



## MEMORANDUM

To: Sunwest Tenant in Common (TIC) Investors, Preferred Members, LLC Members, and Noteholders

From: Clyde Hamstreet, CRO

Re: Restructuring Update

Date: November 25, 2009

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Over the past few weeks investors have continued to call my office and the offices of Sunwest, the Receiver Michael Grassmueck, and BMC (the claims processing agent), asking many questions about various aspects of the SEC Receivership case, the Stayton bankruptcy, and the Sunwest restructuring effort. I understand that the plan process has been both long and confusing, especially to those looking in from the outside. This memorandum attempts to answer many of the questions we have been hearing. It is sent to all investors, but much of the content is most relevant to TICs, Preferred Members, or LLC Members.

### **General Status**

The Distribution Plan that Judge Hogan approved on October 2 is essentially an “either-or” plan. That is, it provides for two possibilities:

1. THE SALE PLAN, i.e., the sale of most of Sunwest’s core senior living assets to a buyer at an auction; or
2. THE STAND-ALONE PLAN, i.e., the creation of a new legal structure that would continue to own and operate Sunwest’s performing core senior living facilities in an ongoing business.

The Distribution Plan also establishes a framework for selling Sunwest’s non-core or non-performing assets and seeking recoveries on third party claims. These efforts will create additional operating capital and sources of return for claimants (“Other Income Sources”). We anticipate that claimants will receive distributions from Other Income Sources regardless of which plan goes into effect.

Which Plan? In mid-September, a joint venture led by Blackstone Real Estate Advisors made an unsolicited offer to purchase most of Sunwest’s Holdco senior living assets. Since then, Blackstone, Sunwest, and my own team have devoted a significant portion of our time to due diligence and contract negotiations. Due diligence has been substantially complete for several weeks, but the contract negotiations continue. I expect to announce shortly after Thanksgiving whether or not we have a signed purchase and sale agreement.

Investors may have heard rumors that the Blackstone offer is a “low-ball” offer at an unfair price. In fact, industry opinion is that Blackstone has made a good offer in the current market. I understand

that some investors do not wish the company to be sold in the current real estate market. I also understand that other investors desire to receive a cash return as quickly as possible. Ultimately, the judge will make the decision as to whether we proceed with the Sale Plan or the Stand-Alone Plan. My job has been to bring the Blackstone offer to the table on the best possible terms. My team is still working hard to accomplish that.

If an agreement is reached, it will be filed with the Court and come before Judge Hogan for approval, along with proposed rules for soliciting higher bids from other potential buyers.<sup>1</sup> The Judge will consider both the sale contract terms and the bidding procedures at a hearing tentatively scheduled for December 16. If the Court approves the contract and bid rules, we will go forward with the Sale Plan. If the Court rejects the contract and bid rules, we will proceed with the Stand-Alone Plan.

The uncertainty over which plan will go forward has been difficult for everyone. I am as eager as you are to bring that uncertainty to an end.

The Chapter 11 Plan of Reorganization and Disclosure Statement. The Distribution Plan provided for the consolidated Sunwest assets to be placed into a single chapter 11 bankruptcy case as the means to implement the plan. That bankruptcy case is “In re Stayton SW Assisted Living” (“Stayton”). My team will be filing a Plan of Reorganization (“POR”) in the Stayton case in the very near future. In light of the uncertainty over which path the case will take, the POR will be an “either-or” plan very similar to the one that was attached as an exhibit to the Distribution Plan filed with the Court in August 2009.

When we file the POR we will also submit to the Court an accompanying disclosure statement. The disclosure statement is a very important (and long) document that will set forth a full description of the POR, including its implementation, impact, risks, tax consequences, financial projections, and estimated returns to claimants. The disclosure statement is subject to a hearing and must be approved by the Court before it becomes an official document that can be relied upon by investors and other claimants. Prior to Court approval of the disclosure statement, we will provide information to investors in other formats.

Wind-down and Resolution of Case. Once the Judge determines which path the case will take, we will be in a good position to move forward. Several different spheres of action are in play:

- **Effective Date of Plan:** The adversary proceedings to transfer TIC interests to the buyer (in a Sale Plan) or the new Sunwest entities (in a Stand-Alone Plan) should be concluded early in 2010, allowing for confirmation of the POR in mid-February. Depending on which route is taken, the Effective Date of the plan—i.e., closing of a sale to the highest bidder or creation of the new Sunwest entities—could occur anywhere from late February to early April 2010.
- **Claims process:** Collection of claims and investor election forms will end on January 15, and the Receiver will begin to evaluate claims. He estimates that process will take approximately three months.
- **Sale of Non-Core Assets:** Non-core assets will be held either by the Receivership estate or in a liquidating trust administered by an appointee of the Court. Sale of these assets will take place over the next 1-3 years as the markets improve and opportunities present themselves.

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<sup>1</sup> Bidding processes and auctions are standard procedures under the Bankruptcy Code, where they were instituted to ensure that debtors receive fair prices for their assets.

- Third-Party Claims: Depending on whether settlements are reached or litigation is required, this process may take 1-3 years to wrap up.

### **Investor Options, Elections, and Deadlines.**

Investors will have different options depending on whether the Sale Plan or Stand-Alone Plan is implemented. The Distribution Plan outlines the options under both plans. Please read the Distribution Plan carefully for full clarity on this issue. In particular, you will find pertinent discussions of investor options under the alternative plans in sections VI.B.2 and X.A. If you do not already have a copy of the Distribution Plan, you can download it, together with the approval order entered on October 2, by visiting <http://www.sunwestmanagement.com/articles/100209-1.pdf>.

That said, I would like to provide some limited guidance on certain questions that have concerned many investors.

### The Master Limited Partnership/SWP Holdings, LLC

- SWP was formed in July 2009 as a “lifeboat” partnership to hold the interests of TICs in properties that were being foreclosed prior to completion of the restructuring. In a Stand-Alone Plan, SWP would become the master limited partnership into which eligible investors would be able to contribute their interests in order to continue deferring taxable gain. In a Sale Plan, SWP would become defunct.
- To date, we have not provided you with the information you need to convey your interest into the master limited partnership known as SWP Holdings, LLC (“SWP”).
- The Notice of Election form included in your proof of claims form packets is NOT the way to direct your property interest into SWP.
- SWP may or may not become an option for eligible investors—it depends on which plan is chosen.
  - Under the Sale Plan, SWP will become defunct and REITCO will not be created. There will be no further opportunity for investors to exchange into SWP, and SWP will not complete the exchanges of investors in foreclosed properties who have already conveyed their interests into it. Plan distributions to claimants would consist primarily in cash from the sale transaction and from the Other Income Sources mentioned above.
  - Under the Stand-Alone Plan, SWP would continue as an entity and REITCO would be formed. Plan distributions to claimants would consist in interests in one or both of these entities in addition to cash from the Other Income Sources.
- Even under the Stand-Alone Plan, not all investors have the option to convey their interests into SWP. These options depend on the status of each property as Holdco, Trustco, or Divestco, and on the particular circumstances of any given Divestco property. Please see the Distribution Plan section VI.B.2 and X.A for details.
- If the Stand-Alone Plan is chosen, we will provide eligible investors with more information about SWP and how to make that election if desired.

### The Adversary Proceedings (Summons and Complaints)

- Adversary proceedings have been filed by the debtor in the Stayton case (represented by the law firm Tonkon Torp) against TIC investors in 108 properties. The summonses and complaints were served by US mail on the registered agent for the LLC for each TIC

investment. The lawsuits seek to compel the sale or transfer of TIC interests in real property in accordance with the Distribution Plan.

- Due to different property circumstances, not all Sunwest properties are involved in adversary proceedings. If your property is not listed on any of the memos referred to above, that means an adversary proceeding is not active for your property.
- The deadline for responses to the adversary proceedings was originally 30 days from the date of the summons. The Court extended the deadline once to November 25<sup>th</sup>. We have since sought a further extension of the deadline, which the Court granted by an order entered yesterday.
- The new response deadlines differ by property. On November 20, we sent four separate memoranda to TICs affected by the adversary proceedings to inform them of the deadline in their cases. Please refer to those memos if you have questions. You can access the memos at: <http://www.sunwestmanagement.com/investorinfo.php>.
- *The adversary proceedings are distinct from the claims process.* A response in the adversary proceeding does NOT count as filing a proof of claim. Everyone who wishes to receive a recovery from the Receivership and bankruptcy estates MUST file their proof of claim form(s) by January 15, 2010.
- If you have questions about the adversary process, please email Maren Cohn ([mcohn@hamstreet.net](mailto:mcohn@hamstreet.net)) or call her at the Hamstreet office: 503-223-6222.

### The Claims Process

The Court appointed BMC Group, located in Chanhassen, MN, to distribute the claims and investor election forms. BMC sent these forms by US Mail on November 9, 2009. Completed claims and election forms must be received by BMC at the address on the forms by January 15, 2010. Samples of completed claim forms are now available on BMC's website at:

<http://www.bmcgroup.com/restructuring/geninfo.aspx?ClientID=226>

*ALL parties who wish to recover plan dividends from Sunwest MUST file a proof of claim.*

Other than the mailing and collection of claims, the claims process is being administered by the Receiver's office, The Grassmueck Group. The Receiver recently posted a set of Frequently Asked Questions about the claims forms on his website. You can access this document at:

<http://www.grassmueckgroup.com/sunwest.php>. We understand that the FAQs will be updated from time to time. If after review you still have questions about the claims process, please call the Receiver's office at 1-866-674-6791.

It has come to my attention that an outfit called Prime Shares is mailing inquiries to Sunwest claimants offering to purchase your claims. Whether or not you deal with an organization like this is up to you, but please be aware that Prime Shares is in no way officially involved in or related to Sunwest, the Receivership, the Stayton bankruptcy, or any of the Court-approved officers or bodies in this case.

### The Notice of Election Form

This form is included in the claims form packets from BMC. The form presents three election options:

- The PM and LLC Member Election

This election is described in the Distribution Plan section VI.B.2(c). It is available under certain circumstances to Preferred Member and LLC Member Investors in certain properties. While it is true that most TIC investors hold their TIC interests through an LLC, that fact does NOT mean TICs are eligible for the LLC Member Election.

- The TIC Election

This election is described in the Distribution Plan section VI.B.2(d). As noted in an earlier message, this election is NOT the means to convey TIC interests into the master limited partnership, SWP. Rather, it pertains to the option that some TICs may have (depending on which path the plan takes and what properties they are in) to retain bare legal title to their properties. TICs should read the Distribution Plan carefully to understand this option more fully.

- The Bare Land Election

This election is described in the Distribution Plan section VI.B.2(e). The memo sent to TICs in bare land properties on November 20 contains the most up to date information on the status of the Bare Land Election. The memo is available at:  
<http://www.sunwestmanagement.com/investorinfo.php>.

#### When Will I Know How Much Money I Am Getting Back, and When Will I Get It?

We are not able to say at this time how much of a return claimants would receive under either plan, or when plan distributions will take place. In general, we anticipate that the first distribution of cash might occur in mid to late 2010. Estimates of returns in both plan scenarios will be presented in the disclosure statement that we intend to file with the Court during the week of November 30, 2009. Keep in mind, however, that until the disclosure statement is approved by the Court it should not be relied upon as a source of information in this case.

#### Tax Reporting for 2009

Tax reporting will be done for 2009. From now until January 31, 2010, tax reports will be sent to those investors who have received a 1099 in the past. For investments for which a K-1 was the tax report, those are due before April 15, 2010. It is the goal to have those distributed by March 14, 2010.