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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants,

Case No. 09-CV-6056-HO

NOTICE OF MOTION AND MOTION FOR
APPROVAL OF DISTRIBUTION PLAN OF
RECEIVER AND CHIEF RESTRUCTURING
OFFICER FOR SUNWEST ENTERPRISE

Date: September 23, 2009

Time: 9:30 a.m.

Place: U.S. District Court
405 East Eighth Avenue
Eugene, OR 97401

ORAL ARGUMENT REQUESTED

NOTICE OF MOTION AND MOTION FOR
APPROVAL OF DISTRIBUTION PLAN

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

Relief Defendants.

PLEASE TAKE NOTICE that, beginning on September 23, 2009, at 9:30 a.m. before the Honorable Michael R. Hogan at the United States District Court, 405 East Eighth Avenue, Eugene, Oregon 97401, Michael A. Grassmueck, Court-appointed Receiver for the Receivership Entities, and Clyde A. Hamstreet, the Chief Restructuring Officer for the Receivership Entities, will move the Court for approval of the jointly-proposed Distribution Plan. The requested approval will be based on this Notice of Motion and Motion, as well as the filed Distribution Plan of Receiver and Chief Restructuring Officer for Sunwest Enterprise ("Distribution Plan"), Memorandum of Points and Authorities, Declarations of Michael A. Grassmueck, Clyde A. Hamstreet, Greg Gadawski, Matt Marcos, and Paul Rundell, Appendix of Distribution Plan Exhibits, any Reply Memorandum filed in response to any opposition, and any argument or evidence presented to the Court at the hearing of this matter.

This Notice of Motion and Motion sets forth only a summary of the proposed Distribution Plan. Complete terms are set forth in the separately-filed Distribution Plan. In the event of any conflict or inconsistency between the terms as summarized below and the terms set out in the Distribution Plan, the Distribution Plan controls.

The Distribution Plan establishes how claims against the Receivership Estate are calculated for purposes of establishing Allowed Claims; how Allowed Claims are treated with regard to priority and source of Plan Distributions; and what the source of Plan Distributions will be and how they will be created. The Distribution Plan contemplates a Claims Process that will

involve solicitation, review and resolution of Proofs of Claim submitted to the Receiver, and Court order.

The Distribution Plan seeks judicial recognition of the Sunwest Enterprise as a unitary enterprise, and authorization for a follow-on chapter 11 Reorganization Case to restructure the unitary Sunwest Enterprise through a Reorganization Plan. The Distribution Plan has two core purposes: (1) maximizing the value of the Sunwest Enterprise for the benefit of all holders of Allowed Claims; and (2) providing for an equitable distribution of that value among all holders of Allowed Claims. For purposes of the Distribution Plan, the real properties in the Sunwest Enterprise have been designated "Holdco Properties" (those properties being retained for the Reorganization Plan), "Trustco Properties" (those properties to be held for appreciation in value before sale), and "Divestco Properties" (properties to be promptly released upon Distribution Plan approval). The Distribution Plan proposes to restructure the Sunwest Enterprise with a REIT structure and affiliated master limited partnership to maximize going-concern value, enhance the ability of Investors and creditors to transfer their interests, and, potentially, provide certain tax benefits or protections to Investors.

The proposed Distribution Plan identifies different types of Claims against the Receivership Estate: (i) Administrative Claims, comprised primarily of the expenses incurred by Court-approved professionals and other parties providing value to the Receivership Estate in amounts approved by the Court; (ii) Claims of Secured Creditors; (iii) Claims of employees, trade creditors, and other Unsecured Creditors, and (iii) Investor claims.

The Distribution Plan proposes that Administrative Claims, after Court approval, shall be paid in full from funds of the Receivership Estate. Secured Creditors will retain their liens and loan payment terms and collateral, unless or until modified in the Reorganization Case

The Allowed Claims of Investors and Unsecured Creditors are proposed to receive Plan Distributions of (i) cash generated from asset sales and any recovery on Third Party Claims pursued by the Receiver against those contributors to the financial distress of the Sunwest Enterprise, and (ii) securities of the REIT and related master limited partnership formed pursuant

to the Reorganization Plan. These distributions will be made on a *pro rata* basis to Investors and Unsecured Creditors based on an Allowed Claim amount calculated on the basis of money or other value invested with or otherwise transferred to the Sunwest Enterprise, less any money or other value received from and after January 1, 2006 ("modified Money-in/Money-out" or MIMO). Utilizing the MIMO Allowed Claim amounts and pro rata distribution approach, the Receiver and CRO project that Investors and Unsecured Creditors could receive a dividend representing a significant portion of the total allowed amount of their MIMO claim.

Holders of Allowed Claims will not be allowed to pursue third parties for alleged wrongdoing whom the Receiver is also entitled to pursue as a Third Party Claim, and the Distribution Plan assigns the rights of the Holders of Allowed Claims to the Receiver in exchange for the right to receive Plan Distributions.

In formulating the proposed Distribution Plan, the Receiver and CRO considered alternative methods of calculating claims and distributions that could serve as the basis for a plan. One alternative was to conduct an orderly sale of the Sunwest Enterprise assets or entities, and distribute the sale proceeds and proceeds from Third Party Claims on a pro rata basis. Distributions under this liquidation approach might range from 0% to 13%, but most Investors would receive nothing or very little. Another alternative would be to allow investors to assert claims for their investments on an entity-by-entity, nonunitary basis. Again, however, the only means to realize this value would be to conduct either a piecemeal or orderly bulk sale of the Sunwest Enterprise assets. Distributions under this tracing approach would again range from 0% to over 100%, but the vast majority of investors would receive nothing or very little, while a few others would receive over 100%. A third alternative involved the possible transfer of Defendant and Relief Defendant ownership interests to Investors and creditors. This alternative was infeasible, produced disparate distributions, and had undesirable tax consequences.

Any party wishing to support, oppose, or otherwise respond to the motion and proposed Distribution Plan, must do so **no later than September 9, 2009**, by serving a copy of such supporting, opposition or response papers on counsel for the CRO and counsel for the Receiver

and filing the original with the United States District Court, District of Oregon, Eugene Division, located at 405 East Eighth Avenue, Eugene, Oregon 97401. Email service on out-of-state counsel is permitted and encouraged.

If you were served only with a copy of this Notice of Motion and Motion, you may obtain copies of the Distribution Plan and all supporting papers from the Clerk of the Court, or download them from the following websites of Sunwest, the Receiver, or the CRO, respectively: www.sunwestmanagement.com; <http://www.grassmueckgroup.com/sunwestplan.php>; or www.hamstreetandassociates.com. Copies may also be obtained from the Court's Pacer website: <https://ecf.ord.uscourts.gov> (Pacer account required.) Alternatively, you may also request copies in writing addressed to "Receiver, Sunwest Enterprise, c/o Grassmueck Group, P. O. Box 3649, Portland, OR 97208-5248."

Dated: August 25, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ David L. Osias

David L. Osias
Attorneys for Receiver
Michael E. Grassmueck

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