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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
Eugene Division

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

DECLARATION OF RECEIVER MICHAEL  
GRASSMUECK IN SUPPORT OF MOTION  
FOR ORDER ESTABLISHING ALLOWED  
AMOUNTS OF CLAIMS

In Re: STAYTON SW ASSISTED LIVING,  
L.L.C. (Constituting the Sunwest Unitary  
Enterprise as determined by the Order Entered  
on October 2, 2009 in U.S. District Court  
Case No. 09-cv-6056-HO,

Debtor

I, Michael A. Grassmueck, declare:

1. I am the Court-appointed federal equity receiver ("Receiver") for Sunwest Management, Inc. ("SMI") and certain subsidiaries, affiliates and entities controlled by them, as defined and identified in the orders appointing me. I submit this declaration in support of the Motion for an Order Establishing Allowed Amounts of Claims and the supporting Memorandum of Points & Authorities (the "Motion").

2. I have personal knowledge of the facts stated in this declaration and could and would competently testify thereto if called upon to do so. My knowledge is based upon my work and the work of my staff and professionals in carrying out the duties and obligations of the Receiver under the orders appointing me and under the Distribution Plan. My knowledge and views of the Claims are also informed by my 25 years of experience serving as a trustee in bankruptcy and as a receiver.

**Appointment of the Receiver**

3. On March 2, 2009, the Securities and Exchange Commission (the "SEC") filed its Complaint in this action ("Action") naming Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC and Jon M. Harder ("Harder") as defendants and Darryl E. Fisher ("Fisher"), J. Wallace Gutzler ("Gutzler"), Kristin Harder, Encore Indemnity Management, LLC, Senenet Leasing Company, Fuse Advertising, Inc., KDA Construction, Inc., Clyde Hamstreet, and Clyde A. Hamstreet & Associates, LLC as relief defendants. The SEC's Complaint alleged violations of federal securities laws. In summary, the Complaint alleged securities fraud in the offering of various investments in Receivership entities and that the parties in control of the Sunwest enterprise operated it virtually as a "Ponzi" scheme. In conjunction with the Action, the SEC requested injunctive relief and the appointment of a receiver.

4. The Court entered its Order Granting Preliminary Injunction and Appointing Receiver on March 10, 2009, appointing me as receiver over SMI and other entities identified in

Exhibit A to that order. The Court subsequently appointed me as receiver over additional entities pursuant to additional orders entered by the Court on May 27, 2009 and August 28, 2009.

**Overview of Claims Review and the Proposed Allowed Amounts**

5. The Distribution Plan establishes a methodology for evaluating the Claims of each class of Claim. In general, Plan Distributions to Investors and certain unsecured creditor Claims will be determined on a "MIMO" basis, meaning "Money In, Money Out." Preferred membership and LLC investors will have a one-time opportunity to elect to retain their interests in lieu of having an Allowed Claim, and TIC Investors will be given the option to retain bare legal title, subject to certain conditions including a new and superseding master tenant lease. These elections are to be made concurrently with the submission of Proofs of Claim.

6. As set forth in the Motion, the Receiver filed a motion to approve the Claim procedures, establish a bar date, approve the Claim form and other matters related to the Claims process. My intent is and has been to make the Claims process as efficient and transparent as possible so that Claimants can understand how their Claims will be classified and consequently what Distribution Plan treatment they are entitled to and what Plan Distributions they could reasonably expect. Processing Claims is necessary in order for me as Receiver to determine the maximum amount of Claims that will be entitled to Plan Distributions of cash and securities.

7. I, with assistance from my staff (collectively, the "Receiver's Office"), have followed and implemented the Claims procedures. The process is described more fully below, as well as in the Motion. Upon receiving Proofs of Claim, the Receiver's Office commenced a review and analysis of the Claims in order to reconcile the Claims with the books and records of the Receivership Entities and other sources.

8. Where discrepancies existed between a Claimant's assertion of a Claim and the records of the Receivership Entities and other records, the Receiver's Office communicated directly with Claimants to obtain the back-up documentation to substantiate, among other things, the identity of the Claimant and the amount of the investment. Through this process, the Receiver's Office was able to resolve a substantial number of the initially disputed Claims. The

Receiver's Office engaged in a subsequent "consent" process in September and October 2010 and in multiple mediations to address the Claims.

9. The results of this process are the Receiver's recommendations for allowing and disallowing Claims, which are set forth in Exhibit "1" attached to the Motion. The exhibit reflects: (1) the assigned Claim Number; (2) the amount of each Claim; (3) the basis to allow or disallow the Claim in whole or in part (*e.g.*, unsubstantiated, overstated, subject to certain deductions for payments made to the Claimant, etc.); and (4) the recommendation to allow or disallow part or all of each Claim. By the Motion, I seek an order establishing the Allowed Amounts of the Claims for Tranche A purposes.

### **The Claims Process**

#### Notice to Investors and Creditors.

10. Pursuant to orders of the Court, the parties engaged BMC Group as noticing agent. As set forth in the Affidavits of Service filed by BMC Group, BMC Group served the interested parties in these matters.

11. In addition, the Claims Procedures Order, Proof of Claim form and Notice of Election form were made available on the Receiver's website. We also posted lists of facilities, sorted by facility name, state and entity name, to assist potential Claimants. The Distribution Plan and other important documents also remained available on the Receiver's website. The Proof of Claim and Election forms, among other documents, were also made available on the CRO's website.

12. Further, BMC Group maintained a website that included substantial information regarding the Claims process in the Sunwest matter. The website included the Claims Procedures Order, the Notice of Election form, the Proof of Claim form, list of entities, links to investor updates, important dates, "frequently asked questions", and searchable court dockets for both the SEC Action and the Bankruptcy Case, among other Claims-related information. In addition to having the ability to obtain paper copies from the website, the BMC Group website allowed potential Claimants to submit a Proof of Claim electronically online through the website.

13. In order to assist investors and creditors and to facilitate efficient filing and processing of Claims, my office posted a "frequently asked questions" document relating to the Claims form and Claims process on the Receiver's website, along with the Claims Procedures Order and related forms. Further, in February 2010, my office made available a detailed explanation of the Proof of Claim form, with each portion of the Proof of Claim Form numbered and explained. In addition, on July 7, 2010, I, as Receiver, and staff from the Receiver's Office hosted a "webinar" online to clarify the Claims process and address common questions and concerns. The recording of the webinar, as well as a pdf file of the slides presented, were also made available on the Receiver's website. The parties also established a Sunwest Claims hotline (a toll free number), and a dedicated email address for Sunwest Claims.

Claims Intake

14. The Proof of Claim Forms and Election Forms provided for the Proof of Claim and Elections to be submitted to BMC Group at the addresses provided, or to submit them online. To be thorough and inclusive, we also obtained and considered Proofs of Claim and Elections sent to other addresses including the CRO, Debtors' counsel, the Receiver's Office, and those Claims filed directly with the Court in the Bankruptcy Case. Claims forms were submitted to BMC for compiling, scanning and quality control. My office received the Proof of Claims forms from BMC in four batches from April 13 to May 24, 2010.

15. Each Claim was assigned a number. When a Claimant amended their Claim information with BMC, a new and distinct Claim number was assigned. Many Claimants filed multiple Proofs of Claims for the same loss, creating duplicate Claims. If a Claimant checked multiple Claim types on one Proof of Claim form, the Claim was "split" in order to evaluate each Claim type separately, with each receiving a Claim number. If a Claimant filed one Proof of Claim for investments in multiple properties, the Claim was also split in order to evaluate each investment separately.

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Claims Auditing.

16. The Receiver's Office spent significant time working with Sunwest and the CRO to obtain all payment and investment records, which were then used to audit Claims. The Receiver's Office also reviewed any documentation submitted with the Proof of Claim.

17. Once all Claims were initially audited for a particular Claimant, the Receiver's Office sent the Claimant a letter that described the proposed treatment of their Claim. These individual letters were sent out May 1 through June 30, 2010 as part of the standard operating procedure of the initial Claims audit. In many cases, Claimants submitted additional documentation or explanation regarding Claims to which the Receiver was proposing an objection in whole or in part. The Receiver's Office also engaged in telephone calls and other correspondence with Claimants to attempt to resolve Claims issues and address discrepancies between the Claimants assertion of a Claim and the records of the Receivership Entities. Through this process, the Receiver's Office was able to resolve a substantial number of the initially disputed Claims.

18. Overall, after "splitting" certain Claims to address Proof of Claim forms that included multiple Claims or categories, the Receiver's Office evaluated 11,821 numbered Claims.

Mediation Of Claims.

19. On September 24, 2010, the Court entered an Order in the SEC Action and in the Bankruptcy Case setting mediation for October 18, 19 and 20, 2010 with regard to all Claims that remained disputed or as of the date of the order were unliquidated and contingent (the "Mediation Order"). The Mediation Order required all parties with Claims which were disputed or contested by the Receiver to notify the Receiver and the Court of their intent to attend the mediation. The parties were directed to contact the Receiver to determine which day their Claims would be mediated.

20. Notice of the Mediation Order was provided to the Claimants. We sent a letter to Claimants. A true and correct copy of the letter is attached as Exhibit A hereto. A copy of the

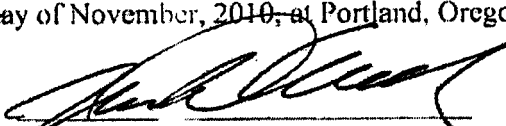
letter and the Mediation Order were also posted on the Receiver's website for this case. The letter informed Claimants that if they disputed the proposed treatment of their Claims, that they needed to read the enclosed Mediation Order closely, and that the Mediation Order required Claimants that disagreed with the Receiver's proposed treatment to appear at the courthouse for mediation starting at 9:00 a.m. on October 18, 19 and 20, 2010. The letter, and the Mediation Order, also instructed Claimants that if they disputed a Claim treatment, they must notify the Court and Receiver of their objection and to determine which day their Claim would be mediated.

21. In September and October 2010, my office undertook a further consent process. The Receiver's Office attempted to contact all Claimants for the purposes of resolving any remaining disputes and obtaining the Claimants' written consent to the treatment of their Claims. The Receiver obtained consent forms on over 5,221 Claims.

22. In response to contacts made by Claimants directly to the Receiver or through notices of intent to appear at mediation filed with the Court, we created a schedule for the mediation of Claims on October 18 through 20. My staff, professionals and I then participated in those mediations pursuant to the Mediation Order. A number of additional previously disputed or contested Claims were resolved between the Receiver and Claimants. Certain other Claims, although mediated, were not resolved through the mediation process.

23. Exhibit 1 to the Motion, and the additional exhibits broken out by consent status, set forth the results of the mediations, consent process and the claims auditing process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 10<sup>th</sup> day of November, 2010, at Portland, Oregon.

  
MICHAEL A. GRASSMUECK

DECLARATION OF MICHAEL GRASSMUECK IN  
SUPPORT OF CLAIMS MOTION

**EXHIBIT A**





September 28, 2010

Re: *Securities and Exchange Commission v. Sunwest Management, Inc. et al.*  
Case No. 09-CV-6056-HO  
*In re: Stayton Assisted Living, LLC*  
Case No. 09-6082-HO

Dear Claimants:

The Court has issued an Order which describes the process for resolving disputed claims. The Receiver's office previously sent you a letter describing how they think your claim should be treated. You are receiving this letter because your claim(s) has not been resolved or we have not yet received the consent form indicating that you approve of our proposed treatment of your claim(s). If your claim has been allowed in full, you have consented to your proposed claim treatment or you have elected to take the LLC Settlement in place of your claim(s), you should read the enclosed Order, but you **do not need** to appear for mediation since all claim(s) issues have been resolved for your claim(s).

If you dispute the Receiver's proposed treatment of your claim(s), then please read the enclosed Order closely as it may affect your rights under the Plan of Distribution and the claim(s) you filed. This Order requires all claimants that disagree with the Receiver's proposed treatment of your claim(s) or secured lenders without approved deficiency claim(s), to appear at the Wayne L. Morse United States Courthouse in Eugene, Oregon for mediation starting at 9am on October 18, 19, and 20, 2010. If you dispute your claim, you must notify the Court and Receiver, in writing, of your objection and to contact the Receiver's office to determine what day your claim to be mediated. In order to ensure proper scheduling and preparation, please contact the Receiver's office no later than October 11, 2010 at 5pm. Please notify the Receiver's office of each claim that you intend to dispute and the nature of such dispute.

If you are working with the Receiver's office to resolve the dispute, you should still file a dispute for your claim per the instructions in the Court's Order, but **please continue working with the Receiver's office to resolve your claim**. If your claim is resolved prior to mediation, you will no longer need to attend.

Secured lenders that are unable to resolve their deficiency in this mediation shall be subject to an estimation proceeding under applicable Bankruptcy Code and to be set prior to November 22, 2010.

**All claimants need to read the enclosed Order and follow the instructions contained therein if they intend to dispute their claim(s)**. If you have questions about your claim(s) or to notify the Receiver of your dispute, please call 1-866-674-6791. If you have questions of the representative committees, please contact them at the phone number included in the Court's Order.

Sincerely,

Michael A. Grassmueck, Receiver