

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,  
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS STABLE-VALUE FUND, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

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**RECEIVER'S AMENDED MOTION FOR APPROVAL OF CLAIMS PROCESS**

Receiver Daniel S. Newman, not individually, but solely in his capacity as receiver (“Receiver”) for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. (collectively, the “Receivership Entities”), hereby files this Amended Motion for Approval of Claims Process,<sup>1</sup> and if the Court approves the Parties’ proposed settlement agreement (the “Settlement Agreement”), the Receiver requests that this Court enter an Order: (1) withdrawing the original Motion for Approval of

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<sup>1</sup> The Receiver files this Amended Motion for Approval of Claims Process primarily to correct errors made in the original Motion for Approval of Claims Process [D.E. 337] concerning the calculation of the Claims Bar Date and the deadline for return of Investor Releases. As such, the Receiver seeks permission from the Court to withdraw the original Motion for Approval of Claims Process [D.E. 337].

Claims Process [D.E. 337]; (2) approving the procedure to administer claims set forth herein and the proof of claim form attached as **Exhibit A** (the “Proof of Claim Form”); (3) establishing a deadline for filing with the Receiver the Proof of Claim Form; (4) permitting notice of the deadline by mail, by publication on the Receiver’s website, and by publication in the New York Times at least one day per week for two consecutive weeks; and (5) permitting the Receiver to provide copies of all executed Investor Releases to the Sun-Related Parties as he receives them, once an appropriate agreement has been executed. The Receiver submits this application with the approval of the United States Securities and Exchange Commission (the “SEC”).

### **FACTUAL BACKGROUND**

On April 20, 2009, the SEC filed its complaint (“SEC Action”) against Founding Partners Capital Management Company (“FPCMC”) and William L. Gunlicks (“Gunlicks”), alleging that FPCMC and Gunlicks had engaged, and were engaging in, a scheme to defraud investors and violate the federal securities laws. [D.E. 1]. In the Complaint, the SEC sought, among other relief, entry of a temporary restraining order and a preliminary injunction. After reviewing the SEC’s submission, on April 20, 2009, the Court entered an Order Freezing Assets of FPCMC and Gunlicks (the “Asset Freeze Order”). The Asset Freeze Order also applies to Founding Partners Stable-Value Fund, L.P., (“Stable-Value”), Founding Partners Stable-Value Fund II, L.P. (“Stable-Value II”), Founding Partners Global Fund, Ltd., (“Global Fund”) and Founding Partners Hybrid-Value Fund, L.P. (“Hybrid-Value”) (collectively, “Receivership Funds”).

On April 20, 2009, the Court also entered an order (the “Initial Receivership Order”) appointing a receiver (the “Initial Receiver”) for the Receivership Entities. [SEC Action, D.E. 9]. The Initial Receiver was subsequently removed by Court Order on May 13, 2009. [SEC Action, D.E. 70]. Daniel S. Newman, Esq. (the “Receiver”), was appointed Replacement

Receiver by Court Order on May 20, 2009 (the “Receivership Order”), which Order supersedes the Initial Receivership Order. [SEC Action, D.E. 73]. The Receivership Order placed the Receiver in charge of the Receivership Entities. *Id.* at 2-3. Pursuant to the Receivership Order, the Receiver was granted “full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of Founding Partners and the Founding Partners Relief Defendants; marshal and safeguard all of the assets of Founding Partners and the Founding Partners Relief Defendants; and take whatever actions are necessary for the protection of investors.” *Id.* at 1-2. The Receivership Order required the Receiver to, among other things:

- take immediate possession of and administer the assets of the Entities;
- investigate the manner in which the affairs of the Entities were conducted;
- institute such actions and legal proceedings, for the benefit and on behalf of Entities and their investors and other creditors as the Receiver deems necessary;
- assume control of all of the Entities’ financial accounts, as necessary; and
- make payments and disbursements from the funds and assets taken into control as necessary in discharging the Receiver’s duties.

*Id.* at 3-6.

In accordance with his powers and obligations under the Receivership Order, the Receiver has determined that it is in the best interests of the Receivership Entities and the investors to commence a claims process, by which all investors in and creditors of the Receivership Entities may make any claims they may have for the return of any funds to which they may be entitled, and the Receiver may evaluate and process those claims for purposes of recommending an eventual plan of distribution to the Court.

The Receiver is substantially underway in the process of determining legal obligations of the Receivership Entities. However, for the Receiver to confirm the extent of the Receivership Entities' legal obligations, and to allow investors, creditors, and any other interested parties to advise the Receiver of any possible claims against the Receivership Entities, the Receiver proposes that the Court approve the Proof of Claim Form<sup>2</sup> and the procedures to administer claims as set forth below.

**I. POTENTIAL SOURCES OF RECOVERY FOR DISTRIBUTION**

**A. Proposed Settlement with Sun Capital and Related Parties**

Pursuant to the Receivership Order, on July 14, 2009, the Receiver filed an ancillary proceeding against Sun Capital, Inc. ("SCI"), Sun Capital Healthcare, Inc. ("SCHF"), and HLP Properties of Port Arthur, LLC ("HLP") (collectively, "Sun Capital"), seeking the recovery of over \$500 million. *See Newman v. Sun Capital, Inc., et al.*, Case No. 2:09-cv-445-FtM-229SPC (the "Sun Litigation"). The Receiver asserted, among other things, claims arising from the loan agreements between Stable-Value and Sun Capital. The vast majority of funds raised by the Receivership Entities were provided to Sun Capital as loans.

On December 9, 2011, the Receiver and Sun Capital filed a Joint Motion for Expedited Approval of the Proposed Procedure to Obtain Court Approval of a Proposed Settlement Transaction (the "Joint Motion"). [D.E. 248-249]. This Court granted the Joint Motion on December 27, 2011 ("Order Approving Joint Settlement Motion"). [D.E. 255].

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<sup>2</sup> As noted, the Proof of Claim Form is attached as **Exhibit A**.

In essence, the Settlement Agreement described in the Joint Settlement Motion between the Receiver and the Sun-Related Parties<sup>3</sup> provides that, in exchange for releasing the Sun-Related Parties from the Receiver's claims and potential claims, the Sun Principals will transfer their direct or indirect ownership interests in their factoring companies (SCHI and SCI) and their hospital companies and associated real estate holding companies (Promise, Success and Other Acquired Companies) to a newly formed, wholly-owned subsidiary of Stable-Value (the "FP Designee"). Thus, under the terms of the Settlement Agreement, after the closing, each of SCI, SCHI and Success will be wholly-owned by the FP Designee, and SCHI will own 96% of the issued and outstanding common stock of Promise, while the other 4% will be retained by the Sun Principals, their Spouses and Dawson (the "Retained Equity"). As described herein, the Receiver seeks to institute a claims process in order to allow for the eventual distribution of interests in the FP Designee to participating investors upon Court approval.

Under the terms of the proposed Settlement Agreement, all investors who choose to participate in the Settlement Agreement (the "Releasing Investors") must agree to release the Sun-Related Parties and the Receiver from any claims they may have against any of them as a condition to being eligible to receive an equity interest in the FP Designee through a Court-ordered distribution. A copy of the required investor release is included with the proposed Proof of Claim Form submitted with this Motion (the "Investor Release"). The originals of any

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<sup>3</sup> The Sun-Related Parties that would be parties to the Settlement Agreement are composed of the following: (a) SCHI and SCI, which are Defendants in the Sun Litigation; (b) Messrs. Peter Baronoff, Howard Koslow, and Lawrence Leder (the "Sun Principals"); (c) Malinda Baronoff, Jane Koslow, and Carole Leder, the Sun Principals' spouses (the "Spouses"); (d) Mark Dawson, an individual with an ownership interest in Promise ("Dawson"); (e) Promise Healthcare, Inc. ("Promise"); (f) Success Healthcare, LLC ("Success"); and (g) affiliates of SCHI, SCI, Promise and Success listed on Annex I to the Settlement Agreement. The affiliates listed on Annex I except for Trieste Land Ventures, LLC and F.C.G. Courtyard are collectively referred to as the "Other Acquired Companies."

executed Investor Releases provided to the Receiver will be held in escrow by the Receiver's counsel, to be delivered to the Sun-Related Parties at closing.

The obligations of the parties to consummate the transactions contemplated by the transaction documents are contingent upon, among other things, the solicitation of releases from all Receivership Fund investors and receipt of a sufficient number of executed releases from the investors in the four Receivership Funds.

At an eventual fairness hearing to be set by this Court, the Receiver expects to rely upon Section 3(a)(10) of the Securities Act of 1933 with respect to the issuance of membership interests in the FP Designee to Releasing Investors without registration. *See* 15 U.S.C. § 77c(a)(10). Assuming the Court determines that the exchange of claims for securities is fair, the Receiver will be able to issue, upon confirmation of interest and approval by the Court, membership interests in the FP Designee to eligible Releasing Investors, which will result in ownership of the FP Designee being transferred from Stable-Value to Releasing Investors.

**B. Other Potential Recoveries**

The Receiver has taken other steps to maximize the amount of recovery available to the Receivership Entities. In addition to the proposed settlement with the Sun-Related Parties, the Receiver has instituted legal proceedings against the law firm of Mayer Brown LLP and the accounting firm of Ernst & Young, alleging that these professionals breached legal duties owed to the Receivership Entities.<sup>4</sup> The Receiver has also commenced an ancillary action in this Court against the adult children of Mr. Gunlicks and their respective trusts, to recover fraudulent

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<sup>4</sup> *See Daniel Newman v. Ernst & Young LLP and Mayer Brown, LLP*, Broward County Circuit Court, Case No. 10-49061.

transfers made to them.<sup>5</sup> Additionally, the Receiver may recover funds from the Receivership Entities' investments, mostly through the Hybrid-Value Fund, in private illiquid investments.

Each of these avenues of potential recovery, however, is in a different stage of either litigation or review, and the Receiver cannot determine at this stage when or if funds will be made available for distribution to investors from any of these sources of recovery. Investors who choose not to participate in the settlement with the Sun-Related Parties, and thus do not obtain an interest in the FP Designee, will remain eligible to receive distributions from any future monetary recovery by the Receiver, as will any creditors of the Receivership Entities.

## **II. THE PROPOSED CLAIMS PROCESS AND REQUESTED RELIEF**

The Receiver seeks to initiate a claims process by requesting that investors in and/or creditors of the Receivership Entities submit the attached Proof of Claim Form to be supplied to them by the Receiver once the Court has approved the Settlement Agreement. The Proof of Claim Form, once approved by this Court, will also be made available on the Receivership website maintained by the Receiver.

### **A. Claims Bar Date**

The Receiver seeks entry of an order establishing a filing deadline for all claimants holding claims against the Receivership Entities (including creditors), arising in any way out of the activities of the Receivership Entities (the "Claimants") to assert a claim (the "Claim Bar Date"). On March 30, 2012 the Court held a hearing to determine whether to approve the settlement transactions contemplated by the Settlement Agreement and other transaction documents. If the Court approves the Settlement Agreement and then grants the relief sought herein, the Receiver

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<sup>5</sup> See *Newman v. William L. Gunlicks Irrevocable Trust f/b/o Nissa Cox, et al.*, Case No. 2:11-CV-479-JES-DNF.

will distribute the Proof of Claim Forms thereafter.

The Receiver proposes that the Claim Bar Date be set 45 days from the entry of the Order requested herein. This date will allow the Receiver sufficient time to arrange for and publish the proposed Notice (as hereafter defined) and give investors and other potential Claimants sufficient time to file a Proof of Claim Form with the Receiver. Claimants must file Proof of Claim Forms in order to participate in any distribution of any of the Receivership Entities' assets. The Receiver proposes that any Proof of Claim Form received by the Receiver after the Claim Bar Date should be disallowed.

The Receiver submits that it is appropriate to establish a Claim Bar Date to permit the Receiver to allow as many Claimants as possible to participate in these proceedings. Furthermore, a Claim Bar Date will allow the Receiver to obtain certainty as to the total amount of potential claims against the Receivership Entities in a reasonably prompt fashion. Such certainty will facilitate a timely claims resolution and distribution process.

As part of the claims process, the Receiver further requests that, consistent with the terms of the Joint Settlement Motion and the Order Preliminarily Approving the Settlement, the Court order all investors who seek to participate in the settlement transaction to also return their executed Investor Releases to the Receiver within the same time limitation as the executed Proof of Claim Form, *i.e.* 45 days from the entry of the Order requested herein.

As previously mentioned, all original executed Investor Releases provided to the Receiver will be held in escrow by the Receiver's counsel, to be delivered to the Sun-Related Parties at closing. If for any reason the closing does not occur, the Investor Releases shall not be delivered and shall not take effect and the Receiver will be authorized to destroy the original

executed Investor Releases, which he will be holding in escrow, but will be entitled to retain one copy of each of them for his files in his discretion.

Counsel for the Sun-Related Parties has requested that the Receiver provide copies of the executed Investor Releases to them prior to closing. Counsel for the Sun-Related Parties and the Receiver agree that it would be beneficial for counsel for the Sun-Related Parties to have copies of the Investor Releases before closing, to ensure that there are no questions at closing as to the validity and number of executed Investor Releases and whether the closing condition of receipt of a sufficient number of such Investor Releases has been met. The Receiver and the Sun-Related Parties, or their counsel, are preparing an agreement that will govern the Receiver's provision of copies of the executed Investor Releases to counsel for the Sun-Related Parties before closing, with such agreement to provide that: (i) counsel for the Sun-Related Parties are only receiving *copies* of the Investor Releases before closing, with the copies stamped to indicate as such; (ii) the copies of the Investor Releases cannot be construed or deemed to have the effect of an original or to have been delivered to the Sun-Related Parties with the intent of entering into a binding agreement; (iii) the Investor Releases are not effective until closing, when the originals will be released from escrow and delivered to the Sun-Related Parties; and (iv) the Sun-Related Parties' counsel will agree at all times prior to closing not to disclose or publish the Investor Releases or any part thereof to any person or entity and not to use the Investor Releases or any part thereof, except for the purpose of reviewing information therein to facilitate the closing, provided that any disclosures or communications relating thereto may be made if the Receiver or the Receiver's counsel participates in or consents to any such disclosures or communications. With these limitations in mind, the Receiver requests permission from this Court to provide

copies of the executed Investor Releases to counsel for the Sun-Related Parties as he receives them, once an appropriate agreement has been executed.

To the extent Receivership Fund investors do not provide properly executed Investor Releases to the Receiver prior to the Claim Bar Date, the Receiver requests that the Court approve the exclusion of such Non-Releasing Investors from participating in any manner in the FP Designee or receiving any interest in the FP Designee or any other proceeds resulting from the settlement of the Sun Litigation. [D.E. 255 at 3]. This is consistent with the terms of the Settlement Agreement and will facilitate the closing of the proposed settlement transaction if approved by the Court. This also will allow the Receiver to obtain certainty, in a reasonably prompt fashion, as to whether the sufficient number of releases have been received to effectuate the settlement transaction described in the Joint Settlement Motion and Order Preliminarily Approving the Settlement.

**B. Notice by Mail and Publication**

The Receiver and his professionals have spent considerable time, effort, and resources examining documents and other data relating to the Receivership Entities. Based on the review of these voluminous documents, the Receiver believes he has identified substantially all of the Receivership Entities' investors and creditors. As to these known potential Claimants, the Receiver possesses last known mailing addresses. However, some of the last known mailing addresses may not be current.

In addition, it is possible that some potential Claimants may be currently unknown. As such, alternative forms of notice are advisable.

Based upon the documents reviewed and information gathered to date, investors and other potential creditors are located throughout the United States and overseas. Given the

geographically broad area in which investors are located and significant expense associated with publication of the Notice (as hereafter defined) in each of the states and provinces where claimants may reside and the relatively few (if any) interested parties who might benefit from such publication, the Receiver proposes publishing the Notice in The New York Times,<sup>6</sup> a paper with a national and international circulation, at least one day a week for two consecutive weeks and at least 30 days prior to the Claim Bar Date. The Notice of the Claim Bar Date will be in the form attached hereto as **Exhibit B** (the "Notice").

The Receiver further proposes to publish the Proof of Claim Form and Notice on the Receivership website at [www.foundingpartners-receivership.com](http://www.foundingpartners-receivership.com).

Therefore, the Receiver seeks permission to provide notice of the Claim Bar Date to known potential Claimants by mail to their last known address and to unknown Claimants by publication in The New York Times and on the Receiver's website.

The Receiver believes that such notice is reasonably calculated to inform all known and unknown Claimants of the Claim Bar Date.

**C. Procedures to Be Applied to Administration of Claims**

The Receiver has developed a proposed procedure and Proof of Claim Form to efficiently, equitably, and promptly identify potential Claimants and the amount and validity of any claim. The Receiver's proposed procedure will ensure certainty as to the total number and amount of claims against the Receivership Entities and thus allow for an equitable distribution among Claimants. The Receiver's proposed procedure will also allow the Receiver to obtain information to insure that all Claimants claims can be verified and that to the extent any potential

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<sup>6</sup> The cost of global publication for one day in The New York Times for an advertisement the size of the Receiver's proposed Notice is approximately \$1,155.00.

set-offs are appropriate they can be identified and applied.

The Receiver and his professionals have spent considerable time and resources examining voluminous documents relating to the Receivership Entities, including their financial information. With respect to the investors in the Receivership Funds, based on this examination and to the extent possible, the Receiver has determined a Net Invested Capital (as hereafter defined) amount for investor "accounts."<sup>7</sup>

The "Net Invested Capital" for an account is calculated by adding all amounts contributed by the pertinent investor(s) to its or their account and subtracting all payments made to that accountholder(s) and/or in connection with that account, irrespective of whether those payments are characterized as interest, earnings, profits, returns or redemptions of principal, incentive fees, management fees, or by any other terminology. For example, an account that had a total investment of \$100,000, of which \$50,000 was distributed to the accountholder, would have Net Invested Capital equal to \$50,000. The Receiver proposes that Net Invested Capital be the starting point for all determinations as to distributions to investors in the Receivership Funds.<sup>8</sup>

If the investor maintained multiple accounts, the Receiver will send the investor a Proof of Claim Form and Investor Release for each account. The investor must complete and return the Proof of Claim Form for each account to preserve all claims. The investor must also complete an Investor Release for each account.

To the extent the Receivership Entities do not have sufficient funds to pay all valid claims, the Net Invested Capital will serve as the basis for determining the recipients and

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<sup>7</sup> For ease of reference, the Receiver will use the term "account" in this motion and the attached exhibits, although it is not meant to denote an ownership right to any amount reflected as being in an investor "account."

<sup>8</sup> Where applicable, the Receiver may recommend set offs from that amount.

amounts of distributions with respect to investors.<sup>9</sup> The identification of a Net Invested Capital amount does not mean that the investor account has a valid claim; the Receiver reserves the right to object to the validity of any claim notwithstanding the identification of any such amount.

Subject to the Receiver's discretion to be exercised in an equitable manner and in the best interests of the Receivership Entities, the Receiver may send notice of a deficiency in a submitted Proof of Claim Form to the submitting Claimant. The Receiver proposes that the Claimant then have the later of either: (i) the Claim Bar Date; or (ii) thirty (30) days from the date the notice of deficiency is sent, to return an amended Proof of Claim Form to preserve his, her, or its claims.

Each Proof of Claim Form provided to the Receiver must conform substantially to and must contain all of the information sought in the Proof of Claim Form approved by the Court. The Receiver reserves the right to reject any altered Proof of Claim Form or any Proof of Claim Form that is not filled out completely and properly executed by the correct legal entity or individual. Such rejection will be treated as a deficiency and the Claimant will have the time indicated above within which to submit an acceptable Proof of Claim Form. Each Proof of Claim Form must be signed by the Claimant or, if the Claimant is not an individual, by an authorized agent of the Claimant. The Claimant must attest under penalty of perjury that the information, including the information provided by the Receiver, is true and correct. Each Proof of Claim Form must be legible, written in English, and denominated in United States currency. The submission of a Proof of Claim Form will subject the Claimant to the jurisdiction of the United States District Court for the Middle District of Florida.

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<sup>9</sup> To the extent any non-investor claims are submitted, the Receiver will recommend and seek the Court's approval for a method for addressing and resolving such claims consistent with the goals of the Receivership.

All Proof of Claim Forms and Investor Releases must be sent so as to be *received* on or before the Claim Bar Date at the following address:

Daniel S. Newman, Receiver  
c/o Jonathan Etra, Esq.  
BROAD AND CASSEL  
One Biscayne Tower  
2 South Biscayne Boulevard, 21<sup>st</sup> Floor  
Miami, FL 33131

Any timely and properly completed and executed Proof of Claim Form provided to the Receiver will be considered allowed if it is established that: (1) the claim arises out of any of the Receivership Entities' activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent with the books and records available to the Receiver; and (4) no ground exists for denying the claim or setting off amounts claimed. After the Claim Bar Date and the Receiver has evaluated all submitted claims, he will seek approval from this Court regarding: (1) allowed claim amounts; (2) priority of claims; (3) a process for the determination of objections to claim determinations and priorities reached by the Receiver; (4) the timing and amount of distributions to be made to Claimants; and (5) if needed, the establishment of reserves for administration of the Receivership, for litigation, and for disputed claims and priorities (until such time as such disputes are resolved).

After all claims and priority objections are resolved, the Receiver will prepare a motion for a proposed distribution to approved Claimants. The motion will identify the total assets of the Receivership Entities at the pertinent time and the total allowed claims amount. The motion will also address the methodology applied to arrive at the proposed recommended distributions. After Court approval, any distribution to the Claimants will be made in an equitable manner and in accordance with the appropriate priority, and no Claimant shall receive more than the allowed amounts. Any distributions of amounts less than the Claimants' total allowed amounts will be

made on a pro rata basis based on the Claimants' allowed claim amounts. The Receiver may seek court approval to make interim distributions, *e.g.* with respect to a distribution of membership interests in the FP Designee.

All administrative expenses, including attorneys' fees and costs, litigation expenses, experts, and other administrative costs, will be paid by the Receivership Entities. These administrative expenses will be paid or reserved before any distribution to Claimants is made. Administrative expenses may also include, but are not limited to: (1) expenses for publishing notice; and (2) the retention of one or more consultants to assist in analyzing the validity of claims. No previous request for the relief sought herein has been made to this or any other Court.

If the Court approves the Settlement Agreement, the Receiver requests that this Court then: (1) withdraw the original Motion for Approval of Claims Process; (2) approve the claims administration procedure as set forth herein and the Proof of Claim Form as attached hereto as Exhibit A; (3) establish a deadline 45 days from the date of entry of the Order requested herein for receipt of Proof of Claim Forms and Investor Releases; (4) permit notice of such deadline in the form of Notice attached as Exhibit B by (a) first class U.S. mail to the last known addresses of all known Claimants, (b) publication in The New York Times as described above; and (c) on the Receiver's website as described above; and (5) permit the Receiver to provide copies of all executed Investor Releases to the Sun-Related Parties as he receives them, on the terms set forth above, once an appropriate agreement has been executed.

Undersigned counsel for the Receiver has discussed the relief sought herein with counsel for the SEC and Mr. Gunlicks. While counsel for Mr. Gunlicks has been unresponsive, the SEC has authorized the Receiver to represent to this Court that it does not oppose the granting of the

relief sought in this Motion. For the Court's convenience, a proposed Order granting this Motion is attached as **Exhibit C**.

### **SUPPORTING MEMORANDUM OF LAW**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *Securities Exch. Comm'n v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers.

In receivership proceedings such as this, "[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver, must assert such claim or demand in the court in which such receiver was appointed." Ralph E. Clark, Clark on Receivers § 646, at 1132 (3rd Ed. 1992). Although there are many ways in which a claimant can assert a claim, one such way is for claimants to be authorized "under a general order of the appointing court [to file their] claim with the receiver." *Id.* The receiver may agree or disagree with the claim, which claim is ultimately approved or disapproved by the court. *Id.* "The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any." *Id.* § 651, at 1142.

In addition to approving a proof of claim form, it is not unusual for a court overseeing a receivership to enter an order limiting the time within which claims must be presented. *Id.* § 652, at 1142 (*citing Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)); *U.S. Commodity Futures*

*Trading Comm'n v. Barki, LLC*, 2009 WL 2473687, \*1 (W.D. N.C. 2009) (approving a receivership claims process and a claims bar date no earlier than 30 days after notice to investors). Such an order limiting the time within which claims must be presented has been deemed to be necessary to "lay the foundation for the court to order payments to creditors and distribution to those entitled to receive," *Id.*, § 651, at 1142. Furthermore, a court with jurisdiction over a receivership, by advertisement and by proper notices by mail, by publication and otherwise should take measures to notify interested parties affected by the receivership. *Id.* § 652, at 1143; *see also SEC v. Tanner*, 2006 WL 897462, \*1 (D. Kan. 2006) (approving receiver's web site notice and e-mail notice to investors of a claims process and claims bar date).

Under the terms and conditions of the Receivership Order, the Receiver, among other things, is authorized, empowered, and directed to (a) administer the assets of the Receivership Entities and (b) determine the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Entities. *See* [D.E. 73]. In exercising his duties, the Receiver has determined that it is reasonable, necessary, advisable, and in the best interest of the Receivership Entities that the claims administration procedures, Notice, Claim Bar Date, and Proof of Claim Form as set forth herein and in the attached exhibits be approved by this Court.

**CONCLUSION**

For the foregoing reasons, Daniel S. Newman as Receiver, respectfully requests that this Court, upon approval of the Settlement Agreement, enter an Order: (1) withdrawing the original Motion for Approval of Claims Process [D.E. 337]; (2) approving the claims administration procedure as set forth herein and the Proof of Claim Form attached as Exhibit A; (3) establishing the date 45 days from the entry of the Order requested herein as the Claim Bar Date; (4) permitting notice of such deadline in the form of Notice attached as Exhibit B by (a) first class U.S. mail to the last known addresses of all known Claimants, (b) publication in The New York Times, at least one day a week for two consecutive weeks, and (c) on the Receiver's website as described above; and (5) permitting the Receiver to provide copies of the Investor Releases to counsel for the Sun-Related Parties as he receives them, limited by the restrictions detailed above, once an appropriate agreement has been executed by the Parties.

This Amended Motion, as well as any Order pertaining thereto, will be made available to Receivership Fund investors via the Receivership website.

Date: April 10, 2012.

Respectfully Submitted,

**BROAD AND CASSEL**  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 S. Biscayne Boulevard  
Miami, FL 33131  
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By: s/Jonathan Etra  
Jonathan Etra, Esq.  
Florida Bar No. 0686905  
*Counsel for Receiver*

**CERTIFICATE OF CONFERRAL**

The Receiver certifies that he has contacted counsel for the SEC and Mr. Gunlicks before filing this motion. Counsel for the SEC approves of the motion and the claims process detailed within. Counsel for Mr. Gunlicks was unresponsive.

/s/ Jonathan Etra  
Jonathan Etra, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 10, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of notices of electronic filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically notices of electronic filing.

s/Jonathan Etra  
Jonathan Etra, Esq.

**SERVICE LIST**

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*Counsel for William & Pamela Gunlicks*  
*Service via CM/ECF*

**PROOF OF CLAIMS IS TO BE FILED WITH RECEIVER – DO NOT FILE WITH COURT**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT  
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTNERS STABLE-VALUE FUND, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

**PROOF OF CLAIM FORM**

<p><b>CLAIMANT CONTACT INFORMATION:</b></p> <p>Name of Claimant: _____</p> <p>Name of Person Submitting Form and Relationship to Claimant (if different from Claimant): _____</p> <p>Name and Address Where Notices Should be Sent: _____ _____ _____</p> <p>Telephone No.: _____</p> <p>Email Address: _____</p> <p>Fax No.: _____</p>	<p><b>CLAIM STATUS:</b></p> <p><input type="checkbox"/> Check box if you are aware that anyone else has filed a Proof of Claim Form relating to your Claim. (<i>Attach statement giving particulars.</i>)</p> <p><input type="checkbox"/> Check box if you have never received any notices from the Receiver.</p> <p><input type="checkbox"/> Check box if the address entered on this form differs from the address on the envelope sent to you by the Receiver.</p> <p><input type="checkbox"/> Check here if this Proof of Claim Form:  <input type="checkbox"/>amends  <input type="checkbox"/>replaces  <input type="checkbox"/>supplements a previously filed Proof of Claim Form, dated: _____.</p>
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**PROOF OF CLAIM FORM**

<p><b>SEND PROOF OF CLAIM FORM TO:</b></p> <p>Daniel S. Newman, Receiver c/o Jonathan Etra, Esq.</p> <p><b>MAILING ADDRESS:</b></p> <p>21<sup>st</sup> Floor One Biscayne Tower 2 South Biscayne Boulevard Miami, Florida 33131</p>	<p><b>THIS SPACE IS FOR RECEIVER'S USE ONLY:</b></p> <p>Claim No.: _____</p>
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**INSTRUCTIONS**

**PLEASE READ CAREFULLY – FAILURE TO FOLLOW ALL INSTRUCTIONS MAY JEOPARDIZE YOUR ENTIRE CLAIM**

**1. Where to File Proof of Claim**

This form must be completed in accordance with the instructions below and timely filed with Daniel S. Newman, Receiver. The Receiver's mailing address is: 21<sup>st</sup> Floor, One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida 33131.

**2. Deadline for Filing Proof of Claim**

The deadline for filing this Proof of Claim is [ \_\_\_\_\_ ], 2012. Any Proof of Claim not filed or postmarked with the Receiver on or before [ \_\_\_\_\_ ], 2012 will be considered untimely and may result in disallowance of the Claim.

**3. Who Should File a Claim**

**Founding Partners "Investors of Record."** An Investor of Record is defined as a Person shown to be an investor in the books and records associated with Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P., including any of their related entities (hereinafter "Founding Partners" and also referred to as the "Founding Partners Entities") as of January 1, 2009. If you believe that you invested funds directly into the Founding Partners or some other entity or fund operated by the Defendants and suffered financial injury as a result of your participation in such investment, you should complete and timely submit this Proof of Claim Form to the Receiver. The Receiver is aware that some of the Investors of Record are not the Actual Beneficial Owners of all of the funds that they invested, but instead were raising funds from "Sub-Investors" and then investing those funds through the name of an Investor of Record, or were pooling funds received from a number of "Sub-Investors" under the name of an Investor of Record. The Proof of Claim Form requires all Claimants who are Investors of Record to identify the Actual Beneficial Owners of the funds invested, and to set forth their investment history. Failure to cooperate with the Receiver's efforts to determine the Actual Beneficial Owners of the funds invested in Founding Partners may result in total forfeiture by the Investor of Record of that portion of the investment for which the Investor of Record is not the Actual Beneficial Owner. To the extent that you are an Investor of Record, but are not the Actual Beneficial Owner of any of the funds invested, you should still file a Claim, identifying your Sub-Investors' information relating to their investment. *[If you invested in several of the Founding Partners Entities, please provide a separate proof of claim form for each Founding Partners Entity.]*

**4. Information and Documentation to be Provided by Claimant**

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

Each item of information and documentation requested in this Proof of Claim Form will be used by the Receiver in determining each Claimant's eligibility in any distribution of Receivership Property, and in calculating the appropriate amount of each allowed claim, subject to the Court's approval. Please be as detailed and complete as possible with regard to submissions and accounts attached to this form, as it may affect both your eligibility to participate and the amount of your allowed claim. *Providing false, misleading or incomplete information or incomplete documentation will delay any disbursement made from this Receivership Estate and could jeopardize your distribution altogether.*

**5. Claimant Contact Information**

Complete the Claimant Contact Information section on the first page of this Proof of Claim Form, giving the name, address, telephone number, e-mail address and fax number of the Claimant to whom the Receivership Entity allegedly owes money or property.

**6. Claim Status**

If you have never received any notices from the Receiver about this case, and/or if the address differs from the address on the envelope sent to you by the Receiver, check the appropriate boxes on the form on the first page. If this Proof of Claim Form changes, replaces or supplements a Proof of Claim previously filed by you, check the appropriate box on the form and provide the date the previous Proof of Claim Form was filed. Furthermore, check the appropriate box if anyone else has filed a Proof of Claim Form relating to your Claim, and in an attached statement provide particulars such as who filed the related Proof of Claim Form, its date and amount.

**7. Details Regarding Investments and Returns in the Founding Partners Entities – Schedule A**

With respect to any investment(s) as to which you are asserting a Claim, you must complete Schedule A according to these instructions. Use additional sheets as necessary. Only include in this Schedule A all monies actually transferred directly or indirectly, to Founding Partners, and all monies actually received directly or indirectly, from any such entities. This includes profit payments received by you, and principal returned. Your Schedule A should **not** include any undistributed profits or rollovers of undistributed profits. If you are a Sub-Investor, the Receiver does not expect you to be able to track the transfer of your funds into the Founding Partners Entities. Instead, your Schedule A should identify the accounts into which you deposited your investments, all receipts of profit payments and any principal returns received by you, and the source of those payments, if known.

***FAILURE TO IDENTIFY ALL FUNDS RECEIVED BY YOU IN CONNECTION WITH YOUR INVESTMENT MAY RESULT IN FORFEITURE OF YOUR ENTIRE CLAIM***

**8. Details Regarding "Introducing Party" Fees/Commissions – Schedule B**

Some Claimants may have received "introducing party" fees, commissions or other payments in connection with their introduction, whether directly or indirectly, of investors into Founding Partners. These are referred to collectively as "Commission Payments." Any Claimant who has received any Commission Payments must identify all such payments received on the attached Schedule B. Some of these payments may have been further distributed by a Claimant to other marketers or introducing parties, and Schedule B requires such information. Claims may be adjusted to account for these payments.

***FAILURE TO IDENTIFY ALL COMMISSION PAYMENTS MAY RESULT IN FORFEITURE OF YOUR ENTIRE CLAIM***

**9. Details Regarding Potential Settlement of Receivership Claims Against Sun Capital and Related Parties**

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

On December 27, 2011, the Court preliminarily approved a settlement of all claims brought by the Receiver against Sun Capital, Inc., Sun Capital Healthcare, Inc. and HLP Properties of Port Arthur, LLC, as well as certain other related parties (collectively, "the Sun Parties"), pursuant to a Joint Motion brought by the Receiver and the Sun Parties. Pursuant to the Court's instructions, you should have received a Disclosure Package in the mail regarding this potential settlement. If you have not received this Disclosure Package, please contact the Receiver and one will be sent to you immediately. You may also access the Disclosure Package by visiting the Receivership website at [www.foundingpartners-receivership.com](http://www.foundingpartners-receivership.com). In order to participate in the proposed settlement transaction, you will be required to execute and return to the Receiver an Investor Release form. A copy of the Investor Release form was included in the Disclosure Package sent to you, and another copy is included with this Proof of Claim Form for your convenience.

**IF YOU CHOOSE TO PARTICIPATE IN THE PROPOSED SETTLEMENT TRANSACTION, YOU MUST RETURN THE EXECUTED INVESTOR RELEASE ALONG WITH THIS COMPLETED PROOF OF CLAIM FORM. IF YOU CHOOSE NOT TO PARTICIPATE IN THE PROPOSED SETTLEMENT TRANSACTION, YOU DO NOT NEED TO RETURN THE INVESTOR RELEASE, BUT YOU MUST STILL RETURN THIS COMPLETED PROOF OF CLAIM FORM BY THE DATE SET FORTH ABOVE TO PARTICIPATE IN OTHER POTENTIAL DISTRIBUTIONS FROM THE RECEIVERSHIP ESTATE, OR YOUR CLAIM MAY BE DISALLOWED IN TOTAL. THUS, IF YOU CHOOSE NOT TO PARTICIPATE IN THE PROPOSED SETTLEMENT TRANSACTION, TO PARTICIPATE IN ANY OTHER POTENTIAL DISTRIBUTION FROM THE RECEIVERSHIP ESTATE, YOU MUST COMPLETE AND SUBMIT THIS PROOF OF CLAIM FORM IN A TIMELY MANNER.**

**10. Supporting Documents Relating to Investment**

You must attach to this Proof of Claim Form all documents that show the Receivership Entity owes the obligation claimed. These documents must be sufficient to show the source of the funds invested in Founding Partners, the amount and dates of funds deposited, and the amounts and dates for each payment of funds received from Founding Partners. (For example, you may want to attach copies of cancelled checks (front and back), carbon checks, wire transfer instructions, wire transfer confirmations, money orders, bank statements, itemized account statements, correspondence, subscription documents, etc.) If documents are not available, you must attach an explanation as to why they are not available.

*Please make sure that you sequentially label all of the documents that you produce to the Receiver in connection with your Claim, to ensure that both you and the Receiver have the same record of documents received, and in order to maintain integrity and order among the documents the Receiver receives among numerous documents. The Receiver recommends that you label on the bottom right hand corner of each document using your initials and beginning with the number 001 (e.g. for John Q. Smith, the first page of the production of documents would be labeled "JQS001," the second page "JQS002" and so on). Labeling by hand is acceptable.*

**DO NOT SEND ORIGINAL DOCUMENTS AT THIS TIME – ONLY SEND COPIES OF DOCUMENTS**

**11. Identification of Actual Beneficial Owners of Funds Invested in the Founding Partners Entities**

To the extent that you are an Investor of Record in Founding Partners, but are not the Actual Beneficial Owner of all of the funds that you invested in your name, you should check the box in Section II.H of the Proof of Claim Form indicating that you are not the Actual Beneficial Owner of all of the funds that you invested, and provide contact information for each separate Sub-Investor whose funds you invested in your name. To the extent that you are a Sub-Investor whose funds were invested in the name of a different Investor of Record, you should check the box so indicating. To the extent that you are an Investor of Record in Founding Partners and you are also the Actual Beneficial Owner of the funds that you invested, you should check the "No" box.

**12. Supporting Documents to Beneficial Ownership of Funds Invested**

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

The Receiver requires that all Persons submitting a Proof of Claim Form identify and provide supporting documentation verifying the source and Actual Beneficial Owner of the funds invested. To the extent that any portion of the funds invested by you are beneficially owned by some Person other than yourself, you must so indicate and provide the Receiver with contact information for each such Person, describe the relationship between you and each such Person, and provide all documents relevant for each such Person holding a beneficial interest in your investment in the Founding Partners Entities with respect to which you are making a claim, and current contact information for each such Person. For example, if your investment constitutes a pooling of funds that you received from others, you must so indicate and provide the information required in this instruction.

To the extent that you are claiming that all or any portion of your investment constitutes funds for which you have sole beneficial interest, you must set forth the source of your funds and provide supporting documentation verifying this source. For example, if you indicate that the funds invested were proceeds of a relative's life insurance policy, you must provide documentation establishing your receipt of such funds and tracing such proceeds to your investment.

If for any reason you are unable to provide information regarding the source of the funds invested, you must provide a detailed explanation as to why this information is unavailable to you or is otherwise unable to be provided. Attach additional sheets if necessary.

**13. Questions Seeking Additional Information Relating To Your Investment**

Please answer the questions to the best of your ability. This will assist the Receiver with his investigation efforts, and may lead to the recovery of additional assets.

**14. Questions Relating to Credits**

By signing and filing this Proof of Claim Form, you are stating under oath that you have given the Receivership Entity credit for ALL payments received from any Receivership Entity or any other third-party.

**15. No Blank Answers**

If a particular item does not apply to you specifically, write "not applicable." If you do not know the answer to a particular item, write "not known." *Do not leave a question blank. Use additional pages as necessary to provide complete responses.*

**16. Signature – Legal Authority to Submit Claim**

The Proof of Claim Form must be signed and dated by the Claimant, or a duly authorized officer or legal representative in the space provided on the final page. To the extent that the signatory is authorized pursuant to a power of attorney or court appointment, documentation of such authority must be provided.

**17. Independent Verification of Claims – Requests for Supplemental Information**

All Claims are subject to verification by the Receiver and any professionals and experts he retains. It is important to provide complete and accurate information to facilitate this effort. Claimants may be asked to supply additional information to complete this process. Claims will not be considered for payment until they have been verified.

**18. Acknowledgment of Filing Proof of Claim**

To receive an acknowledgment of the receipt of your Claim, enclose a self-addressed envelope or postcard with your Proof of Claim Form.

**19. Communications With Receiver**

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

Any questions about this form or process (including supporting documentation) should be made by e-mail to [tanzalone@BroadandCassel.com](mailto:tanzalone@BroadandCassel.com) or in writing to the Receiver's office, Broad and Cassel, Attn: Founding Partners Claims Administrator, 21<sup>st</sup> Floor, One Biscayne Tower, 2 South Biscayne Boulevard, Miami, Florida 33131. If you have information that you believe may be helpful to the Receiver, the SEC or any other law enforcement agencies, we encourage you to contact the Receiver at the aforementioned e-mail address.

**20. Certification of Truthfulness**

Each Person completing a Proof of Claim Form is required to certify, under penalty of perjury, that all the information contained in this Proof of Claim Form is correct, to the best of such Person's knowledge, and that such Person is authorized by the Claimant to submit the Proof of Claim Form on the Claimant's behalf.

**21. Requests for Additional Information or Documentation**

The Receiver may require additional information or documentation. By submitting a Proof of Claim Form, each Claimant agrees to cooperate with the Receiver in these requests. *Failure to provide all such requested information or documentation may result in delays in the claims process or in the partial or complete disqualification of your claim.*

**22. Computing Your Claim Amount**

You are not being requested at this time to state an amount you wish to recover through an allowed claim. Using the information provided in and with your Proof of Claim, the Receiver will determine the amount of your allowed claim, if any, and will provide notice to you of such determination, as well as how you might object to the Receiver's determination, in accordance with a Court approved plan of distribution.

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

**QUESTIONNAIRE**

*Before completing this form, please read the foregoing Instructions, provided to you along with this Proof of Claim Form.*

*Providing false, misleading or incomplete information or incomplete documentation could delay any disbursement made from this Receivership Estate and could jeopardize your distribution altogether.*

**Section I. – Affiliations and Related Parties**

*Check the appropriate box for each question. If the answer to any question is yes, please attach an explanation giving details*

- |    | Yes                      | No                       |  |
|----|--------------------------|--------------------------|--|
| A. | <input type="checkbox"/> | <input type="checkbox"/> | Are you affiliated with or related in any way to any of the Defendants?  |
| B. | <input type="checkbox"/> | <input type="checkbox"/> | Are you a present or former officer, director, employee or agent of any of the Defendants?   |
| C. | <input type="checkbox"/> | <input type="checkbox"/> | Are you the legal representative, heir, successor, or assignee of any of the Defendants?   |
| D. | <input type="checkbox"/> | <input type="checkbox"/> | Did you or your company or any of your officers, directors, employees, agents, affiliates or related parties directly or indirectly sell or otherwise market any investment for any of the Defendants?   |
| E. | <input type="checkbox"/> | <input type="checkbox"/> | Did you or your company or any of your officers, directors, employees, agents, affiliates or related parties directly or indirectly recommend any investments for any of the Defendants (including refer anyone to a salesperson, provide a list of names of possible investors, tell others about the investment, etc.)?  |
| F. | <input type="checkbox"/> | <input type="checkbox"/> | Did you or your company or any of your officers, directors, employees, agents, affiliates or related parties receive any money or other compensation or benefit of any nature (such as commission, referral fee, finder's fee, promoter fee, credit on any investment, gift or present) directly or indirectly from any of the Defendants or any other Person connected with the Founding Partners Entities? |

**Section II. – Relationship of Claimant to Founding Partners Entities**

*Please review Instructions carefully before completing this section.*

*Check the appropriate box for each question, and supply additional information as requested.*

- |    | Yes                      | No                       |   |
|----|--------------------------|--------------------------|---|
| G. | <input type="checkbox"/> | <input type="checkbox"/> | Did you invest any funds directly and in your own name into Founding Partners (i.e., were you an "Investor of Record")?   |
| H. | <input type="checkbox"/> | <input type="checkbox"/> | Did you invest funds indirectly into Founding Partners through another Person (i.e., were you a "Sub-Investor")? (If the answer to this question is YES, please state the name of |

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

the Person through which your funds were invested in the Founding Partners Entities, and provide the contact information sought below.)

Person through which funds were invested: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

E-Mail address: \_\_\_\_\_

I.               Did you invest funds directly or indirectly in either Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., or Founding Partners Hybrid-Value Fund, L.P. If yes, please mark the entity in which you claim to have invested. If no, please state the related entity in which you have invested funds either directly or indirectly.

    Founding Partners Capital Management Company

    Founding Partners Stable-Value Fund, L.P.

    Founding Partners Stable-Value Fund II, L.P.

    Founding Partners Global Fund, Ltd.

    Founding Partners Hybrid-Value Fund, L.P.

    Other: \_\_\_\_\_  
\_\_\_\_\_

J.               Did you enter into any written agreement(s) relating to your investment?

K.               Do you possess a copy of such written agreement(s)? (If the answer to this question is YES, please produce copies of any such agreement with your Proof of Claim Form.)

L.               Did you ever send or receive any written communication(s) relating to your investment?

M.               Do you possess a copy of such written communication(s)? (If the answer to this question is YES, please produce copies of all such communications with your Proof of Claim Form.)

**Section III. -- Investment History -- Schedule A**

*All Claimants must complete Schedule A -- Investment History.*

*Please review Instruction 7 carefully before completing this schedule.*

*All information is provided under penalty of perjury.*

**Please Initial:** \_\_\_\_\_

**PROOF OF CLAIM FORM**

*You should attach additional sheets as necessary.*

**YOUR CLAIM WILL NOT BE CONSIDERED UNLESS YOU COMPLETE SCHEDULE A**

**Section IV. – Documents Relating to Investment History**

*All Claimants must provide documentation verifying their investment history, including the submission of periodic (e.g., monthly, quarterly, etc.) bank statements showing all receipts and payments of any funds relating to the Founding Partners Entities, backup documents (such as wire transfer confirmations and fronts and backs of checks), and any and all correspondence reflecting, confirming or otherwise relating to receipts and payments of funds.*

**Section V. – Identification of Actual Beneficial Ownership of Funds Invested.**

*Check the appropriate box for each question, and supply additional information as requested.*

	Yes	No	
M.	<input type="checkbox"/>	<input type="checkbox"/>	Are you the Actual Beneficial Owner of all of the funds that you invested in Founding Partners? (If you are not the Actual Beneficial Owner of the funds invested, please attach a list of all Sub-Investors whose funds you invested in the Founding Partners, and, for each Sub-Investor: (i) provide current contact information; (ii) set forth the entire investment history of such Sub-Investor including all payments received from such Sub-Investor and all payments made to such Sub-Investor; and (iii) produce all documents in your possession relating to such Sub-Investor's investment. To the extent that you were the Actual Beneficial Owner of some but not all of the funds that you invested in Founding Partners, you should check "NO," and provide separate investment histories with respect to both the aggregate investment made by you and the component of such investment that comprises funds that you beneficially owned.)

**Section VI. – Documentation of Actual Beneficial Ownership of Funds**

*Please review Instruction 11 carefully before completing this schedule.*

*You are required to provide documentation establishing your ownership of funds invested in the Founding Partners Entities. This includes, but is not limited to, bank or other financial records for each account out of which funds were invested or into which any payments were received.*

**Section VII. – “Introducing Party” Fees, Commissions, Other Payments – Schedule B**

*Please review Instruction 8 carefully before completing this schedule.*

*All Claimants who have received any “introducing party” fees, commissions or payments in connection with the Founding Partners Entities or any related fund must complete Schedule B – “Introducing Party” Fees, Commission or Other Payments.*

*You should attach additional sheets as necessary.*

**FAILURE TO IDENTIFY ALL SUCH PAYMENTS MAY RESULT IN FORFEITURE OF YOUR ENTIRE CLAIM.**

*All information is provided under penalty of perjury.*

**Please Initial: \_\_\_\_\_**

**PROOF OF CLAIM FORM**

**Section VIII. –Additional Information**

*Please attach additional documents or sheets as needed.*

- N. Who introduced you to the investment that is the basis for your Claim?
- O. Describe in detail how you learned about the investment that is the source of your Claim, and provide all relevant details concerning the investment from first learning of it through the date the Receiver was appointed. (Please provide a narrative of the details.)
- P. What is the source of the funds you invested? (For example, personal savings, borrowed funds, funds invested on behalf of others, etc.)
- Q. How did you first learn that you should file this Proof of Claim Form?
- R. Have you made any attempts, including the filing of any lawsuit, to retrieve your investment, apart from any attempts made through this claims process? *(If the answer to this question is YES, provide a narrative of all such attempts, with whom you communicated, the response you received, and produce all documentation of any such attempts. If you have filed any Claim with any court or in any proceeding, please identify what you have filed and where, and provide any copies and all documentation submitted in connection with any such Claim.)*

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

*PROOF OF CLAIM FORM*

- S. Did you at any time, other than the investment(s) described in this Proof of Claim Form, have business dealings with any of the Founding Partners Entities or with William L. Gunlicks? If so, please describe those business dealings in detail.
  
- T. Have you received any monies from any of the Founding Partners Entities at any time, other than in connection with the investment(s) described in this Proof of Claim Form? If so, please explain.
  
- U. Have you made any investment in the Founding Partners Entities which is not reflected in this or any other Proof of Claim Form? (If the answer to this question is YES, complete Schedules A and B, and also comply with Sections IV, V, and VI, with regard to this investment. Furthermore, explain why you have not filed a Proof of Claim Form with regard to that investment.)
  
- V. Have you had any communications with any of the Defendants and/or anyone formerly affiliated with them regarding retrieving or recovering any part of your investment in the Founding Partners Entities? (If the answer to this question is YES, please provide a written narrative of all such communications, stating with whom you communicated, how the communication came about, what agreements, if any, you reached, and please produce all documentation related to these discussions.)

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*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

*PROOF OF CLAIM FORM*

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I am a signatory to each of the accounts listed above and am duly authorized to provide such consent.

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CLAIMANT

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**PROOF OF CLAIM FORM**

**Certification of Truthfulness**

Pursuant to 28 U.S.C. § 1746, I, the undersigned, hereby certify, under penalty of perjury, and pursuant, that all of the information provided in this Proof of Claim Form, including all Schedules and attachments to the Proof of Claim, is true and correct and that the undersigned is authorized to make this Claim. By initialing each item below, I specifically certify that:

		<b>Initial</b>
1.	I have read the Instructions to the Proof of Claim Form <b>prior</b> to completing the Proof of Claim Form.	_____
2.	I have identified in Schedule A to the Proof of Claim Form all of my investments into Founding Partners or any successor or related investment program, and all Payments and Principal Returns that I have received at any time since the beginning of my participation in such investment to the present.	_____
3.	I have identified in Schedule B to the Proof of Claim Form all "Commission Payments" that I have received in connection with my direct or indirect introduction of investors into Founding Partners or any successor or related investment program.	_____
4.	I have identified, to the best of my knowledge, the Actual Beneficial Owners of the funds that I invested in Founding Partners or related investment program.	_____
5.	I acknowledge a duty on my part to supplement or amend this Proof of Claim Form to disclose a material change with respect to any answer or information provided in connection herewith.	_____

Signed, under penalty of perjury, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name of Claimant: \_\_\_\_\_

Relationship to Claimant (Title): \_\_\_\_\_

*[Sign and print name, the name of the Claimant on whose behalf you are submitting this Claim and your relationship to the Claimant. If you are signing on behalf of the Claimant, state the basis for your authorization to sign on behalf of claimant, and attach any power of attorney or other relevant authorization.]*

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**SCHEDULE A**

**INVESTMENT HISTORY**

(Use additional sheets as necessary)

Name of Claimant: \_\_\_\_\_

Date of Transaction (month/day/ year)	Funds invested (\$ amount)	Payments received from Founding Partners (\$ amount)	Your bank account information (include name of bank, branch, account holder name, account number)	Method of investment / payment (e.g., check, wire transfer)	Counterparty	Counterparty bank information, if known (include name of bank, branch, account holder name, account number)	Are you producing along with your Proof of Claim Form documents reflecting or relating to this transaction, and if yes, please indicate document numbers. (Yes or No)

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**SCHEDULE B**

**COMMISSION PAYMENTS**

(Use additional sheets as necessary)

Name of Claimant: \_\_\_\_\_

Date of Transaction (month/day/year)	Amount of commission payments received (\$ amount)	Bank account information for Claimant Account into which payment received (include name of bank, branch, account holder name, account #)	Payor Name	Your bank account information re payor of commissions if known (include name of bank, branch, account holder name, account #)	Transfers of Funds by Claimant to Other Marketers / Introducing Parties (\$ amount)	Name of Recipient of Commission Payments Transferred by Claimant	Counterparty Bank information, if known (include name of bank, branch, account holder name, account number)	Are you producing along with your Proof of Claim Form documents reflecting or relating to this transaction and if yes, please indicate document numbers. (Yes or No)

*All information is provided under penalty of perjury.*

Please Initial: \_\_\_\_\_

**RELEASE OF CLAIMS (by Fund Investors)**<sup>1</sup>

The undersigned person (the "Affiant"), in consideration of:

the Settlement Agreement approved by the District Court by its order dated April \_\_\_, 2012 (the "Settlement Agreement") of which this Release of Claims is an integral part, and the Releases of Claims of all Parties and all Fund Investors delivering Releases of Claims, the mutual promises contained therein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

on behalf of:

such Affiant, and his/her/its officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasers"),

hereby releases and discharges:

the Affiliated Companies, the Principals, the Spouses and Dawson, and the Receiver, and each of their respective officers, directors, partners, members, shareholders, managers, agents, representatives, heirs, executors, trustees, administrators, predecessors, subsidiaries, successors, affiliates, assigns, advisors, legal representatives, attorneys, and employees (collectively, the "Releasees"), but this Release of Claims does not release any of the following persons or entities: Ernst & Young, Mayer Brown LLP, William L. Gunlicks, William V. Gunlicks, Jr., all investment advisors to any of Founding Partners or FPCM, and Cain Brothers & Company, LLC, and their respective officers, directors, partners, members, shareholders, managers, trustees, administrators, predecessors, successors, affiliates, assigns and current or former employees, contractors or vendors,

from:

all liabilities arising from any and all claims, demands, controversies, actions, causes of action whether asserted or unasserted, suits, debts, dues,

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<sup>1</sup> This updated version of the Investor Release differs from the version of the Investor Release attached to the Joint Motion to Approve the Settlement Agreement [D.E. 248] in the following ways: (1) "Exhibit A" was removed from the header; (2) the name of the title was changed to removed "FP Designee"; (3) the first paragraph was changed to add in the Order Preliminarily Approving the Settlement Agreement [D.E. 255]; (4) the years throughout were changed from 2011 to 2012; and (5) the "to be conformed" language was removed.

sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, proceedings, agreements, promises, variances, trespasses, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, liquidated or unliquidated, pending or not pending, disclosed or not disclosed, whether directly, representatively, derivatively or in any other capacity (collectively, the "Claims"),

which against the Releasees the Releasors ever had, now have or hereafter can, shall or may have for, upon or by reason of:

any Claims in any way related to the investments by any of the Fund Investors into Founding Partners or FPCM, the Loans and the credit relationship between Founding Partners or FPCM and any of the Companies, and any uses of the proceeds of the Loans by any of the Companies or transfers between the Companies or Affiliated Companies; any Claims in any way related to the facts, statements or omissions alleged in the actions or proceedings listed on Exhibit A and/or in any proposed amended pleading or intervenor pleading that was sought to be filed in such actions or proceedings; and any Claims in any way related to any actions or omissions of the Receiver relating in any manner to his role as the Receiver of Founding Partners and FPCM (collectively, the "Released Claims").

Notwithstanding anything to the contrary set forth in this Release, the Released Claims shall not include any Claims arising under, or relating to the performance under or the enforcement of, the Transaction Documents.

The Releasors shall not commence, prosecute, or assert any action, complaint, demand, cause of action, arbitration or other proceeding of any kind relating to, arising out of or involving in any way the Released Claims including, without limitation, any action for contribution, indemnity or otherwise, against or affecting any of the Releasees or any of their property, except for the purpose of enforcing this or any other Release executed in connection with this Settlement Agreement. In addition, the Releasors shall not assist or cooperate with any other person to commence, prosecute or pursue any claim

against any Releasee provided, however, that the Releasors shall be permitted to respond to subpoenas or court orders, in which case the Releasor will notify the affected Party or Parties of any such subpoena or order promptly so as to afford the affected Party or Parties the opportunity to take such action as they deem appropriate.

In the event that any Releasor breaches the foregoing paragraphs, such Releasor shall indemnify and hold harmless each Releasee for any loss or damages, however suffered, caused by such breach, including, without limitation, costs, expenses and reasonable attorneys' fees, including, without limitation, attorneys' fees incurred in the course of enforcement of this indemnification provision.

The Releasors represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim released hereby that they have had, now have or may have against Releasees or any portion thereof or interest therein.

This Release may be modified only by a writing duly executed by the parties hereto.

This Release is integral to and forms part of the Settlement Agreement.

This Release shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to any conflicts of laws rule or principle that might require the application of the laws of another jurisdiction.

Unless otherwise defined herein, capitalized terms used herein shall have the definitions set forth in the Settlement Agreement.

IN WITNESS WHEREOF, the Affiant has set his or her or its hand this \_\_\_\_ day of \_\_\_\_\_, 2012.

(Name of Fund Investor):

\_\_\_\_\_

(Signature):

By: \_\_\_\_\_

(Position):

\_\_\_\_\_

[Individual Acknowledgement]

STATE OF )  
 : ss.:  
COUNTY OF )

On \_\_\_\_\_, 2012, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same, and that by his/her signature on the instrument, the individual executed the instrument.

\_\_\_\_\_  
Notary Public

[Corporate Acknowledgement]

STATE OF )  
 : ss.:  
COUNTY OF )

On \_\_\_\_\_, 2012, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her corporate capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual taking acknowledgment

\_\_\_\_\_  
Notary Public

EXHIBIT A

Actions and Proceedings

1. *Securities and Exchange Commission vs. Founding Partners Capital Management Co. and William L. Gunlicks, et al.*, No. 2:09-cv-229-FtM-29SPC (M.D.Fla.)
2. *Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P. v. Sun Capital, Inc., Sun Capital Healthcare, Inc., HLP Properties of Port Arthur, LLC*, No. 2:09-cv-445-FtM-29SPC (M.D.Fla.)
3. *Annandale Partners, LP, et al. v. Sun Capital, Inc., Sun Capital Healthcare, Inc., Promise Healthcare, Inc., Peter Baronoff, Howard Koslow, and Lawrence Leder*, No. 09-03561 (134<sup>th</sup> Jud. Dist., Dallas County, Texas)
4. *Roman Catholic Church of the Archdiocese of New Orleans v. Sun Capital Healthcare, Inc., Sun Capital, Inc., Peter R. Baronoff, Howard B. Koslow, Lawrence Leder, and Equitas Capital Advisors, LLC*, No. 09-12364 (La. Civ. Dist. Ct., Orleans Parish)
5. *William Bonewitz, et al. v. Founding Partners Capital Management Company, et al.*, No. 2:09-cv-00718-JES-DNF (M.D. Fla.)
6. *Subpoena Duces Tecum* issued by Louisiana Department of Justice to Daniel S. Newman as Receiver on June 21, 2011, and any related proceeding.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,  
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS STABLE-VALUE FUND, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

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**NOTICE TO INVESTORS AND CREDITORS**

All investors, creditors and other persons who may have a claim against Founding Partners Capital Management Company; Founding Partners Stable-Value Fund, L.P.; Founding Partners Stable-Value Fund II, L.P.; Founding Partners Global Fund, Ltd.; and Founding Partners Hybrid-Value Fund, L.P., which arose prior to \_\_\_\_\_, or against the assets held by the receiver appointed pursuant to the order dated May 20, 2009 (the "Receiver"), must file with the Receiver an original Proof of Claim Form. A Proof of Claim Form is available from the Receiver by calling (305) 373-9400, or by downloading a copy from the receivership website at [www.foundingpartners-receivership.com](http://www.foundingpartners-receivership.com). **Do not file the Proof of Claim Form with the Court.** The Proof of Claim Form must be received by the Receiver by no later than 5:00 p.m. on \_\_\_\_\_, 2012. Failure to file a claim timely shall result in a waiver of any rights to participate in any distribution of funds through the Receivership.

**PUBLISH :** \_\_\_\_\_ and \_\_\_\_\_, 2012.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,  
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS STABLE-VALUE FUND, LP,  
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,  
FOUNDING PARTNERS GLOBAL FUND, LTD., and  
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

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**ORDER APPROVING  
RECEIVER'S MOTION FOR APPROVAL OF CLAIMS PROCESS**

This cause comes before the Court for consideration of the Receiver's Amended Motion for Approval of Claims Process (the "Amended Motion"). The Securities and Exchange Commission does not oppose the granting of the relief sought by Receiver in the Motion.

Having considered the Amended Motion, and being otherwise fully advised, it is

**ORDERED** and **ADJUDGED** that:

1. The Amended Motion is GRANTED.
2. Each investor, creditor, or interested party ("Claimant") that wishes to assert a claim against the Receivership, arising out of or related in any way to the acts, conduct, or activities of Founding Partners Capital Management Company, Founding Partners Stable-Value

Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, LP (collectively, the Receivership Entities), must file a Proof of Claim Form with the Receiver, in the form attached to the Amended Motion as Exhibit A, and, if such investor wishes to participate in the settlement transaction with the Sun-Related Parties, must submit a validly executed Investor Release to the Receiver, in both cases so as to be received by Daniel S. Newman, c/o Jonathan Etra, Esq., Broad and Cassel, One Biscayne Tower, 2 South Biscayne Boulevard, 21<sup>st</sup> Floor, Miami, FL 33131, **no later than 45 days from the entry of this Order** (the “Claim Bar Date”). Any Claimant who fails to file a Proof of Claim Form with the Receiver on or before the Claim Bar Date, *i.e.* fails to take the necessary steps to ensure that the Proof of Claim Form is **received** by the Receiver on or before the Claim Bar Date, shall be forever barred and precluded from asserting any claim against the Receivership or Receivership Entities.

3. The notice procedures detailed in the Amended Motion shall be sufficient and reasonably calculated to provide notice to all Claimants if made by: (a) first class U.S. mail to the last known addresses of all known Claimants; (b) publication in The New York Times at least one day per week for two consecutive weeks, and at least 30 days prior to the Claim Bar Date; and (c) on the Receiver's website at [www.foundingpartners-receivership.com](http://www.foundingpartners-receivership.com). The notice shall be in the form attached to the Amended Motion as Exhibit B (the “Notice”). The Court hereby authorizes the cost of publication of the Notice to be paid directly from the Receivership Entities’ Assets.

4. The Claims Process as set forth in the Amended Motion, the Proof of Claim Form attached to the Amended Motion as Exhibit A, and the Notice attached to the Amended Motion as Exhibit B are approved in all respects.

5. The Receiver's original Motion for Approval of Claims Process [D.E. 337] is deemed withdrawn.

6. The Receiver is permitted to provide copies of the Investor Releases to counsel for the Sun-Related Parties prior to closing, subject to the limitations described in the Amended Motion, once an appropriate agreement has been executed by the Parties.

DONE and ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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United States District Court Judge

cc:  
Notice of electronic service to all parties on the Service List.

**SERVICE LIST**

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U.S. Securities and Exchange Commission  
801 Brickell Avenue, Suite 1800  
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*U.S. Securities and Exchange Commission*  
*Via CM/ECF*

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*Service via CM/ECF*

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*Attorney for the Receiver*  
*Via CM/ECF*