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19 and FIRST FINANCIAL PLANNING CORPORATION

20 **UNITED STATES DISTRICT COURT**  
21 **SOUTHERN DISTRICT OF CALIFORNIA**

22 **SECURITIES AND EXCHANGE**  
23 **COMMISSION,**

24 **Plaintiff,**

25 **v.**

26 **LOUIS V. SCHOOLER and**  
27 **FIRST FINANCIAL PLANNING**  
28 **CORPORATION d/b/a**  
**WESTERN FINANCIAL**  
**PLANNING CORPORATION,**

**Defendants.**

Case No. 12 CV 2164 GPC JMA

**DECLARATION OF LOUIS V. SCHOOLER IN SUPPORT OF DEFENDANTS' MOTION FOR MODIFICATION OF THE PRELIMINARY INJUNCTION ORDER TO REMOVE THE REAL ESTATE GENERAL PARTNERSHIPS FROM THE RECEIVERSHIP**

1 I, LOUIS V. SCHOOLER, hereby declare, pursuant to 28 U.S.C. § 1746, as  
2 follows:

3 1. I am a Defendant in the above entitled action. I have personal  
4 knowledge of the matters set forth herein and, if called as a witness, I could and  
5 would testify competently hereto under oath.

6 2. I have owned and operated Defendant First Financial Planning  
7 Corporation d/b/a Western Financial Planning Corporation (“Western”) since 1978.

8 3. I have held a California real estate salesperson’s or broker’s license  
9 since 1986, and Western has been registered with and regulated by the California  
10 Department of Real Estate (DRE) since 1988.

11 4. Neither I nor Western have ever been the subject of DRE disciplinary  
12 action.

13 5. I am also licensed by the State of Nevada, Department of Business and  
14 Industry, Real Estate Division, and have no history of disciplinary action in Nevada.

15 6. From the late 1970's onward, I have used general partnerships (GPs) as  
16 the means of investment syndication. The use of GPs provides investors with (1)  
17 maximum control of all aspects of the investment vehicle through majority rule of  
18 the voting members, and (2) greater flexibility than a tenancy-in-common since only  
19 a bare majority vote is needed to decide when to sell, to whom to sell, and for how  
20 much.


21 7. The GPs are formed solely to invest in undeveloped land for the  
22 purpose of obtaining profits from property appreciation on resale. The GPs are not  
23 established for, and do not do, development of undeveloped land or management of  
24 already-developed land.

25 8. The GPs do not have day-to-day management responsibilities. The  
26 operational needs consist of the periodic payment of property taxes and insurance,  
27 and the annual retention of an accountant’s services for the preparation and mailing  
28 of Form K-1 to the investor-partners.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 29<sup>th</sup> day of May, 2013, in San Diego, California.



LOUIS V. SCHOOLER

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**CERTIFICATION**

I hereby certify that on the 29th day of May 2013, I submitted the foregoing via electronic mail to the Court’s chambers together with Defendants’ Memorandum of Points and Authorities in Support of Their Motion for Modification of the Preliminary Injunction Order to Remove the Real Estate General Partnerships from the Receivership, with the following counsels of record included on that electronic mail communication:

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\_\_\_\_\_/s/Eric Hougen\_\_\_\_\_

Eric Hougen

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**STATEMENT AND AGREEMENT OF PARTNERSHIP  
OF  
P-40 WARHAWK PARTNERS**

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**STATEMENT AND AGREEMENT OF PARTNERSHIP OF  
P-40 WARHAWK PARTNERS**

The undersigned parties voluntarily associate themselves to form a General Partnership pursuant to the terms and conditions set forth in this Agreement. This General Partnership Agreement is effective as of \_\_\_\_\_, 20\_\_.

**1. NATURE OF PARTNERSHIP**

1.1. Name of Partnership. The name of the Partnership shall be P-40 WARHAWK PARTNERS.

1.2. Statement of Partnership. The Partnership shall promptly file a Statement of Partnership Authority (GP-1) with the Office of the California Secretary of State.

**1.3. Description of Partnership Business. The Partnership is formed for the primary purpose of acting as the sole member of P-40 WARHAWK, LLC, a Nevada limited liability company (referred to herein as the "LLC"), which shall be formed to engage in any lawful act or activity for which a Limited Liability Company may be formed under the Limited Liability statutes of the State of Nevada, and at the present time for the purpose of acquiring, maintaining, and holding for investment purposes and at some future point in time disposing of an undivided one-quarter (1/4) interest, as tenant in common, in unimproved real property in Washoe County, Nevada, the full legal description of which is set forth in Exhibit "A" attached hereto and incorporated as though fully set forth at length herein (the real property parcels are collectively referred to herein as the "Master Parcel" and the Partnership's undivided one-quarter (1/4) interest in the Master Parcel is referred to herein as the "Subject Property"). The Subject Property may be encumbered by deed(s) of trust securing promissory note(s) (referred to herein as the "Acquisition Note(s)") given by, or assumed by (including "subject to") the LLC. The Partnership shall enter into a Co-Tenancy Agreement with three (3) other entities. Each Co-Tenant shall hold (through respective limited liability companies) an undivided one-quarter (1/4) interest in the Master Parcel.**

1.4. Term of Partnership. The Partnership shall commence upon the execution of this Agreement and shall continue until terminated as hereinafter provided. The Partnership shall not terminate automatically upon the admission, withdrawal, incapacity, death, bankruptcy or insolvency of a Partner.

1.5. Place of Business. The principal place of business of the Partnership shall be 5186 Carroll Canyon Road, San Diego, California, 92121 and/or at such other place or places as may from time to time be designated by the Partnership.

**2. FINANCIAL**

2.1. Contributions to Capital. The names and addresses of all Partners, the initial number of their Partnership Units, their initial percentage of ownership interest in the Partnership represented by those units, and any changes or updates to those respective fields will be maintained as the "P-40 Warhawk Partnership List of Partners" (referred to herein as the "List of Partners"). A final completed version of the List of Partners will be furnished to each partner upon the close of

escrow for the Subject Property and updated versions of the List of Partners will be provided to the Partners for their records periodically.

2.1.1. Upon execution of this Agreement, each Partner shall contribute \$1.00 to the capital of the Partnership for each Unit purchased, payable as follows:

- (i) \$1.00 in cash upon execution of this Agreement (such Partners are referred to herein as the "All Cash Partners"); or
- (ii) \$0.32 in cash and \$0.68 by delivery of a full recourse promissory note ("Promissory Note") payable in one hundred twenty (120) equal monthly installments (such Partners are referred to herein as the "Leveraged Partners"). Interest payments on any Leveraged Partner's Promissory Note shall not be considered to be capital contributed to the Partnership. Payments of any Leveraged Partner's Promissory Note shall be made only in the form of direct payments (ACH debits) from an account designated by the Partner. Authorization for such ACH debits shall be made in conjunction with any note signed by the Leveraged Partner. No payment of this Note may be made by check or any other means other than ACH debits, with the exception of final payoff payments which can be made by check.

2.1.2. Each Partner who executes a Promissory Note in favor of the Partnership hereby grants to the Partnership a security interest in such Partner's ownership interest in the Partnership to further secure payment of such Partner's Promissory Note(s). Such Partner shall execute all documents necessary to perfect the Partnership's security interest in all of such Partner's Partnership Units. Those documents include, but are not limited to, the documents described in the Article herein titled "Security Agreement".

2.1.3. Each Partner hereby authorizes the Partnership to obtain, at the Partner's expense, consumer credit reports from any consumer credit reporting agency. Each Partner hereby instructs such consumer credit reporting agencies to issue a consumer credit report on such Partner to the Partnership.

2.1.4. Although not presently available, each Partner hereby authorizes the Partnership to establish at a future time a VISA<sup>®</sup> and MasterCard<sup>®</sup> credit card acceptance account, so that, at that point in time, a Partner's additional capital contributions for operational purposes, as set forth in the Section titled "Additional Contributions to Capital," and the entire balance owing, but not the monthly payments, on such Partner's Promissory Note, if any, could be payable by VISA<sup>®</sup> or MasterCard<sup>®</sup>.

## 2.2. Additional Contributions to Capital.

2.2.1. Except for the "Required Amounts" described in the immediately following subsection, no Partner shall be allowed to make a voluntary contribution to capital without the written consent of the Partnership.

2.2.2. Each Partner must, as an additional capital contribution, contribute to the Partnership such Partner's pro-rata share of such amounts as are necessary to enable the Partnership to make all payments required in connection with the ownership and operation of the LLC, maintenance of the LLC's title and interest in the Subject Property, operation of the Partnership, and any business conducted in furtherance thereof by the Partnership (hereinafter called the "Required Amounts"), including, but not limited to, taxes, interest, principal payments on any note secured by a deed of trust or mortgage on such property, insurance premiums, payments which, in the reasonable judgment of the Partners, are necessary for the preservation and maintenance of Subject Property and all amounts which are necessary to enable the Partnership to pay salaries or any legal, tax, accounting, or administrative fees and expenses. Partners shall receive an additional Unit for each additional dollar (\$1.00) of capital contributed to the Partnership.

2.2.3. Each Partner's pro rata share of the required amounts shall be determined by a fraction, the numerator of which is each respective Partner's number of Units owned and the denominator of which is the number of Units owned by all Partners. The numbers of such Units shall be determined by reference to the most recent List of Partners.

2.2.4. At least fifteen (15) days preceding the due date of any required amounts under subsection 2.2 of this Section, the Partnership Administrator shall notify each Partner in writing, setting forth in such notice the amount of the payments due, the due date and such Partner's pro rata share thereof. Each Partner shall remit to the Partnership, in care of the Partnership Administrator, such Partner's share of such payment.

2.2.5. The failure of any Partner to contribute, in the manner and on or before the due date herein specified, an amount equal to such Partner's entire pro rata share of the required amounts described in this Section shall be deemed a "default." Upon the occurrence of any default, if such default is not cured within thirty (30) days after written notice of such default is given to the defaulting Partner, the Partnership shall have the option of pursuing any and all rights and remedies available, including, but not limited to, any of the actions described in the Article of this Agreement titled "Default."

2.2.6. In the event that a default, as defined in this Agreement, is not cured within ninety (90) days after written notice of such default is given to the defaulting Partner, each Partner hereby authorizes the Partnership to report such default to appropriate consumer credit reporting agencies.

2.3. Withdrawal of Capital. No portion of the capital contributed to the Partnership may be withdrawn at any time without the written consent of the Partnership. Absent the consent of all Partners, any such withdrawal must be in the same ratio as the Partners share in ownership of the Partnership, as set forth in the most recent List of Partners.

2.4. Interest on Capital. No Partner shall be entitled to interest on capital contributed to the Partnership.

2.5. Books of Account. Complete and accurate accounts of all transactions of the Partnership shall be kept by the Partnership Administrator.

2.6. Inspection of Books. The books of account and other records of the Partnership shall, at all times, be kept and maintained by the Partnership Administrator located at 5186 Carroll Canyon Road, San Diego, California, 92121, or by such other entity or at such other place or places as may from time to time be designated by the Partnership. At all reasonable times, any of the Partners shall have access to, and may inspect and copy, any of the Partnership records or books.

2.7. Method of Accounting. The books of account of the Partnership shall be on a cash basis.

2.8. Fiscal Year. The fiscal year of the Partnership shall end on the 31st day of December each year.

2.9. Definitions. The terms "net profits" and "net losses" as used in this Agreement shall mean the net profits and net losses of the Partnership as determined by cash basis accounting for each accounting period.

2.10. Profits and Losses. The net profits and net losses of the Partnership shall increase or decrease, as the case may be, the Partners' capital accounts in the same ratio as their ownership interest in the Partnership, as set forth in the List of Partners. Each Partner's ownership interest in the Partnership shall be based on the amount of capital contributed to the Partnership by such Partner compared to the total amount of capital contributed by all Partners to the Partnership.

2.11. Distributions. Distributions shall decrease the Partners' capital accounts in the same ratio as the Partners' ownership interest in the Partnership, as set forth in the most recent List of Partners. The Partnership is unlikely to make any distributions before the sale of the Subject Property.

2.12. Capital Accounts, Units Owned. There shall be maintained for each Partner a capital account. Initially, the capital account of each Partner shall consist of his/her contribution to the initial capital contributed to the Partnership as set forth in the List of Partners. Any additional capital contributions made pursuant to this Agreement shall be a credit to the contributing Partner's capital account. Capital accounts shall also be increased or decreased due to profits, losses, or distributions, as stated in this Agreement. The capital accounts described in this Section shall be maintained for tax accounting purposes only. These capital account calculations are distinct, separate, and do not apply to the method of determining each Partner's capital contributed to the Partnership as reflected in the most recent List of Partners.

2.13. Bank Accounts. All funds of the Partnership shall be deposited in accounts in the name of the Partnership at such bank or banks as may from time to time be selected by the Signatory Partners and the Partnership Administrator. Checks written on any Partnership account may be signed by a Signatory Partner or a designated agent of the Signatory Partners.

### 3. SECURITY AGREEMENT

3.1. Collateral. Each Partner hereby grants to the Partnership a security interest in such Partner's ownership interest in the Partnership (referred to herein as the "Collateral") to further secure (i) all of such Partner's obligations under this Agreement and (ii) payment of such Partner's Promissory Note(s), if any.

3.1.1. The security interest hereby created shall attach immediately upon execution of this agreement by each Partner and shall secure the payment and performance of (i) the terms of this General Partnership Agreement and (ii) the Promissory Note, if any.

3.1.2. The Parties shall execute any Financing Statement(s) required to perfect the security interest created by this Agreement. Such Financing Statement(s) shall be on a form or forms approved by the California Secretary of State. The Partnership shall pay the filing fee required by the California Secretary of State.

#### 4. **PARTNERS**

4.1. Definition. As used in this Agreement, the term "Partners" shall mean the original Partners named in the List of Partners, any successor in interest to the original Partners' respective ownership interests in the Partnership and any new Partners admitted to this Partnership. No person(s) shall be admitted to this Partnership unless such person is an original Partner or a successor in interest to an original Partner.

4.2. Signatory Partners. Each Partner hereby agrees that \_\_\_\_\_ and/or \_\_\_\_\_ shall serve as "Signatory Partners."

4.2.1. Each Signatory Partner is hereby empowered to:

- (i) sign documents on behalf of the Partnership and the LLC at any time during the term of the Partnership, including, but not limited to:
  - (a) The LLC Operating Agreement,
  - (b) The Purchase Agreement by which the LLC will acquire the Subject Property and all related documents regarding the acquisition and financing of the Subject Property, including, but not limited to, related note(s) and deed(s) of trust, and
  - (c) The Co-Tenancy Agreement;
- (ii) approve and execute any documents that grant access for ingress and egress to the Subject Property;
- (iii) hire a Partnership Administrator and execute a corresponding Partnership Administration Agreement to assist in the regular operation and maintenance of the Partnership as described in more detail in this Agreement, below; and
- (iv) hire and/or enter into contracts with other vendors, professionals, and service providers as needed for the orderly and efficient operation of the Partnership and LLC.

4.2.2. Any person, including, but not limited to, title companies, lenders, escrow companies, purchasers, and trustees, may rely upon written documents signed by any

Signatory Partner, including, but not limited to, escrow instructions, notes, deed(s) of trust, grant deeds, checks and contracts.

4.2.3. Any Signatory Partner may (i) be removed as Signatory Partner by the affirmative vote of a majority in interest of the capital contributed to the Partnership; or (ii) resign at any time. In either such event, a new Signatory Partner shall be elected by the General Partners.

4.2.4. So long as the Signatory Partners are acting in accordance with the provisions of this Agreement, and the other General Partners' consent as specified herein, the Signatory Partners shall incur no additional liability, fees, or costs (in an amount greater than those incurred by the other General Partners) as a result of its actions in signing on behalf of the Partnership. By their signature below, the other General Partners hereby agree to indemnify, hold harmless, and defend the Signatory Partners with regard to any actions of the Signatory Partners (including, but not limited to the designated Signatory Partner's actions as the Tax Matters Partner) acting on behalf of the Partnership and made in accordance with the provisions Agreement.

4.3. Tax Matters Partner. Subject to the Section titled "General Partners' Right to Control the Partnership," either one of the Signatory Partners shall serve as the Tax Matters Partner ("TMP") for the Partnership, pursuant to Sections 6221-6231 of the Internal Revenue Code of 1954, as amended ("Code").

4.3.1. The powers and responsibilities of the TMP shall include, but are not limited to, the following:

- (i) The TMP will be responsible for notifying the Internal Revenue Service of Partners' names and current addresses to ensure proper notification of all Partners in the event of an administrative proceeding;
- (ii) The TMP will keep Partners informed of all administrative and judicial proceedings to the extent required by the Treasury Regulations;
- (iii) The TMP will act on behalf of the Partnership in negotiating tax settlement agreements and/or requesting administrative adjustments (however, this provision does not restrict or otherwise limit the rights of individual Partners to participate in such proceedings as provided in the Code);
- (iv) In accordance with the Code, the TMP will have the exclusive right to appeal any final Partnership administrative adjustment within the first ninety (90) days after the mailing of such notice (in the event that such appeal is not made within the 90 day period, individual Partners may then appeal on behalf of the Partnership during the immediately succeeding sixty (60) day period);
- (v) The TMP may, by writing, extend the period for tax assessment with respect to Partnership items, and such an extension will be binding on all Partners; and



- (vi) All other powers and responsibilities which may be required to effectively perform the duties of the TMP pursuant to the Code and Treasury Regulations.

4.3.2. These provisions appointing the designated Signatory Partner as the TMP are not intended to preempt or to otherwise limit the individual rights of other Partners, as permitted under the Code. The TMP shall be reimbursed for all reasonable expenses incurred in performing the TMP duties, including, but not limited to, reasonable expenses incurred in administrative or judicial proceedings.

4.4. Retirement Plan Owner. Anything in this Agreement to the contrary notwithstanding, if an IRA or other qualified retirement plan (collectively referred to herein as an "IRA") is a Partner, the IRA owner may make any additional capital contribution required of the IRA. In that event, the IRA owner shall become a Partner and own, in an individual capacity, an interest in the Partnership equal to the capital contributed to the Partnership by the IRA owner.

4.4.1. Unless the IRA owner is already an individual Partner, the books and records of the Partnership shall reflect the admission of the IRA owner as a new individual Partner separate and distinct from the IRA Partner. The Partnership and the new IRA owner Partner shall comply with all provisions of the Section titled "New Partners" except for the written approval of a majority vote of the Partnership.

4.4.2. When an IRA owner makes a contribution to the capital contributed to the Partnership, in lieu of the IRA Partner doing so, the IRA Partner shall not be in default.

4.4.3. The rights and procedures described in this section are available only to IRA Partners and IRA owners. Nothing described in this section shall be deemed to be a sale or a transfer of an interest in the Partnership.

4.5. New Partners. Except as otherwise provided in this Agreement, new Partners may be admitted to this Partnership only upon the approval in writing of a majority in interest of the capital contributed to the Partnership. In any case, a supplemental agreement, in terms satisfactory to the Partnership, shall be executed by each new Partner setting forth:

4.5.1. The amount of the Partnership capital and allocation thereof among the Partners, including an updated List of Partners reflecting the new allocation of Capital Contributions;

4.5.2. The percentages in which the Partnership profit and loss shall be thereafter shared or borne; and

4.5.3. A statement that all Partners shall be bound by this Partnership Agreement as amended by the supplemental agreement.

## 5. RIGHTS AND DUTIES OF PARTNERS

5.1. General Partners' Right to Control the Partnership.

5.1.1. Notwithstanding the provisions of the Section titled "Signatory Partners," each Partner (subject to the limitations placed on the Non-Voting Partners as described below) shall participate in the control, management, and direction of the business of the Partnership.

5.1.2. All Partnership decisions shall be made in accordance with the vote of a majority of the interests in the capital contributed to the Partnership by Partners entitled to vote. For purposes of this Agreement, the term "majority of the interests in the capital contributed to the Partnership by Partners entitled to vote" shall mean a vote of more than 50% of the capital contributed to the Partnership (excluding the capital interests and contributions of the Non-Voting Partners), each Unit being entitled to one (1) vote (herein referred to as a "Majority Vote"). Partnership decisions may be made at meetings of the Partners or by written assent of the Partners through a ballot process.

5.1.3. Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., and any and all persons or entities receiving compensation of any kind from Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, or EBS Land Co. shall be "Non-Voting Partners." Non-Voting Partners shall not be entitled to any of the voting privileges described in this Agreement. However, Non-Voting Partners shall be entitled to all other rights and privileges granted to all other General Partners by the terms of this Agreement.

5.2. Initiation of Matters for Partnership Consideration. Any Partner, including Non-Voting Partners, may initiate a matter for Partnership consideration by submitting a written request to the Partnership Administrator specifying one of the following actions:

5.2.1. Distribution of Information: Any Partner may request distribution of information relevant to the business of the Partnership by submitting the relevant information to the Partnership Administrator for distribution. The Partnership Administrator will in a prompt manner prepare and distribute the information to all Partners at the addresses listed in the most recent List of Partners.

5.2.2. Ballot Vote or Written Assent of the Partnership: Any Partner, including Non-Voting Partners, may request a vote of the Partnership on any matter relevant to the business and operation of the Partnership. Upon receipt of such a written request, the Partnership Administrator will in a prompt manner prepare and distribute a ballot to all Partners at the addresses listed in the most recent List of Partners.

- (i) In the interests of ensuring all Partners are informed of any and all proposed Partnership action, Non-Voting Partners, although not allowed to vote, will be included in the distribution of any ballot or request for written assent.
- (ii) Procedures will be put in place allowing for Partners to submit their ballot signatures by facsimile, email, or hard-copy delivery.

5.3. Formation of Special Committees. The Partnership is authorized to form one or more Special Committees for the purpose of carrying out specifically mandated and delegated



responsibilities. Upon the motion of any Partner, a ballot may be presented to the Partnership setting forth the following: (1) the specific purpose of the Special Committee, (2) the scope of authority delegated to the Special Committee to act on behalf of the Partnership, and (3) the duration of the Special Committee's tenure. Special Committees shall consist of three Voting Partners selected by Majority Vote.

5.3.1. Litigation Special Committee. In the event the Partnership or LLC should become a party to litigation or other legal dispute, whether as a plaintiff or a defendant, there shall be formed a Litigation Special Committee delegated with adequate and proper authority to seek and retain able counsel and direct the pursuit of appropriate legal rights and remedies on behalf of the Partnership and/or LLC. The Litigation Special Committee shall keep the Partnership properly informed, including with regard to legal fees and expenses, and secure proper Partnership authority and approval for all actions binding the Partnership.

5.4. Partner Contact Information. Each Partner understands and agrees that their contact information and the number of Units each Partner holds will be distributed to all Partners.

5.5. Time Devoted to the Partnership. None of the Partners shall be bound to devote all of its business time to the affairs of the Partnership. Each shall devote so much of his/her time to the Partnership business as is necessary or advisable and may, during the continuance of this Agreement, engage in any activity for his/her own profit or advantage, without the consent of the other Partners, including activities which are in competition with this Partnership.

5.6. All Cash Partners. It is agreed by all Partners that the All Cash Partners shall have no personal liability for any Acquisition Note(s). The Partnership is relying on the payments from the Promissory Note(s) delivered by each Leveraged Partner to make the payments required by any Acquisition Note.

5.7. Reimbursement of Expenses. If the Partnership incurs any liability because of the act of any Partner, including any Signatory Partner, not contemplated by this Agreement, such Partner shall reimburse the Partnership on demand for all costs, expenses, attorneys' fees and liabilities arising in connection therewith. The Partnership shall reimburse the Signatory Partner for expenses incurred on behalf of the Partnership in good faith in accordance with this Agreement.

## 6. CO-TENANCY OF THE MASTER PARCEL

6.1. The Partnership Will Hold Its Interest as Co-Tenant. The Partnership's real property interest is an undivided one-quarter (1/4) interest which will be held by the Partnership (through the LLC) as a co-tenant with three other entities which will hold a corresponding undivided one-quarter (1/4) interest in the same parcels of real property described in Exhibit "A" attached hereto. The real property parcels described in Exhibit "A" attached hereto are collectively referred to herein as the "Master Parcel" and the Partnership's undivided one-quarter (1/4) interest in the Master Parcel is referred to herein as the "Subject Property."

6.2. Co-Tenant's Form and Structure. The other entities holding (through respective limited liability companies) a corresponding one-quarter (1/4) co-tenancy interest in the Master Parcel will be General Partnerships with the same or similar structure, form, and operation as this Partnership.

6.3. Co-Tenancy Agreement. Any disposition regarding the Master Parcel as a whole will require the mutual agreement of the four Co-Tenants. In order to facilitate the orderly maintenance of the Master Parcel and any future disposition thereof, the Co-Tenants will enter into a Co-Tenancy Agreement governing their respective rights and obligations regarding the Master Parcel.

6.3.1. Information and Communication. The Co-Tenancy Agreement will provide, and the Partnership hereby agrees, that each Co-Tenant will have access to and the ability to communicate with the other Co-Tenants and their respective Partner Members.

6.3.2. Initiating a Matter for a Co-Tenant's Consideration. A Partner Member of one Co-Tenant can submit a written request to its Partnership Administrator for a formal Co-Tenancy Communication requesting the other Co-Tenants to distribute information and/or initiate a ballot vote on matters regarding the Master Parcel that are of consequence or importance to all Co-Tenants.

6.3.3. Agreement to Honor a Co-Tenant's Requests. Each Co-Tenant will agree to honor and promptly act upon all communications and requests from the other Co-Tenants in the same manner and with the same care that each Co-Tenant would exhibit in handling such communications and requests had they originated from their own respective Partner Members.

## 7. PARTNERSHIP ADMINISTRATOR

7.1. Partnership Administration Agreement. For the purpose of facilitating the efficient and orderly administration of the Partnership's various clerical, administrative, and organizational needs, the Partnership will enter into a Partnership Administration Agreement with EBS Land Co., a California and Nevada corporation, Louis V. Schooler, President, to serve as "Partnership Administrator."

7.1.1. Administrative Responsibilities. The Partnership Administrator, as authorized by the Partnership, shall have responsibility for the following tasks:

- (i) Maintaining a designated mailing address and telephone number for all Partnership related matters;
- (ii) Maintenance and storage of all Partnership and LLC records, including, but not limited to, all executed Partnership Agreements, LLC Operating Agreements, Servicing Agent Agreements, Purchase Agreements, Co-Tenancy Agreements, Notes, Deeds of Trust, bank, tax, accounting, and insurance records, other Partnership documents and records, and all related filings;
- (iii) General administration and coordination of Partnership and LLC operations, including, but not limited to, banking, accounting, legal, tax, insurance, property maintenance, data processing and storage, information technology,

government filings, assessments, reports, and other Partnership and/or LLC administrative and operational needs and/or requirements;

- (iv) Collection, processing, and tracking of payments from Leveraged Partners pursuant to the terms of applicable Promissory Notes;
- (v) Maintenance and administration of the Partnership and LLC bank accounts and capital accounting, including the collection, processing, and tracking of Contributions to Capital and Additional Contributions to Capital, and updating the List of Partners to reflect current Partnership Unit allocations;
- (vi) Issuing notices to Partners and/or Co-Tenants in default of payment obligations;
- (vii) Coordinating and processing Transfer Offers and Approvals and any other authorized transfers of ownership and/or re-titling of Partnership Interests due to intra-family transfers, gifts, bequests, or other changes of ownership due to death, divorce, and/or trust creation;
- (viii) Coordinating periodic valuation assessments and other requirements pertaining to Partnership Interests held in IRA accounts;
- (ix) Preparing and distributing correspondence to Partners, including periodic updates and reports, the preparation and distribution of ballots, and the orderly receipt, processing, and tracking of ballot responses;
- (x) Coordinating the procurement, hiring, and payment of vendors, professionals, and service providers as authorized by the Partnership, including for regular banking, accounting, tax, insurance, maintenance, phone, information technology, data processing, storage, record-keeping, engineering, legal, and/or other services provided by third-party providers; and
- (xi) Other duties and responsibilities as may be required and/or assigned per the terms of the Partnership Administration Agreement and other governing documents and agreements and/or per order, action, or instruction authorized by the Partnership.

7.1.2. Compensation. The Partnership will pay the Partnership Administrator a monthly fee of \$400/month for these services, subject to adjustment per the terms of the Partnership Administration Agreement to be entered into between the Partnership and the Partnership Administrator.

7.1.3. Sale of the Subject Property. In addition to the responsibilities enumerated above, in the event the Partnership receives an offer or enters into negotiations with a potential purchaser of the Subject Property, the Partnership Administrator, in order to assist the Partners in evaluating any such potential transaction, will prepare Partner Statements detailing each Partner's current Partnership Interest and the corresponding share of any

proceeds the Partner would receive from the proposed sale. In addition, the Partnership Administrator will coordinate communication and distribution of information related to the Partnership's negotiation with the potential purchaser and with the Partnership's Co-Tenants, will coordinate any counter-offers, contingencies, requested due diligence, or other requests, and will coordinate escrow and all final accounting for accurate and timely distribution of proceeds to the individual Partners. The Partnership Administrator will be compensated from the proceeds of the sale of the Subject Property an amount equal to two and one half percent (2.5%) of the sales price of the Subject Property for these additional services, but only upon the completed sale of the Subject Property.

7.1.4. Termination or Resignation of the Partnership Administrator. The Partnership may, by a Majority Vote, terminate the Partnership Administrator and the Partnership Administration Agreement, with or without cause, upon a written notice of 30 days. The Partnership Administrator may resign and terminate the Partnership Administration Agreement on 60 days written notice to the Signatory Partners of the Partnership.

## 8. **DEFAULT**

8.1. Events of Default. Each Partner shall be in default under this Agreement and under Division 9 of the Uniform Commercial Code of California upon occurrence of any of the following events:

8.1.1. The failure of a Partner to make a capital contribution as called for pursuant to the Article titled "Financial";

8.1.2. The failure of a Partner to pay an installment required by the terms of that Partner's Promissory Note(s), if any, when due;

8.1.3. The failure of a Partner to promptly pay or perform, when due, any obligation secured by this Agreement or the security interest created by this Agreement;

8.1.4. Any misstatement, false statement, or misrepresentation in connection with this Agreement.

8.1.5. The failure of a Partner to keep or observe any warranty or covenant of such Partner contained in this Agreement or any other agreement existing between such Partner and the Partnership or to comply with or perform any of such Partner's obligations, agreements or affirmations under or emanating from this Agreement or the evidence of obligation.

8.2. Rights and Remedies. Upon the occurrence of any default, if such default is not cured within thirty (30) days after written notice of such default is given to the defaulting Partner, the Partnership shall have the option of pursuing any and all (i) rights and remedies afforded a secured party by the chapter on "Default" of the California Commercial Code and (ii) other rights and remedies available, including, but not limited to, the following:

8.2.1. If the default is due to nonpayment of Additional Contributions to Capital that are required for operation and maintenance of the Partnership and the Subject Property (the "Required Amounts" described above in this Agreement), the Partnership may pay the entire amount of the default and receive the additional shares attributable to payment of the Additional Contribution(s) in question. In that event, the number of Units of the non-defaulting Partners shall be increased by their proportionate share of the curing Additional Contribution(s).

- (i) If the entire Partnership does not elect to cure the default, individual Partners may do so. Each Partner curing a default shall receive the additional Partnership Units attributable to its payment amount. Each curing Partner shall be entitled to contribute an equal share of the default, unless the curing Partners decide otherwise. If two or more Partners do not wish to cure the default, a single Partner may do so and receive the entire additional Partnership Units attributable to the curing Additional Contribution.
- (ii) If no Partners wish to cure the default, Western Financial Planning Corporation ("WFPC") or one of its affiliated entities may do so.
- (iii) Any purchase by Partners, a single Partner, or WFPC or its affiliated entities will be conditioned upon payment directly to the Partnership of the Additional Contribution(s) necessary to cure the default.

8.2.2. If the default relates to the Partner's obligations under such Partner's Promissory Note, the Partnership shall have the right (but not the obligation) to commence any and all legal proceedings to enforce its rights under the defaulting Partner's Promissory Note(s) and/or this Agreement; and

- (i) All unpaid installments of such defaulting Partner's Promissory Note(s) shall then become due and payable; and
- (ii) The unpaid installments of such defaulting Partner's Promissory Note(s) shall continue to bear interest at the highest lawful rate.

8.2.3. In connection with its exercise of any right or remedy pursuant to the Security Agreement contained herein, the Partnership may demand reimbursement for any loss, cost or expense, including, but not limited to, expenses incurred in collecting sums payable by a Partner on such Partner's obligation secured by this Agreement or otherwise, in checking, handling and collection of the Collateral, or in preparation and enforcement of any agreement relating to the Collateral.

8.2.4. The Partnership may assign its rights under the Security Agreement contained herein and the security interest created hereby. Should the Partnership do so, the Partnership's assignee shall be entitled, upon written notice of the assignment being given by the Partnership to the Partner to all performance required of such Partner by this Agreement and all payments and monies secured by this Agreement

8.2.5. The defaulting Partner shall have no vote during the pendency of any default, and such defaulting Partner's ownership interest in the capital contributed to the Partnership shall not be counted for purposes of determining the requisite majority vote.

8.2.6. The defaulting Partner shall not thereafter be allocated or receive any distributions or allocations of profits or losses of the Partnership, unless and until such default is completely cured prior to sale of such Partner's Partnership interest. After notice of default from a Signatory Partner, the allocation or distribution to which such Partner shall be entitled shall be allocated or distributed to the remaining Partners in accordance with their respective interests in Partnership allocations and distributions, as set forth in the Sections titled "Profits and Losses," "Distributions" and "Capital Accounts" of this Agreement, for the entire period during which such default shall have continued until a sale of the defaulting Partner's interest.

8.2.7. The defaulting Partner hereby appoints the nondefaulting Partners, or any of them, as attorney-in-fact to execute such documents as may be necessary or desirable in order to transfer or encumber his/her Partnership interest in the manner selected by the Partnership. If the Partnership interest is sold, the defaulting Partner shall have no right, title or interest in or to the Partnership, its assets or the income therefrom.

8.2.8. To the extent that the rights and remedies provided by the California Commercial Code are in conflict with this Agreement, the terms of this Agreement shall control.

8.2.9. The failure or delay of the Partnership to exercise any right, power or remedy shall not operate as a waiver thereof, but all rights, powers or remedies shall continue in full force and effect until all of the Partner's obligations are fully paid and performed.

8.2.10. All of the Partnership's rights and remedies under this Agreement are cumulative in nature and none are exclusive.

## 9. **TERMINATION OF PARTNERSHIP RELATION**

9.1. Duration of Partnership. The Partnership shall begin as of the date of this Agreement and shall continue until the first to occur of the following events:

9.1.1. The expiration of thirty (30) years from the date of this Agreement;

9.1.2. The sale of all of the Partnership assets; or

9.1.3. The decision of a majority of the interests in the capital contributed to the Partnership to terminate the Partnership.

9.2. Transfer of a Partnership Interest.

9.2.1. A Partner may not sell, transfer, assign or subject to a security interest such Partner's interest in the Partnership or any part thereof to any party other than WFPC, except as provided herein. A Partner's interest may be made subject to a security interest



held by WFPC, so long as that interest is subordinate to the rights of the Partnership with regard to the security interest created in this Agreement. Any assignment or other transfer contrary to this provision shall be void and of no effect.

9.2.2. Any sale, assignment or transfer shall be made by written instrument satisfactory in form to the Signatory Partners, accompanied by such assurance of the genuineness and effectiveness of each signature as may reasonably be required by the Signatory Partners. Before any assignment or other transfer is made, the transferor and/or transferee shall reimburse the Partnership for all expenses it has incurred, including, but not limited to, attorneys' fees.

9.3. Right of First Refusal on Sale or Transfer of Partnership Interest.

9.3.1. Except as otherwise provided in this Agreement, no one may sell or transfer their interest in the Partnership or any portion thereof. Any one desiring to sell their interest shall first offer (the "Transfer Offer") to sell such interest to the remaining Partners in proportion to the remaining Partners' then current interests in Partnership capital at a price equal to the balance of the selling Partner's capital account. The purchase price, in an amount up to the amount of the unpaid principal balance (plus accrued unpaid interest) of the selling Partner's Promissory Note, shall be paid by assumption of such note by the purchasing Partners. The balance of the purchase price shall be paid in five equal annual installments bearing interest at the rate of three and one-half percent (3.5%) per annum, payable annually. (Each buying Partner shall give the selling Partner a promissory note equal to such buying Partner's pro rata share of the unpaid balance.) The selling Partner shall put the Transfer Offer in writing and give the other Partners a minimum of thirty (30) days from the date of making the Transfer Offer in which to accept or reject said offer.

9.3.2. If any Partners do not elect to purchase their pro rata share of the interest offered for sale, the other Partners may purchase the share not taken in the proportion which their respective interests in the Partnership capital bear to each other. The Transfer Offer shall be deemed rejected in its entirety unless the acceptance of the various Partners applies to the entire interest offered for sale. If the Transfer Offer is accepted in its entirety, the Partner or Partners accepting the Transfer Offer shall have an additional sixty (60) days in which to raise the funds necessary to meet the terms of the offer. If no other Partner purchases the interest offered for sale, the selling Partner may sell such interest to any other bona fide purchaser upon the terms described in this Section. If the selling Partner is unable to sell such interest to a bona fide purchaser upon such terms and desires to sell such interest upon other terms, the selling Partner must first offer to sell such interest to the remaining Partners, in the manner hereinabove described, upon such other terms. In any event, the selling Partner may not sell such interest for a purchase price that exceeds the selling Partner's capital account (described in the Section titled "Capital Accounts").

9.3.3. Notwithstanding any other provision in this Agreement, any Partner may transfer all or any part of its entire Partnership Interest to WFPC or any of its affiliated entities without obtaining the written approval ("Transfer Approval") of a majority in interest of the capital contributed to the Partnership and without making a Transfer Offer.

9.3.4. WFPC or any of its affiliated entities may transfer all or any portion of its Partnership Interest to a third party without Transfer Approval and without making a Transfer Offer.

9.3.5. Any Partner may transfer all or any part of his/her Partnership interest by gift, without Transfer Approval and without making a Transfer Offer only if such gift is made to either the Partner's spouse, a member of the Partner's family, persons adopted by a member of the Partner's family, or to a trust, of which such Partner is trustee, for the benefit of one or more members of the Partner's family. The phrase "member of the Partner's family" is defined to include only the lineal descendants of the Partner's ancestors.

9.4. Dissolution. When any dissolution of the Partnership under this Agreement or applicable law occurs, the continuing operation of the Partnership's business shall be confined to those activities reasonably necessary to wind up the Partnership's affairs, discharge its obligations, and preserve and distribute its assets. Notice of dissolution shall be published as required by California statute.

9.5. Liquidation of the Partnership.

9.5.1. Within a reasonable time after the dissolution of the Partnership and the termination of its business, the real property and all other assets then owned by the Partnership or the LLC (other than the Partners' Promissory Notes owed to the Partnership) shall be sold and the proceeds thereof shall be applied in the following order and priority:

- (i) The expenses of liquidation and debts of the Partnership, other than debts owing to the Partners, shall be paid.
- (ii) Such debts as are owing to the Partners, including unpaid fees, loans and advances made to the Partnership shall be paid.
- (iii) The balance in each Partner's capital account shall be paid after it has been increased or decreased for any profit or loss as shall have accrued from the date of last posting to these accounts. For purposes of this subsection, unless a Partner has paid the unpaid principal balance and all accrued interest of such Partner's Promissory Note(s) prior to the date of distribution pursuant to this subsection, the Partnership shall deduct the total unpaid principal balance and all accrued interest of such Promissory Note(s) from the amount of the distribution due such Partner pursuant to this subsection. Such deduction shall be deemed to be a cash distribution to such Partner in the amount of the unpaid principal balance, plus accrued unpaid interest, of such Partner's Promissory Note(s).

9.5.2. Any gain or loss arising out of the disposition of Partnership assets during the course of liquidation shall be increased or decreased to the Partners in the same proportions as profits and losses were distributed prior to liquidation. A negative balance in the capital account of any Partner, after all the debts of the Partnership are paid and the posting of



profits is completed, shall constitute an obligation from that Partner to the other Partners, to be paid forthwith, upon demand. At the election of a majority in interest of the capital contributed to the Partnership, any promissory note or other obligation payable to the Partnership (other than a Partner's Promissory Note) may be distributed to Partners "in kind" and administered through a collection agency, rather than selling the note at a discount.

## 10. **SPECIAL POWER OF ATTORNEY**

### 10.1. Appointment of Signatory Partner.

10.1.1. Each Partner hereby makes, constitutes and appoints the Signatory Partners his/her true and lawful attorney, in his/her name, place and stead, from time to time:

- (i) To make all agreements amending this Agreement, as now and hereafter amended, that may be appropriate to reflect:
  - (a) A change of the name or the location of the principal place of business of the Partnership.
  - (b) The disposal by any Partner of his/her interest in the Partnership in any manner permitted by the Agreement, and any return of the capital contribution of a Partner (or any part thereof) provided for by the Agreement.
  - (c) A person becoming a Partner of the Partnership as permitted by the Agreement.
- (ii) To make such certificates, instruments and documents as may be required by, or may be appropriate under, the laws of any state or other jurisdiction in which the Partnership is doing or intends to do business, in connection with the use of the name of the Partnership by the Partnership.
- (iii) To make such certificates, instruments and documents as may be required of the Partners or as may be appropriate for the Partners to make, by the laws of any state or other jurisdiction, to reflect:
  - (a) A change of address of said Partners.
  - (b) Any changes in or amendments of the Agreement, or pertaining to the Partnership, of any kind referred to in this Section.
  - (c) Any other changes in or amendments of the Agreement, but only if and when the consent of a majority in interest or other required percentage of the Partners has been obtained.

- (iv) To convey (as defined in Section 1510.5(2) of the California Corporations Code) title to real property, standing in the Partnership or LLC name, by a conveyance executed in the Partnership or LLC name.

10.1.2. Each of such agreements, certificates, instruments and documents shall be in such form as the Signatory Partners and legal counsel for the Partnership shall deem appropriate. The powers hereby conferred to make agreements, certificates, instruments and documents shall be deemed to include the powers to sign, execute, acknowledge, swear to, verify, deliver, file, record and publish the same.

10.1.3. Each Partner authorizes the Signatory Partners to take any further action which the Signatory Partners shall consider necessary or convenient in connection with any of the foregoing, hereby giving the Signatory Partners full power and authority to do and perform each and every act and thing whatsoever requisite, necessary or convenient to be done in and about the foregoing as fully as each Partner might or could do if personally present, and hereby ratifying and confirming all that the Signatory Partners shall lawfully do or cause to be done by virtue hereof.

10.2. Irrevocable. The power of attorney granted by this article shall be deemed coupled with an interest and shall not be affected by the subsequent incapacity or death of the principal, or the assignment of all or any part of his/her interest as a Partner until the transferee or assignee shall execute and acknowledge a grant of a written Power of Attorney and the Agreement as then constituted.

10.3. Subject to this Agreement. The power of attorney granted by this Article is subject to the terms of this Agreement.

## **11. GENERAL PROVISIONS**

11.1. No Waiver. Failure, at any time(s), to require strict performance by a Partner of any of the provisions, warranties, terms and conditions contained in the Security Agreement or any other agreement, document or instrument now or hereafter executed by such Partner and delivered to the Partnership shall not waive, affect or diminish any right of the Partnership to demand strict compliance and performance therewith and with respect to any other provision, warranties, terms and/or conditions contained in such agreement, documents, and instruments. Any waiver of any default or breach shall not waive or affect any other default or breach, whether prior or subsequent thereto, and whether the same or of a different type.

11.2. Representations. The representations, warranties, covenants, agreements and indemnities set forth in or made pursuant to this Agreement, or in any instrument, certificate, opinion, or other writing provided for in it, shall remain operative, shall be deemed made upon execution of this Agreement and shall not be merged therein.

11.3. Examination. Each party has relied upon its own examination of the entire Agreement, and the warranties, representations, and covenants expressly contained in the Agreement itself. The failure or refusal of either party to inspect the Agreement or other documents, or to obtain legal

advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based upon such reading, inspection or advice.

11.4. Employees. The fact that a Partner or a member of his/her family is employed by, or is directly or indirectly interested in or connected with any firm or corporation employed by the Partnership to render or perform a service, or from whom or which the Partnership or the LLC may purchase real property, shall not prohibit the Partnership from executing a purchase agreement with or employing any such person, firm or corporation or from otherwise dealing with him or it in transactions entered into in good faith.

11.5. Notices. Any and all notices between the parties hereto, provided for or permitted under this Agreement or by law, shall be in writing and shall be deemed duly served when personally delivered to a Partner, or, in lieu of such personal service, when deposited in the United States mail, certified, postage prepaid, addressed to such Partner at his/her address as set forth in the most recent List of Partners, or to such other place as may from time to time be specified in a notice, given pursuant to this Section, as the address for service of notice on such Partner.

11.6. Gender and Number. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

11.7. Investment Interest. Each Partner represents and warrants to the other Partners that such Partner is sufficiently experienced in real estate investment and business matters to recognize that this Partnership is newly organized and has no history of operation and is a speculative venture. Each Partner further recognizes that there is no public market for the Partnership interests being purchased and that it may not be possible to liquidate an investment in the Partnership in case of an emergency because the transferability of Partnership interests is restricted. Each Partner further recognizes that there are substantial risks in this investment and it is possible that such Partner may lose the total amount of said investment. Each Partner further recognizes that projections, with respect to any project, furnished by any other partner are estimates based on data procured from third parties and should not be deemed predictions or guarantees of the results of the project. Each Partner represents and warrants that such Partner is investing for such Partner's own investment account, without intentions of further selling or distributing the investment, except to a trust for the benefit of family members.

11.8. Litigation. In the event any party commences litigation for the judicial interpretation, enforcement or rescission hereof or any action relating to (i) this Agreement; (ii) the Partnership; or (iii) Partnership affairs, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred. The "prevailing party" means the party determined by the Court to have most nearly prevailed, even if such party did not prevail in all matters; not necessarily the one in whose favor a judgment is rendered.

11.9. Document Execution. Each party hereto agrees to execute, with acknowledgment or affidavit if required, any and all documents and writings which may be necessary or expedient in the creation of this Partnership and the achievement of its purposes.

11.10. Representative Capacity. Anything herein to the contrary notwithstanding, during any period that any Partnership interest herein is subject to administration in an estate, guardianship or conservatorship, such interest shall be ignored in determining the consents or agreements required for the taking of any action by the Partnership, it being intended that the difficulty in obtaining consents or agreements from any person acting in such representative capacity shall not interfere with or impede the conduct of Partnership affairs.

11.11. Indemnity. If as a result of a Partner's commission of an act not authorized by or in breach of this Agreement (such Partner is referred to herein as the "Breaching Partner"), any other Partner or the Partnership is made a party to any obligation or otherwise incurs any loss, damages or expenses, the Breaching Partner shall indemnify, hold harmless, defend and reimburse the Partnership or other Partner for any and all of such loss, damages and expenses incurred, including attorneys' fees. The interest of the Breaching Partner in this Partnership may be charged therefore.

11.12. Counterparts. This Agreement, or any amendment thereto, may be executed in multiple counterparts, each of which shall be deemed an original Statement and Agreement of Partnership, and all of which shall constitute one Statement and Agreement of Partnership, by each of the Partners hereto on the dates respectively indicated in the acknowledgments of said Partners, notwithstanding that all of the Partners are not signatories to the original or the same counterpart. The Partners hereby authorize the Signatory Partner to remove the signature pages of this instrument from any counterpart copy and attach all such signature pages to a single instrument so that the signatures of all Partners will be physically attached to the same document.

11.13. Duplicate Original Signature Pages. Each Partner shall execute two (2) original signature pages to this Agreement, one of which shall be attached as set forth above in preceding Section, and another for the records of the Partnership.

11.14. Joint Ownership. For all purposes hereunder, in those cases where two or more persons are indicated as one Partner, holding such Partnership interest as tenants in common, joint tenants or as community property, the following shall apply:

11.14.1. To the extent required by law, such persons shall each be considered as Partners hereunder, each shall be deemed to have contributed equally to the capital contribution indicated in the most recent List of Partners opposite their respective names. Each shall be deemed to have an initial capital interest consisting of an equal share of the capital contribution as set forth opposite their respective names. However, as to any additional capital contribution required by the Section titled "Additional Contributions to Capital," if the entire amount required from all joint owners is not contributed, all joint owners shall be deemed to be in default.

11.14.2. For purposes of voting upon or consenting to any actions or matters, as provided herein or by law, the vote or consent of any such person shall, unless all such persons are present and voting or indicate otherwise in writing, be deemed to vote or consent of all such persons. In the event that all are present and voting or submit written consents or refusals, then each shall vote an interest equivalent to an equal share of the interest which may be voted by all.

11.14.3. Upon the death of any such person and the passing of the decedent's interest, by any means, to the survivor of such persons, such passing is hereby established as a passing carrying with it the right to be a substituted Partner as to the decedent's interest, and such survivor shall become a substituted Partner as to the decedent's interest by virtue of this provision and without the requirement of consent of any other Partner.

11.14.4. Any proposed transfer pursuant to the Section titled "Right of First Refusal on Sale or Transfer of Partnership Interest" hereof, shall, if made by any such persons as the offering Partner, be of their joint interest herein, or, if made by just one of such persons, be of only their share of their joint interest herein, and the remaining shares shall thereafter for all purposes hereunder, belong solely to the other(s) of such persons.

11.14.5. An election made by any such person to acquire a Partnership interest offered by another under Section "Right of First Refusal on Sale or Transfer of Partnership Interest" hereof, shall bind both all persons.

11.14.6. Any notices given to any such persons shall, unless the Partnership is otherwise advised in writing, be deemed notice to all persons.

11.15. Construction. The language in this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any of the Partners hereto.

11.16. Governing Law. This Agreement, and any dispute arising hereunder, shall be construed and enforced in accordance with, and be governed by, California law. Each Partner hereto agrees that proper jurisdiction and venue for any suit to interpret or enforce any term or provision of this Agreement shall be in San Diego County, California.

11.17. Amendment. This Partnership Agreement may be amended upon the written consent of a majority of the interests in the capital contributed to the Partnership by the Partners entitled to vote. Neither the Partners nor the Partnership shall amend this Agreement in a way that diminishes the rights or increases the obligations of any Non-Voting Partner.

11.18. Binding on Successors. All provisions of this Agreement shall extend to and bind, or inure to the benefit not only of the Partners, but to each and every one of their heirs, executors, representatives, successors, and assigns.

11.19. Captions. Titles and captions in this Agreement are inserted for convenience of reference only and do not define, describe, amplify or limit the scope of the intent of this Agreement or any of the terms hereof.

11.20. Unenforceable Provisions. If any sentence or section of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable, the remaining provisions shall nevertheless be carried into effect.

11.21. Entire Agreement. This Agreement contains the entire agreement between the Partners relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK.

SIGNATURE PAGES FOLLOW.

This Agreement has been executed at \_\_\_\_\_ County, California, as of the day and year first above written.

**PARTNERS:**

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_

\_\_\_\_\_ Date

Read and approved:

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

\_\_\_\_\_

This Agreement has been executed at \_\_\_\_\_ County, California, as of the day and year first above written.

**PARTNERS:**

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_

\_\_\_\_\_ Date

Read and approved:

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

\_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE SUBJECT PROPERTY**

AN UNDIVIDED TWENTY-FIVE PERCENT (25 %) INTEREST IN AND TO THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF WASHOE, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

## PARTNER REPRESENTATIONS

In connection with my desire to acquire an ownership interest (referred to herein as the "Partnership Interest") in P-40 WARHAWK PARTNERS, a California general partnership (referred to herein as the "Partnership"), I hereby make the following representations and warranties:

1. I am at least eighteen (18) years of age.
2. I have sufficient experience, knowledge, and understanding of real estate and financial matters such that I am capable of evaluating the merits and risks of my investment in the Partnership. Furthermore, I am able to bear the economic risk if my investment in the Partnership ultimately should be determined to be worthless.
3. This Partnership Interest is being acquired for my own account, for investment purposes and without any intention of distributing, transferring, or selling such interest.
4. I have adequate means of providing for my current needs and possible personal contingencies, and have no need for liquidity of my investment in the Partnership.
5. I can bear the economic risk of losing my entire investment in the Partnership.
6. I am aware that the Partnership has no financial or operating history and that the Partnership Interests are speculative investments. I understand that this investment involves a high degree of risk and I could lose my entire investment in the Partnership.
7. I understand that my Partnership Interest is a personal property interest, and is not considered to be an interest in real property for legal or tax purposes. I further understand that this means that my Partnership Interest may not be exchanged for real property under the terms of IRS Code Section 1031, or any other governing codes or statutes. Since there is no practical process by which a tax deferred exchange of my Partnership Interest is possible, a tax deferred exchange will not be an available option.
8. I understand that transferability of my Partnership Interest is restricted, and I cannot expect to be readily able to sell, transfer, or otherwise liquidate this investment in case of an emergency. Before deciding to invest in the Partnership, I gave substantial consideration to all factors relevant to my personal situation, including, but not limited to, the age, health, income, savings and foreseeable obligations of each of the members of my family. That process has convinced me that despite the *long term* nature of this partnership investment, my investment in the Partnership is warranted.
- 9. I understand that the Partnership shall be the sole member of the P-40 WARHAWK, LLC, a Nevada limited liability company (referred to herein as the "LLC"), and that the Partnership will thereby act through the LLC, including, upon formation, entering into a contract to purchase an undivided one-quarter (1/4) interest in certain real property identified in Exhibit "A" to this Partner Representation (the real property parcels are collectively referred to herein as the "Master Parcel" and the Partnership's undivided one-quarter (1/4) interest in the Master Parcel is referred to herein as the "Subject Property").**
- 10. I understand that the LLC will enter into a Co-Tenancy Agreement with three (3) other entities regarding the Master Parcel, with each co-tenant owning an undivided one-quarter (1/4) interest in the**

**Master Parcel. I understand that although each co-tenant will have the right and authority as Co-Tenant to approve or reject the offer of any third party to purchase the Master Parcel, per the terms of the Co-Tenancy Agreement, the Co-Tenants agree to be bound by any decision agreed to by a majority of the Co-Tenants, including with regard to the final approval or rejection of an offer of a third party to purchase the Master Parcel. I further understand that per the terms of the Co-Tenancy Agreement, the Partnership will have the ability, through specifically delineated procedures, to require a vote by the members of the other Co-Tenants on matters regarding the Master Parcel, including on whether to accept or reject any offers from a third party to purchase the Master Parcel.**

**11. I understand, accordingly, that upon any future sale of the Master Parcel that each co-tenant will receive its respective one-quarter (1/4) share of the proceeds from the sale, the Partnership receiving that portion of the Master Parcel proceeds representing its undivided one-quarter (1/4) interest in the Master Parcel. I have factored this into any valuations, estimates, or other calculations I have made regarding the value of my Partnership Interest and any potential return I might receive on my investment.**

**12. I understand that before, during, and after formation of the LLC, all capital contributions necessary for the purchase and maintenance of the Subject Property will be passed through the Partnership to the LLC, and then passed to the Seller of the Subject Property pursuant to the Purchase Agreement between the Seller and the LLC. I further understand that if the Partnership or the LLC does not complete formation, the Purchase Agreement will be terminated and all money invested will be returned to the partners.**

13. I understand that the Partnership will carry out its operations and hold its interest in the Subject Property through the LLC and that all references herein to the Partnership in the singular form includes both the Partnership and the LLC (including, but not limited to, all interests, assets, property, rights, assignments, liabilities, and encumbrances held directly by the Partnership and/or by the Partnership through the LLC).

14. I understand that the Partnership is formed for the purpose of holding, maintaining, and protecting its interest in the Subject Property for a period of years in the hopes of realizing a profit from possible future appreciation in the saleable value of the Subject Property. I understand that there is no way of predicting the number of years the Partnership will hold this investment.

15. I understand that my Partnership Interest will not generate any periodic dividends or other disbursements to me and I do not look to the efforts of any other partner, nor to any person, corporation, or entity for the management, development, maintenance, mining, or farming of the Subject Property in order to make a profit. I look solely to the potential appreciation in value of the Subject Property over the years for any profit I may derive from this transaction, and I understand that (i) any such potential profit is subject to the uncertainty and unpredictability of the market, the type and pace of development in the area, and many other factors that can affect the value of real property, and (ii) any such potential profit can only be realized through the sale of the Subject Property by the Partnership to a willing buyer in the open market.

16. I understand that the Partnership, although not prohibited by the terms of the Partnership Agreement from undertaking development of the Subject Property, does not currently intend to and is not currently adequately capitalized to be able to undertake any current or future development of the Subject Property. I further understand that the level of financing or additional capital contribution the Partnership would have to secure for such an undertaking, makes it highly unlikely and improbable that the Partnership will now or at any time in the future attempt any direct development of the Subject Property. I do not enter into this investment

with any expectation that the Subject Property will be developed by the Partnership or that any profit or return on my investment will be generated through the development, conversion, or active use of the Subject Property for any means during the life of my investment.

17. I understand that during the life of the investment, the Partnership will incur various costs and expenses related to its operations and the maintenance of its interest in the Subject Property. Accordingly, I and other partners will, from time to time, need to make additional capital contributions to the Partnership to cover such expenses (including, but not limited to, taxes, property assessments, insurance, and related accounting, tax, and administrative services).

**Initials** ( ) ( )

18. I understand that periodic appraisals of the Subject Property may be conducted, but that due to the nature of undeveloped land, the difficulty in predicting its potential future value, and the fluctuations in valuation that can be caused by the presence or absence of nearby development and/or comparable land transactions, that such appraisals of the value of the Subject Property and my corresponding Partnership Interest may be substantially higher or lower than the amount of my initial investment and/or any final actual realized return on my investment.

19. In determining the advisability of this investment, I am not relying on any representations by any other Partner, Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., or any related person or entity regarding the present value, projected future value, or other opinion or projection of any kind regarding the value or potential value of any real property the Partnership has acquired or may acquire.

20. I have been provided with my own copy, have read, carefully reviewed in detail, and understand the terms and operation of each of the following documents as confirmed by my initials:

20.1. **Initials** ( ) ( ) Statement of Agreement and Partnership of P-40  
WARHAWK PARTNERS (referred to herein as the "Partnership Agreement")

20.2. **Initials** ( ) ( ) Operating Agreement of P-40 WARHAWK, LLC  
(referred to herein as the "Operating Agreement")

20.3. **Initials** ( ) ( ) The Purchase Agreement

20.4. **Initials** ( ) ( ) The Co-Tenancy Agreement

All the above documents are collectively referred to herein as the "Partnership and Operating Agreements."

20.5. **Initials** ( ) ( ) Timko/P51 North Property Preliminary Site  
Investigation Report

20.6. **Initials** ( ) ( ) Timko/P51 South Property Preliminary Site  
Investigation Report

The Timko/P51 North Property Preliminary Site Investigation Report and the Timko/P51 South Property Preliminary Site Investigation Report are collectively referred to herein as the "Feasibility Study."

21. I have had sufficient opportunity to ask for additional information and documentation, have been provided all such requested information and documentation, and have otherwise been afforded full and ample opportunity to conduct my own review and due diligence of this transaction and its terms to my full and complete satisfaction.

22. I understand that neither this investment opportunity, nor the Partnership Agreement, nor the Operating Agreement have been submitted to or reviewed by any governmental agency.

23. I have carefully reviewed the Partnership and Operating Agreements and I understand them. I have been given the opportunity to make further inquiries concerning the respective operations of the Partnership and the LLC. I understand that by signing the Partnership Agreement, I am authorizing the Signatory Partners to execute, on behalf of the Partnership and the LLC, the Operating Agreement, the Purchase Agreement, the Co-Tenancy Agreement, and all other documents related to the acquisition of the Subject Property and the financing thereof, including, but not limited to, the documents described above and related note(s), deed(s) of trust, and other appropriate or required documents.

24. I understand that in order to facilitate the efficient and orderly administration of the Partnership's various clerical, administrative, regulatory, and organizational needs, the Partnership will enter into a Partnership Administration Agreement with EBS Land Co., a California and Nevada corporation, Louis V. Schooler, President, to serve as "Partnership Administrator" as described in the Partnership Agreement. I understand that EBS Land Co. will be compensated for its services. I also understand that the Partnership, by a Majority Vote (as that term is defined in the Partnership Agreement), can terminate the Partnership Administrator and the Partnership Administration Agreement, with or without cause, upon 30 days written notice.

25. I understand that each partner's original capital contribution depends upon the number of Units purchased. Investors may purchase Units with a capital contribution of all cash or cash and a promissory note (referred to herein as the "Note") executed in favor of the Partnership.

26. I understand that if I elect to purchase Units with cash and a Note, I will be charged a monthly collection fee in the approximate amount of Five Dollars (\$5.00) in addition to the monthly payment called for in the Note. Such a Note shall be payable only by direct payments (ACH debits) made from an account designated by the Partner. Authorization for such ACH debits shall be made in conjunction with any note signed by any Leveraged Partner. No payment of this Note may be made by check or any other means.

27. I understand that the Partnership and the Subject Property will generate a negative cash flow which will require periodic assessments of the partners by the Partnership.

28. I understand that I may incur additional obligations resulting from the Company's acquisition of the Subject Property. Such additional obligations may include, but are not limited to, tax assessments, interest expenses, liability insurance and other expenses. Furthermore, I realize I have no assurance that there will be no increase in taxes, real property assessments, insurance premiums, and/or other additional payments.

29. I understand that as part of the initial capitalization of the Partnership, approximately One Hundred Ninety One Thousand Sixty Six and 67/100 Dollars (\$191,066.67) will be allocated as a fund available to meet Partnership and LLC expenses as they arise. This money will be held in an account, in the name of the Partnership, as a Partnership asset.

30. I have read the Sections titled "Contributions to Capital" and "Additional Contributions to Capital" of the Partnership Agreement and am aware that additional capital contributions will have to be made from time to time during the life of the Partnership. I am also aware that if I fail to make any required additional capital contributions or Note payments, my Partnership Interest may be purchased by the Partnership, or by other partners, for substantially less than the sum of all capital I have contributed. I acknowledge and agree that any delinquency of ninety (90) days or more in payment of Partnership capital contributions may be reported to credit reporting agencies. The possibility exists that in the future I may be able to arrange to make capital contributions via automatic payments from my bank account.

**Initials** ( ) ( )

31. If my Partnership Interest is owned by an IRA or retirement plan, I have read and understand the pertinent provisions of the Partnership Agreement and these Partnership Representations with regard to my IRA or retirement plan. I understand that I have the option to have the IRA or retirement plan make the capital contribution payment (for which I will need to sign an Investment Direction to allow the contribution to be made), or that I may choose to pay the capital contribution myself outside of the IRA or retirement plan.

**Initials** ( ) ( )

32. In the event that my Partnership Interest is purchased with funds from an IRA or other retirement plan, I have consulted with my trustee or financial advisor with regard to the economic and tax effects any such capital contribution may have on the IRA or retirement plan. I will continue to do so before each future capital contribution. I understand that special care needs to be taken to comply with all statutory limitations on contributions.

33. I understand that when a Cash Contribution is paid from a Partner's IRA or other retirement plan, in order to comply with IRS regulations, the portion of that Partner's interest represented by the cash payment made from the IRA or retirement plan shall not be encumbered as security for the Note.

34. I understand that the partners referred to as "All Cash Partners" in the Partnership Agreement shall have *no* personal liability for any note secured by a deed of trust encumbering the Partnership Property.

35. I understand that by executing the Partnership Agreement: (i) I shall be encumbering my general partnership interest by creating a security interest in favor of the Partnership, and (ii) in the event of a default under the terms of the Partnership Agreement or the Note, if any, the Partnership's rights and remedies (as the Secured Party) shall include, but not be limited to, foreclosure of its security interest and the sale of my general partnership interest.

36. I understand that neither the Seller nor any partner is responsible for any damage done to the property by wind, washes, flood, land slippage, earthquakes, subterranean conditions, and other natural hazards.

37. I have been given and have read the Preliminary Site Investigation Report for the Timko North Property and the Preliminary Site Investigation Report for the Timko South Property (collectively referred to herein as the "Feasibility Study") and understand the disclosures contained therein. I am aware that the Feasibility Study is a summary report that discusses a number of important characteristics of the Subject Property impacting potential future development (and thereby the potential future value) of the Subject Property. I understand that

all reports, maps, schedules, exhibits, and appendices referred to in the Feasibility Study are available for my inspection and careful review upon request. I understand that I can also request copies of any such supporting documentation for my records.

38. I understand that the Feasibility Study was conducted by the engineering firm of Wood Rodgers before formation of the Partnership and that any observations, opinions, or conclusions reached in the Feasibility Study are those of Wood Rodgers and Wood Rodgers alone.

39. I understand that the Feasibility Study is merely a preliminary report for purposes of evaluating the future development potential of the Subject Property generally. Any reference to development or developers in the Feasibility Study are only for the purpose of discussion and analysis of the future development potential of the Subject Property and is not meant to be relied on, and is not relied on, as a reference to any actual developer or development of the Subject Property by the Partnership.

40. I further understand that the Feasibility Study was for the purpose of identifying certain potential benefits and risks associated with the Subject Property and was not prepared as a final or complete analysis of all conditions or factors that may be of specific consequence or importance for a particular development plan that another party may consider at some future point in time. I realize that there is no way of knowing how another party might weigh the various factors and characteristics of the Subject Property relative to specific development or planned uses of the Subject Property and its ultimate corresponding dollar value.

41. I understand that there may be additional, important characteristics of the Subject Property, including potential defects, liabilities, or other potential concerns of significance that are unknown and not identified in the Feasibility Study. I understand that I may conduct my own physical inspection of the Subject Property and that I may hire, at my own cost, my own professionals or consultants to examine the site, verify conditions and characteristics, and, with proper prior notice and approval, conduct reasonable tests regarding the Subject Property to my full and complete satisfaction.

42. I understand that easements may encumber the Subject Property which may provide: (i) access to other parcels of land and (ii) installation and maintenance of utilities serving other parcels of land.

43. I understand that the acreage of the Subject Property is computed on a gross acreage basis. Therefore, if roads (or other easements) are placed on the Subject Property, then the usable acreage of the Subject Property will decrease.

44. I am aware that the Subject Property consists of two separate land areas: (1) The North Property consisting of ten (10) parcels containing 39.84 acres together with 44 acre feet of appurtenant water rights; and (2) The South Property consisting of three (3) parcels containing 76.32 acres. I understand that the North Property and the South Property are not adjacent to each other. An undeveloped parcel of land lies between the two properties.

45. I understand that the North Property is located adjacent to the Red Rock Road off-ramp exit to U.S. Highway 395 and that the South Property is approximately one quarter (1/4) mile directly south of the North Property.

46. I understand that the North Property previously contained residential rental units, but that all structures have been removed from the North Property, returning the North Property to a state of vacant land without any



structures except for some remaining utility improvements, namely water and power lines. I understand, therefore, that regardless of any prior or previous use(s) of the North Property, the North Property interest owned or to be purchased by the Partnership is vacant land without any residential structures.

47. I understand that the process of removing all of the structures formerly on the North Property included removal of approximately 37 former residential rental units, including removal of all foundations, septic tanks, and any other structures, materials, and appurtenances previously on the North Property. I further understand that some of the removed structures had shown evidence of building materials containing asbestos and that standard asbestos abatement and removal procedures were followed regarding the removal of any such material prior to removal of the remaining structures.

48. I understand that several unpaved interior roadways previously provided access to the ten (10) individual parcels adjacent to one another that make up the North Property. I understand that these interior roadways are contained within a parcel separate and apart from the North Property (the "Roadway Parcel"). The Roadway Parcel is currently owned by the same third-party who also owns the undeveloped parcel of land that lies between the North Property and the South Property.

49. I understand that the Roadway Parcel runs along and between the North Property parcels, but is separate and apart from the North Property parcels and is not included within the Subject Property owned or to be purchased by the Partnership. I agree to purchase my Partnership Interest understanding that title to the Roadway Parcel is not included within the North Property and is not included within the Subject Property owned or to be purchased by the Partnership.

50. I understand that the South Property consists of undeveloped land containing a series of water springs. I am aware there are water facilities on the South Property that serve water uses on the North Property with potable and non-potable water. I understand that the water facilities on the South Property consist of a \$250,000 water pumping and filtration system, a 25,000 gallon water tank, a 1,000 gallon water tank, an overflow pond collection area for non-potable water, and pipes and other appurtenances. I understand that a 2-inch water line delivering potable water to the North Property is located within an existing public easement, and that the 4-inch line delivering non-potable water to the North Property runs across the undeveloped parcel that lies between the North and South Properties without any known recorded easement. I also understand that the water facilities have historically served water to a residence located on the South Property for many years. I understand that presently there is not a recorded water permit for this domestic use and that a new water appropriation may be required in the future.

51. I understand that 44 acre feet of water rights under three (3) Nevada water permits (Permit Nos. 29589, 29590, and 29591)(the "Permits") are being conveyed with the Subject Property (the "Water Rights"). I understand that the Water Rights are appurtenant to the North Property, and their source is the springs located on the South Property. I understand that the Water Rights could be of value to meet water needs of any future development of the North and/or South Properties. However, I understand that due to the nature of the Water Rights being surface water rights from springs, these rights may not be accepted for dedication to any municipal water provider. I also understand the Water Rights could be sold to other parties.

52. I understand that an additional four and 17/100 (4.17) acre feet of water rights from the Permits have been deeded to LVS IV, LLC, an entity owned and operated by Louis V. Schooler, together with a relocatable easement and rights of access and diversion providing LVS IV, LLC with the necessary and appropriate rights of ingress to the South Property, access to the water source and related springs, and diversion of the four and



17/100 (4.17) acre feet of Water Rights. I understand the relocatable easement will include placement of water lines, pumping stations, and other appurtenances necessary to access and divert up to four and 17/100 (4.17) acre feet of water rights from the South Property.

53. I understand that the North Property is also encumbered by a relocatable utility easement for the benefit of LVS IV, LLC allowing for water lines to cross the North Property from its southern boundary to the northeast corner of the North Property.

54. I understand that the South Property also consists of a duplex residential structure to be occupied by property and water system caretakers. I understand that in lieu of rent, the residents of the duplex structure will provide services and be responsible for general property maintenance and for oversight, operation, and general maintenance of the water facilities, related equipment, and appurtenances on the South Property. I understand that no rent, revenue, distributions, or other income will be generated by either the duplex residence or the water facilities.

55. I understand there is also a separate workshop structure of approximately 3,200 square feet on the South Property near the duplex residential structure. I understand the workshop structure will be used by the residents of the duplex for their personal and/or business purposes, including storage of heavy equipment.

56. I understand that a Union Pacific Railroad line runs along the northern boundary of the South Property and across the northwest and northeast corners of the South Property, causing both the northwest and northeast corners of the South Property to lie north of the rail line.

57. I am aware that access to the South Property is currently served by a roadway extending south from Mer Mac Street across a parcel owned by another party adjacent to the South Property, across a Union Pacific Railroad crossing near the northeast corner of the South Property, and along the rail line into the South Property. I understand that the current property title report notes that this right of access has not been recorded in the Washoe County land records. I understand that rights to this access may have already been acquired by prescription or by an implied easement by necessity. However, I further understand that this means the current roadway access may need to be perfected at some future point in time, both with regard to the adjacent parcel and with regard to the Union Pacific Railroad crossing. I understand this may need to be done by the Partnership or possibly by whatever future developer to whom the Partnership might sell the Subject Property.

58. I agree to purchase my Partnership Interest with the understanding that, if necessary, the Partnership may need to take steps to formalize and/or perfect its right of access to the South Property. I understand these steps could include negotiating directly with adjacent property owners to formalize and/or purchase a recordable easement right and/or bringing legal action to perfect any existing right of prescriptive easement, easement by necessity, or other applicable right of access.

59. I am aware that due to certain activities on both the North Property and the South Property, there are pockets of uncompacted fill dirt that will be located on the property topographic mapping at the completion of the property demolition and septic tank removal so that full and adequate disclosure can be given to any future purchaser and/or developer regarding any known areas of uncompacted fills. In particular, on the North Property, the spaces where the septic tanks and former house foundations were located have been filled in with uncompacted dirt. So also, on the South Property, some of the pits and holes have been filled in with uncompacted dirt. I understand that each of the known areas of uncompacted dirt will be located and identified

on the property topographic mapping for future identification and disclosure to any future purchaser and/or developer of the Subject Property.

60. I am not relying on the efforts of Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., or any other person or entity to obtain, preserve, maintain, and/or extend any future, additional, or further development, maintenance, entitlement, zoning, annexation, master plan amendment, and/or other action regarding the Subject Property, including, but not limited to, any actions taken or not taken by any person, entity, government official, or governing body regarding title to the Roadway Parcel, operation of the water facilities on the South Property, maintaining or preserving any water rights, perfecting any rights of access, or regarding any other attribute or feature of the Subject Property.

61. I understand that neither the seller nor any other partner is responsible for changes in the law or any governmental actions, including, but not limited to, ballot initiatives, local ordinances, state, federal, and county rules and regulations, planning and zoning rulings and administrative proceedings, required improvements, eminent domain, condemnation, special designations, and/or the lack of any such actions. I also understand that such governmental actions or lack thereof can increase or decrease the value of the Subject Property.

62. I understand that the South Property is within the City of Reno Sphere of Influence and is currently a Master Planned Special Planning Area of the City of Reno. I understand that previous owners of the South Property submitted an annexation request to the City of Reno. I understand that it is likely the City of Reno will approve the pending annexation request, but that there is no guarantee that the City of Reno will do so and it may in fact deny the annexation request. I understand it may require additional and future action by the Partnership and the other Co-Tenants of the South Property to achieve annexation by the City of Reno. I understand the Partnership and/or the other Co-Tenants of the Subject Property may choose to act or not act with regard to annexation.

63. I understand the City of Reno may update its zoning and master plan designations, and that the effect of any such action, or lack thereof, could impact the Subject Property positively or negatively, or may cause no change to the value or utility of the Subject Property.

64. I understand that Washoe County may update its zoning and master plan designations, and that the effect of any such action, or lack thereof, could impact the Subject Property positively or negatively, or may cause no change to the value or utility of the Subject Property.

65. I am aware and understand that the Subject Property falls within Reno-Stead Corridor Joint Plan ("RSCJP"). I understand that the RSCJP may update its zoning and master plan designations, and that the effect of any such action, or lack thereof, could impact the Subject Property positively or negatively, or may cause no change to the value or utility of the Subject Property.

66. I agree to purchase my Partnership Interest regardless of any outcome regarding the potential efforts by the City of Reno, Washoe County, and/or the Reno-Stead Corridor Joint Plan to update their respective zoning and/or master plans or any other governmental action or changes in the law governing the use of the Subject Property.

67. I am aware that the tax aspects of my investment in the Partnership are not susceptible to absolute prediction. New developments in rulings of the Internal Revenue Service, audit adjustments, court decisions or

legislative changes may have an adverse effect on one or more of the tax consequences of investing in the Partnership.

68. I have been advised to consult with my own attorneys regarding legal matters concerning the Partnership, and to consult with my own tax advisors regarding the tax consequences of participating in the Partnership.

69. I represent that neither Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., nor any other related entity, their partners, shareholders, officers, spouses, salesmen, associates, agents, employees, attorneys, CPA's, nor any other persons related thereto, has given me legal and/or tax advice or opinions regarding this investment, but has merely administrated organization of the Partnership. I am relying on my own advisors for legal and tax counsel.

70. I am aware that First Financial Planning Corporation is a Nevada corporation doing business in California as Western Financial Planning Corporation. I am also aware that First Financial Planning Corporation is the Managing Member of P51, LLC, a Nevada limited liability corporation, which is the Seller of the Subject Property to P-40 WARHAWK, LLC.

71. I understand that Louis V. Schooler, President of First Financial Planning Corporation, and Western Financial Planning Corporation are licensed real estate brokers in California and Nevada. Neither one of them represents me or any Partner in this transaction.

72. I understand that Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., and any and all persons or entities receiving compensation of any kind from Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, or EBS Land Co. purchasing any Partnership Interests shall be considered "Non-Voting Partners" and shall not be entitled to any of the voting privileges described in the Section titled "General Partners' Right to Control the Partnership" of the Partnership Agreement. However, Non-Voting Partners shall be afforded all other rights and privileges granted to all other General Partners under the terms and conditions of such Agreement.

73. I am aware that I have granted to Western Financial Planning Corporation the right of first refusal to purchase my Partnership Interest in the event that I desire to sell my Partnership Interest.

74. I have been fully informed that P51, LLC, Western Financial Planning Corporation, First Financial Planning Corporation and/or Louis V. Schooler, as owner or seller or both, will be making a very substantial profit in the sale of the real property to the Partnership. Therefore, as between those entities and myself there exists a conflict of interest and *no* fiduciary relationship.

75. It never has been represented, guaranteed, or warranted to me by Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., their agents, or employees, any broker, or any other persons expressly or by implication, that:

75.1. I will be required to remain as owner of my Partnership Interest only until some approximate or exact length of time;

75.2. I will receive any approximate or exact amount of return or other type of consideration, profit or loss (including tax write-offs and/or tax benefits) as a result of this venture; or

75.3. The past performance or experience of Louis V. Schooler, Western Financial Planning Corporation, First Financial Planning Corporation, EBS Land Co., their partners, salesmen, associates, agents, or employees, or any securities broker or finder, or of any other person, will in any way indicate the predictability of results of the ownership of the Partnership Interest or of the overall Partnership venture.

76. I am aware that, prior to the close of escrow for the purchase of the Partnership property, there may be additional Partner Representations that may be made subsequent to my execution of these original Partner Representations. I recognize that some Partners may fail to respond to Partnership mailings of these additional Partner Representations, and that without their agreement, they may be removed as Partners in the Partnership. Therefore, I agree that if I do not object in writing to these additional Partner Representations within fourteen (14) days of my receipt of them by delivery through prepaid U.S. Mail, with Return Receipt Requested, my lack of objection shall be considered as a positive response. For purposes of this Section, "my receipt" shall be defined as delivery and signature (by any party at the address given to the Partnership for the Partner). For purposes of this Section, written objection may be made by mail, personal delivery, or fax. The Partnership, the other partners, Western Financial Planning Corporation, and any other party, including, but not limited to, the escrow agent and title officer, may rely upon Partner Representations agreed upon by silence and non-response as set forth herein.

77. I understand the meaning and legal consequences of the representations and warranties contained herein. I shall indemnify and hold harmless the Partnership, and each partner thereof, and any of their agents or employees (each of which is generically referred to as an "Indemnitee") from any or all liabilities, claims, demands, and expenses of any nature including, but not limited to, court costs and attorneys fees, resulting directly or indirectly or partially or entirely from:

77.1. A breach of any representation or warranty contained in this document; and/or

77.2. An Indemnitee's reliance upon any false, incomplete or inaccurate representation contained herein.

78. The foregoing representations and warranties are true and correct as of the date hereof and shall be true and correct as of the date of delivery of my payment for the Partnership Interest to the Partnership and shall survive such delivery. If in any respect such representations and warranties shall not be true and correct prior to delivery of such payment, I shall give written notice of such fact to the Partnership with a copy to the Signatory Partners specifying which representations and warranties are not true and correct and the reasons therefore.

**THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

**SIGNATURE PAGE FOLLOWS.**

IT IS HEREBY ACKNOWLEDGED THAT I (WE), \_\_\_\_\_

\_\_\_\_\_, HAVE READ THIS DOCUMENT IN ITS ENTIRETY, UNDERSTAND IT FULLY, AND AGREE WITH THE PROVISIONS CONTAINED HEREIN. I (WE) DECLARE, UNDER PENALTY OF PERJURY, THAT THE ABOVE IS TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED AS OF \_\_\_\_\_, \_\_\_\_\_, AT \_\_\_\_\_, CALIFORNIA.

\_\_\_\_\_  
Partner's Signature

\_\_\_\_\_  
Partner's Signature

\_\_\_\_\_  
Partner's Name (Printed)

\_\_\_\_\_  
Partner's Name (Printed)

\_\_\_\_\_  
Social Security #

\_\_\_\_\_  
Social Security #

\_\_\_\_\_  
Address

Phone(s): Home: \_\_\_\_\_

Business: \_\_\_\_\_

Cell: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Read and approved:

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

\_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE SUBJECT PROPERTY**

AN UNDIVIDED TWENTY-FIVE PERCENT (25 %) INTEREST IN AND TO THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF WASHOE, STATE OF NEVADA, DESCRIBED AS FOLLOWS: