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3 **STATE OF OREGON**
4 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
5 **DIVISION OF FINANCE AND CORPORATE SECURITIES**

6
7 **BEFORE THE DIRECTOR OF THE DEPARTMENT OF**
8 **CONSUMER AND BUSINESS SERVICES**

9
10 **In the Matter of:**

11 **S-09-0016-2**

12 **Thomas F. Biesiadecki,**

13 **ORDER TO CEASE AND DESIST,**
14 **ORDER DENYING EXEMPTIONS,**
15 **ORDER ASSESSING CIVIL**
16 **PENALTIES, AND CONSENT TO**
17 **ENTRY OF ORDER**

18 **Respondent.**

19 **WHEREAS** the Director of the Department of Consumer and Business Services
20 (hereinafter, the “Director”) has conducted an investigation into certain business activities of
21 Canyon Creek Development, Inc.; Sunwest Management, Inc.; Canyon Creek Financial, LLC;
22 Thomas F. Biesiadecki (“Biesiadecki”) and others;

23 **WHEREAS** the Director has determined that Biesiadecki engaged in activities
24 constituting violations of provisions of the Oregon Securities Law, ORS 59.005 et seq. and

25 **WHEREAS** Biesiadecki neither admits nor denies the Findings of Fact or
26 Conclusions of Law contained herein, but wishes to resolve and settle this matter with the
27 Director by entering into this Consent to Entry of Order, which is evidenced by the authorized
28 signatures subscribed below.

29 **NOW THEREFORE**, the Director enters the following Findings of Fact,
30 Conclusions of Law, and Orders.

31 **I. FINDINGS OF FACT**

32 The Director **FINDS** that:

33 //

1 **A. The Respondent and Other Parties**

2 1. Canyon Creek Development, Inc. (“Canyon Creek Development”) is an
3 Oregon domestic for-profit corporation (Business Registry Number: 012198-98) formed on or
4 about March 28, 2001 with offices located at 3723 Fairview Industrial Drive SE, Suite 270,
5 Salem, Oregon 97302 (the “Fairview Location”). As of December 31, 2008, Jon M. Harder
6 (“Harder”) was the Vice President, a Director, and 60 percent owner of Canyon Creek
7 Development.

8 At all times material herein, Canyon Creek Development’s principal business was
9 locating and/or acquiring: 1) senior living facilities (a “Facility”, a “Facility Acquisition” or a
10 “Project”), or 2) empty parcels of land on which a Facility could be built (a “Land
11 Acquisition” or a “Project”).

12 2. Sunwest Management, Inc. (“Sunwest Management”) is an Oregon domestic
13 for-profit business corporation (Business Registry Number: 284595-84) formed on or about
14 February 27, 1992 with offices located at the Fairview Location. Harder is the founder of
15 Sunwest Management and as of December 31, 2008, was approximately its 75 percent owner.
16 At all times material herein, Harder was the Chief Executive Officer, President, and Director
17 of Sunwest Management.

18 Sunwest Management’s principal business was marketing, operating, and managing
19 senior living properties, including Facilities, which Canyon Creek Development located
20 and/or acquired.

21 3. Canyon Creek Financial, LLC (“Canyon Creek Financial”) is an Oregon
22 domestic limited liability company (Business Registry Number: 321171-94) formed on or
23 about November 4, 2005 with offices located at the Fairview Location. As of December 31,
24 2008, Harder was the 100 percent owner and Sole Member of Canyon Creek Financial.

25 On June 26, 2006, the Director licensed Canyon Creek Financial to act as a securities
26 broker-dealer in Oregon (CRD Number: 139306; BD Number: 5555).

1 Beginning in June of 2006, Canyon Creek Financial was a captive broker-dealer for
2 Canyon Creek Development that offered or sold only securities interests in Projects sponsored
3 by Canyon Creek Development and managed by Sunwest Management. Canyon Creek
4 Financial stopped selling securities on July 2, 2008.

5 4. Thomas F. Biesiadecki was an Oregon resident, and effective July 26, 2007,
6 was the President and the Chief Compliance Officer of Canyon Creek Financial. Prior to July
7 26, 2007, Biesiadecki was the Chief Operating Officer and Chief Compliance Officer.
8 Biesiadecki passed the Series 7 exam (General Securities Representative Examination), the
9 Series 24 exam (General Securities Principal) and the Series 63 exam. He was registered with
10 FINRA as a broker-dealer salesperson (CRD # 2210719) until on or about October 27, 2008.
11 The Director initially licensed Biesiadecki as a securities broker-dealer salesperson in 1995.
12 Biesiadecki withdrew his registration with FINRA as a broker-dealer salesperson on October
13 27, 2008. His Oregon license lapsed on December 31, 2008. He worked for five different
14 broker-dealers before starting work with Canyon Creek Financial in November 2005.
15 Biesiadecki's employment with Canyon Creek Financial ended on March 1, 2009, although as
16 of the date of this Order, he is still employed by Sunwest.

17 As President and as Chief Compliance Officer of Canyon Creek Financial, Biesiadecki
18 was responsible for supervising the activities of its registered representatives, including
19 Harder.

20 5. Jon M. Harder is an Oregon resident. As of December 31, 2008, Harder had a
21 20 percent or more controlling interest in more than 490 limited liability companies and
22 corporations including Canyon Creek Development and Sunwest Management and held a 100
23 percent interest in Canyon Creek Financial. His holdings also included affiliated companies
24 that provided services to Projects that were sponsored by Canyon Creek Development and/or
25 managed by Sunwest Management, including, but not limited to firms providing,
26 construction, interior decorating, pharmacy, advertising, and employee leasing services.

1 At all times material herein, Harder was registered with FINRA as a broker-dealer
2 salesperson (CRD #5085573) for Canyon Creek Financial. He passed the Series 22 exam on
3 or about December 12, 2006 and the Series 63 exam on or about September 13, 2006. The
4 Director initially licensed him as a broker-dealer salesperson on December 13, 2006.

5 **B. Overview**

6 6. From February 1992 to March 2008, Sunwest Management grew from
7 managing two senior living related properties in Oregon to over 270 properties in 36 different
8 states. From March 2001 to June 2008, Canyon Creek Development entered into over 200
9 Facility Acquisitions and over 40 Land Acquisitions.

10 7. Each Project – with the assistance of Canyon Creek Financial and Harder and
11 others – solicited individual investors to raise funds that would be used to locate, acquire,
12 construct, manage and/or operate the Project. From March 2001 to June 2008, over 1,200
13 investors, including over 500 Oregon investors, were solicited for investments in Projects
14 totaling over \$250 million.

15 8. Canyon Creek Development structured each Project acquisition in a consistent
16 manner. Canyon Creek Development formed one limited liability company that acquired and
17 maintained a fee interest in the property (the “Co-Owner” or “Property LLC”). Harder and
18 others controlled the Co-Owner.

19 9. Canyon Creek Development divided the single fee interest in the Property into
20 multiple co-ownership interests, which were sold to outside investors (“TIC Investors”)
21 through a securities offering. The TIC Investors then owned the property as tenants-in-
22 common with the Co-Owner. Harder and others generally retained a controlling interest in
23 Facility Acquisition Property LLCs. Biesiadecki sometimes held a minority interest in a
24 Property LLC.

25 10. The Co-Owner then leased the Property and/or Facility to a second limited
26 liability company that was formed by Canyon Creek Development (the “Master Tenant” or

1 “Operator LLC”) that would: 1) operate, maintain, and manage the Facility with the assistance
2 of Sunwest Management and others, or 2) construct a Facility on the property.

3 11. The Master Tenant agreed to pay each TIC investor a return on their
4 investment in the form of rent (the “TIC Rent”). Until January 2008, the TIC Rent was
5 usually 10 percent of a TIC Investor’s investment, but was generally lower for Projects that
6 closed after January 2008. After April 2, 2007, some of the Master Tenant’s obligations to
7 pay the TIC Rent were unconditionally guaranteed by a guarantor. The guarantor was Lease
8 Reserve LLC, a single purpose Oregon limited liability company whose limited net worth was
9 disclosed in the Private Placement Memoranda and that was 100 percent owned by Harder.

10 12. If necessary, the Master Tenant solicited membership interests (the “Preferred
11 B Interests”) through a securities offering to finance the construction of a Facility. Harder
12 and others always retained a greater than 60 percent controlling interest in the Master Tenant.
13 The Preferred B Interests were entitled to a return, which was typically 10 percent (the
14 “Preferred Return”).

15 13. In the case of a Land Acquisition, Canyon Creek Development managed the
16 Project’s finances. According to the terms of each Master Tenant’s limited liability company
17 agreement, Canyon Creek Development was not allowed to transfer funds from one Master
18 Tenant to another Master Tenant.

19 14. Upon the completion or acquisition of a Facility, the Master Tenant would hire
20 Sunwest Management to manage, market, and operate the Facility and manage its finances.
21 Sunwest Management was required to account for each Project’s funds separately.

22 15. The TIC Investors and Preferred B Interests relied on the efforts of Harder,
23 Canyon Creek Development, Sunwest Management, and others for the payment of their TIC
24 Rent and Preferred Return and had no ability to control operations and/or management of the
25 Project.

26 //

1 **C. Offer and Sale of Securities**

2 16. Canyon Creek Development, Canyon Creek Financial, Harder and others
3 directly or indirectly marketed the TICs and Preferred B Interests by means of a confidential
4 private placement memorandum (a “Prospectus”) and an executive summary (an “Executive
5 Summary”). As sponsor, Canyon Creek Development issued the Prospectus and Executive
6 Summary using information provided by Sunwest Management and others.

7 17. In particular, Canyon Creek Development marketed securities through Canyon
8 Creek Financial and Third-party Brokers with Canyon Creek Financial acting as managing
9 broker dealer.

10 18. In addition, certain principals and employees of Canyon Creek Development,
11 Canyon Creek Financial, and Sunwest Management, including Harder, met with potential
12 investors in person at the Fairview Location regarding investment opportunities in Projects.

13 19. Harder and others, at times, told investors directly or indirectly, either orally or
14 in writing, in connection with the offer or sale of securities that an investor’s funds would
15 only be used towards their particular Project; that payment of their TIC Rent or Preferred
16 Return was based on the successful operation of their particular Project – including the ability
17 to increase the Facility’s occupancy to a specified “stabilized” level; that the risk of losing
18 their investment was solely limited to that particular Project. In addition, Harder at times told
19 potential investors directly that no Project had ever missed a TIC Rent or Preferred Return
20 payment to investors. These statements were material.

21 20. Canyon Creek Financial and Biesiadecki’s supervision of Harder’s conduct
22 was not sufficient to identify misleading statements made by Harder or the omission of
23 material information that was necessary to make other statements not misleading.

24 **D. Liquidity Management/Transfer of Project Funds**

25 21. As market and economic conditions turned less favorable, some Land
26 Acquisitions Projects faced difficulty obtaining financing and constructing Facilities on time

1 and on budget (some Land Acquisition Projects were delayed, suspended, or cancelled) and
2 Sunwest Management was not able to improve the operations of some Facilities. As a result,
3 some Projects did not have enough liquid assets or income from operations to meet
4 obligations to creditors and investors. To manage those liquidity issues, Canyon Creek
5 Development, Sunwest Management, and others applied many of the Projects' liquid assets
6 collectively in a manner that satisfied short term capital requirements. At some point it
7 became Canyon Creek Development's, Sunwest Management's, and others' practice to
8 merely review all Project account balances each morning for overdraft positions, and transfer
9 funds from other Project accounts to cover those shortfalls. As a result, Canyon Creek
10 Development, Sunwest Management, and others operated all Projects as if they were one
11 integrated company.

12 22. Harder and others at times did not inform prospective investors in connection
13 with the offer or sale of their securities that other Project funds would be transferred to their
14 Project, and therefore their Project was dependent on the success of other Projects; that some
15 existing Facility Projects were not meeting their projections and that some Construction
16 Projects were delayed, suspended or cancelled. Harder and others at times also omitted to
17 state that the reason why other Projects had never missed a TIC Rent or Preferred Return
18 payment was because certain Projects were reliant on other Projects for those payments.

19 **E. Collapse of the Projects**

20 23. On July 8, 2008, Canyon Creek Development informed all TIC Investors and
21 Preferred B Interests by letter that some of their TIC Rent and Preferred Interest payments for
22 July and August would be delayed. Periodically, Canyon Creek Development sent further
23 correspondence to TIC Investors and Preferred B Interests stating that subsequent payments
24 would also be delayed or missed. A small minority of TIC and Preferred B Interests were paid in
25 July 2008, but all TIC Investor and Preferred B Interest payments were stopped by October
26 2008.

1 24. On or about September 2008, Sunwest Management, and certain principal
2 equity holders of Sunwest Management and Canyon Creek Development hired Clyde A.
3 Hamstreet & Associates, LLC to provide professional interim management and restructuring
4 assistance to Sunwest Management, Canyon Creek Development, Canyon Creek Financial,
5 the Projects, and others.

6 25. Beginning on or about October 2008, a number of Facilities began to go into
7 receivership or foreclosure. Canyon Creek Development, Sunwest Management, Harder and
8 others also began placing various Co-Owners into bankruptcy as a way to stem further
9 foreclosures and receiverships.

10 26. In October 2008, some Projects had sufficient net operating income to pay
11 their respective TIC Investors and Preferred B Interests had they been run as a stand alone
12 operation.

13 27. On or about December 31, 2008, Harder filed for personal bankruptcy
14 protection under Chapter 11 of the Bankruptcy Code.

15 **F. DFCS Litigation**

16 28. Effective October 10, 2008, Canyon Creek Development, Sunwest
17 Management, and others entered into an ORDER SUSPENDING USE OF EXEMPTIONS
18 TO REGISTRATION REQUIREMENTS AND CONSENT TO ENTRY OF ORDER, (File
19 Number: S-08-0044) with the Director. By the terms of that order, the Director suspended the
20 use of the exemptions from the securities registration requirements under Oregon Securities
21 Law by the Respondents and their successor interests. In conjunction with the issuance of
22 that Order, Biesiadecki signed an affidavit in which he agreed, *inter alia*, not to offer, sell, or
23 solicit the purchase or sale of any security or other interest issued or offered by any Sunwest
24 affiliate under or in reliance on any exemption from the registration requirements of the
25 Oregon Securities Law from the effective date of his affidavit until such time as determined
26 by the Director.

1 29. On September 21, 2009, the Director issued an administrative ORDER TO
2 CEASE AND DESIST, ORDER DENYING EXEMPTIONS, ORDER ASSESSING CIVIL
3 PENALTIES, AND NOTICE OF RIGHT TO A PUBLIC HEARING, (File Number: S-09-
4 0028-1), against Sunwest Management, Canyon Creek Financial, Canyon Creek Development
5 and other entities for violations of the Oregon Securities Law.

6 30. On January 22, 2010, Jon Harder and the Director entered into an ORDER TO
7 CEASE AND DESIST, ORDER DENYING EXEMPTIONS, LICENSE APPLICATION
8 BAR, ORDER ASSESSING CIVIL PENALTIES, VOLUNTARY SURRENDER OF
9 LICENSE, AND CONSENT TO ENTRY OF ORDER, (File Number S-09-0028-2), to
10 resolve the Division’s findings that Jon Harder engaged in activities that constituted violations
11 of the Oregon Securities Law.

12 **G. SEC Litigation**

13 31. On March 2, 2009, the United States Securities and Exchange Commission
14 (the “SEC”) filed a complaint against Sunwest Management, Canyon Creek Development,
15 Canyon Creek Financial, Harder, and others citing securities fraud and sought an emergency
16 court order freezing their assets as well as the assets of others (the “Complaint”).

17 32. On the same day United States District Judge Michael R. Hogan (“Judge
18 Hogan” or the “Court”) denied the relief sought by the SEC in the Complaint except for
19 certain terms read into the record and issued by the Court in a temporary restraining order.

20 33. On March 10, 2009, Judge Hogan entered a preliminary injunction (the
21 "Preliminary Injunction") against the named parties. The Court also: 1) appointed Michael
22 Grassmueck to act as a receiver (the “Receiver”) over Sunwest Management, Canyon Creek
23 Development, Canyon Creek Financial and several other entities that were identified in
24 Exhibit A of the Preliminary Injunction (“Exhibit A”) to, among other things, pursue claims
25 against third parties and to examine the past conduct of the Sunwest Management, Canyon
26 Creek Development, Canyon Creek Financial, Harder, and others; 2) enjoined creditors and

1 claimants from filing lawsuits, liens or encumbrances or bankruptcy cases against any entity
2 under receivership; and 3) gave Clyde A. Hamstreet & Associates, LLC, Clyde Hamstreet,
3 and a Management Committee certain powers with respect to the operations, asset disposition,
4 and restructuring of Sunwest Management, Canyon Creek Development, Canyon Creek
5 Financial and the entities in Exhibit A, as supplemented.

6 34. On December 9, 2009 the Court entered a Findings of Fact and Conclusions of
7 Law in Support of Securities and Exchange Commission’s Motion for Partial Summary
8 Judgment¹ where the Court found that Harder made material misstatements and omissions –
9 including material misstatements and omissions in at least one Prospectus – in connection
10 with the offer and sale of securities in violation of Section 17(a) of the Securities Act of 1933,
11 and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated
12 thereunder.

13 **H. Books and Records**

14 35. From September 10 – 12, 2008, the Division conducted a broker-dealer
15 examination of Canyon Creek Financial at the Fairview Location (the “Examination”).

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

24 37. As a result of the Examination, the Division concluded that some of the
25 required documentation was missing or inaccurate.

26 ¹ Case number 09-cv-06056-HO; Document 997.

1 **II. CONCLUSIONS OF LAW**

2 The Director **CONCLUDES** that:

3 **A. ORS 59.015 Definitions**

4 38. The TIC and Preferred B Interests described in this Order that were offered or
5 sold between March 2001 and June 2008 are “securities” under ORS 59.015(19)(a) inasmuch
6 as they were purchased by investors with a sum of money and/or debt, with the expectation
7 that the investment would return a profit. The money raised from investors was pooled with
8 other monies raised in the offering. The investors had little or no control over the operation of
9 the investment and depended solely and exclusively on the efforts of Sunwest Management,
10 Canyon Creek Development, and others to generate the expected profits.

11 39. At all times material herein, Biesiadecki “controlled” Canyon Creek Financial
12 as that term is defined under ORS 59.015(2) because he possessed, directly or indirectly, the
13 power to direct or cause the direction of the management of Canyon Creek Financial as a
14 Principal.

15 **B. Misstatements and Omissions**

16 40. At all times material herein, Harder and others, directly or indirectly in
17 connection with the purchase or sale of securities, made untrue statements of a material fact or
18 omitted to state a material fact necessary in order to make the statements made, in light of the
19 circumstances under which they were made, not misleading in violation of ORS 59.135(2)
20 including, but not limited to, the material misstatements and omissions contained in Findings
21 of Fact Section C above.

22 **C. Failure to Supervise under ORS 59.205(13)**

23 41. Canyon Creek Financial and its control persons including Biesiadecki did not
24 adequately supervise the activities of Harder and others in violation of ORS 59.205(13).

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1 without the prior approval of the Director. The Director will review and act upon any future
2 application or request for licensing or registration by Biesiadecki according to the then current
3 law. The Director’s approval of any such license or registration application or request shall
4 not be unreasonably withheld.

5 47. Any denial by the Director of a “no-action” letter or a license or registration
6 application is subject to a contested case hearing pursuant to ORS 59.295 and ORS chapter
7 183.

8 **E. Civil Penalties**

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

11 48. Biesiadecki is ordered to pay a CIVIL PENALTY of \$20,000 (twenty thousand
12 dollars) for continuing violations of ORS 59.205(13) as described herein.

13 49. Biesiadecki is ordered to pay a CIVIL PENALTY of \$5,000 (five thousand
14 dollars) for violation of ORS 59.195 and ORS 59.205(14) as described herein.

15 50. In summary, Biesiadecki is assessed CIVIL PENALTIES of \$25,000 (twenty-
16 five thousand dollars).

17 51. The Director hereby SUSPENDS payment of \$20,000 (twenty thousand
18 dollars) of those CIVIL PENALTIES assessed above so long as Biesiadecki is in full
19 compliance with all terms of this Order; PROVIDED HOWEVER, that the suspended portion
20 of the CIVIL PENALTIES will be immediately due and payable upon a determination by the
21 Director, subject to ORS 59.295, that Biesiadecki has committed new material violations of
22 the Oregon Securities Law as provided below or has violated any term of this Order,
23 including but not limited to, nonpayment of the unsuspended portion of the CIVIL
24 PENALTY.

25 **F. Payment of Penalty to Restitution Fund**

26 52. The Director and Biesiadecki agree that the CIVIL PENALTIES are due and

1 shall be paid to the Restitution Fund created by the Receiver (the “Restitution Fund”) for the
2 benefit of TIC Investors, Preferred B Interests, and other investors (collectively, the
3 “Investors”) prior to the closing of the Restitution Fund or not later than three years from the
4 effective date of this Order, whichever occurs first.

5 **G. Future Actions of the Director**

6 53. The Director reserves the right to take further action to enforce this Order or to
7 take appropriate action upon discovery of new violations of the Oregon Securities Law that
8 arise from facts and circumstances outside the scope of this Order.

9 **IT IS SO ORDERED.**

10 Dated this 14th day of April, 2010, at Salem, Oregon.

11
12 CORY STREISINGER, DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

13
14 /s/ David Tatman

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

17 **CONSENT TO ENTRY OF ORDER**

18 I, Thomas F. Biesiadecki, state that I have read the foregoing Order and fully
19 understand the contents thereof; that I have been advised of the right to a hearing and of the
20 right to be represented by counsel at any such hearing; that I have been represented by
21 counsel in this matter; that I voluntarily and without any force or duress, consent to the entry
22 of this Order, without admitting or denying the factual allegations and conclusions of law
23 stated herein, expressly waiving any right to a hearing in this matter; that I understand the
24 Director reserves the right to take further actions to enforce this Order or to take appropriate
25 action upon discovery of other violations of the Oregon Securities Law that are outside the
26 scope of this Order; and that I will fully comply with the terms and conditions stated herein.

1 I further assure the Director that I will not effect securities transactions in Oregon
2 unless such activities are in full compliance with the terms of this Order and with the Oregon
3 Securities Law and Chapter 441 of the Oregon Administrative Rules promulgated thereunder.

4 Dated this 18th day of March, 2010.

5
6 /s/ Thomas Biesiadecki
Thomas F. Biesiadecki
7

8
9 ACKNOWLEDGMENT

10 Signed before me this 18 day of March, 2010 by Thomas F. Biesiadecki, who was first
11 duly sworn on oath or affirmation.

12
13 /s/ Doreen Davis
Signature of Notary Public
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17 Approved as to form:

18 /s/ Jon P. Stride
19 Jon P. Stride, Tonkon Torp, LLP
20 Attorney for Thomas F. Biesiadecki

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