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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 **In the Matter of:**

S-09-0028-2

10 **JON MICHAEL HARDER,**

**ORDER TO CEASE AND DESIST,
ORDER DENYING EXEMPTIONS,
LICENSE APPLICATION BAR,
ORDER ASSESSING CIVIL
PENALTIES, VOLUNTARY
SURRENDER OF LICENSE, AND
CONSENT TO ENTRY OF ORDER**

11 **Respondent.**

12
13 **WHEREAS** the Director of the Department of Consumer and Business Services
14 (hereinafter, the “Director”) has conducted an investigation into certain business activities of
15 Canyon Creek Development, Inc.; Sunwest Management, Inc.; Canyon Creek Financial, LLC;
16 Senior Living Properties II, LLC; Senior Living Properties III, LLC; Jon Michael Harder and
17 others;

18 **WHEREAS** on September 21, 2009, the Director filed an ORDER TO CEASE AND
19 DESIST, ORDER DENYING EXEMPTIONS, ORDER ASSESSING CIVIL PENALTIES,
20 AND NOTICE OF RIGHT TO A PUBLIC HEARING against Jon Michael Harder (“Jon
21 Harder”) having determined that he has engaged in activities constituting violations of ORS
22 59.005 to 59.451, 59.991 and 59.995 (the “Oregon Securities Law”);

23 **WHEREAS** on October 8, 2009 Jon Harder filed a written request for a contested
24 case hearing;

25 **WHEREAS** without admitting or denying the Findings of Fact or Conclusions of Law
26 described in Sections I and II herein, Jon Harder wishes to resolve and settle this matter with





1 the Director by withdrawing his request for a hearing and entering into a Consent to Entry of
2 Order, which is evidenced by his signature in that Consent;

3 **WHEREAS** the Director in consideration for Jon Harder’s agreement to enter into
4 this Order hereby withdraws the Notice Order against the Respondent; and

5 **WHEREAS** as further described in Section III herein, the Director has agreed to defer
6 collection of any assessed CIVIL PENALTIES, provided that, 1) Jon Harder makes payments
7 to a restitution fund created by the Director for the benefit of certain investors described in
8 this Order, 2) abides by the terms of this agreement; and 3) commits no further violations of
9 the Oregon Securities Laws.

10 **NOW THEREFORE**, the Director enters the following Findings of Fact,
11 Conclusions of Law, and Orders:

12 **I. FINDINGS OF FACT**

13 The Director **FINDS** that:

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

15 1. Canyon Creek Development, Inc. (“Canyon Creek Development”) is an
16 Oregon domestic for-profit corporation (Business Registry Number: 012198-98) formed on or
17 about March 28, 2001 with offices located at 3723 Fairview Industrial Drive SE, Suite 270,
18 Salem, Oregon 97302 (the “Fairview Location”). As of December 31, 2008, Jon Michael
19 Harder (“Jon Harder”) was the Vice President, a Director, and 60% owner of Canyon Creek
20 Development.

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

25 2. Sunwest Management, Inc. (“Sunwest Management”) is an Oregon domestic
26 for-profit business corporation (Business Registry Number: 284595-84) formed on or about

1 February 27, 1992 with offices located at the Fairview Location. Jon Harder is the co-founder
2 of Sunwest Management and as of December 31, 2008, was approximately its 75% owner. At
3 all times material herein, Jon Harder was the Chief Executive Officer, President, and Director
4 of Sunwest Management.

5 Sunwest Management's principal business was marketing, operating, and managing
6 senior living properties, including Facilities that Canyon Creek Development located and/or
7 acquired.

8 3. Canyon Creek Financial, LLC ("Canyon Creek Financial") is an Oregon
9 domestic limited liability company (Business Registry Number: 321171-94) formed on or
10 about November 4, 2005 with offices located at the Fairview Location. As of December 31,
11 2008, Jon Harder (CRD Number: 5085573) was the 100% owner and Sole Member of
12 Canyon Creek Financial.

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

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

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

23 As of December 31, 2008, Jon Harder owned approximately 33% of both Senior Living
24 Properties II and Senior Living Properties III. At all times material herein, Jon Harder was a
25 manager of both Senior Living Properties II and Senior Living Properties III.

26 Both Senior Living Properties II and Senior Living Properties III served as the sole



1 member of various limited liability companies that co-owned – with investors – senior living
2 properties that were sponsored by Canyon Creek Development and generally managed by
3 Sunwest Management.

4 5. Silver Insurance Management, LLC (“Silver Insurance”) is a Colorado
5 domestic limited liability company (ID Number: 20021208252) formed on July 20, 2002 and
6 administratively dissolved on December 30, 2004. As of December 31, 2008, Jon Harder was
7 a Member of and owned approximately 33% of Silver Insurance.

8 Silver Insurance was the sole-owner of Silver Indemnity, Ltd., a captive offshore
9 reinsurance company organized and licensed under the laws of the Cayman Islands on
10 September 5, 2002 (“Silver Indemnity”). As sole-owner, Silver Insurance received all of
11 Silver Indemnity’s profits and losses. From 2002 to 2004, Silver Indemnity received
12 premiums for professional liability and general liability, auto liability and workers'
13 compensation reinsurance provided to Sunwest Management, as the primary insured, and for
14 the senior living properties managed by Sunwest Management and affiliates.

15 6. Encore Indemnity Management, LLC (“Encore Insurance”) is a Nevada
16 domestic limited liability company (Corporation Number: LLC13704-2004) formed on June
17 22, 2004 with offices located at the Fairview Location. At all times material herein, Jon
18 Harder was a Director and 45% owner of Encore Insurance.

19 Encore Insurance is the sole-owner of Encore Indemnity, Ltd., a captive offshore
20 reinsurance company organized under the laws of the Cayman Islands on July 28, 2004
21 (“Encore Indemnity”). As sole-owner, Encore Insurance received all of Encore Indemnity’s
22 profits and losses. From 2004 to the date of this Order, Encore Indemnity received premiums
23 for professional liability and general liability, auto liability, and workers’ compensation
24 reinsurance provided to Sunwest Management, as the primary insured, and for the senior
25 living properties managed by Sunwest Management and affiliates.¹

26 _____
¹ Includes those senior living properties and affiliates that were formerly insured by Silver Insurance.





1 7. Jon Harder is an Oregon resident. As of December 31, 2008, Jon Harder had a 20%
2 or more controlling interest in more than 490 limited liability companies and corporations
3 including Canyon Creek Development, Sunwest Management, Canyon Creek Financial,
4 Senior Living Properties II, Senior Living Properties III, Silver Insurance, and Encore
5 Insurance. Those holdings also included affiliated companies that provided services to
6 Projects that were sponsored by Canyon Creek Development and/or managed by Sunwest
7 Management, including, but not limited to, construction, interior decorating, pharmacy,
8 advertising, and employee leasing.

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

13 8. Effective October 10, 2008, Canyon Creek Development, Sunwest
14 Management, Canyon Creek Financial, Jon Harder, and others entered into an ORDER
15 SUSPENDING USE OF EXEMPTIONS TO REGISTRATION REQUIREMENTS AND
16 CONSENT TO ENTRY OF ORDER, (File Number: S-08-0044) with the Director. By the
17 terms of that order, the respondents named in the order agreed to stop using the exemptions
18 from the securities registration requirements under Oregon Securities Law. That order
19 remains in effect as of the date of this Order.

20 **B. Overview**

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

25 10. Each Project – with the assistance of Jon Harder – solicited individual
26 investors to raise funds that would be used to locate, acquire, construct, manage and/or

1 operate the Project. From March 2001 to June 2008, Projects solicited over \$250 million in
2 Project investments from over 1,200 investors – including over 500 Oregon investors.

3 11. Canyon Creek Development structured each Project acquisition in a consistent
4 manner. Canyon Creek Development formed one limited liability company that acquired and
5 maintained a fee interest in the property (the “Co-Owner” or “Property LLC”). Jon Harder
6 and others controlled the Co-Owner through either Senior Living Properties II or Senior
7 Living Properties III, the sole member of the Co-Owner.

8 12. Canyon Creek Development divided the single fee interest in the Property into
9 multiple co-ownership interests, which were sold to outside investors (“TIC Investors”)
10 through a securities offering. The TIC Investors then owned the property as tenants-in-
11 common with the Co-Owner. In exchange, TIC Investors were guaranteed a return equal to a
12 percentage of their investment (the “TIC Rent”), which until approximately January 2008 was
13 usually 10% of a TIC Investor’s investment but was generally lower for Projects that closed
14 after January 2008. Jon Harder and others generally retained a controlling interest in Facility
15 Acquisition Property LLCs.

16 13. The Co-Owner then leased the Property and/or Facility to a second limited
17 liability company that was formed by Canyon Creek Development (the “Master Tenant” or
18 “Operator LLC”) that would 1) operate, maintain, and manage the Facility with the assistance
19 of Sunwest Management and others, or 2) construct a Facility on the property.

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

25 15. In the case of a Land Acquisition, Canyon Creek Development managed the
26 Project’s finances. According to the terms of the Master Tenant’s limited liability company





1 agreement, Canyon Creek Development was not allowed to transfer funds from one Master
2 Tenant to another Master Tenant.

3 16. Upon the completion or acquisition of a Facility, the Master Tenant generally
4 would hire Sunwest Management to manage, market, and operate the Facility and manage its
5 finances. Sunwest Management was required to account for each Project's funds separately.

6 17. The TIC Investors and Preferred B Interests relied on the efforts of Jon Harder,
7 Canyon Creek Development, Sunwest Management, and others for the payment of their TIC
8 Rent and Preferred Return and had no ability to control operations and/or management of the
9 Project.

10 C. Offer and Sale of Securities

11 18. Canyon Creek Development, Canyon Creek Financial, Jon Harder and others
12 offered and sold the TICs and Preferred B Interests by means of a confidential private
13 placement memorandum (a "Prospectus") and an executive summary (an "Executive
14 Summary"). As sponsor, Canyon Creek Development issued the Prospectus and Executive
15 Summary using information provided by Sunwest Management and others.

16 19. In particular, prior to the formation of Canyon Creek Financial, Canyon Creek
17 Development offered and sold securities through real estate brokers – including Richard
18 Wielde - after the formation of Canyon Creek Financial, Canyon Creek Development offered
19 and sold securities through Canyon Creek Financial and Third-party brokers – including
20 Richard Wielde – with Canyon Creek Financial acting as managing broker dealer.

21 20. In addition, certain principals and employees of Canyon Creek Development,
22 Canyon Creek Financial, and Sunwest Management, including Jon Harder, met with potential
23 investors in person at the Fairview Location regarding investment opportunities in Projects.

24 21. Jon Harder and others, at times, told investors directly or indirectly, either
25 orally or in writing, in connection with the offer or sale of securities that an investor's funds
26 would only be used towards their particular Project; that payment of their TIC Rent or



1 Preferred Return was based on the successful operation of their particular Project – including
2 the ability to increase the Facility’s occupancy to a specified “stabilized” level; that the risk of
3 losing their investment was solely limited to that particular Project. In addition, Jon Harder
4 at times told potential investors that no Project had ever missed a TIC Rent or Preferred
5 Return payment to investors.

6 **D. Sale of Unregistered Securities**

7 22. Canyon Creek Development and Canyon Creek Financial asserted its reliance
8 on an exemption from federal registration found under Section 4(2) of the Securities Act of
9 1933² and Rule 506 promulgated thereunder (“Rule 506”)³ for the offer or sale of TICs and
10 Preferred B Interests prior to and after the formation of Canyon Creek Financial.

11 23. Canyon Creek Development and Canyon Creek Financial have not
12 independently asserted nor have they established the availability of an exemption from
13 registration under Oregon Securities Law⁴ as of the date of this Order.

14 24. The Division has searched its records for a notice of filing (a “Notice Filing”)
15 and a payment of the applicable fee pursuant to ORS 59.049 and OAR 441-049-1051
16 promulgated thereunder, for 99 TICs that were purportedly offered or sold in reliance on Rule
17 506 in Oregon between 2001 and 2008. The Division found only three Notice Filings.

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

21 **E. Liquidity Management/Transfer of Project Funds**

22 26. As market and economic conditions turned less favorable, some Land
23 Acquisitions Projects faced difficulty constructing Facilities on time and on budget (some
24 Land Acquisition Projects were delayed, suspended, or cancelled) and Sunwest Management

25 _____
26 ² 15 U.S.C. §77d.

³ 17 CFR §230.506.

⁴ ORS 59.025 or ORS 59.035.



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

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

19 **F. Collapse of the Projects**

20 28. 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
25 paid in July 2008 but all TIC Investor and Preferred B Interest payments were stopped by
26 October 2008.

1 29. In October 2008 some Projects had sufficient net operating income to pay their
2 respective TIC Investors and Preferred B Interests had they been run as a stand-alone
3 operation.

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

8 31. On or about November 2008, Sunwest Management, and Jon Harder and other
9 equity holders of Sunwest Management hired Clyde A. Hamstreet & Associates, LLC to
10 provide professional interim management and restructuring assistance to Sunwest
11 Management, Canyon Creek Development, Canyon Creek Financial, the Projects, and others.

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

14 **G. The SEC Litigation**

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

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

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



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

8 36. Beginning in the summer and fall of 2009, some of the parties named in the
9 Complaint and others engaged in federal mediation with the Securities and Exchange
10 Commission to resolve the allegations made in the Complaint (the “Federal Mediation”). The
11 Federal Mediation is ongoing.

12 37. On October 2, 2009 the Court approved a distribution plan developed by the
13 Receiver to distribute assets and value to TIC investors, Preferred B Interests, creditors and
14 others (the “Distribution Plan”). The Distribution Plan, inter alia, required that the collective
15 assets of the entities identified in Exhibit A be reorganized into a real estate investment trust
16 or similar entity (“REITCO”). The TIC Investors, Preferred B Interests, and others would
17 then hold shares in REITCO in exchange for their existing shares.

18 38. During the course of the Federal Mediation, Clyde Hamstreet, the Receiver,
19 Jon Harder and other Principals along with their spouses and children tendered to the Court
20 for its approval a proposal regarding the disposition of their ownership interests in Sunwest
21 and related entities (the “Proposed Settlement Agreement”).⁵ Under that proposal, Jon
22 Harder and other Principals along with their spouses and children agreed to assign any and all
23 of their interests in the Sunwest Management and affiliated companies to REITCO. In
24 exchange, Jon Harder and the other Principals would, inter alia, receive restricted securities
25 that could be converted into 25% or more of REITCO after three years provided that certain
26 _____

⁵ 09-cv-06056-HO; Document 540-3



1 thresholds, which are set forth in the Proposed Settlement Agreement (including that investors
2 and creditors entitled to receive securities in REITCO under the Distribution Plan receive an
3 aggregate value in shares of at least \$500 million), are met. The Proposed Settlement
4 Agreement itself and any subsequent agreements are subject to approval by the Court; the
5 Court has not approved the Proposed Settlement Agreement or any subsequent agreements as
6 of the date of this Order.

7 39. Also during the course of the Federal Mediation, Jon Harder and his wife,
8 Kristin Harder, agreed to undergo a judgment debtor examination as provided for under
9 Oregon law (the “Judgment Debtor Examination”). The Receiver conducted the Judgment
10 Debtor Examination on December 4 and 7, 2009, with any supplemental disclosure from Jon
11 and Kristin Harder due to the Receiver by on or about December 14, 2009. The Judgment
12 Debtor Examination required Jon and Kristin Harder to disclose any and all of their assets;
13 any assets not disclosed would be subject to forfeiture to the Receiver and included in the
14 Distribution Plan.

15 40. On December 9, 2009 the Court entered a FINDINGS OF FACT AND
16 CONCLUSIONS OF LAW IN SUPPORT OF SECURITIES AND EXCHANGE
17 COMMISSION’S MOTION FOR PARTIAL SUMMARY JUDGMENT⁶ where the Court
18 found that Jon Harder made material misstatements and omissions – including material
19 misstatements and omissions in at least one Prospectus – in connection with the offer and sale
20 of securities in violation of Section 17(a) of the Securities Act of 1933, and Section 10(b) of
21 the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.

22 H. Investigation of other Jon Harder Controlled Affiliated Entities

23 1. Canyon Creek Financial

24 a) September 2008 Broker- Dealer Examination

25 41. From September 10 to 12, 2008, the Division conducted a broker-dealer
26

⁶ 09-cv-06056-HO; Document 997



1 examination of Canyon Creek Financial at the Fairview Location (the “Examination”).

2 42. At the outset of the Examination, two of the Division’s Securities Examiners
3 provided Canyon Creek Financial with a written request for information, including: 1) a list of
4 current and terminated Canyon Creek Financial employees, 2) due diligence documentation
5 for Project Offerings in which it offered or sold securities, 3) Canyon Creek Financial’s
6 financial information, 4) history of checks written, 5) investor correspondence and
7 complaints, and 6) a detail of sales commissions paid to its salespersons. The information
8 requested is the type of information that Canyon Creek Financial is required to maintain as a
9 licensed broker-dealer.⁷

10 43. As a result of the Examination, the Division concluded that some of the
11 required documentation was missing or inaccurate.

12 **b) Hiring of Richard Wielde**

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

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

21 46. Prior to the formation of Canyon Creek Financial, Richard Wielde offered and
22 sold TICs and Preferred B Interests to Oregon residents in exchange for a commission.

23 47. On February 27, 2007, Richard Wielde entered into an Independent Contractor
24 Engagement Agreement with Canyon Creek Financial and Canyon Creek Development.

25

26 ⁷ Canyon Creek Financial provided information to the Division after January 1, 2009 that was not made available at the Examination.



1 Under the terms of that agreement, Richard Wielde agreed to offer and sell TICs and
2 Preferred B Interests in Arizona, California, Hawaii, Illinois, Montana, and Washington.

3 48. As a result of the Examination, the Division concluded that Richard Wielde
4 offered and sold securities to Oregon residents in violation of the Stipulation.

5 **2. Silver Insurance, Silver Indemnity, Encore Insurance, and Encore**
6 **Indemnity**

7 49. The Director determined after an investigation that Silver Insurance, Silver
8 Indemnity, Encore Insurance and/or Encore Indemnity directly or indirectly transacted
9 insurance in Oregon without first being authorized to do so by the Director.

10 **II. CONCLUSIONS OF LAW**

11 The Director **CONCLUDES** that:

12 **A. ORS 59.015 Definitions**

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

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

25 52. At all times material herein, Jon Harder “controlled” 1) Canyon Creek
26 Development, Sunwest Management, Canyon Creek Financial collectively and individually



1 and 2) each Co-Owner, Master Tenant, Senior Living Properties II, and Senior Living
2 Properties III, and affiliated companies as that term is defined under ORS 59.015(2) because
3 he possessed, directly or indirectly, the power to direct or cause the direction of the
4 management of those entities through the ownership of voting securities and/or as a Principal
5 of those entities.

6 **B. Violations of ORS 59.135(2)**

7 53. At all times material herein, Canyon Creek Development, Sunwest
8 Management, Canyon Creek Financial, Senior Living Properties II, and Senior Living
9 Properties III and their control⁸ persons, including, but not limited to, Jon Harder (the “ORS
10 59.135(2) Actors”) directly or indirectly in connection with the purchase or sale of securities
11 made untrue statements of a material fact or omitted to state a material fact necessary in order
12 to make the statements made, in light of the circumstances under which they were made, not
13 misleading in violation of ORS 59.135(2) including, but not limited to, the material
14 misstatements and omissions contained in Findings of Fact Section E.

15 **C. Offer and/or Sale of Unregistered Securities under ORS 59.055.**

16 54. From March 2001 to June 2008, , the ORS 59.135(2) Actors offered or sold
17 securities in Oregon for which there were no exemptions under ORS 59.025 or ORS 59.035
18 without those securities first being registered under ORS 59.065 or filed under ORS 59.049.

19 **D. Hiring Unlicensed Broker-Dealer and Broker Dealer Salespersons under ORS**
20 **59.165(3)**

21 55. From March 2001 to June 2008, each Project that offered or sold securities,
22 Canyon Creek Development, and Canyon Creek Financial, and their respective control
23 persons, including, but not limited, to Jon Harder acted as and/or employed broker-dealers
24 and/or broker-dealer salespersons, or issuer salespersons to sell securities in Oregon without
25 their first being licensed under the Oregon Securities Law.

26 _____
⁸ As defined by ORS 59.015(2) and as used throughout this document in reference to a “control person.”



1 hereby **DENIED** until further order of the Director, except that any party that is or may be
2 subject to the denial of exemptions may request a “no-action” letter pursuant to ORS 59.285,
3 ORS 183.310, and OAR 441-001-0040 promulgated thereunder.

4 **C. Surrender of License**

5 60. Jon Harder hereby agrees to **SURRENDER** his broker-dealer salesperson
6 license.

7 **D. Bar from Applying for a Securities, Insurance, and other Financial**
8 **Services Licenses**

9 61. Jon Harder personally, and/or any current or successor business in which Jon
10 Harder is associated (whether or not as an owner, officer, director, or control person), over
11 which he has control, and/or would otherwise be deemed an owner, officer, or director and/or
12 that current or successor business's affiliates, subsidiaries or assigns are hereby **BARRED**
13 from applying for, holding, or renewing any license or registration required by the Director in
14 Oregon within the Finance & Corporate Securities Division and/or the Insurance Division
15 until further order of the Director except that any party described herein that is or may be
16 subject to the bar may request a “no-action” letter pursuant to ORS 59.285, ORS 183.310, and
17 OAR 441-001-0040 promulgated thereunder.

18 **E. Civil Penalties**

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

21 **1. Violations of ORS 59.135(2)**

22 62. Jon Harder is ordered to pay a **CIVIL PENALTY** of \$3.9 million for the
23 continuing violations of ORS 59.135(2) as described herein.

24 **2. Violations of ORS 59.055**

25 63. Jon Harder is ordered to pay a **CIVIL PENALTY** of \$100,000 (One Hundred
26 Thousand Dollars) for one continuing violation of ORS 59.055 as described herein.





1 **3. Violations of ORS 59.165(3)**

2 64. Jon Harder is order to pay a CIVIL PENALTY of \$100,000 (One Hundred
3 Thousand Dollars) for one continuing violation of ORS 59.165(3).

4 **4. Violations of ORS 59.195 and ORS 59.205**

5 65. Jon Harder is ordered to pay a CIVIL PENALTY of \$100,000 (One Hundred
6 Thousand Dollars) for the continuing violations of ORS 59.195 and ORS 59.205.

7 **5. Summary of Civil Penalties**

8 66. In summary, Jon Harder is ordered to pay no more than \$4,200,000 million in
9 CIVIL PENALTIES plus interest as set forth below. The Director and Jon Harder agree that
10 the CIVIL PENALTIES will be paid as restitution into a Restitution Fund created by the
11 Receiver on behalf of the Director for the benefit of TIC investors, Preferred B Interests, and
12 other investors⁹ (the “Restitution Fund”).

13 67. The Director and Jon Harder agree that if the Court approves the Proposed
14 Settlement Agreement in paragraph 38, Jon Harder must :

- 15 a. Pay \$3,150,000 to the Restitution Fund before August 1, 2013; or
16 b. Pay \$4,200,000 to the Restitution Fund before August 1, 2015; or
17 c. If Jon Harder has not made the required payments pursuant to either
18 item (a) or (b), above, he must then pay \$4, 200,000 plus 5% simple
19 interest per annum until August 1, 2020; or
20 d. If Jon Harder has not made the required payments by August 1, 2020
21 pursuant to either item (a), (b), or (c), above, Jon Harder must surrender
22 any and all interest in any asset received from the Receivership estate¹⁰
23 pursuant to paragraph 38 to the Restitution Fund or to the Director if
24 the Restitution Fund has ceased to exist.

25 _____
26 ⁹ TIC, Preferred B, and/or other investors’ interests do not include control persons, employees, or related persons, including the family members, of any Sunwest related entity.

¹⁰ 09-cv-6056-HO: Document 540-3



1 68. If at any time the TIC, Preferred B, and/or other investors' interests are fully
2 extinguished by law or the Restitution Fund ceases to exist, then any amounts owed by Jon
3 Harder as a CIVIL PENALTY shall be paid to the General Fund of the State Treasury as
4 provided for under ORS 59. 995(1).

5 69. The parties also agree that if the Court does not approve the Proposed
6 Settlement Agreement in paragraph 38 and Jon Harder becomes entitled to a financial benefit
7 from the Receivership assets which is better than anticipated in the Proposed Settlement
8 Agreement, then the Director may require Jon Harder to participate in a one-day mediation
9 conducted by a mutually agreeable mediator for the purpose of renegotiating the Restitution
10 Fund payment terms, but not the \$4,200,000 amount. If the parties cannot reach an agreement
11 on the payment terms, that mediator will set the payment terms.

12 70. If the Court does not approve the Proposed Settlement Agreement and Jon
13 Harder is not entitled to a financial benefit from the Receivership assets, then the entire
14 CIVIL PENALTY shall be suspended so long as Jon Harder is in full compliance with all
15 terms of this Order and/or has not committed any other violations of the Oregon Securities
16 Laws.

17 71. The CIVIL PENALTY of \$4,200,000 shall be immediately due and payable to
18 the Restitution Fund upon a determination by the Director that Jon Harder is not in full
19 compliance with all terms of this Order and/or committed new violations of the Oregon
20 Securities Laws.

21 **F. Future Actions of the Director**

22 72. The entry of this Order in no way limits further remedies that may be available
23 to the Director under Oregon law. The Director reserves the right to take further action to
24 enforce this Order or to take appropriate action upon discovery of other violations of the
25 Oregon Securities Law that are outside the scope of this Order.

26 73. Further, the value of any assets forfeited pursuant to the Judgment Debtor

1 Examination shall not count or credit towards any portion of the \$4,200,000 CIVIL
2 PENALTY owed by Jon Harder.

3 **IT IS SO ORDERED.**

4 Dated this 22nd day of January, 2010, at Salem, Oregon.

5
6 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
7 CORY STREISINGER, DIRECTOR

8 /s/ David Tatman
9 David C. Tatman, Administrator
10 Division of Finance & Corporate Securities

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Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 **CONSENT TO ENTRY OF ORDER**

2 I, Jon Michael Harder, state that I have read the foregoing Order and fully understand
3 the contents thereof; that I have been advised of the right to a hearing and of the right to be
4 represented by counsel at any such hearing; that I have been represented by counsel in this
5 matter; that I voluntarily and without any force or duress, consent to the entry of this Order,
6 without admitting or denying the factual allegations and conclusions of law stated herein,
7 expressly waiving any right to a hearing in this matter; that I understand the Director reserves
8 the right to take further actions to enforce this Order or to take appropriate action upon
9 discovery of other violations of the Oregon Securities Law that are outside the scope of this
10 Order; and that I will fully comply with the terms and conditions stated herein.

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

14 Dated this 22 day of January, 2010.

15
16 /s/ Jon Michael Harder
Jon Michael Harder

17 Approved as to form:

18 David Van Speybroeck
David VanSpeybroeck, Bullivant, Houser, Bailey P.C.
19 Attorney for Jon Michael Harder

20 **ACKNOWLEDGMENT**

21 Signed before me this 22 day of January, 2010 by Jon Michael Harder, who was first duly
22 sworn on oath.

23 /s/ Christine Hicks
(Signature of Notary Public)

24 Christine Hicks
(Printed Name of Notary Public)

25 Notary Public for the State of: Oregon

26 My commission expires: 8/21/12

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Salem, OR 97301-3881
Telephone: (503) 378-4387

