as the “Receiver Estate”).

2.

In furtherance of his duties, the Receiver provided investors and other creditors with claim forms, which were approved by this Court by Order dated January 22, 2007. The January 22, 2007 Order also established a Claims Bar Date of March 1, 2007. Subsequently, on April 18, 2007, the Court approved the Receiver’s Plan for Claims Administration and Distribution of Proceeds (the “Plan”), a true and correct copy of which is attached hereto as Exhibit A.

### **ANALYSIS OF CLAIMS**

3.

The Receiver has completed his initial analysis of all Claims<sup>1</sup> filed in accordance with the Plan. 1959 Claims were filed, with a total amount claimed of \$42,833,545.66 Of these Claims, 1935, representing \$42,192,690.21 claimed,

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<sup>1</sup> Capitalized terms not defined herein shall have the same meaning as in the Plan.

were Investor Claims, and 24, representing \$640,855.45 claimed, were Creditor Claims.

4.

The Receiver has issued a Claim Determination Notice to each Claimant who timely filed a Claim. Of the 1959 Claims filed, the allowed amount of 1946 Claims is not in dispute. The total amount of all allowed claims is \$40,339,496.67.

5.

In response to the Receiver's Claim Determination Notices, 131 Claimants filed Disputed Claims. Pursuant to Section 2.6.2 of the Plan, the Receiver has resolved the majority of these Disputed Claims, and only 12 Disputed Claims remain. Of these 12 claims, all are Investor Claims and only one involves a dispute regarding the amount invested or the amount returned to the Investor. The remaining 11 Disputed Claims involve Claimants who are requesting that the Receiver allow a claim in excess of the Investor's Net Loss as defined by the Plan. In addition to the Disputed Claims, the Receiver also has received notice from one Creditor that it may seek to dispute the Receiver's disallowance of its late filed Claim. Although the total amount sought by the remaining Disputed Claims and late filed Claim is not clear because not all Claimants have specified the amount in dispute as required by the Plan, the potential Allowed Amount of the Disputed

Claims represent approximately \$715,000; however the Receiver believes the ultimate allowed amount for these Claims will be significantly less. Thus, the remaining Disputed Claims represent only 0.6% of all Claims, and less than 1.7% of all amounts claimed.

6.

The Receiver continues to work towards the resolution of the remaining Disputed Claims. If necessary, the Receiver, pursuant to Section 2.6.3 of the Plan, will file for resolution by this Court those Disputed Claims for which a voluntary resolution can not be reached. The Receiver will also file with the Court, on a periodic basis, any Disputed Claims that are voluntarily resolved, and the Receiver will add such Claims to the Approved Claims for which interim distributions are authorized.

### **INTERIM DISTRIBUTIONS**

7.

Because the appropriate amounts of the vast majority of the Claims filed against the Receiver Estate have been established, the Receiver believes that it is in the best interests of both the Receivership Estate and the injured investors and creditors of Pinnacle to make interim distributions on currently Approved Claims, prior to the Final Determination of all currently Disputed Claims.

8.

Interim distributions are particularly appropriate here because the Receivership Estate currently has close to \$13 million cash on hand, the majority of which is available for immediate distribution to Pinnacle Investors and Creditors. The Receivership Estate also includes a substantial number of other assets, including pieces of real property and claims against third parties, which will yield additional funds available for distribution. These funds are likely to become available in varying amounts and at different times. Allowing the Receiver the discretion to make interim distributions as will insure that aggrieved Investors and Creditors benefit from these funds as quickly as possible.

9.

Pursuant to Sections 2.7 and 3.3 of the Plan, the Receiver requests that the Court grant the Receiver the authority to make interim distributions from the Receiver Estate to pay Approved Claims in such amounts and at such intervals as the Receiver determines to be prudent. Consistent with the terms of the Plan, no interim distribution will be made except after 10 days notice to the SEC, with opportunity for the SEC to object to the Court regarding such distribution.

10.

Pursuant to Section 2.7 of the Plan, attached hereto as Exhibit B is a schedule of all currently determined Investor Approved Claims, and attached as Exhibit C is a schedule of all currently determined Creditor Approved Claims. Because the Receiver was able to reach resolution with all Claimants included on the schedule, there are no Subordinated or Disapproved Claims to report to the Court at this time. The Receiver requests that the Court approve the attached schedules and grant the Receiver the Authority to make interim distributions in accordance with Sections 2.7 and 3 of the Plan.

11.

Pursuant to Section 2.7 of the Plan, the Receiver shall reserve funds sufficient to make appropriate distributions on Disputed Claims that are later categorized as Approved Claims. To that end, the Receiver shall submit to the Court at a later date all Disputed Claims that require resolution by the Court, as well as a list of all Approved Claims that are agreed upon after the date of this motion. Moreover, within 30 days after the final determination of all Disputed Claims, the Receiver will file with the Court a final definitive schedule of all Approved Claims, Subordinated Claims and Disapproved Claims.

12.

Pursuant to Section 3.5 of the Plan, at the conclusion of the receivership, and subject to providing for payment of any then unpaid or contingent Administrative Claims and Expenses, the Receiver shall make a final distribution from all remaining assets of the Receiver Estate. Prior to making such final distribution, the Receiver will file with the Court a Final Report setting forth the conclusion of all activities in this receivership and indicated the Receiver's intend to make a final distribution.

### **CONCLUSION**

WHEREFORE, S. Gregory Hays, Receiver, respectfully requests that the Court grant the Receiver's Motion for Approval of Interim Distributions Pending Final Resolution of All Disputed Claims and approve the schedule of currently Approved, Subordinated and Disputed Claims.

This 27<sup>th</sup> day of July, 2007.

By: /s/ J. David Dantzler, Jr.  
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**Local Rule 7.1D Certificate of Compliance**

The undersigned certifies that this brief has been prepared with on of the font and point selections approved by the Court in Local Rule 5.1B.

By: /s/ J. David Dantzler, Jr.  
J. David Dantzler, Jr.  
Georgia Bar No. 205125

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**CERTIFICATE OF SERVICE**

This is to certify that on July 27, 2007, I electronically filed this  
RECEIVER'S MOTION FOR APPROVAL OF INTERIM DISTRIBUTIONS  
PENDING FINAL RESOLUTION OF ALL DISPUTED CLAIMS with the Clerk  
of Court using the CM/ECF system which will automatically send email  
notification of such filing to the following attorneys of record:

James Alexander Rue

William P. Hicks

Michael D. Watson

John Gerald Westrick

This 27th day of July, 2007.

By: /s/ J. David Dantzler, Jr.  
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