

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 DIVISION OF FINANCE AND CORPORATE SECURITIES
3 BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
4 BUSINESS SERVICES

5 In the Matter of:) No. S-08-0044
6)
7 Canyon Creek Development, Inc;) ORDER SUSPENDING USE OF
8 Canyon Creek Financial, LLC;) EXEMPTIONS TO REGISTRATION
9 Sunwest Management, Inc.;) REQUIREMENTS; AND
10 Jon M. Harder;) CONSENT TO ENTRY OF ORDER AS
11 Darryl E. Fisher;) TO THE FOLLOWING RESPONDENTS:
12 Michael J. Deines;)
13 J. Wallace Gutzler;) Canyon Creek Development, Inc;
14 Thomas Biesiadecki;) Canyon Creek Financial, LLC;
15 Jeffrey Schumacher;) Sunwest Management, Inc.;
16 John David Thurber;) Jon M. Harder;
17 Francis J. Curtis; and) Darryl E. Fisher;
18 Mark Devos) Michael J. Deines;
19) J. Wallace Gutzler;
20) Jeffrey Schumacher;
21 Respondents) Francis J. Curtis; and
22) Mark Devos

23 WHEREAS, the Director of the Department of Consumer and
24 Business Services for the State of Oregon (hereafter the
25 "Director"), acting pursuant to the authority granted by the
26 Oregon Securities Law (ORS 59.005 et seq.), is investigating the
27 financial condition and business operations of **CANYON CREEK
28 DEVELOPMENT, INC., CANYON CREEK FINANCIAL, LLC., AND SUNWEST
29 MANAGEMENT, INC.** (collectively, "**SUNWEST**") and affiliates and
30 certain principals, officers, and employees of **SUNWEST** and its
31 affiliates (collectively, the "**RESPONDENTS**");

32 WHEREAS **RESPONDENTS** wish to resolve the matter of
33 exemptions to the registration requirements with the Director;

34 NOW THEREFORE, the Director hereby issues the following
35 Findings of Fact and Conclusions of Law, which **RESPONDENTS**
36 neither admit nor deny, and issues the following Order, to which

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 **RESPONDENTS** have consented, as evidenced by the signatures on
2 the Consents to Entry of Order attached hereto.

3 **FINDINGS OF FACT**

4 The Director **FINDS** that:

5 1. Canyon Creek Development, Inc. ("Canyon Creek
6 Development") is an Oregon domestic for-profit corporation
7 formed on or about March 28, 2001 with offices located at 3723
8 Fairview Industrial Drive SE, Suite 270, Salem, OR 97302.
9 Michael J. Deines is President and Director; Jon M. Harder is
10 Vice President and Director; Darryl E. Fisher is Treasurer and
11 Director; J. Wallace Gutzler (OSB #570327) is Secretary and
12 Director.¹

13 2. Canyon Creek Financial, LLC ("Canyon Creek Financial")
14 is an Oregon domestic limited liability company formed in 2005
15 with offices co-located with Canyon Creek Development. It has
16 been registered since June 22, 2006 with the SEC and FINRA
17 (CRD# 139306) as a securities broker or dealer selling
18 securities of only one issuer and private placements of
19 securities. On June 26, 2006, Oregon approved Canyon Creek
20 Financial to sell private placements only.

21 3. Jon Harder is the Sole Member of Canyon Creek
22 Financial. Thomas Biesiadecki is a Manager, President and Chief
23 Compliance Officer. Jeffrey Schumacher is a Manager. Francis
24 J. Curtis is the Financial Operations Principal. John David
25 _____

26 ¹ Based on documents prepared by Canyon Creek Development.



1 Thurber (OSB #903934) is the Vice President of Marketing and
2 Sales.²

3 4. Sunwest Management, Inc. ("Sunwest Management") is an
4 Oregon domestic for-profit business corporation formed in 1991
5 with offices co-located with Canyon Creek Development. Jon
6 Harder is the Chief Executive Officer and President, Darryl
7 Fisher is the Chief Operating Officer, and Wally Gutzler is the
8 Executive Vice President and General Counsel of Sunwest
9 Management.

10 5. Canyon Creek Development is primarily engaged in the
11 acquisition and development of assisted living facilities
12 throughout the United States. Between 2005 and 2007, Canyon
13 Creek Development added at least 120 new properties—including,
14 but not limited to, assisted living facilities and vacant land—
15 to its portfolio.

16 6. After acquiring a property, Canyon Creek Development
17 facilitates a mortgage for it. Typically, Jon Harder and Darryl
18 Fisher and their respective spouses personally guarantee this
19 mortgage.

20 7. Canyon Creek Development then obtains investors in the
21 property by "sponsoring" the private placement of tenant-in-
22 common or other securities interest in the property. Typically,
23 this private placement securities offering is made through
24 Canyon Creek Financial and/or another broker-dealer. An LLC

25 _____

26 ² Based on information provided by Canyon Creek Financial during the September 2008
examination.

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1 controlled by Jon Harder retains a controlling ownership in the
2 property, which can range from 3 to 100 percent.

3 8. Simultaneously upon closing of the private placement
4 securities offering, Canyon Creek Development transfers all
5 ownership interests to an LLC that it created (the "Property
6 LLC" or "Co-Owner"), subject to the mortgage. Canyon Creek
7 Development also forms a second LLC (the "Operator LLC"), which
8 operates the facility on behalf of the Property LLC.

9 9. Investors are then required to lease back their
10 tenant-in-common or other securities interest pursuant to a
11 master tenant agreement in exchange for lease payments paid by
12 the Operator LLC. Before they stopped on or about July 2008,
13 lease payments in earlier securities offerings amounted to
14 approximately 10-12 percent annually of the amount invested. In
15 more recent offerings, lease payments were as low as 6 percent
16 annually. An LLC controlled by Jon Harder retains the right to
17 re-acquire the investors' tenant-in-common or other interests.

18 10. Pursuant to a management agreement with the Operator
19 LLC, Sunwest Management manages most properties. Among other
20 things, Sunwest Management is responsible for the finances of
21 the property, including monthly payments—including lease, rental
22 and mortgage payments—to investors, landlords, and debtors.

23 11. Sunwest Management also manages other properties that:
24 1) are owned by affiliates of Jon Harder and Darryl Fisher, or
25 2) are owned by Real Estate Investment Trusts ("REITS").

26 12. In the past 3 years Canyon Creek Financial has

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1 distributed approximately 99 securities offerings for Canyon
2 Creek Development. As of July 2008, a number of these securities
3 offerings had not been completed or closed and are ostensibly
4 available for additional investment.

5 13. Canyon Creek Development and Canyon Creek Financial
6 apparently relied on a small offering exemption under the
7 Securities Act of 1933 (the "Securities Act") in the offer or
8 sale of the securities. Securities that qualify for a small
9 offering exemption are exempt from the federal registration
10 requirements, however, an issuer must file a Form D with the
11 Securities and Exchange Commission ("SEC"). A Form D is not on
12 file with the SEC for some of these securities offerings.

13 14. Under ORS 59.049 and OAR 441-049-1051, an issuer
14 offering securities in reliance on Rule 506 of the Securities
15 Act must file the proper notice with Oregon's Division of
16 Finance and Corporate Securities ("DFCS") and pay a fee. There
17 are no such "notice filings" on file at DFCS nor have any fees
18 been paid for any of the securities offerings sponsored by
19 Canyon Creek Development and offered or sold through Canyon
20 Creek Financial.

21 15. On or about July 2008, Sunwest Management stopped
22 making payments to investors pursuant to the Master Tenant
23 Agreement asserting financial distress.

24 16. Also, on or about July 2008, Sunwest Management did
25 not meet some of its mortgage obligations owed to debtors
26 asserting financial distress.

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1 17. Also, on or about July 2008, Sunwest Management was
2 unable to meet some of its rental obligations owed to REITS
3 asserting financial distress.

4 18. On October 8, 2008, the Director learned that Mark
5 Devos, an investor in a property sponsored by Canyon Creek
6 Development and managed by Sunwest Management telephoned another
7 investor in the same property ("Investor #1") from the offices
8 of Sunwest Management with the knowledge of Jon Harder. Mark
9 Devos (CRD #5279783) is a former registered representative of
10 Canyon Creek Financial and currently associated with Sunwest
11 Management, Inc. According to the information provided by Mark
12 Devos to Investor #1, the bank providing the mortgage for the
13 property had found a buyer for the property (the "Buyer"). Mark
14 Devos was attempting to raise funds from Investor #1 and from
15 other investors in the property to prevent it from being sold to
16 the Buyer.

CONCLUSIONS OF LAW

18 The Director **CONCLUDES** that:

19 1. At least one of the **RESPONDENTS** is "insolvent" and/or in
20 an "unsound financial condition", pursuant to ORS 59.105(1)(b),
21 because it does not have the revenue and/or resources to meet
22 its financial obligations.

23 2. One or more of the **RESPONDENTS** offered or sold
24 unregistered securities in Oregon in violation of ORS 59.049 or
25 ORS 59.055. In particular, one or more of the **RESPONDENTS**
26 offered or sold a federal covered security that is subject to

1 Section 18(b)(2) of the Securities Act of 1933, as amended,
2 without filing of a notice with, and the payment of the required
3 fee to, the Director in a manner prescribed by the Director in
4 ORS 59.049 and OAR 441-049-1051.

5 3. Further offers or sales of securities by **RESPONDENTS**,
6 and/or its licensed or unlicensed salespersons on its behalf or
7 for its benefit, and/or by affiliates, successors or assigns of
8 the **RESPONDENTS** would work an imposition on any purchaser,
9 pursuant to ORS 59.045 (a), because one or more **RESPONDENTS** does
10 not have the revenue and/or resources to meet its financial
11 obligations.

12 ORDER

13 Therefore, the Director **ORDERS**:

14 1. That **RESPONDENTS**, and/or its licensed or unlicensed
15 salespersons on its behalf or for its benefit, and/or by
16 affiliates, successors or assigns of the **RESPONDENTS** shall **CEASE**
17 **and DESIST** from offering or selling any security in Oregon in
18 violation of ORS 59.045 or ORS 59.055 unless the security is
19 registered and the offer or sale is not in violation of any rule
20 or order of the Director.

21 2. That the use by **RESPONDENTS**, and/or its licensed or
22 unlicensed salespersons on its behalf or for its benefit, and/or
23 by affiliates, successors or assigns of the **RESPONDENTS**, of any
24 exemptions to securities registration requirements authorized by
25 ORS 59.025 and ORS 59.035 is, for the protection of the
26 investing public, hereby **SUSPENDED** until further order of the

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1 Director, pursuant to the authority granted by ORS 59.045.

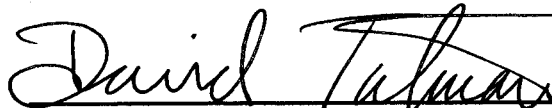
2 3. That **RESPONDENTS**, and/or its licensed or unlicensed
3 salespersons on its behalf or for its benefit, and/or by
4 affiliates, successors or assignees of the **RESPONDENTS** shall
5 remain free, at any point in time, to petition the Director in
6 writing to lift the above described suspensions. Concurrently,
7 the Director reserves the right to take further actions to
8 enforce this Order or to take appropriate action upon
9 determining that there have been violations of the Oregon
10 Securities Law.

11 The entry of this Order in no way limits further remedies
12 or actions which may be available to the Director under Oregon
13 law.

14 **IT IS SO ORDERED.**

15 Dated this 17th day of ~~October~~, 2008 at Salem, Oregon.
16 NOVEMBER

17
18 CORY STREISINGER, Director
19 Department of Consumer and Business Services

20 
21 David C. Tatman, Administrator
22 Division Of Finance And Corporate Securities

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CONSENT TO ENTRY OF ORDER

For **SUNWEST MANAGEMENT, INC.:**

I, Jon Harder, represent that I have been authorized by **SUNWEST MANAGEMENT, INC** to enter into this Order for and on behalf of **SUNWEST MANAGEMENT, INC.** Furthermore, I state that I have read the foregoing Order and fully understand the contents thereof; that I have been advised of the right to a hearing and of the right to be represented by counsel at any such hearing; that I, voluntarily, and without any force or duress, consent to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon determining that there have been violations of the Oregon Securities Law; and that I will fully comply with the terms and conditions stated herein.

I understand that this Consent Order is a public document.

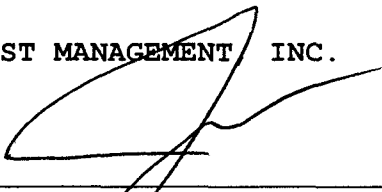
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Dated this 10th day of October, 2008.

SUNWEST MANAGEMENT INC.


By: Jon Harder
Title: Chief Executive Officer and President

CORPORATE ACKNOWLEDGMENT

There appeared before me this 10th day of October, 2008, John Harder who was first duly sworn on oath, and stated that he was and is President of Sunwest Management, Inc. and that he is authorized and empowered to sign this Consent to Entry of Order on behalf of Sunwest Management, Inc., and to bind Sunwest Management, Inc. to the terms hereof.

Nancy Cooper
(Individual)



Nancy Cooper
(Printed Name of Notary Public)

Notary Public for the
State of: Oregon
My commission expires: 11/3/2008

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1 CONSENT TO ENTRY OF ORDER

2 For CANYON CREEK DEVELOPMENT, INC.:

3 I, MICHAEL DEINES represent that I have been authorized by
4 CANYON CREEK DEVELOPMENT, INC to enter into this Order for and on
5 behalf of CANYON CREEK DEVELOPMENT, INC. Furthermore, I state
6 that I have read the foregoing Order and fully understand the
7 contents thereof; that I have been advised of the right to a
8 hearing and of the right to be represented by counsel at any
9 such hearing; that I, voluntarily, and without any force or
10 duress, consent to the entry of this Order, expressly waiving
11 any right to a hearing in this matter; that I understand that
12 the Director reserves the right to take further actions to
13 enforce this Order or to take appropriate action upon
14 determining that there have been violations of the Oregon
15 Securities Law; and that I will fully comply with the terms and
16 conditions stated herein.

17 I understand that this Consent Order is a public document.

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1 Dated this 17 day of October, 2008.

2 CANYON CREEK DEVELOPMENT, INC.

3
4 By: [Signature]

5 Title: PRESIDENT

6
7
8 CORPORATE ACKNOWLEDGMENT

9
10 There appeared before me this 17th day of October,
11 Michael J. Deines, who was first duly sworn on oath, and stated
12 that he was and is President of CANYON CREEK DEVELOPMENT,
13 INC.. and that he is authorized and empowered to sign this
14 Consent to Entry of Order on behalf of CANYON CREEK DEVELOPMENT,
15 INC., and to bind CANYON CREEK DEVELOPMENT, INC. to the terms
16 hereof.

17 Sarah A. Bruck

18 (Individual)



21 Sarah A. Bruck

22 (Printed Name of Notary Public)

23 Notary Public for the

24 State of: Oregon

25 My commission expires: 10-12-09

26
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1 CONSENT TO ENTRY OF ORDER

2 For CANYON CREEK FINANCIAL, LLC.:

3 THOMAS F. BIESIADDECKI
I, _____,

represent that I have been authorized by
4 CANYON CREEK FINANCIAL, LLC. to enter into this Order for and on
5 behalf of CANYON CREEK FINANCIAL, LLC. Furthermore, I state that
6 I have read the foregoing Order and fully understand the contents
7 thereof; that I have been advised of the right to a hearing and
8 of the right to be represented by counsel at any such hearing;
9 that I, voluntarily, and without any force or duress, consent to
10 the entry of this Order, expressly waiving any right to a
11 hearing in this matter; that I understand that the Director
12 reserves the right to take further actions to enforce this Order
13 or to take appropriate action upon determining that there have
14 been violations of the Oregon Securities Law; and that I will
15 fully comply with the terms and conditions stated herein.

16 I understand that this Consent Order is a public document.

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Dated this 17th day of October, 2008.

CANYON CREEK FINANCIAL, LLC.

T. Briesiadecki
By: THOMAS F. BRESIADECKI in my capacity as
Title: PRESIDENT of CANYON CREEK FINANCIAL,
LLC

CORPORATE ACKNOWLEDGMENT

There appeared before me this 17th day of October,
Thomas F. Briesiadecki
2008, _____, who was first duly sworn on oath, and stated
that he was and is President of **CANYON CREEK FINANCIAL,**
LLC. and that he is authorized and empowered to sign this
Consent to Entry of Order on behalf of **CANYON CREEK FINANCIAL,**
LLC., and to bind **CANYON CREEK FINANCIAL, LLC.** to the terms
hereof.

Sarah A. Bruck

(Individual)



Sarah A. Bruck

(Printed Name of Notary Public)

Notary Public for the

State of: Oregon

My commission expires: 10-12-09

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1 Dated this 10th day of October, 2008.

2

3

By [Signature]

4

Jon M. Harder

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6

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ACKNOWLEDGMENT

8

9 Signed before me this 10th day of October, by

10 Jon M. Harder, who was first duly sworn on oath.

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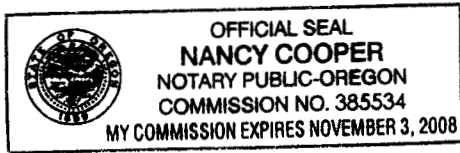
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[Signature]

13

(Individual)

14



15

Nancy Cooper

16

(Printed Name of Notary Public)

17

Notary Public for the

18

State of: Oregon

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My commission expires: 11/3/2008

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1 CONSENT TO ENTRY OF ORDER

2 I, **Darryl E. Fisher**, state that I have read the foregoing
3 Order and fully understand the contents thereof; that I have
4 been advised of the right to a hearing and of the right to be
5 represented by counsel at any such hearing; that I, voluntarily,
6 and without any force or duress, consent to the entry of this
7 Order, expressly waiving any right to a hearing in this matter;
8 that I understand that the Director reserves the right to take
9 further actions to enforce this Order or to take appropriate
10 action upon determining that there have been violations of the
11 Oregon Securities Law; and that I will fully comply with the
12 terms and conditions stated herein.

13 I understand that this Consent Order is a public document.

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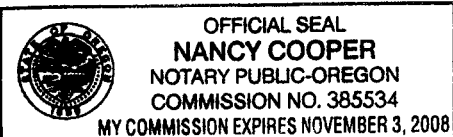
Dated this 10th day of October, 2008.

By [Signature]

Darryl E. Fisher

ACKNOWLEDGMENT

Signed before me this 10th day of October, by
Darryl E. Fisher, who was first duly sworn on oath.



[Signature]
(Individual)

Nancy Cooper
(Printed Name of Notary Public)

Notary Public for the

State of: Oregon

My commission expires: 11/3/2008

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1 **CONSENT TO ENTRY OF ORDER**

2 I, **Michael J. Dienes**, state that I have read the foregoing
3 Order and fully understand the contents thereof; that I have
4 been advised of the right to a hearing and of the right to be
5 represented by counsel at any such hearing; that I, voluntarily,
6 and without any force or duress, consent to the entry of this
7 Order, expressly waiving any right to a hearing in this matter;
8 that I understand that the Director reserves the right to take
9 further actions to enforce this Order or to take appropriate
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11 Oregon Securities Law; and that I will fully comply with the
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13 I understand that this Consent Order is a public document.

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1 Dated this 13 day of OCTOBER, 2008.

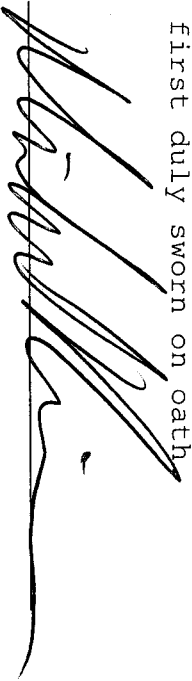
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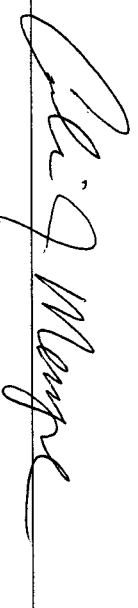
4 Michael J. ~~Deines~~
5 DEINES

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8 **ACKNOWLEDGMENT**

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10 Signed before me this 13 day of OCTOBER, by

11 Michael J. ~~Deines~~, who was first duly sworn on oath
12 DEINES

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14 
15 (Individual)

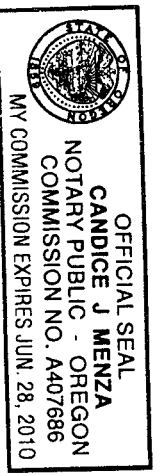
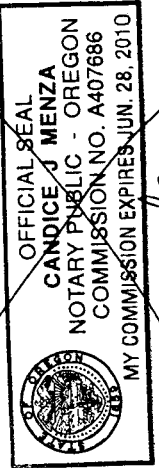
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18 (Printed Name of Notary Public)

19 Notary Public for the

20 State of: Oregon

21 My commission expires: 6-28-10



1 CONSENT TO ENTRY OF ORDER

2 I, J. Wallace Gutzler, state that I have read the foregoing
3 Order and fully understand the contents thereof; that I have
4 been advised of the right to a hearing and of the right to be
5 represented by counsel at any such hearing; that I, voluntarily,
6 and without any force or duress, consent to the entry of this
7 Order, expressly waiving any right to a hearing in this matter;
8 that I understand that the Director reserves the right to take
9 further actions to enforce this Order or to take appropriate
10 action upon determining that there have been violations of the
11 Oregon Securities Law; and that I will fully comply with the
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Dated this 16th day of October, 2008.

By *J. Wallace Gutzler*
J. Wallace Gutzler

ACKNOWLEDGMENT

Signed before me this 16th day of October, by
J. Wallace Gutzler, who was first duly sworn on oath.

Eileen H. Christie



(Individual)

Eileen H. Christie

(Printed Name of Notary Public)

Notary Public for the

State of: Oregon

My commission expires: 10-18-2010

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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, Jefferey Schumacher, state that I have read the foregoing
3 Order and fully understand the contents thereof; that I have
4 been advised of the right to a hearing and of the right to be
5 represented by counsel at any such hearing; that I, voluntarily,
6 and without any force or duress, consent to the entry of this
7 Order, expressly waiving any right to a hearing in this matter;
8 that I understand that the Director reserves the right to take
9 further actions to enforce this Order or to take appropriate
10 action upon determining that there have been violations of the
11 Oregon Securities Law; and that I will fully comply with the
12 terms and conditions stated herein.

13 I understand that this Consent Order is a public document.

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



1 Dated this 31st day of October, 2008.

2
3 By [Signature]
4 Jeffrey Schumacher

5
6
7 **ACKNOWLEDGMENT**

8
9 Signed before me this 31st day of October, by
10 Jeffrey Schumacher, who was first duly sworn on oath.

11
12 [Signature]
13 (~~Individual~~) Notary Public

14
15
16 Candice J Menza
17 (Printed Name of Notary Public)

18 Notary Public for the
19 State of: Oregon
20 My commission expires: 6-28-10

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CONSENT TO ENTRY OF ORDER

I, **Francis J. Curtis**, state that I have read the foregoing Order and fully understand the contents thereof; that I have been advised of the right to a hearing and of the right to be represented by counsel at any such hearing; that I, voluntarily, and without any force or duress, consent to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon determining that there have been violations of the Oregon Securities Law; and that I will fully comply with the terms and conditions stated herein.

I understand that this Consent Order is a public document.

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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



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Dated this 14 day of October, 2008.

By [Signature]
Francis J. Curtis

ACKNOWLEDGMENT

Signed before me this 14th day of October, 2008, by
Francis J. Curtis, who was first duly sworn on oath.

Sarah A. Bruck

(Individual)

Sarah A. Bruck

(Printed Name of Notary Public)

Notary Public for the

State of: Oregon

My commission expires: 10-12-09

Division of Finance and Corporate Securities
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Salem, OR 97301-3881
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Dated this 12 day of November, 2008.

By [Signature]

Mark Devos

ACKNOWLEDGMENT

Signed before me this 12th day of November 2008, by
Mark Devos, who was first duly sworn on oath.

mark de Vos

(Individual)

Janelle Jordan

(Printed Name of Notary Public)

Notary Public for the

State of: OREGON

My commission expires: 3-18-2011

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

