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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

**SECURITIES AND EXCHANGE
COMMISSION,**

Civil No. 6:09-cv-06056

Plaintiffs,

v.

**SUNWEST MANAGEMENT, INC.,
CANYON CREEK DEVELOPMENT,
INC.; CANYON CREEK FINANCIAL
LLC, and JON M. HARDER**

**DECLARATION OF CLYDE A.
HAMSTREET IN SUPPORT OF
DISTRIBUTION PLAN OF RECEIVER
AND CHIEF RESTRUCTURING
OFFICER FOR SUNWEST ENTERPRISE**

Defendants.

and

**DARRYL E. FISHER; J. WALLACE
GUTZLER; KRISTIN HARDER;
ENCORE INDEMNITY MANAGEMENT
LLC; SENENET LEASING COMPANY;
FUSE ADVERTISING, INC.; KDA
CONSTRUCTION, INC.; CLYDE
HAMSTREET and CLYDE A.
HAMSTREET & ASSOCIATES, LLC,**

Relief Defendants.

and

**DARRYL E. FISHER, J. WALLACE
GUTZLER, KRISTIN HARDER, ENCORE
INDEMNITY COMPANY, FUSE
ADVERTISING, INC., KDA
CONSTRUCTION, INC., CLYDE
HAMSTREET AND CLYDE A.
HAMSTREET & ASSOCIATES, LLC,**

Relief Defendants.

1. I, Clyde A. Hamstreet, make this declaration based on my personal knowledge and experience. I am a Certified Turnaround Consultant and the Chief Restructuring Officer of Sunwest Management, Inc. ("SMI") and hundreds of affiliated entities (collectively referred to as "Sunwest" or "the Company"). I am competent to testify about the matters described herein.

2. I am founder and principal of Clyde A. Hamstreet & Associates ("H&A"), a nationally-recognized business and turnaround consulting firm based in Portland, Oregon. H&A specializes in improving the financial results of underperforming companies and rescuing firms experiencing financial crisis. I serve clients in a wide range of industries, providing financial, management, and operational analysis and advice, assistance in debt restructuring and negotiation with secured lenders, interim management, and operational assessment and turnaround. I have worked in this field for more than 20 years, serving over 100 businesses with a very high rate of success. I have led restructurings in 20 cases involving Chapter 11 filings in five states. I have held positions as Director, President, CEO, and CRO of the companies I have served, and I have won two prestigious national awards in recognition of my firm's outstanding work. We value high quality, hard work, integrity, and successful results.

BACKGROUND OF SUNWEST'S FINANCIAL CRISIS AND CRO ENGAGEMENT

3. SMI is a management company providing housing, care, and services to approximately 11,000 elderly residents at 165 communities across the United States. At the time

I became aware of SMI in the summer of 2008, it was part of a group of related companies (collectively referred to as “Sunwest” or “the Company”) involved in the acquisition, development, design, construction, financing, insuring, and operation of senior living and other properties nationwide. Sunwest’s facilities are constructed in a manner convenient to the needs of seniors who require varying levels of assistance with the Activities of Daily Living (“ADLs”). Approximately 29% of Sunwest facilities are designed for seniors who can live independently, 56% provide assisted living to seniors who need help with ADLs such as meals, bathing, and medication, and 14% specialize in Alzheimer’s care. The average age of a Sunwest resident is 85 years.

4. Prior to the real estate and credit troubles of 2008, the Company operated 290 facilities and was the largest privately-owned assisted living provider in the country. At Sunwest’s peak in mid-2008, secured debt on senior living facilities totaled \$1.85 billion and was held by 90 lenders, not including participants. Annual debt service was \$150 million. The non-senior living portfolio, including bare land, apartments, and commercial properties, added substantially to these numbers.

5. The principal owners of SMI and related entities were founder and CEO Jon Harder, COO Darryl Fisher, and General Counsel Wallace Gutzler (“HFG”). Together or severally, HFG owned controlling interests in SMI and related entities: Senenet (an employee leasing company), Encore Indemnity (an offshore captive insurance company), Canyon Creek Development (a real estate acquisition and development company), KDA (a construction company), Canyon Creek Financial (a broker-dealer), and several hundred LLCs that held varying degrees of ownership interests in hundreds of senior living, commercial, and other real properties affiliated with Sunwest.

6. The remaining ownership interests in Sunwest affiliated properties were held by different classes of private investors who purchased their investments from Canyon

Creek Financial or outside broker-dealers. This group included some 1,200 tenant-in-common investors (“TIC”) and several hundred preferred and LLC members. In addition to institutional borrowing from over 100 lenders and the sale of thousands of investments, Sunwest and HFG also raised funds through non-institutional loans from various sources, which were generally guaranteed by Harder and often Fisher. Most of these loans were unsecured, but some were secured. Harder also sometimes made pledges of his equity interests in return for loans.

7. Each Sunwest affiliated property had separate ownership, often involving multiple parties in addition to HFG. The senior living facilities and certain other properties generally employed one of two ownership structures: 1) A single special purpose LLC owned HFG’s interest in the underlying real property and the operations; or 2) One special purpose LLC owned HFG’s interest in the real property, which was leased to the operator, and a second LLC operated the facility. Either way, the Sunwest-affiliated LLC may have been a co-tenant with independent TIC LLCs, or it may have been a member of another LLC that also included outside investors.

8. Although HFG owned the Sunwest properties through separate LLCs, and those LLCs in turn shared ownership with a variety of other parties, under HFG’s leadership the Company generally conducted its business as if it were a single corporate entity, with centralized management, personnel administration, marketing services, and cash management. SMI managed nearly all of the affiliated senior living facilities, and Senenet was the employer of nearly all of the personnel who worked at the affiliated entities. The Company routinely aggregated and commingled funds in centralized SMI and Senenet accounts. Funds were typically taken from wherever they could be found within the Company and used wherever they were needed.

9. In addition to senior mortgage debt, Sunwest financed the acquisition and development of senior living properties by selling fractional undivided minority interests in real estate and preferred membership investments. TIC investors in particular were the lifeblood of

the Company's extremely rapid growth from 162 senior living facilities at the end of 2005 to a peak of 291 in mid-2008. Between 2005 and mid-2008, the Company raised \$440 million in cash through 1,800 TIC investments, \$45 million through 280 preferred LLC memberships, and \$85 million from 250 non-institutional loans. Sunwest typically guaranteed TIC and preferred LLC investors a 10% annual return plus a 2% per annum buyout premium in the event of sale or refinance.

10. Early in 2008 Sunwest's cash flow problems rose to crisis level and strained relationships with key lenders, most notably General Electric Capital Corporation ("GECC"). Occupancy levels stagnated as the real estate market slowed home sales. Many of Sunwest's facilities could not generate revenues to cover operating expenses, service on secured debt, and lease payments owed to TICs. Around the same time, the credit markets began to seize up, making it difficult for the Company to borrow money or refinance properties as it had done in the past. Falling real estate values put many facilities under water. By the summer of 2008 Sunwest could no longer meet its obligations and ceased funding all investor payments.

11. The declining economy exposed a fundamental flaw in the Company's business model. Although the TIC investments were structured as equity—providing the cash to leverage the secured debt—in effect they imposed an additional and unsustainable debt load. Strong capital markets and easy financing aided Sunwest's growth. When the financing dried up, however, Company operations could not support guaranteed monthly payments to TICs.

12. In the spring of 2008 Sunwest hired Alvarez & Marsal ("A&M)—an internationally recognized provider of turnaround management, performance improvement, and corporate advisory services—to provide financial and restructuring advice. With their help the Company developed a plan to become a simpler, more efficient, and cost-effective operation. A&M also worked with Sunwest to put together an asset sale of sufficient size to finance the restructuring of the Company.

13. In late November, 2008, I became Chief Restructuring Officer ("CRO") of

Sunwest. Prior to entering into this engagement, I interviewed Sunwest principals and employees, attorneys representing the Company, and professionals from A&M. In those interviews I learned that Sunwest was experiencing a severe cash crisis that threatened its ability to make payroll and continue operating its affiliated senior living communities. I learned about the Company's financing arrangements, and that it had fallen into default with its secured lenders. I also learned that the Company had stopped making payments to investors, and that it was being investigated by the Oregon Department of Corporate Finance and by the Securities and Exchange Commission for commingling and mishandling of investor funds. On the positive side, I learned of the prospective sale of assets and the significant improvement in liquidity it could provide.

14. Until I was approached by Sunwest in the late summer of 2008, I had no acquaintance with or knowledge of Jon Harder, Darryl Fisher, or Wally Gutzler, except to the extent that I may have read some of the news articles appearing in the Oregon media around this time.

15. On the basis of my interviews and investigations, I saw that the Company provided valuable services to a vulnerable segment of our population. I encountered a generally qualified and dedicated staff capable of providing those services successfully if the Company could overcome its financial crisis. I perceived that Sunwest's difficulties stemmed from its real estate activities and capital structure, not from its senior living operations. I agreed to serve as Sunwest's CRO because I believed that with appropriate action the Company could be stabilized and turned around, thus benefiting the thousands of residents, employees, investors, and creditors who depended in various ways on the Company's success.

16. When I took office Sunwest had consumed the cash reserves at the properties it managed. The Company's lack of liquidity was in the middle of the worst crisis I have ever seen in a business of comparable size. Relationships with vendors, including critical suppliers of water, electricity, and food, were strained due to a history of late payment. Checks

bounced frequently. Meeting its \$10 million payroll on the 5th and 25th of each month was always a challenge and sometimes a drama. Sunwest's centralized employee leasing arrangement took advantage of economies of scale for benefits purposes, but it created additional risks during the crisis. The failure of one senior living facility to make its required contribution to Senenet could lead to bounced payroll checks throughout the Company. This had happened at least once prior to my engagement. Soon after I arrived, both the Company and some of its principals became subject to garnishment actions, throwing up additional obstacles to cash management.

17. The Company struggled to keep payroll taxes current during the earlier part of the year and by the time I took office had fallen behind. The IRS has since asserted a 2008 past due payroll tax claim of \$2.2 million, including penalties and interest, relating primarily to the two months prior to my engagement.

18. Lawsuits peppered Sunwest and HFG. Boxes and envelopes containing legal service papers cluttered the halls in the legal department. Many of these items were unopened. Secured lenders were initiating foreclosure actions and suing to install receivers in facilities they financed. Investors were suing to cancel SMI's management contracts, enforce personal guarantees, push HFG from control over properties, and establish claims of securities fraud. On several occasions, Company management had no idea an action was pending until a state-appointed receiver showed up at the facility, or an account was garnished. At least twice, an unexpected garnishment nearly halted operations by affecting vendor food payments and payroll. By the end of January 2009, receivers controlled 30 facilities, with 15 more added during the month of February. Nine foreclosures had taken place, and 75 more were pending, along with 570 other litigious proceedings against Sunwest and/or HFG across the country.

19. Secured lenders were generally hostile and uncooperative. Many refused to negotiate forbearance agreements or modified loan terms. Those who were willing to negotiate required lock boxes or cash management agreements to silo cash generated by the

facilities they financed. While these demands were understandable, they threatened to push the Company into definitive financial collapse by cutting off cash in the form of management fees and inter-entity transfers. However undesirable those transfers were, until the Lone Star proceeds became available there was no way to bring them to a halt without further disrupting the Company's precarious cash flow situation and endangering care and service to residents.

20. As secured lenders pursued their remedies through receiverships, lock boxes, and foreclosures, Sunwest was forced to place certain facilities in bankruptcy. In the summer of 2008, the Company filed ten senior living Chapter 11 cases in the Middle District of Tennessee; seven of the bankrupt facilities were subsequently sold in 363 sales, wiping out the "Carolina 7" TIC investors. In the month of December 2008, Sunwest filed 21 more facilities in Chapter 11 in the District of Oregon. Each filing required a significant amount of cash and taxed the resources of the Company's already-strained finance and accounting staff.

21. Sunwest's investors were equally up in arms. In July 2008 monthly payments had come to an abrupt stop. Many investors depended on the income for living expenses. Attracted by a guaranteed 10% rate, some had mortgaged their homes or used cash from their retirement savings to invest in Sunwest. Most of the TICs had exchanged into their properties under section 1031 of the tax code, which granted a special tax-deferred status. Foreclosures of property threatened not only their cash investments, but also their tax status. As the crisis developed, and particularly after the Carolina 7 sales took place, investors started to talk among themselves. They learned about the Company's cash management practices, and specifically the free movement of funds throughout the organization. Feeling robbed, lied to, stonewalled, and angry, some investors sought assistance from private attorneys, and from state and federal agencies. On the advice of counsel in the securities investigation, the Company communicated very little about its financial situation to investors, adding flames to the fire.

22. My primary goal as Sunwest's new CRO was to protect, care for, and serve its elderly residents. To promote that end I appointed Mark Schmidt, one of my senior

colleagues with expertise in management and management systems used in businesses with a large number of geographically dispersed locations, to work alongside Sunwest's COO to monitor and improve operations. Only slightly less important were several additional objectives: stabilize the company's financial situation, silo cash in the facilities and cease inter-entity transfers, restore communication with investors, repay parties to whom Sunwest owed money, and build value for the future.

THE LONE STAR TRANSACTION, HARDER BANKRUPTCY, AND SEC LAWSUIT

23. The only way to achieve the restructuring goals set forth above was to generate a significant amount of cash with which to pay up critical vendors, replenish working capital, appease lenders, and fund the restructuring of the company. During their tenure at Sunwest, A&M had developed a sound restructuring plan, and had helped Sunwest initiate negotiations for the sale of 45 senior living facilities to a private equity firm (the "Lone Star transaction"). I began participating in these negotiations after my appointment as CRO, and I supervised their completion. A&M estimated that the sale would net \$30 million on account of HFG's collective equity interests. By the terms of my engagement as CRO, HFG had assigned their rights to distribution to me for use in the restructuring. The Lone Star transaction, slated to close on January 15, was the Company's lifeline.

24. By the end of December, it was clear that another element, besides cash, was necessary for a successful restructuring, and that was the ability to bring all of Sunwest's affiliated entities together under a single controlling authority—such as a court—with powers to 1) sell assets and 2) stay the chaos of litigation. In the absence of such authority, it was next to impossible for the Company to shed its non-performing assets and gain the breathing room needed to reorganize. Properties with TICs required unanimous consent to sell, unless the Company had sufficient funds to exercise a buy-out option that paid investors in full with, usually, a 2% per annum premium. Difficulty obtaining TIC consents had nearly prevented Lone Star from closing, despite the promise of full payment after the sale. Unanimous TIC consent to

short sales was extremely hard to obtain, even to avert the worse prospect of foreclosure. But without the ability to sell properties the restructuring was paralyzed.

25. On December 31, Jon Harder sought protection under Chapter 11 due to garnishments on a \$5 million judgment that threatened the Company's operations. Shortly after the filing, Harder and several Sunwest intervenors sought a preliminary injunction from the Bankruptcy Court against secured lenders in most of Sunwest's senior living properties. The injunction suit brought limited relief in the form of a temporary restraining order against foreclosures. During the relative lull we negotiated several forbearances with lenders, prioritized assets, and made plans for additional bankruptcies, though limited staff and financial resources restricted the usefulness of that tool. We also familiarized the newly-constituted General Unsecured Creditors' Committee ("GUC Committee"), TIC Committee, and Management Committee in Harder's bankruptcy with Sunwest and its situation.

26. On February 13, the Bankruptcy Court ruled against the injunction request. Over the next two weeks, the litigation fires flamed back up. Trustee or foreclosure sales were scheduled at the rate of almost one per day during the first two weeks of March. That pace was likely to continue for the next few months as lender actions initiated in the fall came to fruition. Foreclosure actions threatened all of Sunwest's facilities, regardless of financial performance. Nearly all facilities were in default—including strong performers due to depleted working capital reserves and cross-collateralized loan pools. Lenders were acting aggressively; a few had purchased their loans at a discount with the specific intention of acquiring the properties.

27. In summary, on Friday, February 27, Sunwest was facing the disorderly liquidation of its business.

28. On March 2, 2009, the Securities and Exchange Commission filed suit against Harder, SMI, and others, alleging (among other accusations) that the defendants' practice of commingling funds among entities had misled investors and led to the collapse of the business. This lawsuit achieved for Sunwest what none of its own efforts, or the efforts of its

outside consultants or lawyers, could have achieved: it prompted the U.S. District Court to issue an injunction imposing a stay of foreclosures, receivership actions, and all other litigation, in order to give the restructuring effort a chance.

29. With the stay in place, the restructuring team could now focus more intensively on its primary mission to stabilize the company, improve operations, build value, and repay creditors and investors. Use of Harder's proceeds from the Lone Star sale had been complicated by his bankruptcy. After a series of negotiations, however, the restructuring effort gained full access to those funds, which were instrumental in achieving the needed financial stability. Lone Star funds enabled Sunwest to cover expenses without resorting to inter-entity transfers—my cash management team was able to bring that practice to a halt early in January. Meeting payroll lost its drama and became almost routine.

30. Important improvements on the operational side added to the stability that developed after the stay took effect. Programs we began at the end of 2008 to improve employee and management accountability, training, quality review processes, collections practices, communications, and other management systems and functions were well into implementation and had begun to result in operational improvements. The worst strains on employee morale and performance began to ease.

31. The stability could only be temporary, however. Cash drain of approximately \$600,000 per month from underperforming facilities continued to be an issue. More challenging to the Company were the fees paid to the professionals representing HFG and the estate. Legal fees incurred by secured lenders represented yet another burden by increasing the Company's secured obligations. The newly-appointed Receiver, with his accountants and counsel, would now add to this load. We aimed for a quick restructuring, which would put an end to the need for professionals and allow the Company to get back on its own two feet.

CONFLICTS AND INVESTOR DIVISIVENESS

32. For the restructuring to succeed, Sunwest had to divest scores of non-

performing assets. This process continued to present serious challenges. At the time I became CRO, many investors were seeking to step in and take control over assets in which they possessed an ownership interest. Where such a transfer of control did not deprive the estate of value (e.g., where the assets sought by investors had no equity above secured debt), I supported it. Where such a transfer would take value from the estate, however, I opposed it unless the Company received due compensation. Working out the policy and procedures for asset disposition was complex due to the number and variety of properties, investors, and ownership configurations in play. In December I had formed an asset disposition team consisting of approximately 15 Sunwest, Hamstreet, and A&M staff. This group worked assiduously throughout the winter to evaluate properties and make deals where appropriate.

33. After Harder's Chapter 11 filing, the asset disposition process became significantly more complicated. Transfers and other dispositions required the approval of Harder's estate, which was difficult to obtain. The newly-formed Management Committee began taking an active role. Finally, with the Receivership, yet another layer of analysis and approval was added to this already cumbersome process. By early April, the Hamstreet-A&M restructuring team had developed strong working relationships with the Management Committee, the Receiver, and the Receiver's counsel. But the process remained slow:

33.1. Secured lenders whose efforts to foreclose had been interrupted agitated for relief from the stay and immediately pursued an appeal of the injunction to the 9th Circuit. It was difficult to engage lenders in serious loan discussions early on, before we had a realistic and stable outcome to propose for their future borrower. Lenders in non-performing properties were especially frustrated by the difficulty of working through the disposition process. The issue of releases has been important to both the Harder estate and the Receivership, and has sometimes been a sticking point in divestment negotiations.

33.2. Investors in the more valuable properties looked aggressively for ways to get those assets out of the estate. TICs in particular fought to retain their property interests in

part to preserve their special 1031 tax status. Investors in the prime properties argued that they had performed due diligence in choosing a particular facility, and that they should have the right to retain their interest and bring the Sunwest affiliation to an end.

33.3. Investors in less valuable properties, including some that had already been foreclosed, looked more favorably upon estate control of Sunwest assets, in the hopes of sharing in an equitable distribution. But they resisted dispositions through short sales or foreclosures that might destroy their investments and create adverse tax consequences.

34. Conflicts over asset dispositions were supplemented by disputes over how to distribute value from the Sunwest estate to different classes of stakeholders (TICs, non-institutional note holders, unsecured creditors, LLC members, preferred LLC members, HFG), and how to calculate claims. These and other issues and arguments drove up the administration costs of the estate, which was supporting not only the restructuring advisors and attorneys, but also the attorneys and advisors of HFG, the TIC and GUC Committees, the Management Committee, and the Receiver and his counsel. To prevent depletion of the estate and the loss of the restructuring opportunity, the Court imposed a stringent timeline on the parties. Also in the interests of saving time and expense down the road, the Court required that the parties negotiate the terms of the restructuring and the distribution plan in advance, through informal meetings and formal mediations led by retired Lane County Circuit Court Judge Lyle Velure.

RESTRUCTURING TASKS AND GOALS

35. As the asset disposition process evolved, we established three basic categories of assets: Holdco, Trustco, and Divestco. Currently, Holdco consists of 152 core senior living facilities (including three not-for-profits), three apartment buildings, and nine commercial properties, around which the new Sunwest will reorganize. Trustco consists of one commercial building and 34 land parcels to be held for sale, unless land investors exercise an option to buy out the estate's interest prior to that time. Divestco consists of 60 senior living facilities and 26 other properties that will be released to lenders as soon as possible.

36. Alongside the major task of evaluating company assets, the restructuring team worked to formulate a plan for the Holdco assets that would achieve four key goals, in the following order of priority: 1) Provide a healthy and satisfying environment for residents well into the future; 2) Maximize the value of the estate for the highest possible recovery to Sunwest's creditors and investors; 3) Provide for Sunwest's creditors and investors to benefit equitably from the value created by the Receivership estate; and 4) Avoid adverse tax impacts to TICs and other investors, primarily the triggering of a taxable event that causes deferred taxes to become due.

36.1. Goal 1: Resident care. Along with the operational and management improvements initiated by my team, the best way to ensure quality resident service was to put the business on a firm financial footing, enabling staff to focus on their mission of care. That is the key aim of the restructuring effort.

36.2. Goal 2: Maximum value. Maximizing the value of the Receivership estate meant unifying Sunwest's assets into a single entity, which would significantly increase the value over prospective alternatives. Business valuation expert Shannon Pratt has confirmed this opinion in detail. His report is attached to this declaration as Exhibit A. In summary, the business advantages of unification include the following:

36.2.1. Economies of scale. Large organizations typically have much greater purchasing power than small ones, and also enjoy savings on employee benefits, insurance costs, cost and quality of financial, accounting, and management information systems, training and education programs, and in-house specialty staff such as dietitians, nurse management, risk management, and maintenance engineers.

36.2.2. Professional management. Large, multi-geographic organizations more easily attract top quality professionals and specialists with higher pay and more opportunities for advancement.

36.2.3. Stability. The ability to use cash freely across the organization increases

liquidity and financial strength, leading to greater stability and a lower cost of capital. Weak assets no longer threaten the entire organization, as happened in the past.

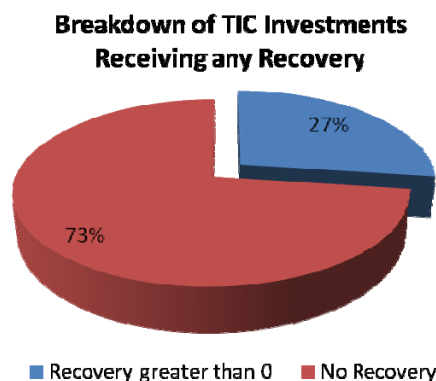
36.2.4. Risk. A large, unitary enterprise spreads risk more effectively through diversification of assets and geography.

36.2.5. Liquidity and marketability. Shares in a unified entity that owns 150 similar facilities are much more liquid and marketable than a minority TIC or LLC interest in one senior living facility.

36.2.6. Public vs. private ownership. Liquidity and marketability increase substantially when an organization moves from private to public. Publicly-traded REIT shares are a highly liquid investment vehicle.

36.3. Goal 3: Equitable sharing among Claimants. This was a key goal for two reasons: 1) I believed that the Company's long-term practice of operating on a unitary basis effectively meant that investors—whether they knew it or not—were investors in the Company as a whole, not the particular entity in which they initially purchased their interest. For this reason, I felt that investors should share equally in the Company's value. 2) Legal and financial analysis persuaded me that without the SEC's lawsuit and the injunction that resulted from it, very few investors, if any, would have received a return on their investment. The figure below presents our team's estimates of TIC recoveries in the event of an orderly liquidation as of March 2009.¹ (In fact, liquidation at that time without the benefit of the injunction would have been disorderly, but our analysis gave investors the benefit of the doubt.) The analysis showed that of the 27% who would receive any recovery, only two in ten would get more than 25 cents on the dollar. This recovery analysis supported my view that all value in Sunwest above and beyond the March 2009 liquidation value should be shared equitably by all investors.

¹ Assumptions: (1) Weighted average price per unit = \$97,000 before closing costs (\$93,000 after); (2) 4% transaction cost for closing, legal, broker, and other costs; (3) TICs have first claim against proceeds net of secured debt and liens. Value attributable to operator is subordinated to TICs; (4) No discount for minority position; (5) Payment up to full amount of initial investment, no deduction for rents or other returns.



36.4. Goal 4: Avoidance of harm to investors, particularly on tax issues. The situation of the TICs has posed a special challenge throughout this case. As part of any restructuring plan approved by the Court, a significant portion of Sunwest’s assets will be sold or foreclosed. Few if any of these dispositions will result in significant equity flowing to the TICs. Even so, the IRS considers the transactions a taxable event, potentially triggering substantial capital gains taxes even though investors have lost most or all of their money.

36.5. My team has consistently sought to restructure the Company in a manner that causes the least harm to TICs while maximizing recovery for all constituencies. Early on we engaged the services of Darryl Steinhouse of Luce Forward, an expert tax and real estate attorney to advise us as we sought the best approach to the TIC issues. With his assistance we have supported a plan that reorganizes Sunwest’s excessively complex and unwieldy business structure in a way that enables TICs (and other investors) to continue deferring taxable gains.

PLAN DEVELOPMENT

37. Shortly after the Receivership began, as the company stabilized both operationally and financially, an intense period of meetings and strategic deliberations ensued to determine the future of the restructuring effort. These discussions included representatives of the Receiver, the SEC, the Harder bankruptcy committees, the Management Committee, HFG, secured lenders, and private investors. I hosted dozens of strategic and informational sessions

that collectively apprised all parties, including individual investors, of our progress and sought their input. To the extent possible, we promptly supplied financial and other information to those who requested it.

38. In addition to voluntary meetings and sharing of information, I and my team participated in dozens of mediation sessions ordered by the Court. Many dealt with particular parties on a variety of focused issues. In addition, large general sessions in May and June were devoted to discussions of asset disposition, third party claims, and the restructuring plan. During four days in July and two days in August, Court-supervised negotiations over the emerging unified plan took place with the CRO, the Receiver, the bankruptcy committees, private TIC and LLC member attorneys, HFG, and secured lenders. Mediated agreements and modifications to the plan resulted. Parties have had a full opportunity to share their comments and proposals with the CRO and Receiver, even up to the last week before filing the plan.

39. To assist in deliberations about the plan, I charged A&M with preparing a liquidation analysis as of March 2009. I have reviewed the assumptions and the results of the analysis and concur with its conclusions. This analysis establishes a baseline of value available to stakeholders through orderly liquidation at the time the Receivership began. Traditional receiverships would simply proceed with liquidation and distribution. We believed we could do much better for creditors and investors by reorganizing the Company and distributing value over time on a going concern basis. The liquidation analysis provides the measure by which the value of the restructuring can be measured.

40. Early on, I estimated that an orderly liquidation in March would net investors 13 cents on their capital investment. More recently, I charged Paul Rundell of A&M to prepare a more detailed liquidation analysis using the claims estimates and other information we now have at our disposal. I have reviewed and concur in that analysis, which projects a low recovery to investors of three cents on the dollar, and a high recovery of thirteen cents on the dollar.

41. I also prepared a going concern analysis to project potential recovery to investors if a reorganization is carried out. Early on, I estimated that restructuring could generate \$500 million in value, and I still believe it can. On the basis of preliminary financial and performance projections currently being prepared by my team, I directed Matt Marcos of A&M to prepare a going concern recovery analysis based on estimated claims, valuations, and other information now at our disposal. I have reviewed and concur in his analysis, which shows that if projected results are achieved, recovery to investors would be much greater than liquidation and could well approach 70 cents on the dollar.

42. Most stakeholders found the value analyses compelling and supported reorganization. But time was of the essence to preserve our window of opportunity. Secured lenders pressed hard for a traditional receivership and liquidation of their properties. Deep rifts among investors also threatened to destroy reorganization efforts. This threat took the form of efforts by some investors to resist any plan that unified Sunwest's assets into a single enterprise. These investors—typically those in the most valuable properties—argued that they should be entitled to retain their interests in particular properties. Many TICs were also outraged by the prospect of losing their 1031 status, or fearful that the new business structure would trigger a taxable event. But if TICs and others were allowed to retain their property interests, liquidation would be the only realistic outcome. The Receivership would have no other way to liquidate its interest in those same properties except through partition and sale.

43. As the case proceeded I became increasingly convinced that unification into a single business enterprise offered a superior outcome compared to all other possibilities. It would maximize the value of the Company. It would also be the fastest and least expensive outcome for the estate. Liquidation would be a lengthy and expensive process, involving more professional fees to administer and more fighting over the scraps. By contrast, once the reorganized enterprise was formed, it would become everyone's interest to have it succeed, and all parties could begin working toward the same goal. Unification also provided the most

effective way to deal with the very complicated situation of inter-entity transfers of funds. Thousands of transfers, booked as loans, took place back and forth between facilities, and between the facilities and other Sunwest entities. Many of the lending and borrowing entities were now defunct or had no funds to repay the loans. It would be next to impossible to track, account for, and resolve these obligations. Unification eliminated the need to try.

44. As the CRO and Receiver teams worked with other parties to demonstrate the advantages of unification, we also worked amongst ourselves to design the best structure for achieving the goals of the restructuring. The simplest approach from a business perspective would have been to unify Holdco into a C-corporation and issue shares to Claimants on the basis of their Allowed Claims. This approach, however, involved important tax disadvantages, ranging from the loss of deferred status for TICs to higher taxes for the corporate entity and less value flowing through to shareholders. Consequently, we determined that reorganization as a C-corporation was not likely to maximize recoveries for investors and creditors.

45. At the other extreme was the possibility of leaving the existing ownership of the Holdco properties in place, unifying the HFG interest in those properties, and distributing that value to Unsecured Creditors and Claimants with interests in Divestco properties. Three powerful arguments defeated this proposal: 1) The resulting ownership structure would be no less cumbersome than the existing one, which made disposal of assets very difficult, hampered the Company's financial flexibility and stability, and seriously impacted its value; 2) Value could not be distributed equitably to all Claimants since there would be no way to equalize returns received by the differently situated investors; and 3) Such a plan would lead to the liquidation of the estate, as the Receivership would have no other way to monetize its interest for the benefit of Claimants other than to sue for partition, leading to the sale of assets in one of the worst real estate markets in U.S. history.

46. In an effort to address the weaknesses of a status quo plan and accommodate the many concerns investors expressed about exchanging their individual property

interests for shares in a unitary enterprise, we considered various hybrid proposals. For example, we considered moving TICs from Divestco properties into the HFG interests in Holdco properties. This plan, however, proved to be impossible for complex tax reasons, and also would not have allowed for the equitable distribution of value. Indeed, we learned that any plan that shared value equitably resulted in a partnership for tax purposes, whether it were called a partnership or not. Since the equitable sharing of value was a higher priority than enabling TICs to retain their individual 1031 status, we abandoned hope of achieving the latter goal.

47. However, we found that it was possible to offer the TICs a master limited partnership (“MLP”) structure that enabled preservation of their tax deferral status, even if they could not perform future 1031 exchanges on an individual basis. TICs and other investors would contribute their property interests to the MLP in a nontaxable transaction, receiving membership interests on the basis of their Allowed Claims. The MLP would agree not to dispose of property conveyed by such TICs for four years without performing its own 1031 exchange and thus maintaining the TICs’ deferred status for at least that long. The MLP would become the direct or indirect title holder of all Holdco assets, and would enjoy the flexibility and other advantages of unification into a single enterprise.

48. For all its tax advantages, a pure MLP structure had one significant drawback: members could transfer a maximum of only 2% of their interests per year. This restriction on transferability impacted the MLP’s value and deprived the structure of two key advantages of unification: liquidity and marketability.

49. A REIT structure presented the best solution to this problem. A REIT with an affiliated MLP provides liquidity and marketability while preserving the MLP’s tax advantages. The combined structure achieves all of our primary goals: financial and operational stability through professional management and corporate flexibility; maximization of value through formation of a unitary enterprise; and preservation of key tax advantages for investors. A strong team of business and legal professionals with expertise in corporate, tax, real estate,

bankruptcy, and receivership areas worked cooperatively in developing this structure, which is explained and drawn on Exhibit B to this Declaration.

50. The Distribution Plan proposes to create the REIT/MLP structure and implement the restructuring through a Chapter 11 process. The bankruptcy is a key step in achieving the goals of the restructuring, enabling the Company to: 1) Provide liquidity to Investors by issuing securities without the expense and difficulty of registration; 2) Sell the interests of co-owners in Sunwest-affiliated assets in a lawful manner resulting in clear, insurable title—indeed, no other means of obtaining clear title and title insurance appears possible; and 3) impose restructured loan terms on lenders with whom we have not already reached an agreement.

51. As the plan took shape over the summer, and finances and operations improved, we made important headway with major lenders. We reached agreements in principle with several lenders, including GECC. Together these agreements pertained to more than 60 Holdco facilities.

ECONOMIC TRENDS, FINANCIAL PROJECTIONS, AND PROBABILITY OF SUCCESS

52. Four factors will drive significant value creation in the restructured Sunwest:

52.1. *Factor 1: Stable Debt Restructure.* The recent global collapse of the capital markets followed by the unprecedented efforts of the United States government to stabilize financial institutions make corporate finance an especially crucial component of our restructuring plan. The restructuring will provide \$440 million of debt relief by divesting 60 properties that are unable to make debt payments. (Many of these dispositions are in process or have already occurred.) The restructuring also provides for three years of fixed rate loans with two years of additional financing at then-market rates. These terms significantly improve the Company's prospects and enhance its value. The distribution plan will accomplish this debt

restructuring through the associated chapter 11 plan of reorganization.

52.2. *Factor 2: Economic Trends.* Recovery of the economy and credit markets will lead to greater availability of capital and lower cap rates, improving business value. The inflation that many experts expect to occur over the next few years could drive up replacement costs and bolster the value of Sunwest's existing properties. As the housing markets recover, seniors will be able to sell their homes more easily and improve occupancy trends in the independent and assisted living sectors.

52.3. *Factor 3: Liquidity of Securities Issued to Claimants.* The ability to take the investors' securities public will significantly increase the value of the reorganized Company. Experts estimate that stock in publicly-held companies carries a 15% to 30% premium above shares in privately-held companies. See the report by Shannon Pratt Valuations, Exhibit A.

52.4. *Factor 4: Improved Operations.* Most importantly, management focus on improved resident care will result in increased occupancy and higher rents, which, with better cost containment, will improve operational performance, drive up NOI, and lead to a significant increase in value. Sunwest is already working towards these goals, which the Company's new professional management will be charged with completing. Indications that initiatives to improve management quality, processes, and accountability are already bearing fruit include:

52.4.1. Sunwest's recent financial results show improvement despite a down economy in which other senior living providers are also struggling for survival. Through July, Sunwest Management has experienced three consecutive months of positive occupancy growth, comparing favorably to most publicly-reporting senior living providers, which showed declines over the quarter. Financial results for the quarter ended June 30, 2009, showed a revenue increase of 4.4% over the previous year, NOI gaining 10.1%, and operating margin up 5.5%. In contradistinction to a long history of making late vendor payments, Sunwest has been paying more than 99% of its trade payables on time for the past six months.

52.4.2. Employee morale has improved since the spring of 2008, as evidenced in a

recently-completed employee opinion survey. A random employee opinion survey conducted last spring showed that employees believe Sunwest provides quality care to its residents but that improvements were needed in certain management areas and facility maintenance. Sunwest is currently launching an “Operations Improvement Project” with emphasis on resident satisfaction, property maintenance and capital improvements, employee satisfaction, and operations management and communications.

53. Three factors support my view that demand will rise significantly in the senior living sector over the next few years. 1) The nation’s economic crisis has negatively impacted senior living operators, most of which experienced declines in occupancy during the first two quarters of 2009. Independent living facilities have suffered in particular, as younger seniors have stayed in their homes to ride out the depression in the housing market. This situation is creating pent-up demand. 2) Demographic trends indicate that the American 85+ population is growing at three times the rate of the population at large. 3) Construction of new assisted living capacity has slowed considerably in the past two years as financing has tightened and real estate values have fallen. The newly restructured Sunwest will be well-positioned to capitalize on resurgent demand in the senior living industry as the general economy and housing market recover.

54. For these reasons it is my professional opinion and judgment that the plan described in this declaration and the combined structure presented in Exhibit B will offer the best possible means of restructuring Sunwest’s affiliated entities, in light of the many competing goals and interests in this case. I have confidence that the plan of restructuring will succeed, and that it will provide the greatest possible value to Claimants under the circumstances.

55. I believe that the proposed Plan of Distribution and its implementation through the proposed Chapter 11 Plan of Reorganization are the only viable means available to accomplish the restructuring described herein.

I declare under penalty of perjury and the laws of the State of Oregon that the

foregoing is true and correct, and that this Declaration was executed on this 25th day of August, 2009 at Portland, Oregon.

/s/ Clyde A. Hamstreet
Clyde A. Hamstreet

Submitted by:

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