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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT, INC.,
CANYON CREEK FINANCIAL, LLC, and
JON M. HARDER,

Defendants,

DARRYL E. FISHER, J. WALLACE
GUTZLER, KRISTIN HARDER, ENCORE
INDEMNITY MANAGEMENT, LLC,
SENETET LEASING COMPANY, FUSE
ADVERTISING, INC. KDA
CONSTRUCTION, INC., CLYDE
HAMSTREET, and CLYDE A . HAMSTREET
& ASSOCIATES, LLC,

Relief Defendants.

Case No. 09-CV-6056-HO

**ORDER APPROVING BARE LAND
ELECTION TERMS OF DISTRIBUTION
PLAN OF RECEIVER AND CHIEF
RESTRUCTURING OFFICER FOR
SUNWEST ENTERPRISE**

On October 2, 2009, this Court entered its Order [Dkt. No. 875] approving the
Distribution Plan of Receiver and Chief Restructuring Officer for Sunwest Enterprise

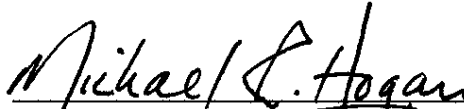
("Distribution Plan"). By its Order, the Court previously reserved consideration of the Bare Land Election terms of the Distribution Plan to a later hearing to be set by the Court, to be held no later than the hearing on confirmation of the Reorganization Plan in the related chapter 11 case In re Stayton SW Assisted Living, LLC, et al., Case No. 09-6082. The Court directed parties with an interest in the Bare Land Election terms to mediation, which has resulted in the final Bare Land Election terms attached hereto as Exhibit "A" (the "Final Bare Land Election Terms"). The Court finds and concludes that such Bare Land Election terms are fair and equitable to Bare Land Investors and other parties in interest, and are consistent with the purposes and effects of the approved Distribution Plan. Accordingly,

IT IS HEREBY ORDERED that:

1. The Court hereby approves the Final Bare Land Election Terms.
2. The Final Bare Land Election Terms attached hereto as Exhibit "A" are hereby deemed to be substituted for and supersede Exhibit 12 to the Distribution Plan.

Dated: _____

27 April 2010



Hon. Michael R. Hogan
Judge, United States District Court

Bare land election

The Receivership estate includes approximately 35 parcels of undeveloped land in which the Receivership entity holds ownership interests that vary from less than 1% to more than 50%. The TIC investors in these properties may elect to withdraw the properties from the Receivership estate by fulfilling the following conditions and procedures:

1. For any given bare land property, TICs holding a minimum of 85% of the fee interests held by the investor TICs must consent to participate in the Bare Land Election.
2. Non-electing TICs' ownership in the property shall be conveyed to the Receiver or obtained through an adversary process and will be sold by the Receiver to the electing TICs as provided below
3. Once the response date in the adversary proceedings filed against TIC Investors in bare land properties has passed (which date has not yet been established), the Receivership will dismiss the adversary proceedings against all TIC investors in properties for which a valid Bare Land Election has been made and all steps outlined below have been accomplished. The electing TICs shall have the right to revoke their election within 30 days of the date that the current FMV for the property is determined as provided in section 6.2 below. Any electing TIC that revokes its election shall receive only cash distributions on account of any claim against the Receivership estate.
4. Electing TICs assume all debts and other obligations secured by the property, including mortgage debt, taxes, and liens. Electing TICs reserve the right to contest the validity and amount of any such assumed obligation. The Receiver agrees not to further encumber the property with any additional secured debt.
5. Releases and Assignment of Claims.
 - 5.1. Electing TICs in the property shall release all claims against all Receivership entities, employees of all Receivership entities, and the HFG parties.
 - 5.2. The claims of non-electing TICs shall be consolidated and resolved in accordance with the relevant provisions of the Distribution Plan as those provisions apply to TICs not making the Bare Land Election.
 - 5.3. Electing TICs shall assign to the Receiver the third-party claims shared by all the investors in a particular property. Individual claims (those claims not held in common by all the investors in a particular property, such as claims against brokers) are not assigned to the Receiver.
 - 5.4. The electing TICs shall obtain releases from secured lender(s), if any, of any claims against Receivership entities and any personal guarantors other than electing TICs for liability on the secured debt and for liability for any deficiency judgment arising from the secured debt.
 - 5.5. The releases and assignments in this section apply only to claims related to or arising from the property at issue.
6. Purchase of Receivership interest. The electing TICs shall purchase the Receivership's interest in the property for the Receivership's pro rata share of the property's Net Current Fair Market Value.

- 6.1. Any ownership interest in the property transferred to the Receiver by a non-electing TIC shall be added to and included with the Receivership interest in the property.
- 6.2. Net Current Fair Market Value equals the current fair market value of the property minus all debts secured by the property, which are being assumed by the electing TICs. If agreement on current fair market value cannot be reached, the parties will select an appraiser to determine the current fair market value of the property. If the parties cannot agree upon the appraiser to use, the parties shall each submit a list of up to 3 acceptable appraisers, with background information on each proposed appraiser, to the mediator. From the lists submitted by both parties, the mediator shall select one appraiser. The selected appraiser shall appraise the property, with the costs of the mediator and the appraiser split evenly between the parties. Both parties shall accept the valuation determined by the appraiser as the current fair market value of the property.
- 6.3. The electing TICs shall be entitled to a credit against the purchase price of the Receivership's interest in the property equal to 6% of the current fair market value of the property. In the event the 6% exceeds the value of the Receivership's interest in the property, the electing TICs may not apply that excess to other amounts owed to the Receivership.
7. Repayment of TIC cash lease payments. Electing TICs shall repay to the Receiver all of the cash lease payments received by TICs in the property (whether they are electing TICs or non-electing TICs) since January 1, 2006.
8. Excess Value. TICs exercising the Bare Land Election cannot receive value based on the valuation set forth in Section 6.2 above or by agreement of the receiver and electing TICs greater than 100% of their original investment. Electing TICs must pay value in excess of 100% of their original investment to the Receivership.
9. All amounts due to the Receivership under this election can be paid in cash with a 10% discount at the time of closing of this transaction or by a promissory note secured by a first position Trust Deed on the property (or second position Trust Deed if the property is currently encumbered by debt) in the amount due the Receivership with interest at the rate of 4% per annum simple interest, with no interest or principal payable until the sale or refinance of the property or on the last day of the 36th month after the closing of the transaction by which the Receivership's interest is transferred to the electing TICs, whichever occurs first. The electing TICs shall have several liability on the promissory note in the amount of each electing TIC's pro rata ownership interest in the property.
10. Each electing TIC shall receive a non-warranty deed from the Receiver for the electing TIC's pro rata share of the Receivership's interest in the property. To the extent in the Receiver's possession or control, the Receiver shall transfer to the electing TICs relevant information and documentation regarding the property (e.g. land use materials, marketing materials, environmental reports, appraisals, engineering and feasibility studies, plans and drawings, and similar information) and, to the extent assignable, and at no cost to the Receiver, assign to the electing TICs all entitlements (e.g. land use approvals, building permits) for the property.

11. Payments made by TICs to protect the value of the property and its improvements or to avoid foreclosure ("Protective Payments"), providing such advances have been or are explicitly approved by the CRO or the Receiver, shall be deducted from the total amount due to the Receivership.
12. Land Sold Prior to Effective Date: The Receivership is in the process of selling three parcels of bare land to third party buyers. Investors in these properties shall be eligible for the Bare Land Election on the same terms as other TICs, with the following exceptions:
 - 12.1. TICs making the Election must pay the Receivership's out-of-pocket selling expenses, including brokers' fees, transfer taxes, escrow and other closing costs, in addition to making all other payments and meeting all other conditions required under the Election;
 - 12.2. TICs making the Election must pay the Receivership for administrative costs in selling the property subject to the following caps:
 - 12.2.1. For properties with sale price up to and including \$500,000, 3% of the sale price;
 - 12.2.2. For properties with sale price from over \$500,000 up to and including \$1 million, 2.5% of the sale price;
 - 12.2.3. For properties with sale price over \$1 million, 2% of the sale price.
 - 12.3. Payment of the Receivership's out-of-pocket selling expenses and administrative costs shall be subject to Court approval;
 - 12.4. In return for meeting the conditions of the Election, instead of receiving title to the land, electing TICs will be paid cash directly from the sale.
 - 12.5. The Receivership shall cooperate with the TICs, at no cost to the Receivership, in attempting to structure the sale of the TICs' interest in the property as a sale qualifying under IRC Section 1031 for the TICs so electing.