STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES

BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of: **CANYON CREEK DEVELOPMENT, INC.,** **SUNWEST MANAGEMENT, INC.,** **CANYON CREEK FINANCIAL, LLC.,** **SENIOR LIVING PROPERTIES II, LLC.,** **SENIOR LIVING PROPERTIES III, LLC.,** **KDA CONSTRUCTION, INC.,** **SENENET, INC.,** **ENCORE INDEMNITY MANAGEMENT, LLC.,** **ENCORE INDEMNITY, LTD.,** **SILVER INSURANCE MANAGEMENT, LLC., and** **SILVER INDEMNITY, LTD.** **Respondents.**	**S-09-0028-1** **ORDER TO CEASE AND DESIST, ORDER DENYING EXEMPTIONS, ORDER ASSESSING CIVIL PENALTIES, AND NOTICE OF RIGHT TO A PUBLIC HEARING**

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The Director of the Department of Consumer and Business Services (hereinafter, the "Director") has conducted and is continuing to conduct an investigation into certain business activities of Canyon Creek Development, Inc.; Sunwest Management, Inc.; Canyon Creek Financial, LLC; Senior Living Properties II, LLC; Senior Living Properties III, LLC; KDA Construction, Inc.; Fuse Advertising, Inc.; Contract Interiors, LLC; Hill Architects, P.C.; Senenet, Inc.; Lease Reserve, LLC; Encore Indemnity Management, LLC; Encore Indemnity, Ltd.; Silver Insurance Management, LLC; Silver Indemnity, Ltd.; Jon Michael Harder and others.

The Director has determined that certain of those parties have engaged in activities constituting violations of ORS 59.005 to 59.451, 59.991 and 59.995 (the "Oregon Securities Law").

The Director, acting by the authority of the Oregon Securities Law, hereby issues the following Findings of Fact, Conclusions of Law, Orders, and Notice of Right to a Public Hearing.

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I. FINDINGS OF FACT

The Director **FINDS** that:

A. THE RESPONDENTS AND OTHER PARTIES

1. Canyon Creek Development, Inc. ("Canyon Creek Development") is an Oregon domestic for-profit corporation (Business Registry Number: 012198-98) formed on or about March 28, 2001 with offices located at 3723 Fairview Industrial

Drive SE, Suite 270, Salem, Oregon 97302 (the "Fairview Location"). As of December 31, 2008, Jon Michael Harder ("Jon Harder") owned approximately 60% of Canyon Creek Development.

At all times material herein, Jon Harder was the Vice President and Director of Canyon Creek Development.

At all times material herein, Canyon Creek Development's principal business was acting as "Sponsor" for real estate investment properties — particularly senior living properties.[1]

2. Sunwest Management, Inc. ("Sunwest Management") is an Oregon domestic for-profit business corporation (Business Registry Number: 284595-84) formed on or about February 27, 1992 with offices located at the Fairview Location. As of December 31, 2008, Jon Harder owned approximately 75% of Sunwest Management. At all times material herein, Jon Harder was the Chief Executive Officer, President, and a Director of Sunwest Management. At all times material herein, Sunwest Management's principal business was marketing and managing senior living properties, including senior living properties Sponsored by Canyon Creek Development.

3. Canyon Creek Financial, LLC ("Canyon Creek Financial") is an Oregon domestic limited liability company (Business Registry Number: 321171-94) formed on November 4, 2005 with offices located at the Fairview Location. As of

[1] Generally, sponsors of real estate investment properties locate, acquire, promote, subdivide, arrange financing for, and dispose of real estate investment properties.

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December 31, 2008, Jon Harder (CRD Number: 5085573) was the 100% owner and Sole Member of Canyon Creek Financial.

On June 22, 2006, the United States Securities and Exchange Commission ("SEC") and Financial Industry Regulatory Authority ("FINRA")[2] licensed Canyon Creek Financial to act as a securities broker-dealer (CRD Number: 139306). That license was limited solely to the private placement of securities. On June 26, 2006, the Director licensed Canyon Creek Financial to act as a securities broker-dealer in Oregon (BD Number: 5555). That license was similarly limited solely to the private placement of securities.

At all times material herein, Canyon Creek Financial was a captive broker-dealer for Canyon Creek Development that offered or sold securities interests in senior living properties sponsored by Canyon Creek Development and managed by Sunwest Management.

4. Senior Living Properties II, LLC ("Senior Living Properties II") and Senior Living Proprieties III, LLC. ("Senior Living Properties III") are Oregon domestic limited liability companies formed on September 26, 2006 (Business Registry Number: 385790-90 and Business Registry Number: 385791-99, respectively) with offices located at the Fairview

[2] FINRA is a self-regulatory organization for securities firms doing business in the United States. It was created in July 2007 through the consolidation of NASD (formerly the National Association of Securities Dealers) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. FINRA registers industry participants and administers examinations for investment professionals to qualify for FINRA membership. The SEC has supervisory responsibility over FINRA. The CRD database is maintained by FINRA.

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Location.

As of December 31, 2008, Jon Harder owned approximately 33%; Darryl Fisher owned approximately 14%; and Wallace Gutzler owned approximately 2% of Senior Living Properties II. At all times material herein, Jon Harder was a manager of Senior Living Properties II.

As of December 31, 2008, Jon Harder owned approximately 33%; Darryl Fisher owned approximately 14%; and Wallace Gutzler owned approximately 2% of Senior Living Properties III. At all times material herein, Jon Harder was a manager of Senior Living Property III.

Both Senior Living Properties II and Senior Living Properties III served as the sole member of various limited liability companies that co-owned senior living properties with investors and that were sponsored by Canyon Creek Development and managed by Sunwest Management (the "Co-Owner").

5. <u>Gresham Chestnut Lane Senior Living Property, LLC</u> (the "Chestnut Lane Property LLC," or the "Chestnut Lane Co-Owner") is an Oregon limited liability company formed on September 4, 2007 (Business Registry Number: 461201-92) with offices located at the Fairview Location. At all times material herein, Senior Living Properties III was the sole member of the Chestnut Lane Property LLC. At all times material herein, the Chestnut Lane Property LLC was the Co-Owner of a senior living property located at Chestnut Lane in

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Gresham, Oregon (the "Chestnut Lane Property").

6. Gresham Chestnut Lane Senior Living, LLC (the "Chestnut Lane Operator LLC," or the "Chestnut Lane Master Tenant") is an Oregon domestic limited liability company formed on September 4, 2007 (Business Registry Number: 461200-93) with offices located at the Fairview Location. As of December 31, 2008, Jon Harder owned approximately 47%; Darryl Fisher owned approximately 20%; and Wallace Gutzler owned approximately 3% of the Chestnut Lane Operator LLC. At all times material herein, the Chestnut Lane Operator LLC leased, operated, and maintained the Chestnut Lane Property.

7. West Salem Senior Living Property, LLC (the "Cottonwood Property LLC," or the "Cottonwood Co-Owner") is an Oregon domestic limited liability company formed on September 10, 2007 (Business Registry Number: 462563-92) with offices located at the Fairview Location. At all times material herein, Senior Living Properties II was the sole member of the Cottonwood Property LLC. At all times material herein, the Cottonwood Property LLC was the Co-Owner of a senior living property located at 1417 Orchard Heights in Salem, Oregon (the "Cottonwood Property").

8. West Salem Senior Living, LLC (the "Cottonwood Operator LLC," or the "Cottonwood Master Tenant") is an Oregon domestic limited liability company formed on September 10, 2007 (Business Registry Number: 462560-95) with offices located at the Fairview Location. As of December 31, 2008,

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Jon Harder was a 29.5% owner,[3] Darryl Fisher was a 19% owner[4], and Wallace Gutzler was a 2% owner of the Cottonwood Operator LLC. At all times material herein, the Cottonwood Operator LLC leased, operated, and maintained the Cottonwood Property.

9. Silver Insurance Management, LLC ("Silver Insurance") was a Colorado domestic limited liability company (ID Number: 20021208252) formed on July 20, 2002 and administratively dissolved on December 30, 2004. As of December 31, 2008, Jon Harder owned approximately 33% of Silver Insurance. Prior to its dissolution, Jon Harder and Darryl Fisher were Members of Silver Insurance.

Silver Insurance was the sole-owner of Silver Indemnity, Ltd., a captive offshore reinsurance company organized and licensed under the laws of the Cayman Islands on September 5, 2002 ("Silver Indemnity"). As sole-owner, Silver Insurance received all of Silver Indemnity's profits and losses. From on or about August 14, 2002 until on or about August 14, 2004 (calendar years 2002, 2003, and 2004, respectively), Silver Indemnity received premiums for professional liability and general liability, auto liability and workers' compensation reinsurance provided to Sunwest Management, as the primary insured, and for the senior living properties managed by Sunwest Management and affiliates. At all times material herein, neither Silver Insurance nor Silver

[3] Kelly Harder, Jon Harder's wife, owns a 1% interest in the Cottonwood Operator LLC.
[4] Owned indirectly through Fisher Family Investments, LLC.

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Indemnity had authority from the Director to transact insurance business in Oregon.

10. Encore Indemnity Management, LLC[5] ("Encore Insurance") is a Nevada domestic limited liability company (Corporation Number: LLC13704-2004) formed on June 22, 2004 with offices located at the Fairview Location. At all times material herein, Jon Harder was a 45% owner; Darryl Fisher was a 33% owner; and Wallace Gutzler was a 5% owner of Encore Insurance.

At all times material herein, Jon Harder was Director and Darryl Fisher was President and Director of Encore Insurance.

Encore Insurance is the sole-owner of Encore Indemnity, Ltd., a captive offshore reinsurance company organized under the laws of the Cayman Islands on July 28, 2004 ("Encore Indemnity") and licensed on October 14, 2004. As sole-owner, Encore Insurance received all of Encore Indemnity's profits and losses. From at least October 2004 to the date of this Order (calendar years 2004, 2005, 2006, 2007, 2008, and 2009, respectively), Encore Indemnity received premiums for professional liability and general liability, auto liability, and workers' compensation reinsurance provided to Sunwest Management, as the primary insured, and for the senior living properties managed by Sunwest Management and

[5] Sometimes referred to by Canyon Creek Development and Canyon Creek Financial as Encore Insurance Management, LLC.

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affiliates.[6] At all times material herein, neither Encore Insurance nor Encore Indemnity had authority from the Director to transact insurance business in Oregon.

11. Senenet, Inc. ("Senenet") is an Oregon domestic for-profit corporation formed on August 14, 2002 (Business Registry Number: 098209-94) with offices located at the Fairview Location. As of December 31, 2008, Jon Harder owned approximately 80% of Senenet.

At all times material herein, Jon Harder was the President and a Director of Senenet.

At all times material herein, Senenet provided leased employees to Sunwest Management, Canyon Creek Development and affiliated entities (including senior living properties sponsored by Canyon Creek Development and managed by Sunwest Management).

12. Fuse Advertising Agency, Inc. ("Fuse Advertising") is an Oregon domestic for-profit corporation formed on March 15, 2000 (Business Registry Number: 742409-88) with offices located at the Fairview Location. As of December 31, 2008, Jon Harder was President and owned approximately 54% of Fuse Advertising.

At all times material herein, Fuse Advertising provided marketing services, including printing, design and yellow page placement services to senior living properties

[6] Includes those senior living properties and affiliates that were formerly insured by Silver Insurance.

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sponsored by Canyon Creek Development and managed by Sunwest Management.

13. KDA Construction, Inc. ("KDA Construction") is an Oregon domestic for-profit corporation formed on October 29, 1999 (Business Registry Number: 718261-85) with offices located at the Fairview Location. As of December 31, 2008, Jon Harder owned 41%; Darryl Fisher owned 20%; and Kelly Harder owned 12% of KDA Construction. At all times material herein, Jon Harder, Darryl Fisher and Kelly Harder were Directors; and Kelly Harder was Vice-President of KDA Construction. At all times material herein, KDA Construction provided construction services – including repairs and improvements – to senior living properties sponsored by Canyon Creek Development and managed by Sunwest Management.

14. Contract Interiors, LLC ("Contract Interiors") is an Oregon domestic limited liability company formed on April 23, 1999 (Business Registry Number: 687595-89) with offices located at 595 Winding Way SE; Salem, Oregon 97302. As of December 31, 2008, Jon Harder owned approximately 50% of Contract Interiors. At all times material herein, Contract Interiors provided design/decorator services, as well as procurement services to senior living properties sponsored by Canyon Creek Development and managed by Sunwest Management.

15. Hill Architects, P.C. ("Hill Architects") is an Oregon domestic professional corporation formed on May 16, 1995 (Business Registry Number: 458802-83) with offices

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located at the Fairview Location. At all times material herein, Jon Harder owned 50% of Hill Architects. At all times material herein, Hill Architects provided architectural and design work for senior living properties sponsored by Canyon Creek Development and managed by Sunwest Management.

16. Lease Reserve, LLC ("Lease Reserve") is an Oregon domestic limited liability company formed on April 2, 2007 (Business Registry Number: 425220-94) with offices located at the Fairview Location. At all times material herein, Jon Harder was the 100% owner and Manager of Lease Reserve. At all times material herein, Lease Reserve's sole purpose was to act as guarantor of certain leases entered into by limited liability companies that leased, operated, and maintained senior living properties that were owned by a Co-Owner (the "Master Tenant"), including the Chestnut Lane Master Tenant.

17. Canyon Creek Financial, Senior Living Properties II, Senior Living Properties III, Fuse Advertising, KDA Construction, Hill Architects, Contract Interiors, Senenet, Lease Reserve, Encore Indemnity, Encore Insurance, Silver Insurance, Silver Indemnity– and other entities that provided services to senior living properties sponsored by Canyon Creek Development and managed by Sunwest Management – all are or were affiliates of Sunwest Management (collectively, the "Affiliates").

18. Jon Harder is an Oregon resident and at all times material herein was the Vice President and Director of Canyon

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Creek Development; Chief Executive Officer and President of Sunwest Management; the sole Member and a broker-dealer salesperson for Canyon Creek Financial; and President of Senenet and Fuse Advertising. As of December 31, 2008, Jon Harder had a 20% or more controlling interest in more than 490 limited liability companies and corporations. A vast majority of these holdings were in Master Tenants or Affiliates that Jon Harder controlled directly and Co-Owners that Jon Harder controlled indirectly through Senior Living Properties II and Senior Living Properties III. His holdings included, but were not limited to, a seventy-five percent (75%) controlling interest in Sunwest Management, a sixty percent (60%) controlling interest in Canyon Creek Development, a one hundred percent (100%) controlling interest in Canyon Creek Financial, a fifty percent (50%) controlling interest in Contract Interiors, a forty-five percent (45%) controlling interest in Encore Insurance, a thirty-three percent (33%) controlling interest in Silver Insurance, a fifty-four percent (54%) controlling interest in Fuse Advertising, a forty-one percent (41%) controlling interest in KDA Construction, a fifty percent (50%) controlling interest in Hill Architects, an eighty percent (80%) controlling interest in Senenet, a 100% controlling interest in Lease Reserve, a thirty three percent (33%) controlling interest in Senior Living Properties II, and a thirty-three percent (33%) controlling interest in Senior Living Properties III.

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At all times material herein, Jon Harder was registered with FINRA as a broker-dealer salesperson (CRD #5085573). He passed the Series 63 examination (Uniform Securities Agent State Law) and the Series 22 exam (Direct Participation Programs Limited Representative). The Director initially licensed him as a broker-dealer salesperson on September 1, 2006.

19. Darryl Fisher ("Darryl Fisher") is an Oregon resident and at all times material herein was a substantial owner and control person in most of the companies affiliated with Sunwest Management.[7] Together with Jon Harder, Darryl Fisher directly or indirectly owned a majority of most Master Tenants. As Chief Operating Officer for Sunwest Management, Darryl Fisher oversaw all of Sunwest Management's home office and local senior living property operations, including properties co-owned by a Co-Owner and leased by a Master Tenant.

20. J. Wallace Gutzler ("Wallace Gutzler") is an Oregon resident and licensed by the Oregon State Bar to practice law in Oregon (Oregon State Bar Number: 570327). At all times material herein, Wallace Gutzler was a minority owner and a control person associated with the Sunwest Enterprise. As Executive Vice President and General Counsel for Sunwest Management, Wallace Gutzler directed the legal and regulatory affairs of Sunwest Management and its associated entities,

[7] See the "Sunwest Enterprise," below.

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including senior living communities managed by Sunwest Management.

21. Richard Elliott Wielde ("Richard Wielde") resides in Arizona and Oregon and at all times material herein was the principal and owner of First West Group, Inc., an Oregon domestic for-profit corporation (Business Registry Number: 031213-81) formed on or about April 30, 1986 with offices located at 2388 NW Birkendene Street; PO Box 25383; Portland, Oregon 97298.

On or about October 22, 1985, Richard Wielde entered into a stipulation with the State of Oregon where Richard Wielde agreed not to engage in the sale of any securities in Oregon as a broker-dealer salesperson or an investment advisor (the "Stipulation").

At all times material herein, Richard Wielde offered and sold TIC security and limited liability company interests in single purpose limited liability companies that were sponsored by Canyon Creek Development and managed by Sunwest Management to Oregon residents in exchange for a commission.

22. The "Sunwest Enterprise" refers to Canyon Creek Development, Sunwest Management, Canyon Creek Financial, Senior Living Properties II, and Senior Living Properties III with Jon Harder, Darryl Fisher, and Wallace Gutzler as principals of the Sunwest Enterprise (the "Principals").

23. On October 10, 2008, the Director entered into a Consent Order with some of the Respondents named herein

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including, but not limited to, Sunwest Management, Inc.; Canyon Creek Development, Inc.; and Canyon Creek Financial, LLC. That Order suspended the use of exemptions to the securities registration requirements found under ORS 59.025 and ORS 59.035. That Order remains in effect as of the date of this Order.

B. OVERVIEW

24. The Sunwest Enterprise with certain of the Affiliates was in the business of locating, acquiring, and/or operating 1) senior living facilities (a "Facility") and improving the Facility's net operating income – revenue minus operating expense – through its purported superior marketing and management capabilities,[8] (a "Facility Acquisition")[9] or 2) empty parcels of land and building a Facility on it (a "Land Acquisition").[10,11]

25. The Sunwest Enterprise obtained financing for each Facility Acquisition or Land Acquisition (individually a "Project" and collectively, "Projects") by soliciting individual investors into a particular Project in exchange for a return that was generally 10% per year. The Sunwest Enterprise told many investors that it would use their

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[8] From February 1992 to March 2008 the Sunwest Enterprise went from managing two senior living related properties in Oregon to over 270 properties — encompassing over 23,000 units — in 36 different states.
[9] See, for example, the Chestnut Lane Facility Acquisition Case Study in Section (I)(G)(1).
[10] The Affiliates provided most services to each acquisition including broker-dealer, construction, design, interior decorating, employee leasing, advertising, and pharmacy services, in exchange for fees for each service.
[11] See, for example, the West Salem Senior Living Land Acquisition Case Study Section (I)(G)(2)-(3).

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invested funds to locate, acquire, construct, manage, and/or operate their particular Project and that payment of their return would come from the reserves or operations of that Project.

26. Using that business model the Sunwest Enterprise experienced rapid growth in a short period of time. From March 2001 to June 2008, the Sunwest Enterprise entered into over 200 Facility Acquisitions and over 40 Land Acquisitions. Also during that time the Sunwest Enterprise solicited, offered and sold over $250 million in Project investments to over 1,200 investors – including over 500 Oregon investors. The Sunwest Enterprise never missed a payment to an investor until July 2008.

27. The Sunwest Enterprise relied heavily on strong local, regional, and national economic conditions; rising housing markets; and favorable private finance and credit markets to fuel its growth. The Sunwest Enterprise also relied in its history of never missing a payment to existing investors to give confidence to new and repeat investors that an investment in a proposed Project was purportedly safe.

28. As market and economic conditions turned less favorable, some Projects were not able to pay investors from its reserves or operations. By the end of 2007, a majority of Projects were not meeting their projections in the first two years of operation.[12] By 2008, of the 40 Land Acquisition

[12] The Sunwest Enterprise typically projected that it would take 1.5 years to develop and construct a Facility and 18 – 24 months to increase a

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Projects in progress, only 11 were fully constructed and operational, 7 were under construction, 1 was abandoned, 2 were suspended for at least one year, 14 were delayed, and the remainder were on schedule.[13] In addition, by April 2008, approximately 140 Facilities were able to generate enough net operating income to pay both senior priority lenders and equity interests (hereinafter referred to as "Tier 1 Facilities"); approximately 60 Facilities generated enough net operating income to pay all senior priority lenders only and none of the equity interests (hereinafter referred to as "Tier 2 Facilities"); 30 to 40 Facilities had positive net operating income, but were not able to pay all senior priority lenders (hereinafter referred to as "Tier 3 Facilities"); and 30 – 40 Facilities had negative net operating income and were unable to pay any senior priority lenders (hereinafter referred to as "Tier 4 Facilities"). Combined, the Tier 1 through Tier 4 Facilities earned $10 – $12 million in net operating income monthly and owed $14 - $15 million in monthly interest payments on loans obtained by project to acquire and construct Facilities.

29. To support the operations of each Project and pay

Facility's occupancy rate to a level that would allow the Facility to sustain its ongoing obligations to its investors and lenders without the need for additional capital. At times, the Sunwest Enterprise and its Principals did not disclose to investors – whether by means of a prospectus or otherwise – that some of its Projects were not meeting their projections.

[13] At times, the Sunwest Enterprise and its Principals did not disclose to investors – whether by means of a prospectus or otherwise – that some of the Sunwest Enterprise's Construction Projects had been abandoned, suspended, or delayed.

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all Project creditors and investors, the Sunwest Enterprise at times took funds from a new[14] or existing Project and diverted them to a different Project. This practice became so pervasive that eventually all Projects operated as one integrated enterprise rather than as a collection of loosely affiliated Projects. The Sunwest Enterprise did not inform many new or existing investors that this pattern of practice was taking place.

30. In July 2008 the Sunwest Enterprise stopped paying most of its investors and by October 2008 the Sunwest Enterprise stopped paying all of its investors even though some Projects had sufficient net operating income to pay its investors had it been run as a discrete Project.

C. ORGANIZATION, OPERATION, AND FINANCING

1. Initial Project Acquisition — Formation of the Co-Owner

31. Canyon Creek Development typically formed a limited liability company that acquired and maintained a fee interest in the Property (the "Co-Owner"), with Senior Living Properties II or Senior Living Properties III as the sole member of the Co-Owner.

32. Canyon Creek Development then divided the single fee interest in the Property into multiple co-ownership interests, which were sold to outside investors through a securities

[14] In June 2008 alone, Canyon Creek Development raised approximately $8.7 million from investors. None of those investors received more than four of the promised monthly return payments.

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offering. Each Project had no more than 35 such investors who invested in the Co-Owner through individual limited liability companies that were created for the sole purpose of acquiring their fee interest in the Property ("TIC Investors"). The TIC Investors would then own the Property as tenants-in-common with the Co-Owner.

33. Prior to 2006, the Co-Owner and employees and associates of the Sunwest Enterprise and its Affiliates generally retained a greater than 50% tenant-in-common ("TIC") ownership interest in the Co-Owner. After 2006, the Co-Owner and employees and associates of the Sunwest Enterprise and its Affiliates generally retained a greater than 50% TIC ownership interest in the Co-Owner for a Facility Acquisition, but not for a Land Acquisition.

a) TIC Securities Offering

34. Prior to the formation of Canyon Creek Financial, Canyon Creek Development hired real estate brokers, including Richard Wielde, to offer and sell TICs as investments in real estate (the "Real Estate Brokers"). After the formation of Canyon Creek Financial, Canyon Creek Development hired Canyon Creek Financial and other broker-dealers that were members of FINRA to offer and sell TICs as securities on a "best-efforts" basis (the "Third Party Brokers").[15] Canyon Creek Financial

[15] As of August 2008, Canyon Creek Financial had 7 in-house broker-dealer salespersons. Canyon Creek Development and Canyon Creek Financial also relied on at least 35 other broker-dealer salespersons located in separate offices, but sending all transactions to the Fairview Location.

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typically acted as managing broker-dealer and received Broker-Dealer Commissions equal to 7% of the gross cash proceeds of the fee interest sold.

35. In addition, certain principals and employees of Canyon Creek Development, Canyon Creek Financial, and Sunwest Management, including Jon Harder met with potential investors in-person at the Fairview Location to discuss the TICs (the "Principal Meetings"). Further, Canyon Creek Development, Real Estate Brokers, and Selling Brokers sometimes conducted seminars that discussed "investment opportunities" that were "1031 Exchange Eligible." On at least one occasion, a Real Estate Broker and/or Selling Broker publicly posted a flyer advertising an investment seminar.

36. Canyon Creek Development, Canyon Creek Financial, Real Estate Brokers, Third Party Brokers, and Principals and employees of the Sunwest Enterprise at times offered and sold the TICs by means of a confidential private placement memorandum (a "Prospectus") and an executive summary (the "Executive Summary") primarily to investors that had recently sold an interest in a business or investment property as way to defer capital gains through Section 1031 of the Federal Tax Code (a "1031 Exchange").[16] As sponsor, Canyon Creek Development prepared the Prospectus and Executive Summary using information provided by Sunwest Management.

37. The disclosures made in Prospectuses or Executive

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[16] 26 U.S.C. § 1031 (1986).

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Summary varied from Project to Project. Generally, each Prospectus disclosed, among other things, a description of the Project – which included a description of the intended sources and uses of funds – risks related to the offering, and detailed operating and financial projections for the Project, which included Stabilization projections, (the "Financial Projections"). No Prospectus or Executive Summary included financial statements or detailed operating or financial projections for other Projects, the Sunwest Enterprise, or the Affiliates.

38. According to statements made in some of the Prospectuses, Canyon Creek Development and Sunwest Management based the Project's Financial Projections solely on the Sunwest Enterprise and the Affiliates' experience in managing senior living properties assuming a 95% occupancy rate. Some of the Prospectuses also disclosed that 1) the Financial Projections were intentionally more aggressive than the prior pre-acquisition performance of the Project, and/or 2) the Sunwest Enterprise and its Affiliates' prior experience in managing senior living properties.

39. As indicated above, Canyon Creek Financial, Jon Harder, Real Estate Brokers, and Selling-Brokers, in writing and orally referred to the Sunwest Enterprise's ability to consistently pay investor returns and liquidate Projects to give confidence to new and repeat investors that an investment in a Project was purportedly safe. For example, a Prospectus

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dated October 19, 2007 for a Facility Acquisition, stated:

> "A number of [affiliated Facilities] are not meeting financial performance projections, but all such affiliates are making mortgage payments to lenders and lease payments to tenant-in-common investors. Moreover, the failure to meet projections, particularly in the first two years of operations, has not prevented Sponsor affiliates from successfully refinancing their properties and purchasing property interests. In fact . . . numerous Sponsor affiliates have repurchased property interests from investors at or above target repurchase prices, and neither the Sponsor nor its affiliates have ever failed to make a required lease payment to a holder of a fractional interest."

40. Upon the close of a TIC Offering, each TIC Investor and the Co-Owner entered into a tenancy-in-common agreement (the "TIC Agreement"). Under the TIC Agreement, only material decisions relating to the operation of the Property LLC — including whether to hire or replace the property manager,[17] to sell or refinance a Project, or to amend the Master Lease Agreement[18] — required unanimous approval of the TIC Investors, which included the Co-Owner; all other decisions required only a majority vote of the TIC Interests, which included the Co-Owner.[19]

b) Acquisition Loan

41. Each Project was typically subject to a loan, which

[17] During the term of the Master Lease Agreement this decision making authority is retained by the Master Tenant.
[18] See Section (I)(C)(3) for a further discussion of the Master Lease Agreement.
[19] As noted above, Jon Harder indirectly controlled the Co-Owner through Senior Living Properties II and Senior Living Properties III. Prior to 2006, the Co-Owner and employees and associates of the Sunwest Enterprise and its Affiliates generally retained a greater than 50% ownership interest in the Property LLC. After 2006, the Co-Owner and employees of the Sunwest Enterprise and its Affiliates retained a greater than 50% ownership in the Property LLC for a Facility Acquisition, but not for a Land Acquisition.

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was either a mortgage loan in the instance of a Facility Acquisition (a "Mortgage Loan") or a land loan in the case of a Land Acquisition (a "Land Loan" and collectively with a Mortgage Loan, an "Acquisition Loan"), that was assumed by the Property LLC and arranged by Canyon Creek Development. Each Acquisition Loan required a Project to comply with various financial and other covenants to avoid default ("Financial Covenants"). Jon Harder and Darryl Fisher, and their spouses at times, personally guaranteed most of the Acquisition Loans.[20]

c) Use of the TIC and Acquisition Loan Proceeds

42. Prospectuses generally stated that the Property LLC would use the proceeds from the TIC Offering and the Acquisition Loan to purchase the Property and Facility (in the case of a Facility Acquisition), pay any acquisition or assignment fees to Canyon Creek Development ("Acquisition Fees" and "Assignment Fees," respectively), pay any offering and closing costs, and pay any broker-dealer commissions ("Broker-Dealer Commissions"). If the Property LLC had acquired a Facility — i.e. a Facility Acquisition — proceeds from Phase I were also to be used by the Property LLC to: 1)

[20] Generally, the guarantees were recourse against their assets and based on the guarantors' net worth. The guarantees also at times cross-collateralized and cross-defaulted with the guarantors' other guarantees. As such, a default on one Project's Loan could lead to the default in an unrelated Project's loan. At times, the Sunwest Enterprise and its principals did not disclose to investors – whether by means of a prospectus or otherwise – that the principals' guarantees were cross-collateralized and cross-defaulted with their other guarantees.

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pay the fee to the broker that was used to obtain the Acquisition Loan (the "Loan Broker Commission"), and 2) loan money (a "Conduit Loan")[21] to a second limited liability company formed by Canyon Creek Development to lease, manage and operate the Property and/or Facility.[22] That second limited liability company would in turn use the Conduit Loan a) to purchase personal property for the Facility, and b) fund a reserve account (the "Reserve Account") that the limited liability company would use to meet its obligations to the Lenders and TIC Investors until the Facility reached an occupancy rate of 95% and was able to sustain its ongoing operations without the need for additional financing ("Stabilized").[23]

2. Formation and Financing of the Master Tenant

43. Prior to 2006, the Co-Owner acquired, retained a fee interest in, operated, maintained, and managed the entire Project including the Property and Facility. After 2006, the Co-Owner acquired and retained a fee interest in the acquired Property only. Canyon Creek Development formed a second limited liability company – typically a manager-managed limited liability company (known as the "Operator LLC," or the "Master Tenant") – that leased the Property and/or Facility

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[21] Generally, the Conduit Loan was made to the Master Tenant from proceeds of the Acquisition Loan and were made on the same terms as the Acquisition Loan.
[22] See Section (I)(C)(2) below for a further discussion of the Operator LLC
[23] If a Property LLC acquired bare land only—i.e. a Land Acquisition—it relied on funds from subsequent equity offerings to pay Loan Broker Commissions and to fund Reserve Accounts. (See for example the Cottonwood Phase II offering in Section (I)(G)(3).

from the Property LLC subject to a master lease (the "Master Lease Agreement").[24] The Operator LLC maintained and managed the Facility. The Operator LLC had no substantial assets other than 1) its leasehold interest in the Project under the Master Lease Agreement, and 2) the resident management agreements that it entered into with residents of a Facility.

44. Principals, employees, and associates of the Sunwest Enterprise were typically the initial members of the Operator LLC (the "Preferred A Interests"). In the case of a Land Acquisition, Canyon Creek Development 1) solicited additional membership interests in the Operator LLC from outside investors (the "Preferred B Interests"), and 2) obtained a construction loan[25] (a "Construction Loan"). Prospectuses generally indicated that the Operator LLC would use those funds to finance the development and construction costs of a Facility and also to 1) pay a developer fee to Canyon Creek Development (the "Developer Fee"), 2) pay offering and closing costs related to the Construction Loan, 3) pay Broker-Dealer and Loan Broker Commissions, and 4) fund the Reserve Account that would be used to pay Acquisition Loan and Construction Loan interest, TIC Rent, and Preferred B Interest payments.[26]

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[24] See Section (I)(C)(3) for a fuller discussion of the Master Lease Agreement.

[25] Any construction loan was also senior in priority to the TICs and Preferred B Interests.

[26] Typically Reserve Accounts from were funded from Preferred B Offering and Construction Loan proceeds after a Land Acquisition only.

a) Preferred B Offering

45. A Preferred B Offering was similar in many respects to a TIC Offering. Prior to the formation of Canyon Creek Financial, Canyon Creek Development hired Real Estate Brokers and relied on its Principals to offer and sell the Preferred B Interests. After the formation of Canyon Creek Financial, Canyon Creek Development hired Canyon Creek Financial and Third-Party Brokers to offer and sell the Preferred B Interests with Canyon Creek Financial typically acting as the managing broker-dealer.

46. As with the TIC Offering, Preferred B Interests were offered and sold exclusively by means of a Prospectus, an Executive Summary, and through Principal Meetings.

b) The Operator LLC Agreement

47. Upon the formation the Operator LLC and the close of the Preferred B Offering (in the case of a Land Acquisition), each Preferred A and Preferred B Interest entered into an Operator LLC Agreement (the "Operator LLC Agreement"). The Preferred B Interests collectively never held more than 40% of the Operator LLC.

48. The Operator LLC Agreement granted the Operator LLC's Managers — typically Jon Harder and Darryl Fisher — with the exclusive right and power, with certain exceptions, to manage, operate and control the Operator LLC and to do all things and make all decisions necessary or appropriate to carry on the business affairs of the Operator LLC during the

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term of the Master Lease Agreement. Typically, the Managers were elected by an affirmative vote of at least 60% of the membership interests and required to be a member of the Operator LLC or a member of an entity that was a member of the Operator LLC. The members of the Operator LLC had no right to participate in or control its management or act for, on behalf of, or otherwise bind the Operator LLC.

49. The Operator LLC Agreement required written consent by 60% of the combined Preferred A and Preferred B Interests to 1) sell or transfer assets, 2) change the nature of the Operator LLCs business operations, 3) liquidate, dissolve or merge the Operator LLC, or 4) place the Operator LLC into bankruptcy.[27]

50. The Operator LLC Agreement also entitled each Preferred B Interest to a preferred return of interest (the "Preferred Return"), which was typically 10% of the Preferred B Interest's capital contribution per year plus an additional 2% of the Preferred B Interest's capital contribution upon liquidation.

c) The Construction Loan

51. The Operator LLC and/or Canyon Creek Development arranged a Construction Loan from a commercial bank or a real estate investment trust (a "Construction Loan Lender"). The Construction Loan generally came with a fixed or variable

[27] As indicated above, the Preferred A Interests always maintained at least a 60% ownership interest in the Operator LLC.

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interest rate and had a maturity that was coterminous with the Acquisition Loan, with interest only payments until maturity. As with the Acquisition Loans, Jon Harder and Darryl Fisher, and their spouses at times, personally guaranteed the Construction Loans.

52. Each Construction Loan Lender typically would not fund the Construction Loan unless a substantial portion of a Project's TIC and Preferred B Offering was closed. Draws on the Construction Loan were permitted subject to certain conditions precedent and had to conform to the Construction Budget. Each Construction Loan was typically recourse to the Operator LLC and secured by the Property.

53. Each Construction Loan also typically subjected the Project to the same types of Financial Covenants used in an Acquisition Loan. A Construction Loan Lender typically was also privy to the same remedies in the event of default by the Operator LLC as an Acquisition Loan Lender.

3. The Master Lease Agreement

54. As indicated above, after 2006 the Operator LLC leased the Property (and Facility in the case of a Facility Acquisition) from the Property LLC subject to a Master Lease Agreement. The Master Lease Agreement was typically a 50 year triple net lease back contract with a right to renew for four successive five year terms. Pursuant to the terms of the Master Lease Agreement the Master Tenant was solely and exclusively responsible for all costs of operating, managing

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and maintaining a Project during the term of the Master Lease Agreement.

55. The Master Lease Agreement also obligated the Master Tenant to pay a base rent equal to a percentage of the TIC Investor's investment (the "TIC Rent"), which until approximately January 2008 was usually 10% of a TIC Investors investment and was generally lower for Projects that closed after January 2008.[28] In the case of a Facility Acquisition, the TIC Rent was "unconditionally and absolutely" guaranteed by a guarantor, such as Lease Reserve.[29]

56. The Master Lease Agreement also granted the Master Tenant the option to buy the TIC Investor's interest at any time after 18 months at fair market value determined as either: 1) the purchase price paid by the TIC Investor plus 2% per year, or 2) an independent appraisal.

57. The execution of the Master Lease Agreement and the TIC Agreement essentially eliminated a TIC Investor's ability to participate in the daily management of a Project or participate in any capital appreciation from the Project upon its liquidation. For example, 1) under the TIC Agreement, only material decisions relating to the operation of the

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[28] For example, Canyon Creek Development offered a 9.7% TIC Rent in the Chestnut Lane Property LLC, a Facility Acquisition that closed in February 2008, a 7.2% TIC Rent in Nashville Senior Living Property, LLC, a Facility Acquisition that closed on or about June 2008, and a 8.75% TIC Rent in Portland Senior Living Property, LLC, a Facility Acquisition that closed on or about June 2008.

[29] The Master Tenant typically paid the guarantor a $25,000 fee in exchange for its guaranty. The guarantor then purportedly held certain funds in reserve should it need to honor its guaranty.

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Property LLC required unanimous consent of the TIC Investors, which included the Co-Owner, other decisions required only a majority vote of the TIC Interests, which included the Co-Owner, and 2) the Master Lease Agreement vested all of the daily management responsibilities in the Master Tenant during the term of the Master Lease and gave the Master Tenant the right to purchase the TIC Investor's interests after 18 months.

4. Registration or Filing of TICs and Preferred B Interests under ORS 59.065 or ORS 59.049

58. Canyon Creek Development and Canyon Creek Financial asserted its reliance on an exemption from federal registration found under Section 4(2) of the Securities Act of 1933[30] and Rule 506 promulgated thereunder ("Rule 506")[31] for the offer or sale of TICs and Preferred B Interests prior to and after the formation of Canyon Creek Financial.

59. Canyon Creek Development and Canyon Creek Financial have not independently asserted an exemption from registration under Oregon Securities Law [32] and it has not established the availability of an exemption to the Division as of the date of this Order.

60. The Division has searched its records for a record of a notice of filing and a payment of the applicable fees for each TIC that was purportedly offered or sold in reliance on

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[30] 15 U.S.C. §77d.

[31] 17 CFR §230.506.

[32] ORS 59.025 or ORS 59.035.

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Rule 506 (a "Federal Covered Security") and were offered or sold in Oregon.[33] Of the 99 filings that the Division searched, the Division found only three records for Federal Covered Securities that were offered or sold between 2001 and 2008.

61. The Division also searched its records for a record that Canyon Creek Development, Jon Harder or Richard Wielde were licensed to offer or sell securities in Oregon from May 2001 to June 2006 and found no such record.

5. Facility Construction and Development (Land Acquisition Only)

62. In the case of a Land Acquisition, upon execution of the Master Lease Agreement, the Master Tenant then constructed a new Facility on the Property. Hill Architects often planned and designed the Facility and/or any improvements to the Property, KDA Construction served as general contractor,[34] Contract Interiors provided interior decorating services,[35] Senenet leased employees as necessary,[36] and the Master Tenant

[33] Pursuant to ORS 59.049 and OAR 441-049-1051 promulgated thereunder, a Federal Covered Security may be offered or sold in Oregon only upon the filing of proper notice with the Division and payment of the applicable fee within 15 days after the first sale of the Federal Covered Security in Oregon.

[34] KDA Construction typically received a fee equal to 7% of the hard costs of construction, which included floors, wall, roof, parking lot, and excavation, but not furnishings, land or other costs and fees. The fee was typically capped at a maximum per Project. KDA Construction did not typically charge for change orders or construction delays.

[35] Canyon Creek Development claims that Contract Interiors charged a markup of approximately 20% on design services (rather than charging a traditional hourly fee) and 7% for procurement services.

[36] According to Canyon Creek Development, Senenet's revenue is derived solely, without profit, from the lease payments that it charged for its employees, which Senenet would then disburse to its employees as salary.

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obtained any necessary permits and approvals.

6. Facility Management and Operation (Facility and Land Acquisition)

63. Upon the acquisition or completion of a Facility in the case of a Land Acquisition or the acquisition of a Facility in the case of a Facility Acquisition, the Master Tenant engaged Sunwest Management to attract residents to and manage the Facility, maintain the Facility's finances — including income from the Facility's operations – and pay the Facility's expenses pursuant to Sunwest Management's standard management agreement (the "Sunwest Management Agreement").

64. The Sunwest Management Agreement also authorized Sunwest Management to engage third parties to provide services, such as construction, advertising, interior design, reinsurance and pharmacy services in exchange for a fee. Typically these third parties were Affiliates, including, but not limited to: Senenet, KDA Construction, Contract Interiors, Fuse Advertising,[37] Preferred Holdings LLC,[38] Silver Indemnity, and Encore Indemnity. According to disclosures made to some investors by the Sunwest Enterprise and its principals – whether by means of a prospectus or otherwise – the fees paid to Affiliates were not negotiated at arms length. The same

[37] According to statements made by Canyon Creek Development, Fuse Advertising charged each Facility and Affiliate market rates for procuring advertisements placed in yellow pages and other media and discounted hourly rates for its design services.

[38] Preferred Holding, LLC is an Oregon limited liability company (Business Registry Number: 116702-96) formed on December 3, 2002 by Wallace Gutzler with offices located at the Fairview Location. Preferred Holding, LLC is managed by Darryl Fisher and at all times material herein provided pharmacy services to Master Tenants.

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disclosures did not indicate that those fees may be greater than otherwise would be payable to independent third parties.

65. For example, Sunwest Management maintained professional liability, general liability, and workers' compensation insurance in its name on behalf of each Facility it managed with Silver Indemnity and Encore Indemnity.[39] The total coverage for general liability insurance for all the Facilities Sunwest Management managed was $1 million per occurrence and $5 million in aggregate. Since its inception, Encore Indemnity received written premiums of $29.9 million and earned premiums of $26.4 million for general liability insurance from Sunwest Management and paid total losses of only $7.4 million. For fiscal year 2007-2008, Encore Indemnity received written premiums of $9.5 million and earned premiums of $6.7 million for general liability insurance from Sunwest Management and paid total losses of only $139,504.

66. In exchange for its services, Sunwest Management received a fee equal to 7% of the revenue from the Facility from the Master Tenant (the "Sunwest Management Fee").

7. Project Sale/Liquidation

67. Once a Facility was Stabilized, the Operator LLC attempted to refinance the Project[40] and use the proceeds to 1) exercise its option under the Master Lease Agreement to

[39] As of May 31, 2008, Encore Indemnity had $31 million in cash and investments.

[40] The Operator LLC would typically receive a 4-6% commission upon refinancing.

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purchase the TIC Investors' interests, 2) redeem the Preferred B Interests, and/or 3) pay the Acquisition Loan and Construction Loan. This allowed the Preferred A Interests to realize any capital appreciation from the Project. As of December 2007, the Sunwest Enterprise refinanced only 42 out of 150 Projects.

D. COMINGLING OF FUNDS

1. Additional Sources of Financing

68. In addition to the monies raised through the TIC Offering, the Preferred B Offering, and from Loans, Projects at times also relied on 1) capital contributions from Canyon Creek Development; 2) personal loans or contributions from the Principals of the Sunwest Enterprise, including Jon Harder; [41] and 3) the deferral of fees earned by Affiliates, Canyon Creek Development, and Sunwest Management — including, but not limited to, Acquisition Fees, Assignment Fees, Broker-Dealer Commissions, Developer Fees, and the Sunwest Management Fees ("Affiliate Fee Deferrals")[42] — to sustain its operations and pay investors and creditors until the Project's Facility reached a stabilized occupancy rate. At times, the Sunwest Enterprise and its Principals did not disclose to investors – whether by means of a prospectus or otherwise – that the

[41] Jon Harder's ability to make personal loans and/or contributions was significantly enhanced by his holdings in the Sunwest Enterprise, the Affiliates, the Co-Owners, and the Operator LLCs as described above.

[42] Purportedly, each Affiliate Fee Deferral was subject to a fee forbearance agreement that the Affiliate would maintain as an account receivable on its balance sheet.

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Principal's ability to make personal loans or contributions and/or the ability of the Affiliates to defer fees were dependent on the performance of other Projects.

2. Cash Management

69. According to statements made to investors, Canyon Creek Development managed a Project's funds until the Master Tenant entered into the Sunwest Management Agreement as an "administrative convenience." According to the terms of each Operator LLC Agreement, Canyon Creek Development was not allowed to comingle funds from one Operator LLC with that of another Operator LLC.

70. Once the Master Tenant entered into the Sunwest Management Agreement, Sunwest Management was required to establish and maintain a bank account for each Facility in order to maintain that Facility's finances (the "Facility Account"). Under the Management Agreement, Sunwest Management alone was authorized to withdraw funds, prepare and sign checks, and make disbursements from the Facility Account. Each Sunwest Management Agreement also required that Sunwest Management account for each Project's funds separately.

3. Liquidity Management

71. As indicated above, as market and economic conditions turned less favorable, many Projects faced difficulty constructing Facilities on time and on budget or improving the Facility's operations. As a result, many Projects did not have enough liquid assets to meet obligations

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to creditors and investors and were unable to secure additional funds from the Principals of the Sunwest Enterprise or the Affiliates. To manage those liquidity issues, the Sunwest Enterprise, the Affiliates and each Project applied their collective liquid assets in a manner that satisfied short term capital requirements.[43] To that end, Canyon Creek Development acted as a "financial hub" to ensure that each Project had sufficient funds for its daily obligations.[44] The Sunwest Enterprise, in connection with the offer or sale of TIC and/or Preferred B Interests, made untrue statements of material fact or omitted to state material facts regarding that use of funds.

72. For example, the Sunwest Enterprise and each Project would pool their assets in a number of ways:

Scenario 1 - One Facility would make a distribution to its shareholders, including Principals, employees, and

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[43] For example, Sunwest Management managed one "continuing care retirement community" — Hillside Senior Living Community LLC ("Hillside Community") — in Oregon that was subject to ORS Chapter 101. As required under ORS 101.060, Sunwest Management collected entrance fees in advance of a resident moving in to Hillside Community, and maintained certain reserves to ensure the operation of the Hillside Community. The Hillside Community reserves met the reserve requirements under ORS 101.060 on December 31, 2007 only because $3.5 million was transferred into the reserves on that day. The reserves, which should have been at or around $3.55 million, had been inadequate since at least May 31, 2007. Further, from January 1, 2006 through August 2008, there had been withdrawals of nearly $12 million from the "Entrance Fee Reserve' account ($1.5 million withdrawn in 2006, $6.3 million in 2007 and $4 million in 2008) earmarked by the notation "To Operations". None of the nearly $1.8 million received in resident entrance fees in 2008 were entered in this account. On August 31, 2008, the balance left in the reserves was only $7785. As of the date of this Order, the Hillside Community reserves do not meet its current requirements.

[44] See the Prospectus for Hawthorne Gardens Confidential and Restated Offering Memorandum (Portland Senior Living Property, LLC), dated May 28, 2008.

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affiliates of the Sunwest Enterprise (the "Inside Shareholders"). Certain Inside Shareholders would then reinvest their proceeds from that distribution into a different Facility. At times, these distributions were disproportionate to their equity share relative to outside TIC Investors and Preferred B Interests.

Scenario 2 - One Facility would distribute its surplus funds to a checking account at Wells Fargo (the "Harder Account"). Certain Principals, employees and affiliates had check writing authority for that account. One of the check writers on behalf of the Sunwest Enterprise would then transfer funds from the Harder Account to the accounts of other Facilities.

Scenario 3 - Canyon Creek Development would borrow funds from one Facility and lend the funds to a different Facility. As a result of this activity, by June 2008, Canyon Creek Development held approximately $59 million of receivables that were due from Projects and had issued approximately $54 million in notes payable to other Projects.

Scenario 4 - Surplus funds from one Facility were distributed directly to other Facilities.

Scenario 5 - Funds from Land Acquisition Projects that were stalled or which were not immediately needed for other purposes were lent or given to other Land Acquisition Projects. By January 2008, Canyon Creek Development had authorized $5,261,000 in such loans.

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Scenario 6 - One Facility would overfund its payroll account at Senenet and Senenet would use those excess funds to meet the payroll obligations of other Facilities.

73. The Sunwest Enterprise claims that some of the transfers described in Scenarios 2 – 6 were "loans" evidenced as a note payable on the balance sheet of a Project that received funds and a note receivable on the balance sheet of a Project from which funds were taken. Not all loans, however, incorporated important terms such as a payment due date. Accordingly, the Director finds, those "loans" were actually just cash transfers.

74. Initially, Canyon Creek Development and Sunwest Management transferred funds from a Tier 1 Facility to Tier 2 – 4 Facilities. However, at some point it became Canyon Creek Development's and Sunwest Management's practice to merely review all account balances in the morning for overdraft positions, and then find ways to transfer funds from other accounts to cover those account shortfalls before banks deemed them to be in overdraft status. As such, even Facilities that did not have sufficient funds from operations transferred funds to Facilities that did. As a result, the Sunwest Enterprise operated all Projects as if they were one integrated enterprise.

75. During this time, each Project and, by implication, the entire Sunwest Enterprise and the affiliated Projects also became increasingly reliant on Affiliate Fee Deferrals to

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manage its liquidity. For example, by July 31, 2008 Canyon Creek Financial had receivables owed from Projects in Broker-Dealer Commissions of $2,036,899. Of that balance, $1,813,594 was over 120 days old.

76. Also during this time, Jon Harder was increasingly unable to make Personal Loans and/or Contributions to a Project, and, by implication, the entire Sunwest Enterprise and the affiliated Projects. As indicated, numerous Acquisition and Constructions Loans that Jon Harder had personally guaranteed were past due.[45] As a result, Jon Harder began to pay the interest out of his personal funds to prevent those loans from going into default. In turn, Jon Harder became increasingly reliant on distributions from his holdings in Affiliates, including Canyon Creek Financial, to pay interest on Acquisition and Construction Loans and to make Personal Loans. Over time, those distributions became more frequent.[46]

E. COLLAPSE OF THE SUNWEST ENTERPRISE

77. On July 8, 2008, Canyon Creek Development informed all TIC Investors and Preferred B Interests via letter that some of their TIC Rent and Preferred Interest payments for

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[45] At times, the Sunwest Enterprise and its Principals did not disclose to investors – whether by means of a prospectus or otherwise – that some Project Loans were not in compliance with their loan documents or were past due.

[46] For example, Canyon Creek Financial made distributions to Jon Harder in the amount of $50,000, $79,000, $50,000, $50,000, and $100,000 on May 15, 2008, May 16, 2008, June 10, 2008, June 19, 2008, and June 26, 2008, respectively. Many of these distributions would not have been made but for the near simultaneous receipt of Broker-Dealer Commissions from Projects.

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July and August would be delayed (the "July 8 Investor Letter"). Periodically, Canyon Creek Development sent further correspondence to TIC Investors and Preferred B Interests stating that subsequent payments would also delayed or missed. The Sunwest Enterprise paid a small minority of TIC and Preferred B Interests in July 2008 and stopped paying all TIC Investors and Preferred B Interests by October 2008.

78. On or about September 2008, Sunwest Management, and Jon Harder, Darryl Fisher, and Wallace Gutzler as equityholders of Sunwest Management hired Clyde A. Hamstreet & Associates, LLC to provide professional interim management and restructuring assistance to the Sunwest Enterprise, the Affiliates, and the Projects and hired Clyde Hamstreet to act as Chief Restructuring Officer.

79. Beginning on or about October 2008, a number of Facilities began to go into receivership or into foreclosure. The Sunwest Enterprise also began placing various Co-Owners into bankruptcy as a way to stem further foreclosures and receiverships.

80. On or about December 31, 2008, Jon Harder filed for personal bankruptcy protection under Chapter 11 of the Bankruptcy Code.[47]

81. On March 2, 2009, the SEC charged Sunwest Management, Canyon Creek Development, Canyon Creek Financial, and Jon Harder, with securities fraud and sought an emergency

[47] Civil No.: 08-37225

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court order freezing their assets as well as the assets of Darryl Fisher, Wallace Gutzler, Encore Insurance, Senenet, Fuse, and KDA Constructions, among others (the "Complaint").[48]

82. On the same day United States District Judge Michael R. Hogan ("Judge Hogan" or the "Court") denied the relief sought by the SEC in the Complaint except for certain terms read into the record and issued by the Court in a temporary restraining order (the "Temporary Restraining Order").[49]

83. On March 10, 2009, Judge Hogan entered a preliminary injunction (the "Preliminary Injunction") against the named parties. The court also appointed Michael Grassmueck to act as a receiver (the "Receiver") over Sunwest Management, Canyon Creek Development, Canyon Creek Financial and several other entities that were identified in Exhibit A of the Preliminary Injunction[50] ("Exhibit A") to, among other things, pursue claims against third parties and to examine the past conduct of the Sunwest Enterprise and its Affiliates.

The Court also gave Clyde A. Hamstreet & Associates, LLC, Clyde Hamstreet, and a Management Committee certain powers with respect to the operations, asset disposition, and restructuring of Sunwest Management, Canyon Creek Development, Canyon Creek Financial and the entities in Exhibit A, as supplemented.

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[48] Civil No.: 09-CV-6056-TC.
[49] Ibid.
[50] Includes most Co-Owners and Master Tenants.

F. Canyon Creek Financial Compliance Examination

1. Books and Records Violations

84. From September 10 – 12, 2008, the Division conducted a broker-dealer examination of Canyon Creek Financial at the Fairview Location (the "Examination"). The Division devoted 151.5 hours towards the Examination; its normal and customary charge for examination expenses is $75 (Seventy-Five Dollars) per hour.

85. At the outset of the Examination, two of the Division's Securities Examiners provided Canyon Creek Financial with a written request for information, including: 1) a list of current and terminated Canyon Creek Financial employees, 2) due diligence documentation for Project Offerings in which it offered or sold securities, 3) Canyon Creek Financial's financial information, 4) history of checks written, 5) investor correspondence and complaints, and 6) a detail of sales commissions paid to its salespersons. The information requested is the type of information that Canyon Creek Financial is required to maintain as a licensed broker-dealer.

Findings from the broker-dealer Examination missing records and erroneous documentation, including:

a) List of Current and Terminated Canyon Creek Financial Employees

86. The list of current and terminated Canyon Creek Financial employees provided to the Division was inaccurate; it did not include at least 17 individuals that were listed as

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employed or terminated by Canyon Creek Financial in the CRD database maintained by FINRA.

b) Due Diligence Documentation

87. The due diligence documentation provided to the Division was incomplete and revealed inconsistencies in the review and approval process. For example, some Project files did not indicate whether a property and business appraisal had been completed. A number of Project files lacked any due diligence documentation prior to the solicitation of investors.

c) Canyon Creek Financial Financial Information

88. The financial documentation produced by Canyon Creek Financial was incomplete. For example, Canyon Creek Financial's income and expense statements for 2006, 2007, and YTD 2008 did not reflect distributions to and/or contributions from Jon Harder.

d) History of Checks Written by Canyon Creek Financial

89. The check history report provided by Canyon Creek Financial was inconsistent with its general ledger. For example, the check history report shows nine (9) distributions to Jon Harder from January 1, 2005 to July 31, 2008 totaling $613,000. The general ledger for the same time period for the same time period shows seventeen (17) distributions to Jon Harder totaling $2,455,000. In addition, nine (9)

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distributions in the general ledger report corresponded to checks written to Jon Harder, but did not identify Jon Harder as the recipient. One payment to Jon Harder in the check history report was incorrectly characterized as a contribution rather than a distribution.

e) Investor Correspondence

90. Canyon Creek Financial did not treat some investor complaints properly. For example, some investor complaints were not segregated by sales representative and recorded in a customer complaint log in the business records of Canyon Creek Financial.

f) Sales Commissions Paid

91. The report of sales commissions paid provided by Canyon Creek Financial was inconsistent with the other financial documentation provided by Canyon Creek Financial. For example, the sales commission report indicated total commissions payable for 2007 of $7,169,304.10. By contrast, the income/expense statement for 2007 shows commissions of $7,329,330.57 – a difference of $160,026.40. The sales commission report did not accurately reflect the correct name of the broker-dealer salesperson that facilitated the transaction. At least one offering report did not provide an accounting of the sales commissions earned. One offering report shows a seven percent commission paid to Canyon Creek Financial, but only one percent was actually credited. Canyon Creek Financial did not provide a record of the remaining six

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percent commission.

2. Suitability of Canyon Creek Financial's Broker-Dealer Salesperson Recommendations

92. Many Project prospectuses indicated that a TIC Investor or Preferred B Interest must: 1) have substantial means with no need for liquidity from their investment, 2) not invest an amount in a Project that is disproportionate to their individual net worth, 3) have adequate means to provide for their current and anticipated financial requirements without reliance on the TIC Interest or Preferred Return.

93. Notwithstanding the above, Canyon Creek Financial and their broker-dealer salespersons sold TIC and/or Preferred B Interests to investors that were financially dependent on the TIC Interest and/or Preferred B Return and had little or no financial reserves beyond what was invested in the Project(s). At least one investor obtained a second mortgage on her home to invest in a Project. Some investors were reduced to living on Social Security or relying on other financial reserves when their Project(s) stopped paying returns starting on or about July 2008.

3. Hiring of Richard Wielde

94. On or about November 1, 2006, Canyon Creek Financial requested a copy of the Stipulation entered into by Richard Wielde with the Division. On or about November 8, 2006, the Division provided Canyon Creek Financial with a copy of that Stipulation. Accordingly, as of November 8, 2006, Canyon

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Creek Financial knew or should have known about Richard Wielde’s agreement with the Division not to engage in the offer or sale of securities in Oregon

95. On February 27, 2007, Richard Wielde entered into an Independent Contractor Engagement Agreement with Canyon Creek Financial and Canyon Creek Development. Under the terms of that agreement, Richard Wielde agreed to offer and sell interests in various Co-Owners and Master Tenants in Arizona, California, Hawaii, Illinois, Montana, and Washington.

96. On or about January 17, 2008, attorney Jack Platten contacted the Division to inquire about the possibility of reinstating Richard Wielde’s broker-dealer salesperson license.

97. On or about June 9, 2008, Richard Wielde and Canyon Creek Financial applied for reinstatement of Richard Wielde’s Oregon securities broker-dealer salesperson license through the CRD database. In a letter of the same date, Canyon Creek Financial forwarded a copy of Richard Wielde’s license application to the Division. In its letter, Canyon Creek Financial noted that Richard Wielde would be selling securities on its behalf.

98. The Division did not reinstate Richard Wielde’s license at that time and Richard Wielde has not been licensed with the Division since he entered into the Stipulation in 1985.

99. During the Examination, the Division found at least

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five Oregon investors with Oregon transactions who listed Richard Wielde as their sales representative in their accredited investor questionnaire.

4. Insolvency of Canyon Creek Financial

100. On September 3, 2008, Canyon Creek Financial notified FINRA that from August 28, 2008 to September 3, 2008 its Net Capital was at least 120 percent below its required Net Capital[51] as a result of its inactivity and insufficient capital contributions from Jon Harder. Accordingly, the Director finds that Canyon Creek Financial is in such financial condition that it cannot continue in business with safety to its customers or prospective customers.

G. Representative Examples of Projects in which the Sunwest Enterprise and Affiliates Offered or Sold Securities

The following examples illustrate the organization, operation and financing of Projects, including disclosures and misstatements to investors.

1. Example #1: Chestnut Lane Facility Acquisition

101. On July 16, 2007, Canyon Creek Development entered into a Real Property and Asset Purchase and Sale Agreement (the "Chestnut Lane Purchase Agreement") to acquire substantially all of the assets used in the operation of an existing 70 unit assisted living facility, including the accompanying land, located on Chestnut Lane in Gresham, Oregon

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[51] Specifically, on September 3, 2008 Canyon Creek Financial's net capital was <$15,502>, which was <250.72%> of its net capital requirement of $6,183.

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for $6,700,000 (the "Chestnut Lane Acquisition Price"). The transaction closed on February 1, 2008 (the "Chestnut Lane Closing Date").

102. The Facility known as "Chestnut Lane" was developed in 2003 and is only one of three senior living facilities in the United States that caters to deaf and blind residents. The Chestnut Lane Facility was 73% occupied as of September 2007.

103. On September 4, 2007, Wallace Gutzler on behalf of Canyon Creek Development formed Gresham Chestnut Senior Living Property, LLC (previously defined as the "Chestnut Lane Property LLC" or the "Chestnut Lane Co-Owner") to act as the Co-Owner and Gresham Chestnut Senior Living, LLC (previously defined as the "Chestnut Lane Master Tenant" or the "Chestnut Lane Operator LLC") to act as the Operator LLC and Master Tenant for the Project.

104. On October 3, 2007, Canyon Creek Development secured a term sheet (the "Chestnut Lane Term Sheet") from an Acquisition Loan Lender for a $5,400,000 Mortgage Loan (the "Chestnut Lane Mortgage Loan"). The Chestnut Lane Mortgage Loan was for a 10 year term with a variable interest rate. Jon Harder and Darryl Fisher jointly and severally fully guaranteed the completion, accrued interest, cost of collection, and principal repayment of the proposed Chestnut Lane Mortgage Loan.

105. According to materials provided to prospective

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Chestnut Lane TIC Investors, the Chestnut Lane Property LLC planned to use 82% of the proceeds for the acquisition of the Property and Facility, 13% for the Conduit Loan to the Master Tenant,[52] and the remainder for cost and fees associated with the purchase of the Property and Facility and for securing the Mortgage Loan.

106. On or about October 22, 2007, the Chestnut Lane Property LLC commenced a TIC Offering for $2,325,000 — or a 33% equity interest[53] — in the Chestnut Lane Property LLC. According to materials provided to investors, the Chestnut Lane Property LLC intended to use 91% of the TIC Offering proceeds for the Chestnut Lane Acquisition Price, 7% for Broker-Dealer Commissions, and the remainder for costs and fees incurred in connection with the purchase of the Chestnut Lane Facility and the TIC Offering.[54] Canyon Creek Development sponsored the offering.

107. The TIC Offering was conducted in a manner that was consistent with the standard TIC Offering described in Section (I)(C)(1)(a) herein. According to materials provided to prospective Chestnut Lane TIC Investors, the Chestnut Lane Operator LLC would pay each TIC Investor a TIC Rent of 9.7%, which was guaranteed by Lease Reserve. In addition, pursuant

[52] $150,000 from the Conduit Loan was to be set aside for both the Reserve Account and Debt Service Reserves; $25,000 from the Conduit Loan was to set aside for TIC Rent guaranty fees, which were purportedly paid to Lease Reserve.
[53] Assumes a purchase price of $7,035,000, which includes the Chestnut Lane Acquisition Price, costs and fees, and the portion of the Mortgage Loan that does not include the Conduit Loan.
[54] According to materials provided to investors.

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to the Chestnut Lane Master Tenant Agreement the Chestnut Lane Master Tenant had the option to purchase the TIC Investor's TIC interest any time after 18 months at fair market value determined as either: 1) the purchase price paid by the TIC Investor plus 2% per year, or 2) an independent appraisal.

108. Canyon Creek Financial, the Third Party Brokers, and Principals of the Sunwest Enterprise offered and sold the TICs by means of a Prospectus, dated October 22, 2007 (the "Chestnut Lane TIC Prospectus"), an Executive Summary, dated September 19, 2007, and through Principal Meetings (collectively, the "Chestnut Lane Selling Materials").

109. According to the Financial Projections, dated October 23, 2007, prepared by Canyon Creek Development with information provided by Sunwest Management and included in the Chestnut Lane TIC Prospectus, the Chestnut Lane Facility was projected to 1) achieve a 97% stabilized rate after its 20th month of operation, 2) achieve positive cash flow after its 12th month of operation, 3) have its monthly cash flow improve from <$25,345> in its first month of operation to $9,123 in its 24th month, and 4) meet its obligations to TIC Investors without having to rely funds from the Reserve Account or outside funding after its 12th month of operation.

110. The Chestnut Lane Selling Materials indicated that payment of the a TIC Investor's TIC Rent was solely linked to the operational success of the Chestnut Lane Facility — which included the ability of Sunwest Management to increase the

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Facility's occupancy, the Facility's ability to meet its Financial Projections, the Facility's ability to fund the Reserve Account, and, if necessary, the Facility's ability to obtain loans from Principals and associates of the Sunwest Enterprise and Affiliate Fee Deferrals from Affiliates.

111. The Chestnut Lane Selling Materials did not disclose that payment of a TIC Investor's TIC return was actually tied to the financial and operating health of other Projects.

112. The Chestnut Lane TIC Prospectus also stated explicitly that the Chestnut Lane Co-Owner was not controlled by Jon Harder and/or Darryl Fisher and did not disclose that Jon Harder owned 33% and Darryl Fisher owned 20% of Senior Living Property III, the sole member of the Chestnut Lane Co-Owner.

113. Many of the Chestnut Lane TIC Investors would not have purchased interests in the Chestnut Lane Co-Owner if they knew about the misleading or omitted statements.

114. Prior to the Closing Date, Canyon Creek Financial and the Third Party Brokers sold $2,776,144, or 39.4%, worth of TIC interests to 18 TIC Investors, including 10 Oregon investors. Those TIC Investors assumed $1,334,000 of the Chestnut Lane Mortgage Loan. Subsequent to the Closing Date, Canyon Creek Financial and another Third Party Broker sold an additional $365,000 worth of TICs to three of the 18 TIC Investors, including two of the Oregon investors.[55] According

[55] The three additional TIC investors did not assume any additional debt.

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to disclosures made in the Chestnut Lane TIC Prospectus, the $400,000 in excess funds raised through the TIC Offering were used to either reduce the amount of the Chestnut Lane Mortgage Loan or loaned to the Master Tenant to increase the Master Tenant's operating reserves.

115. On the Closing Date, immediately after the sale to the Chestnut Lane Co-Owner, the Chestnut Lane Co-Owner leased the Property to the Chestnut Lane Master Tenant. The Chestnut Lane Co-Owner then conveyed a security interest in the Property to the Acquisition Loan Lender and conveyed the TIC interests to the TIC Investors according to their percentage share. The TIC Investors executed a Purchase Agreement, a Master Lease Agreement, a Tenants-in-Common Agreement, a Debt Assumption Agreement, and a Master Tenant Purchase Option Agreement. In addition, according to disclosures made in the Chestnut Lane TIC Prospectus, Affiliates accrued approximately $312,750 — 7% of the TIC Offering — in fees and expenses. Those fees included the Acquisition Fee, the Broker-Dealer Commissions, and the guarantor fee to Lease Reserve.

116. Consistent with the business model described herein, the Chestnut Lane Master Tenant then entered into the Sunwest Management Agreement and relied on Affiliates, including Senenet and Encore Insurance, for their services.

117. The Chestnut Lane Master Tenant paid each TIC Investor its TIC Rent in full monthly beginning in March 2008. Those payments stopped after the July 2008 payment and have

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not resumed as of the date of this Order.

118. The Receiver estimates that as of February 2009, Chestnut Lane was a Tier 2 Facility.

2. Example #2: West Salem Senior Living Land Acquisition Phase I

119. On December 12, 2006, a third-party entered into a Purchase and Sale Agreement and Receipt of Ernest Money Agreement (the "Cottonwood Purchase Agreement") to acquire approximately 18.3 acres of undeveloped land located at 1417 Orchard Heights Road in Salem, Oregon ("Cottonwood") for $4,086,000 (the "Cottonwood Acquisition Price"). That party subsequently assigned its right to acquire Cottonwood to Canyon Creek Development.

120. On September 10, 2007, Wallace Gutzler on behalf of Canyon Creek Development formed West Salem Senior Living Property, LLC (previously defined as the "Cottonwood Property LLC" or the "Cottonwood Co-Owner") to act as the Co-Owner, and West Salem Senior Living, LLC (previously defined as the "Cottonwood Master Tenant," or the "Cottonwood Operator LLC") to act as the Operator and Master Tenant of the Cottonwood Project.

121. On October 1, 2007, the Cottonwood Co-Owner acquired Cottonwood by making a minimum down payment of $1,000,000[56] and obtaining a $3,000,000 loan from the sellers of the Property.[57]

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[56] Canyon Creek Development provided a Bridge Loan for the down payment.

[57] The Seller Loan was secured by a first deed on Phase I of the Project and the personal guarantees of Jon Harder and a third party. The Seller Loan was to accrue interest at 7% per year and was due and payable on or before

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122. According to materials provided to investors, the Sunwest Enterprise and Affiliates expected to begin construction of 1) 272,000 square foot three story main building that had 108 independent living units, 120 assisted living units, and 16 memory care units, and 2) 28 two-bedroom cottages totaling 37,100 square feet (the "Cottonwood Facility") by Spring 2008 at an estimated total cost of $47,723,880. Canyon Creek Development and Hill Architects, among others, were to coordinate the development and obtaining permits for the Cottonwood Project.

123. On or about September 2007, the Cottonwood Property LLC (the "Cottonwood TIC Issuer") commenced a TIC Offering for $4,715,000 — or a 98% equity interest — in the Cottonwood Property LLC. According to materials provided to investors, the Cottonwood Property LLC intended to use 87% of the TIC Offering proceeds for the Cottonwood Acquisition Price, 7% for Broker-Dealer Commissions, 3% for the Assignment Fee, 1.31% for architectural and related fees, and the remainder for costs and fees incurred by Canyon Creek Development in connection with the purchase of the Property and the Cottonwood TIC Offering. Canyon Creek Development sponsored the offering.

124. The TIC Investors' ownership interest was to be subject to a Construction Loan of an estimated $41,950,000

December 31, 2007. The remainder of the Cottonwood Acquisition Price was also secured by a first deed.

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that the Cottonwood Operator LLC and Canyon Creek Development intended to arrange in Phase II.

125. The Cottonwood TIC Issuer conducted the TIC Offering in a manner that was consistent with the standard Phase I TIC Offering described in Section (I)(C)(1)(a) herein. According to materials provided to TIC Investors, the Cottonwood Master Tenant would pay each TIC Investor a TIC Rent of 10%. In addition, the Cottonwood Master Tenant had the option to purchase the TIC Investor's interest any time after 18 months at fair market value determined as either: 1) the purchase price paid by the TIC Investor plus 2% per year, or 2) and independent appraisal.

126. Canyon Creek Development through Canyon Creek Financial and other Selling Brokers and Principals of the Sunwest Enterprise offered and sold the TICs by means of a Prospectus dated September 12, 2007 (the "Cottonwood TIC Prospectus"), an Executive Summary, dated September 19, 2007, and through Principal Meetings (collectively, the "Cottonwood TIC Selling Materials").

127. According to the Financial Projections, dated September 5, 2007, prepared by Canyon Creek Financial with information provided by Sunwest Management and included in the Cottonwood TIC Prospectus, the Cottonwood Facility was projected to 1) achieve a 97% stabilized occupancy rate after its 22nd month of operation, and 2) achieve a positive net operating income after its fifth month of operation.

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128. The Cottonwood TIC Selling Materials through misleading statements or omissions indicated that payment of a TIC Investor's TIC Rent was solely linked to the operational success of the Cottonwood Project — which included the ability of Sunwest Management to complete construction of the Cottonwood Facility, the Project's ability to meet its Financial Projections, the Project's ability to fund the Reserve Account from the funds raised from the Phase II Offering, and, if necessary, the Project's ability to obtain loans from Principals and associates of the Sunwest Enterprise and Affiliate Fee Deferrals from Affiliates.

129. The Cottonwood Selling Materials did <u>not</u> disclose that payment of a TIC Investor's TIC Return was tied to the financial and operating health of other Projects. Further, the Cottonwood Selling Materials also did not disclose that a number of similar Land Acquisition construction projects had been delayed, suspended or cancelled, that other Projects were not in compliance with their loan documents, or that other Projects were not meeting their Financial Projections.

130. Many of the Cottonwood TIC Investors would not have purchased interests in the Cottonwood Co-Owner if they knew about the misleading or omitted statements.

131. Between October 22, 2007 and February 21, 2008, the Cottonwood Property LLC raised $4,713,910.02, or 97.98%, in equity from 19 TIC Investors,[58] including 10 Oregon investors.

[58] Seventeen TIC Investors relied on 1031 Exchanges.

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132. Upon the sale of each TIC Investor's interest, the TIC Investor executed a Purchase Agreement, a standard Master Lease Agreement, a Tenants-in-Common Agreement, and a Master Tenant Purchase Option Agreement. According to the Cottonwood TIC Prospectus, the Cottonwood Property LLC used the proceeds from the sale of the TIC Offering to pay the Seller Loan. In addition, Affiliates accrued an estimated $900,000, or 19% of the TIC Offering, in fees and expenses. These fees included an Assignment Fee,[59] real estate broker fees, and Broker Dealer Commissions.[60]

3. Example #2 (cont'd): West Salem Senior Living Land Acquisition Phase II

133. On or about September 4, 2007, the Cottonwood Operator LLC commenced a Preferred B Interest Offering for $5,773,000 — or a 40% interest — in the Cottonwood Operator LLC (the "Cottonwood Preferred B Interest Offering"). The Offering was conducted in a manner that was consistent with the standard Preferred B Interest Offering as described herein with a Preferred Return of 10% (the "Cottonwood Preferred B Return").

134. The Preferred B Interests were offered and sold by means of a Prospectus dated September 4, 2007 (the "Cottonwood Preferred B Prospectus"), a Prospectus supplement, dated February 12, 2008 (the "Cottonwood Preferred B Prospectus

[59] Approximately $125,000 paid to Canyon Creek Development.
[60] Approximately $330,050 paid to Canyon Creek Financial.

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Supplement"), an Executive Summary and Principal Meetings (collectively, the "Cottonwood Preferred B Selling Materials").

135. Subject to the modifications made in the Cottonwood Preferred B Prospectus Supplement, the Cottonwood Preferred B Prospectus made the same types of disclosures (and nondisclosures) as the Cottonwood TIC Prospectus.

136. According to the Cottonwood Preferred B Prospectus, the Cottonwood Operator LLC intended to use the proceeds from the Cottonwood Preferred B Interest Offering and the proceeds from an anticipated $41,950,000 Construction Loan 1) to construct a Facility on the Property,[61] 2) to fund the Reserve Accounts,[62] and 3) to pay any fees and expenses associated with the Cottonwood Preferred B Interest Offering.

137. The Cottonwood Preferred B Prospectus Supplement materially reduced the size and scope of the Project, including the projected costs and financing for construction of the Facility. The scope of the Project went from a three story <u>272,000</u> square foot building with <u>108</u> independent living units, 120 assisted living units and 16 memory care units and <u>28</u> two-bedroom cottages totaling approximately <u>37,100</u> square feet to a three story <u>245,000</u> square foot building with <u>82</u> independent living units, 120 assisted living units and 16 memory care units and <u>8</u> two-bedroom cottages totaling

[61] Approximately 78% of the combined proceeds.
[62] Approximately 20% of the combined proceeds.

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approximately <u>10,800</u> square feet. Accordingly, the estimated cost of the Project was reduced from $47,723,880 to $39,832,780 and the amount of Construction Loan was reduced from $41,950,000 to $34,052,000. The amount of the Preferred B Interest Offering was not reduced.

138. The Cottonwood Preferred B Prospectus Supplement also modified the Cottonwood Preferred B Prospectus to indicate that 1) reserves held for the Cottonwood Project and other Projects sponsored by Canyon Creek Development in a comingled account were loaned to other Projects if those funds were not immediately needed by a Project despite restrictions in the Operator LLC Agreement. The Cottonwood Preferred B Prospectus Supplement further modified the Cottonwood Preferred B Prospectus to indicate that similar Operator LLCs for Land Acquisition Projects sponsored by Canyon Creek Development 1) were experiencing negative cash flow, 2) were delayed, suspended or cancelled, 3) had experienced cost overruns, and 4) were not meeting their Financial Projections.[63]

139. Canyon Creek Financial and other Selling Brokers sold $3,620,000 — or 25.08% — worth of Preferred B Interests in the Cottonwood Operator LLC to 5 investors, including 3 Oregon Investors between September 6, 2007 and February 12,

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[63] Importantly, in similar Projects, the Sunwest Enterprise and its Principals did not disclose to investors – whether by means of a prospectus or otherwise – that some Land Acquisition Projects 1) were experiencing negative cash flow, 2) were delayed, suspended or cancelled, 3) had experienced cost overruns, and 4) were not meeting their Financial Projections.

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2008 and sold $300,000 — or 2.08% — worth of Preferred B Interests in the Cottonwood Operator LLC to 2 investors, both were Oregon Investors, between February 13, 2008 and June 11, 2008. In total, Affiliates accrued an estimated $837,000[64] or 2% of the Phase II Offering in fees and expenses. Those fees included a Development Fee,[65] an insurance placement fee,[66] Broker-Dealer Commissions,[67] and construction costs.[68]

140. Upon the close of sale of each Cottonwood Preferred B Interest, the Cottonwood Preferred B Interests entered into the Cottonwood Operator LLC Agreement.

a) A Sale of Cottonwood Preferred B Interests to an Oregon Trust

141. On April 23, 2008, a Canyon Creek Financial salesperson/principal sold $200,000 — or 1.39% — worth of Preferred B Interests in the Cottonwood Operator LLC to a living trust located in Oregon (the "Trust") for a monthly Preferred Return of $1,667.[69] The trustee for the Trust (the "Trustee") had 30 years of experience purchasing timber land, but had no experience in acquiring senior living properties. The Trustee was seeking a secure return with minimal risk and effort for the Trust's excess cash.

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[64] Does not include the Architect and Design Fees that were paid to Hill Architects.
[65] Approximately $125,000 paid to Canyon Creek Development
[66] Approximately $3,000 paid to Encore Insurance
[67] Approximately $384,880 paid to Canyon Creek Financial and third party broker-dealers.
[68] Approximately $325,000 paid to KDA Construction.
[69] The Trust also purchased $300,000 — or 1.64% — worth of Preferred B Interests in Paragon Gardens, LLC for a monthly Preferred Return of $2,500 on April 23, 2008.

142. Prior to purchasing the Preferred B Interests, on April 9, 2008 the Trustee completed an accredited investor questionnaire. After completing the accredited investor questionnaire, but prior to investing, the Trustee received a copy of the Cottonwood Preferred B Prospectus and the Cottonwood Preferred B Prospectus Supplement and met with Jon Harder and the Canyon Creek Financial salesperson/principal. Jon Harder and the Canyon Creek Financial salesperson/principal stressed the Sunwest Enterprise’s history of never having missed a payment to a TIC Investor or a Preferred B Interest. Neither Jon Harder nor the Canyon Creek Financial salesperson/principal disclosed that payment of Preferred B Return was actually tied to the financial and operating health of other Projects. The Trustee invested the Trust’s funds in the Cottonwood Operator LLC based primarily on the statements made by Jon Harder in the Principal Meeting.

143. On May 23, 2008 the Trust closed on the purchase of its Cottonwood Preferred B Interests. The Trust received its Preferred B Return payments for May through August, but payments stopped after the August payment.

II. CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

A. ORS 59.015 Definitions

144. The TICs described in this Order that were offered or sold between March 2001 and June 2008, including but not limited to the illustrative examples of the Chestnut Lane TICs

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and the Cottonwood TICs, are "securities" under ORS 59.015(19)(a) inasmuch as they were purchased by investors with a sum of money and/or debt, with the expectation that the investment would return a profit and/or a favorable tax treatment from their investment under Section 1031 of the Federal Tax Code. The money raised from the TIC Investors was pooled to pay applicable fees and expenses, and to enter into a Master Lease Agreement with the Project's Master Tenant. The TIC Investors had little or no control over the operation of the investment, with only a vote in certain decisions of the Operator LLC, and depended solely and exclusively on the efforts of Canyon Creek Development, Sunwest Management, the Affiliates, and the Master Tenant for the management, maintenance, leasing, and (if necessary) construction of a Facility during the term of the Master Lease Agreement.

145. The Preferred B Interests described in this Order that were offered or sold between March 2001 and June 2008, including but not limited to the illustrative example of the Cottonwood Preferred B Interests, are "securities" under ORS 59.015(19)(a). As indicated above, each Preferred B Interest invested a sum of money in an Operator LLC with the expectation that they would receive a return. The investor funds were, at times, pooled for the Operator LLC to finance the development and construction costs of a Facility and pay and fees and expenses. In addition, each Preferred B Interest was dependent solely upon the efforts of the Managers of their

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Operator LLC and the Preferred A Interests for the management operations and control of the Operator LLC and Canyon Creek Development, Sunwest Management, and the Affiliates for the management, operation, control, and construction, of a Facility.

146. At all times material herein, Senior Living Properties II and Senior Living Properties III "controlled" various Co-Owners, as that term is defined under ORS 59.015(2) because they possessed, directly or indirectly, the power to direct or cause the direction of the management of those entities through the ownership of voting securities in those entities.

B. Violations of ORS 59.135(2) and ORS 59.205(2)

147. At all times material herein, Canyon Creek Development, Sunwest Management, Canyon Creek Financial, Senior Living Property II, and Senior Living Property III and their respective control persons (the "ORS 59.135(2) Entities") directly or indirectly in connection with the purchase or sale of securities continuously made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of ORS 59.135(2).

148. Further to that end, Canyon Creek Financial and its control persons also engaged in dishonest, fraudulent, or illegal practices or conduct in connection with the purchase

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of securities by engaging in acts, practices, and/or courses of business that operated as a fraud or deceit upon investors in violation of ORS 59.205(2).

1. Material Omissions

149. Specifically, the ORS 59.135(2) Entities omitted to state, whether in writing or orally, to certain investors:

- That Canyon Creek Development and Sunwest Management allowed funds from one Project (Project #1) to be loaned to other Projects if Project #1 did not have an immediate use for the funds.
- That Project #1 faced risk of nonpayment of principal and nonpayment of interest on the "loan" from the borrowing Project.
- That Canyon Creek Development and Sunwest Management lacked the internal controls necessary to ensure that a Project's reserve funds were not comingled with other Project's reserve accounts.
- That payment of TIC Interest and Preferred B Returns depended on the success of other existing Projects.
- That payment of TIC Interest and Preferred B Returns depended, in part, on Canyon Creek Development's ability to find new Projects and new Investors.
- That Jon Harder's ability to make Personal Loans and/or Contributions was dependent, in part, on the performance of other Projects.
- That an Affiliate's ability to make fee deferrals

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was dependent on the performance of other Projects.

- That similar Projects were not meeting their Financial Projections.
- That construction on similar Land Acquisition Projects were abandoned, suspended, or delayed.
- That similar Land Acquisition Projects were experiencing cost overruns.
- That similar Projects were not in compliance with their Acquisition or Construction Loan documents.
- That Jon Harder's personal guarantees of various Acquisition and/or Construction Loans were cross-defaulted to other guarantees and other loan commitments.

150. Further:

- The <u>ORS 59.135(2) Entities</u> made statements to investors that the Sunwest Enterprise had never missed a TIC Interest and/or Preferred B Interest payment that – although true until June 2008 – were misleading because they omitted to state that the Sunwest Enterprise was able to do so because it comingled Project funds in violation of the Operator LLC Agreements and Sunwest Management Agreements.
- The <u>ORS 59.135(2) Entities</u> did not – whether through Prospectuses, Executive Summaries, or otherwise – provide to prospective investors financial statements or projections for the entire Sunwest Enterprise, the Affiliates and other Projects that would materially

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impact a potential investor’s investment decision.

- The ORS 59.135(2) Entities provided Financial Projections and Sunwest Operating Histories to investors that were misleading.
- The ORS 59.135(2) Entities made statements to investors that that fees paid to third party affiliates were not negotiated at arms length, that – although true – were misleading because they omitted to state that those fees may be greater than otherwise would be payable to independent third parties.
- The ORS 59.135(2) Entities omitted to state that Project funds would be used in a manner inconsistent with stated uses in the Selling Materials, including that Project funds would be comingled with funds from other Projects.

2. Untrue Statements

- The ORS 59.135(2) Entities provided investors with Operator LLC Agreements and/or Sunwest Management Agreements that contained provisions — such as that the Operator LLC would not comingle funds — that had historically not been followed by similar Projects and would not be followed for that Project.
- The ORS 59.135(2) Entities made untrue statements to some investors through Prospectuses and/or Executive Summaries about how the investor’s funds would be used.
- The ORS 59.135(2) Entities made untrue statements to

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some investors through Prospectuses and/or Executive Summaries that the Project's Co-Owner was not controlled by Jon Harder, Darryl Fisher, and Wallace Gutzler.

C. Violations of ORS 59.135(3) — Direct Participants

151. At all times material herein, Canyon Creek Development, Sunwest Management, Senior Living Properties II, Senior Living Properties III, Encore Insurance, Encore Indemnity, Silver Insurance, Silver Indemnity and their respective control persons, (the "Direct ORS 59.135(3) Entities") in connection with the purchase of sale or securities directly engaged in acts, practices, and/or courses of business that operated as a fraud or deceit upon investors in violation of ORS 59.135(3).

152. Specifically, through common ownership and control and by extensively comingling funds, the Direct ORS 59.135(3) Entities fraudulently and deceptively operated the Sunwest Enterprise as a single integrated enterprise that paid certain of its investors their returns, including TIC Rent or Preferred Returns, from funds that belonged to investors in previous Projects, existing investors, or subsequent investors; and not as a loose collection of affiliated Projects in which each Project paid its investors their returns, including TIC Rent or Preferred Returns, from the operations of that particular Project.

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D. Violations of ORS 59.135(3) — Indirect Participants – and ORS 59.205(2)

153. Canyon Creek Financial, KDA Construction, Senenet, and their respective control persons (the "Indirect ORS 59.135(3) Entities") in connection with the purchase or sale of securities directly engaged in acts, practices, and/or courses of business that operated as a fraud or deceit upon investors in violation of ORS 59.135(3).

154. Further to that end, Canyon Creek Financial and its control persons engaged in dishonest, fraudulent, or illegal practices or conduct in connection with the purchase of securities by engaging in acts, practices, and/or courses of business that operated as a fraud or deceit upon investors in violation of ORS 59.205(2).

155. Specifically, the Indirect ORS 59.135(3) Entities deferred Affiliate Fees it was owed from Projects and/or made direct cash contributions to Projects and/or the Sunwest Enterprise in a way that allowed the Direct ORS 59.135(3) Entities to mislead current and potential investors about the true financial condition of a Project, thereby allowing the Sunwest Enterprise to further perpetuate its scheme.

E. Offers and/or Sales of Unregistered Securities under ORS 59.055

156. From 2001 to June 2008, Canyon Creek Financial, Canyon Creek Development, each Co-Owner and their respective control persons offered or sold securities in Oregon for which

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there were no exemptions under ORS 59.025 or ORS 59.035 without those securities first being registered under ORS 59.065 or filed under ORS 59.049.

F. Hiring Unlicensed Broker-Dealer and Broker Dealer Salespersons under ORS 59.165(3) and Willfully or Repeatedly Violating or Failing to Comply with Provisions of the Oregon Securities Laws under ORS 59.205(3)

157. From March 2001 to June 2008, each Project that offered or sold securities and Canyon Creek Development and/or Canyon Creek Financial, acted as and/or employed broker-dealers and/or broker-dealer salespersons or issuer salespersons to sell securities in Oregon without their first being licensed under the Oregon Securities Law.

158. Specifically, from March 2001 to June 2008 various Co-Owners offered and sold TICs to investors either directly through Canyon Creek Development, Canyon Creek Financial, or its control persons or through Real Estate Brokers, including Richard Wielde, that were not licensed as broker-dealers or salespersons in Oregon.

159. In addition, Canyon Creek Financial and its control persons willfully or repeatedly violated or failed to comply with provisions of the Oregon Securities Law in violation of ORS 59.205(3) by allowing Richard Wielde to act as a broker-dealer salesperson in Oregon when he was unlicensed to do so.

G. Canyon Creek Financial's Book and Records Violations

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under ORS 59.195, ORS 59.205(14) and OAR Chapter 441, Division 195

160. From June 2006 to August 2008 Canyon Creek Financial and its control persons failed to comply with the requirements to make and keep records prescribed by rule or order of the Director, to produce such records required by the Director, or to file any financial reports or other information the Director by rule or order may require in violation of ORS 59.195, ORS 59.205(14) and OAR Chapter 441 Division 195.

161. Specifically, Canyon Creek Financial and its control persons failed to: 1) produce an accurate listing of current and terminated employees; 2) produce complete due diligence documentation for securities sales; 3) produce complete income/expense statements; 4) produce an accurate check history report and/or general ledger; 5) treat investor complaints properly; and 6) produce complete reports.

H. Failure to Supervise Broker-Dealer Salespersons of under ORS 59.205(13) and OAR 441-205-0210 promulgated thereunder

162. From June 2006 to August 2008, Canyon Creek Financial and its control persons failed to reasonably supervise its broker-dealer salespersons in violation of ORS 59.205(13) and OAR 441-205-0210 promulgated thereunder.

I. Unsuitable Recommendations under ORS 59.205(2) and OAR 441-205-0140 promulgated thereunder

163. From June 2006 to August 2008, Canyon Creek

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Financial and its control persons recommended to prospective investors the purchase, sale, or exchange of securities without having reasonable grounds to believe that the recommendations was suitable for that particular customer on the basis of information furnished by that customer after a reasonable inquiry concerning the customer's investment objectives, financial situation, and needs and any other information known by a Canyon Creek Financial broker-dealer salesperson in violation of ORS 59.205(2) and OAR 441-205-0140 promulgated thereunder.

J. Insolvency under ORS 59.205(1)

164. Canyon Creek Financial is insolvent under ORS 59.201(1) either in the sense that its liabilities exceed its assets, or that its cannot meet its obligations as they mature, or that it is such financial condition that it cannot continue in business with safety to its customers.

K. Actual Expenses Incurred at the Examination under ORS 59.235

165. The Division's actual expenses incurred in the Examination is $11,362.50 (Eleven Thousand Three-Hundred Sixty-Two Dollars and Fifty Cents).

III. ORDERS

A. Oregon Securities Law Violations

1. Cease and Desist

The Director pursuant to her authority under ORS 59.245, hereby **ORDERS** that:

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166. Canyon Creek Development, Sunwest Management, Canyon Creek Financial, Senior Living Properties II, Senior Living Properties III, KDA Construction, Senenet, Encore Insurance, Encore Indemnity, Silver Insurance, Silver Indemnity and any other successor business over which the Respondents would be deemed officers or control persons or assigns of the Respondents, shall **CEASE and DESIST** from violating any provision of the Oregon Securities Law.

2. Denial of Exemptions

The Director pursuant to her authority under ORS 59.045 hereby **ORDERS** that:

167. The use by the Respondents, and/or their licensed or unlicensed salespersons on their behalf or for their benefit, and/or any affiliate, successor or assign of the Respondents of any exemptions to securities registration requirements authorized by ORS 59.025 and ORS 59.035 are hereby **DENIED** until further order of the Director.

3. Actual Examination Expenses

The Director pursuant to her authority under ORS 59.235 **ORDERS:**

168. That Canyon Creek Financial pay $11,362.50 (Eleven Thousand Three-Hundred Sixty-Two Dollars and Fifty Cents) for actual expenses incurred during the Examination.

169. The Examination expenses shall be due and payable no later than TEN (10) days after the final entry of this Order.

4. Civil Penalties

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The Director pursuant to her authority under ORS 59.995 hereby assesses the following **CIVIL PENALTIES:**

a) Violations of ORS 59.135(2)

170. Canyon Creek Development, Sunwest Management, Canyon Creek Financial, Senior Living Properties II, and Senior Living Properties III are each ordered to pay a **CIVIL PENALTY** of $700,000 (Seven-Hundred Thousand Dollars) for seven continuing violations of ORS 59.135(2) as described herein.

b) Direct violations of ORS 59.135(3)

171. Canyon Creek Development, Sunwest Management, Encore Insurance, Encore Indemnity, Silver Insurance, Silver Indemnity, Senior Living Properties II, and Senior Living Properties III are each ordered to pay a CIVIL PENALTY of $100,000 (One Hundred Thousand Dollars) for one continuing violation of ORS 59.135(3) as described herein.

c) Indirect violations of ORS 59.135(3)

172. Canyon Creek Financial, Senenet, and KDA Construction, are each ordered to pay a CIVIL PENALTY of $100,000 (One Hundred Thousand Dollars) for one continuing violation of ORS 59.135(3) as described herein.

d) Violations of ORS 59.055

173. Canyon Creek Development and Canyon Creek Financial are each ordered to pay a CIVIL PENALTY of $100,000 (One Hundred Thousand Dollars) for one continuing violation of ORS 59.055 as described herein.

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e) Violations of ORS 59.165

174. Canyon Creek Development and Canyon Creek Financial are each ordered to pay a CIVIL PENALTY of $100,000 for one (1) continuing violation of ORS 59.165 as described herein.

f) Violations of ORS 59.205(2) and OAR 441-205-0140 promulgated thereunder

175. Canyon Creek Financial is ordered to pay a CIVIL PENALTY of $100,000 (One Hundred Thousand Dollars) for one continuing violation of ORS 59.205(2) and OAR 441-205-0140 promulgated thereunder as described herein.

g) Violations of ORS 50.205(13) and OAR 441-205-0210 promulgated thereunder

176. Canyon Creek Financial is ordered to pay a CIVIL PENALTY of $100,000 (One Hundred Thousand Dollars) for one continuing violation of ORS 50.205(13) and OAR 441-205-0210 promulgated thereunder as described herein.

h) Violations of ORS 59.195 and ORS 59.205(14)

177. Canyon Creek Financial is ordered to pay a CIVIL PENALTY of $20,000 (Twenty Thousand Dollars) for one violation of ORS 50.205(14) as described herein.

B. Summary of Civil Penalties

178. In summary, Canyon Creek Development is ordered to pay a total of $1,100,000 (One Million One Hundred Thousand Dollars) in CIVIL PENALTIES; Sunwest Management is ordered to pay a total of $800,000 (Eight Hundred Thousand Dollars)in

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CIVIL PENALTIES; Canyon Creek Financial is ordered to pay a total of $100,000 (One Hundred Thousand Dollars)in CIVIL PENALTIES; Senior Living Properties II is ordered to pay a total of $800,000 (Eight Hundred Thousand Dollars) in CIVIL PENALTIES; Senior Living Properties III is ordered to pay a total of $800,000 (Eight Hundred Thousand Dollars)in CIVIL PENALTIES; KDA Construction is ordered to pay a total of $100,000 (One Hundred Thousand Dollars)in CIVIL PENALTIES; Silver Insurance, Silver Indemnity, Encore Insurance, and Encore Indemnity are ordered to pay a total of $100,000 (One Hundred Thousand Dollars) in CIVIL PENALTIES.

The Respondents shall be joint and severally liable for payment of the assessed CIVIL PENALTIES. Pursuant to ORS 183.745(2), the assessed CIVIL PENALTIES shall be due and payable TEN (10) days after the final entry of this Order.

179. The collection of the assessed CIVIL PENALTIES shall be held **IN ABEYANCE** so long as the Respondents comply with the terms of any order and/or judgment issued by the United States District Court, District of Oregon or the Receiver in *Securities and Exchange Commission v. Sunwest Management, Inc. et.al.*, United States District Civil Number: 09-CV-6056-HO (the "SEC Litigation"). The entire CIVIL PENALTY shall be immediately due and payable 1) if any of the Respondents fail to comply with any court order and/or conditions imposed during the pendency of the SEC Litigation, 2) if any of the

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Respondents fail to comply with the terms of this Order,[70] or 3) upon the conclusion of the SEC Litigation.

180. Any monies collected by the Director as CIVIL PENALTIES will be remitted to the Receiver to satisfy any money judgment or order for payment of monies against any of the Respondents including, but not limited to, an order of restitution or disgorgement of monies issued in the SEC Litigation.

The entry of this Order in no way limits any further remedies which may be available to the Director under Oregon law.

IT IS SO ORDERED.

Dated this 21st day of September, 2009, in Salem, Oregon.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
CORY STREISINGER, DIRECTOR

David Tatman

David C. Tatman, Administrator
Division of Finance and Corporate Securities

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[70] Encore Indemnity, Ltd. is not a party to or named in the SEC Litigation as of the date of this Order.

NOTICE OF RIGHT TO PUBLIC HEARING

Pursuant to ORS 59.295, Canyon Creek Development, Sunwest Management, Canyon Creek Financial, Senior Living Properties II, Senior Living Properties III, KDA Construction, Contract Interiors, Senenet, Encore Insurance, Encore Indemnity, Silver Insurance, Silver Indemnity are hereby given notice of their right to request a hearing in this matter. Such request shall be in writing and shall be served upon the Director within 20 (twenty) days after the date of service of this Order. Written demand for such hearing must be requested by each Respondent individually by mailing such demand to the following address:

Department of Consumer and Business Services
Division of Finance and Corporate Securities,
Enforcement Section
350 Winter Street NE, Room 410
Salem OR 97301-3881
Attn: Jason Ambers

If a hearing is requested, the Director shall hold a hearing on this Order. Failure to request a hearing within 20 (twenty) days will result in the entry of a FINAL ORDER TO CEASE AND DESIST, ORDER DENYING EXEMPTIONS, AND ORDER ASSESSING CIVIL PENALTIES. In the absence of a timely request for hearing, no person shall be entitled to judicial review of this Order and this Order shall be final in 20 (twenty) days. Since all Respondents are corporations or limited liability companies, they must be represented at the hearing by an attorney licensed in Oregon.

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The hearing will be conducted pursuant to the contested case procedures as described in ORS 183.310 through 183.550. Failure by any Respondent to attend a hearing requested may result in the allegations of this Order being taken as true and the proceeding being determined against the party failing to attend.

In the event a Respondent fails to request a hearing or fail to appear for a hearing on this matter, the Director designates the Division's investigative reports and accompanying files as the evidentiary record in this case as to that Respondent.

STATEMENT OF REASONABLE ACCOMMODATION

All proceedings will be conducted in a wheelchair accessible location. Written materials may be provided and/or graphic displays may be presented during the proceeding. For any other accommodation needed by individuals due to a disability, please contact the person whose name appears below:

Jason Ambers, Financial Enforcement Officer
Division of Finance and Corporate Securities
Telephone: (503) 378-4140 (voice and TDD)
(503) 947-7862 (fax)

Questions concerning the issues raised in this Order may be directed to Kevin Anselm or Jason Ambers, Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities, Enforcement Section, telephone (503) 378-4140.

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Cross Reference:

Defined Terms and parties by First Appearance

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