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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LOUIS V. SCHOOLER and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION, Defendants.	Case No. 12 CV 2164 GPC JMA **DEFENDANTS' OPPOSITION TO RECEIVER'S REPORT AND RECOMMENDATIONS REGARDING VALUATION OF REAL ESTATE ASSETS OF RECEIVERSHIP ENTITIES** Date: No Hearing Currently Scheduled Time: None Ctrm: 2D Judge: Hon. Gonzalo P. Curiel **NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT**

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CASES

Defendants LOUIS V. SCHOOLER ("Schooler") and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION ("Western") (collectively "Defendants") hereby submit the following Opposition to the Receiver's Report and Recommendations Regarding Valuation of Real Estate Assets of Receivership Entities.

I.

INTRODUCTION

The Receiver's Report on Appraisals jumps over several very important steps in the litigation process and completely disregards multiple governing documents to reach a premature conclusion that real estate general partnership assets should be dissolved and liquidated at current bottom-of-the-market prices. The Receiver is so certain of this conclusion, that prior to any court approval or ballot to investors, the Receiver announces he has already suspended operational billing, depriving several real estate general partnerships ("GPs") of the funds necessary to meet their most basic upcoming obligations: property taxes and loan payments, the default of which will result in unnecessary late fees, acceleration of principal loan amounts, and possible default and surrender of the GPs' property.[1]

Reading the Receiver's recommended course of action, one would think the trial in this matter has already happened and a verdict reached. However, the legal sufficiency of the SEC's case has yet to be established, much less its allegations proven, and there is no final judgment on the merits.

More importantly, the GPs have yet to have their due process rights honored. The GPs have not been provided any hearing on the threshold issue of whether their assets should be placed in a permanent receivership at all. The Court needs to

[1] While there is approximately $6 million across numerous GP operating accounts, there are multiple GPs with insufficient operating balances to make their next tax payment, requiring a timely operational billing by the Receiver to avoid a default on those GPs' tax obligations and the corresponding incurring of costly late fees and penalties by those GPs – a function carried out successfully by the partnership administrators for the past three decades without any of the GPs defaulting on any payment obligations.

address the pending due process arguments before it can take any action to approve or reject the Receiver's improvised recommendations for a massive fire sale that could serve to end the investments in total before the parties have even begun to engage in discovery, let alone have their day in court. This is especially true when the original purpose identified by the Court for appointment of the Receiver was that of "clarify[ing] Western's financial affairs" (Dkt. Doc. 59, p 9 of 12) as opposed to overseeing the liquidation of GP assets.

Therefore, we believe the Court should in the first instance hear oral argument as requested by Defendants on their Motion for Modification of the Preliminary Injunction Order to Remove the Real Estate General Partnerships from the Receivership (Dkt. Doc. 195). In addition, due process requires that the GPs also be provided a hearing on whether they even belong in the receivership before recommendations affecting the ultimate disposition of their assets can be considered.

In the alternative, to the extent the Court decides to issue a ruling on the Receiver's recommendations at this point in time, we address the merits.

A. Agreement in Principle

Defendants do wholeheartedly agree with one statement by the Receiver: that he "sees no reason why a group of GPs that collectively own a property …should not be able to retain the property and take sole responsibility for all mortgages and expenses associated with the property." Dkt. No. 203, p. 3 of 17. It has only taken 10 months and almost $400,000 in fees for the Receiver to concede this central point that the Defendants have maintained from the very onset of this litigation – that the GPs have always been able to tend to their own affairs and should continue to be allowed to do so.

B. Arbitrary and Unnecessary Terms and Conditions

While agreeing that there is no reason that the GPs cannot manage their own

affairs, the Receiver proceeds to recommend arbitrary and unnecessary terms and conditions upon any GP who might dare to run its own affairs. The Receiver's conditions and proposed action are directly contrary to any meaningful vote of the GP investors and would have the effect of discouraging any meaningful voting. Moreover, the Receiver's proposal grants him authority beyond what this Court has granted or the authority that Defendants ever had in relation to the GPs. Law in the Ninth Circuit and elsewhere does not allow such an assumption of power by a court-appointed receiver.

In fact, the Receiver imposes terms and conditions that have the effect of completely re-writing some of the most basic and core terms and conditions originally agreed to by all of the individual investors as set forth in the documents governing the GPs.

The two primary documents governing the GPs' operations are (1) The General Partnership Agreement, and (2) The Co-Tenancy Agreement. The Receiver ignores the terms of both of these governing documents, choosing instead to re-write the terms that he wants to arbitrarily apply to any GPs who might make the simple choice of paying their own taxes and insurance without the aid of a costly receiver. The Receiver fails to point to any legal or factual basis for ignoring the terms agreed to by the investors at the inception of their investment.

Lastly, the Receiver announces that the operational billing for the GPs (for the property taxes, insurance premiums, and other expenses) has been suspended pending disposition of the GPs' parcels, and recommends that collections on the notes from investors to the GPs (for funds borrowed from the GPs and Western to finance the purchase of GP ownership units) be suspended as well. The Receiver's suspension of operational billing and collecting on investor notes are not in the investors' best interests because of the potential jeopardy to the investments that would result, creating a breach of his duty toward the GPs. The GPs' land would be lost, since the nonpayment of the notes would trigger a default on the deeds of trust

for the land. Those investors who acquired their interests through the notes would still be obligated to pay on those notes even after the land was lost (since there is no anti-deficiency protection for them), while those investors who have already paid the cash to acquire their interests would be disadvantaged by the Receiver pushing the other investors into defaulting and jeopardizing the investment as a whole.

II.

ARGUMENT

A. The Court Should Hear Oral Argument on Whether the GPs' Due Process Rights Have Been Honored before Approving any of the Receiver's Recommendations Regarding the GPs' Assets.

Pending before the Court is the Defendants' Motion for Modification of the Preliminary Injunction Order to Remove the Real Estate General Partnerships from the Receivership (Dkt. 195), including the argument that the GPs' due process rights have not yet been honored. The GPs have never been given a hearing on the threshold issue of whether the GPs should even be rightfully included within the receivership. This threshold due process right needs to be provided to the GPs before the Court can proceed to approve recommendations that could cause the GPs to lose their entire investment.

Defendants have urged the Court to grant Defendants' request for oral argument on these issues and to further provide the GPs with a hearing regarding their due process rights. Pending those hearings, the Receiver should be ordered to continue full operation of the GPs, continuing to pay all GP obligations in a timely manner and to the extent necessary, to engage in timely operational billing for those GPs in need of additional operational funds to meet their existing obligations. To do otherwise puts the GPs in jeopardy of defaults on tax payments and other existing obligations that could result in significant late fees and penalties being incurred, contrary to investor interests.

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B. The General Partnership Investors Should Be Given the Opportunity to Decide Whether to Retain Their Property – But Without the Receiver's Proposed Conditions

The Receiver proposes that the investors be allowed to vote on whether to retain the land held by their GPs. However, the Receiver then asks that various conditions be imposed on the balloting, including:

- Since each parcel is held by multiple GPs, *all* GPs that own interests in a parcel must vote in favor of retaining the parcel, with each GP's vote made by a majority of capital contributed to the GP. If a unanimous vote in favor of retention isn't reached, the parcel should be sold or surrendered to the lender, depending on whether equity can be recovered.
- No GP should be allowed to separate from the Receivership until it has repaid all amounts owed by it to Western, including amounts loaned by Western to pay the GP's operating expenses.
- Western's percentage share of cash in the accounts held by those GPs that vote to separate should be retained by Western in full satisfaction of its equity interests, through a full liquidation of Western's remaining equity stake via a cash payment – even if the separating GPs have no cash balance at all.
- "[I]nvestors in GPs that retain their property interests should be deemed to have relinquished all claims and rights to receive distributions from the receivership estate, including any funds that may be available for distribution from Western or Real Asset Locators, Inc. [an entity owned by Schooler, which also participated in acquiring real estate for sale to the GPs], and any amounts obtained from Mr. Schooler by the [SEC] and transferred to the receivership estate for distribution."

In essence, the Receiver is saying the GPs can only pay their own taxes if

they agree to immediately accelerate their 10-year note obligations and fully buy out one their non-voting partners. These arbitrary conditions make no sense and are in fact, contrary to investor interests.

Moreover, the Receiver's proposed conditions are inconsistent with the terms of the partnership and co-tenancy agreements, discourage the investors from voting, promote ill-informed voting, and serve only to provide a continued source of repayment for the Receiver. More fundamentally, the Receiver's improvised "opt-out only" scheme greatly exceeds authority granted anyone under the partnership agreements; particularly at this stage, the Receiver cannot exercise authority none of the entities in receivership could undertake. *See Javitch v. First Union Sec.*, 315 F.3d 619, 625 (6th Cir. 2003) ("a receiver acquires no greater rights in property than the debtor had and ... holds the property for the benefit of the general creditors under the direction of the court").

First, contrary to the Receiver's false assertion that the co-tenancy agreements require a unanimous vote of the co-tenant GPs (Dkt. No. 203, p. 11 of 17, ll. 6-7), the co-tenancy agreements state that only a *majority vote* of the GPs is needed. *See* Stead Property Co-Tenancy Agreement, ¶1.4, attached hereto as Exhibit 1 ("All Co-Tenancy consents and decisions shall be made by the majority vote of the Co-Tenants").

Although three of the parcels are owned by only two GPs and therefore a unanimous vote would be needed to produce a majority, the remaining 20 parcels are held by three or more GPs, with 19 held by three to four GPs. Dkt. No. 203, Exh. A. Requiring unanimity in those circumstances would be potentially unworkable and would produce a *liberum veto* effect, not to mention being directly contrary to the terms of the co-tenancy agreement.[2] In effect, the Receiver's

[2] *Liberum veto*: a notorious aspect of legislative practice in the Polish-Lithuanian Commonwealth of the 16th through 18th centuries, whereby one legislator could veto the entire proceedings of the legislature. As a result of the requirement of unanimity, legislative proceedings became paralyzed, often at times of political

proposal re-writes the co-tenancy agreement without the consent or input of the investors.

With regard to the condition that GPs should not be allowed to separate from the receivership without having first repaid all money loaned from Western, there is no legitimate basis for imposing this condition on the GPs, and the Receiver has articulated no legal basis for it. The facts are, and always have been, that the GPs are legally separate entities from Western, not Western's alter egos, partners, or agents. It is true that Western owns interests in the GPs, but those interests are not majority interests and are expressly prohibited by the partnership agreements from having any voting power. Also, the loans from Western to the GPs are non-recourse loans, and the requirement of prepayment would have the effect of triggering an acceleration of those loans to the GPs' financial detriment.

Defendants do not understand how the Receiver's recommendation to use GP operating funds to prioritize repayment of non-recourse notes to Western can be squared with the Receiver's duty of care to the GPs. His proposals demonstrate the fundamental conflict of interest built into his receivership scheme: The Receiver, wearing his hat as Receiver of Western, may request the repayment of the non-recourse loans, but when he wears his hat as Receiver of the GPs, the duty of care he owes to the GPs requires him to reject such a demand. For the Receiver to prioritize payment of an unsecured, non-recourse debt of the GPs ahead of the GPs obligations to pay taxes and make note payments is a direct violation of the duty of care owed to the GPs. Operating capital should be made available for secured, recourse obligations ahead of unsecured, non-recourse obligations. The cash in the GP operating accounts should be preserved to pay taxes and note payments so that the GPs can be sure to continue to hold their title to the land. The Receiver's recommendation that such precious cash be used instead to repay non-recourse debt

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crisis. *See* http://en.wikipedia.org/wiki/Liberum_veto.

is not in the investors interests and likely a breach of the duty of care owed to the GPS.

This dual conflict of interest between the Receiver's duty of care owed to Western versus the duty of care owed to the GPs shows up repeatedly in the Receivers' recommendations. A careful examination reveals the recommendations to not be in the best interests of the GPs as entities or their constituent investors.

Tying the GPs' ability to control their own property to repayment of money owed to Western is an attempt to create alter ego or principal-agent relationships where there presently are none, and does nothing other than to create another source of funds to pay the Receiver and to discourage the investors from voting to separate from the receivership.

Similarly, the Receiver's proposed condition that "Western's percentage share of cash in Separating GP accounts…should be retained by Western in full satisfaction of its equity interests" by "liquidat[ing] via a cash payment...even if Separating GPs have a zero cash balance" has no valid basis in fact or law (and the Receiver has not pointed to one).

There is no need to have the GPs buy out Western's interests in order to show that Western has no future obligation to pay any share of the operating expenses. Instead, as with the condition of requiring the GPs to repay all Western-loaned funds as a prerequisite to separation, this condition satisfies only the Receiver's need to get paid. For those GPs with a zero cash balance, the Receiver's proposed condition would damage their ability to pay operational expenses and force the investors to make capital contributions both to (1) pay the operational expenses and (2) buy out Western (i.e., the Receiver), which is of critical importance given the Receiver's decision to stop billing for operational expenses (see section II(C) below). This serves only to discourage the investors from voting to separate from the receivership.

The condition that the GPs' decision to separate from the receivership would

result in relinquishing any recovery from the litigation should be stricken. The GPs' investors' decision to reduce costs by taking back control of their investment has no legal connection to the investors' ability to obtain any recovery in the litigation.

Also, the proposed condition would present the GPs with a Hobson's choice of either (a) retaining control of their investments, but with no opportunity to obtain any recovery to backfill any difference, or (b) remaining in bondage to the Receiver for the time that it would take for the litigation to conclude, which may be several years. The Receiver's proposal effectively forces an adhesion settlement agreement on the investors without their ability to negotiate its terms.

The Receiver's condition of the retaining GPs' investors having to relinquish all claims to distributions from the receivership estate also fails, as does the proposed condition that the investors would relinquish any right to recovery from Schooler as a result of retaining their GPs' interests. Although Western is subject to the receivership, Schooler is not. Schooler's bank accounts are no longer frozen, and he is no longer covered by the anti-litigation clause of the preliminary injunction. Therefore, any rights that the GP investors would have to recovery from Schooler cannot be tied to any rights to recovery from Western that would be relinquished upon a successful vote to retain the GPs' interests and free them from Western and the Receiver; Schooler and Western are separate.

Lastly, there is still the issue of due process, which the Receiver's Report once again ignores. The Receiver's conditions affect the assets of the investors, who have not been given a hearing to consent to the conditions. ***Third parties having assets placed in receivership, such as the GP investors, are entitled to a hearing, not just routine notice and ability to be heard as the Receiver has claimed in the past.*** *See In re San Vicente Med. Partners Ltd.*, 962 F.2d 1402, 1408 (9th Cir. 1992) ("a district court has the power to include the property of a non-party limited partnership in an SEC receivership order as long as the non-party meets the minimum contact standard ... and receives actual notice and an opportunity *for a*

hearing." (emphasis added); *see id.* at 1407 ("The Constitution requires that property owners receive procedural due process in the form of notice and opportunity *for a hearing*." (emphasis added) (citing *Goss v. Lopez*, 419 U.S. 565, 577-79 (1975) ("deprivation of life, liberty, or property by adjudication [must] be preceded by notice and *opportunity for hearing* appropriate to the nature of the case") (emphasis added, citations and quotations omitted); *c.f. U.S. v. Arizona Fuels*, 739 F.2d 455, 459 (9th Cir. 1984) (non-party received due process in receivership proceeding because non-party involved in receivership action, including appearance of attorney at preliminary injunction hearing); *S.E.C. v. Whitworth Energy Resources Ltd.*, 243 F.3d 549 (9th Cir. 2000) (investors' procedural due process rights protected since they were given an opportunity for hearing concerning sale of property in receivership).

C. The Default Position for Any Lack of Agreement Among the Investors on Disposition of Their Partnerships' Land, or Lack of a Majority Vote to Sell, Must Be the Status Quo of Continued Ownership of the Land, As Provided for in the Partnership Agreements

In the event that an investor election is held, the Receiver has requested that the vote be on the issue of retention of the land, with the result of a majority of "no" votes being the sale of the land (if equity can be recovered) or surrender of the land to the original seller through foreclosure, deed in lieu of foreclosure, or short-sale (if there is no equity).

The Receiver's proposal has it backwards. The GPs are entitled to control of their land, as the Receiver reluctantly acknowledges. Instead of voting to retain the land as the Receiver suggests, the vote should be on the threshold matter of whether to retain the Receiver. This would be both more equitable (since the investors were never given the opportunity of a hearing, let alone a vote, on whether to have a receivership take control of their assets) and more in keeping with the partnership agreements, in which an abstention or failure to vote (a "non-vote") does not count

as a vote to sell. *See* Partnership Agreement for P-40 Warhawk Partners, p. 8, ¶ 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"), attached hereto as Exhibit 2 (emphasis added). In the event that a majority of the GP interest does not vote in favor of removing the Receiver, then the default would be to revert to the status quo: the continued holding of the land for appreciation (albeit with the Receiver managing things, instead of the investor-partners), as provided in the partnership agreements, with a majority of the capital contributions needed to vote in favor of disposition of the land. Exh. 2, p. 8, ¶ 5.1.2.

Proposing that the result of a "no" vote be the disposal of the land, even by foreclosure, short sale, or deed-in-lieu, would not benefit the GPs. The purpose of the GP investments is to hold land for the long term until the surrounding properties have developed and thereby increased in value so that the GPs' raw land becomes desirable to developers who would then buy at a price that would produce a profit for the GPs. As part of that long-term holding, there is the fact that land prices rise and fall from time to time; the risk is timing when to sell the land, much like a surfer sitting on his board in the ocean swells waiting for the biggest and best-looking wave to drop into.

Forcing the disposal of the land as the result of a negative vote would defeat the purpose of the GP investments and deprive the investors of any opportunity for the value to rise once again. Instead, the investors would be confronted with two undesirable choices: either (a) sell now in a stagnant market and hope for any sort of profit, or (b) return the title to the original seller (or lender, as the case may be).

To the extent any ballot were to be issued by the Receiver at this point in time, such a ballot, in order to ensure a greater probability of investment recovery and investors' control, must be framed in terms of a simple majority vote on whether to "keep the Receiver," not to "keep the land." The default result in any event would be retention of the land until such time as the value has swung upward

into a profit on resale. That would be more in keeping with the GP organization and ballot process and the original understanding of the investors when they entered into their investments.

D. The Receiver's Suspension of Operational Billing and Proposed Suspension of Collection on Investor Notes Is Not in the Investors' Best Interests, Would Result in Voter Suppression, and Constitutes a Breach of The Receiver's Duty of Care Toward the GPs

The Receiver announced in the Report that the bills for the GPs' operational expenses such as property taxes and insurance premiums are no longer being sent to the GP investors "[i]n light of the appraised values of the 23 properties and the bleak outlook for investors." The Receiver also proposes to suspend the collection on the notes from investors to Western and the GPs, which are for the amounts borrowed by the investors to acquire GP investment units. The rationale for halting collections is "the uncertainty of the situation" resulting from the SEC's allegations of fraud and "the bleak outlook for most investors," with no plan to resume collections until after each parcel's disposition has been determined.

Because the Receiver is appointed for the GPs as well as for Western, he has a duty of care toward the GPs, just like any other fiduciary. *Sovereign Bank v. Schwab*, 414 F.3d 450, 454 (3d Cir. 2005) ("A receiver owes a fiduciary duty to the owners of the property under his care"); *see also City of Chula Vista v. Gutierrez*, 207 Cal.App.4th 681, 143 Cal.Rptr.3d 689 (2012).

The Receiver does admit that because of the suspension of the investor billing and collections on investor notes, some mortgage payments and property taxes will not be paid. How missing such payments would be in the interests of the GPs or the investors is unclear.

By halting the billing for property taxes, insurance premiums, and the like, the Receiver has breached his duty of care toward the GPs by taking a course of non-action that jeopardizes the GPs' ownership interest; the failure to pay property taxes

can result in the parcels being sold (involuntarily) at a tax sale by the county tax collector, with accumulation of penalties and interest on default. The same is also true for the Receiver's proposal to halt collections on those notes from the investors to the GPs; by not pursuing the collection, the Receiver creates the risk of default on the deeds of trust for the purchase of the parcels, which in turn would lead to the foreclosure of the parcels.

Furthermore, ***the Receiver's proposal to stop collecting note payments from investors would deliberately sabotage the voting process for the GP investors***. The partnership agreements state that if an investor-partner fails to "pay an installment required by that Partner's Promissory Note(s), if any, when due" or to "promptly pay or perform, when due, any obligation secured by this Agreement" or 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," the investor-partner is in default. Exh. 2, p. 12, ¶ 8.1. If a partner is in default, he or she cannot vote on any matter that the partnership would vote upon, and his or her capital contribution would not be counted for purposes of determining the majority vote, until the default is cured. Exh. 2, p. 14, ¶ 8.2.5. Once a substantial proportion of the investors are disqualified from voting by defaulting on note payments (as planned by the Receiver), then it will be easier for the Receiver to influence the remaining investors and manipulate the vote in favor of retaining the receivership.

The Receiver is attempting to engage in wholesale re-writing of the core documents governing the GPs. To the extent the Receiver feels the need to make any recommendations, such recommendations should at a minimum be within the parameters of the entities and documents governing their formation and operations. At this stage of the litigation, to completely re-write some of the basic terms of the General Partnership Agreement and Co-Tenancy Agreement entered into by the investors is an extreme over-reach on the part of the Receiver and not in the interests of the investors.

The Receiver's proposal should be rejected, and the Receiver ordered to resume billing for operational expenses and collect on the investor notes. The Receiver should not be allowed to manufacture and perpetrate a crisis, and then capitalize on that crisis by disrupting the GP voting process and manipulating it into a vote that keeps money flowing into his pockets.

E. The Appraisals Should Not Be Given Significant Weight by the Court

The Receiver presents summaries of the appraisals, but not the appraisals themselves, to support his contention of a "bleak outlook for investors" that justifies the suspension of billing the GP investors for the GPs' operational expenses and the proposed suspension of collecting on the notes from investors to Western and the GPs. However, not much weight, if any, should be given to those appraisals.

First, as noted above, the Receiver presented only the summary sheets giving estimates of value for the GP properties. There are no documents submitted that explain how the estimates of value were determined, such as sales of comparable properties.

Second, because the appraised property is raw land, the appraisals of that property can vary considerably. In the case of the Dayton III land investment, the appraisers hired by the condemning public utility produced an estimate of value that was less than 10% of the value estimated by the appraiser for the GPs. Therefore, it is possible that the Receiver's appraisals represent the absolute bottom level of value, particularly in this current stagnant market.

Third, even if the Receiver's appraisals are as accurate an assessment of value as can be made, the value is only a *paper value*; it is not the same as having a buyer willing to pay a discrete amount of money now for the land.

Finally, the return on the GPs' investment has from the beginning been based on waiting for development to reach the target property. An appraisal taken now, when that development has still not reached any of the subject properties, does not

provide useful information regarding what the property will be worth if and when development does eventually reach the property (a market that will in no way resemble the current historically low market).

Therefore, the appraisals should be given little, if any, weight in this Court's determination on the Receiver's proposed course of action and conditions on that course of action.[3]

III.

CONCLUSION

As with his prior actions, the Receiver's appraisals are another example of why the receivership over the GPs should be dissolved. The Receiver has incurred (presumably substantial) expense in arranging the appraisals, reviewing the appraisals, analyzing the appraisals, and organizing the appraisals for presentation – a burden that was not requested by the GPs. The preparation of these appraisals harms the GPs twice – first, by producing additional costs that will have to be paid at the GPs' expense, and second, by producing low-ball paper values that would be relied upon to justify the draconian measures of stopping billing for the GPs' operating expenses and repayment of loans to the investors.

The core recommendation that the Receiver presents is what the Defendants have asked for since the inception of this case: that control of the GPs' land revert to

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[3] In the Partner Representations, the GP investors state their understanding 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." See Dkt. No. 14-3, p. 3 of 13, ¶ 18 (Partner Representations for P-40 Warhawk Partners). The investors also state their understanding that the investments are speculative investments with a high rate of risk and the potential for a 100% loss. *Id.* at p. 1 of 13, ¶ 6.

the GPs. However, the conditions that the Receiver imposes on reversion of that control are so onerous, confusing, illogical, and inconsistent with the GPs' governing documents as to discourage the investors from voting at all (which would produce a "non-vote") or from voting in the manner that best protects their investment by retaining control of the land.

Therefore, the Defendants respectfully request as follows:

1. That the GPs be provided with their due process right of a hearing on the threshold issue of whether they should even be included in the Receivership.

2. That the Receiver's appraisals be rejected;

3. That the Receiver's conditions on transfer of the parcels back to the GPs' control not be adopted;

4. That the GPs be allowed to conduct voting on the issue of retention of the Receiver, with the explanation that a "yes" vote is a vote to keep the Receiver in place to run the GPs, and a "no" vote (or an abstention or failure to vote) is a vote to allow the investors to run the GPs in their capacity as general partners, pursuant to the partnership agreements, and a proviso that the land owned by the GPs will be retained in GP ownership regardless of the outcome of the vote;

5. That all balloting and voting be conducted in accordance with the terms of the partnership agreements and co-tenancy agreements, to wit, a majority vote of the capital contribution for each GP to bind that GP and a majority vote of the co-tenant GPs for each parcel; and

6. That the investors in those GPs that vote in favor of separating from Western (and the Receiver) be permitted to retain all rights for recovery from Defendants, should recovery be available.

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DATE: July 1, 2013

Respectfully submitted,

/s/Philip H. Dyson

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Counsel for Defendants

CERTIFICATION

I hereby certify that on the 1st day of July 2013, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following counsels of record:

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501 West Broadway, 15th Floor
San Diego, CA 92101

/s/Philip H. Dyson
Philip H. Dyson

EXHIBIT 1

CO-TENANCY AGREEMENT

The undersigned parties have voluntarily entered into a Co-Tenancy Agreement pursuant to the terms and conditions set forth in this Agreement. This Co-Tenancy Agreement is effective as of _____, 20__.

1. NATURE OF CO-TENANCY

1.1. Description of Co-Tenancy Activities. The Co-Tenancy is formed for the primary purpose of acquiring, maintaining, holding for investment purposes, and at some future point in time selling or otherwise disposing of certain real property described in Exhibit "A" attached hereto (referred to herein as the "Co-Tenancy Property").

1.2. Parties to the Co-Tenancy. P-39 AIRCOBRA PARTNERS, P-40 WARHAWK PARTNERS, F-86 PARTNERS, and F-100 PARTNERS, each being a California general partnership and each holding (through respective limited liability companies) its respective undivided one-quarter (1/4) interest in the Co-Tenancy Property, enter into this Agreement as Co-Tenants of the Co-Tenancy Property.

1.3. Office. The principal office of the Co-Tenancy shall be 5186 Carroll Canyon Road, #100, San Diego, California, 92121 and/or at such other place or places as may from time to time be designated by the Co-Tenancy.

1.4. Co-Tenants' Right to Control the Co-Tenancy. Except as otherwise specifically set forth in this Agreement, each Co-Tenant shall participate in the control, management, and direction of the activities of the Co-Tenancy. In exercising this control, management, and direction, each Co-Tenant's vote shall be equal. All Co-Tenancy consents and decisions shall be made by the majority vote of the Co-Tenants.

2. FINANCIAL

2.1. Contributions.

2.1.1. Each Co-Tenant shall contribute to the Co-Tenancy one-quarter (1/4) of such amounts as are necessary to enable the Co-Tenancy to make all payments required in connection with the ownership and operation of the Co-Tenancy Property, maintenance of the Co-Tenancy's title and interest in the Co-Tenancy Property, and the carrying out of any business in furtherance of the Co-Tenancy (any such amounts are referred to herein as the "Required Amounts"), including, but not limited to, taxes, interest, principal payments on any note secured by an encumbrance on such property, insurance premiums, assessments, leasehold improvement expenses, all amounts necessary to enable the Co-Tenancy to pay salaries or any legal, tax, accounting, engineering or other vendor or professional fees for services, and/or other payments which, in the reasonable judgment of the Co-Tenancy, are necessary for the preservation and maintenance of the Co-Tenancy and the Co-Tenancy Property.

2.1.2. At least fifteen (15) days preceding the due date of any Required Amounts, each Co-Tenant shall be notified by the Partnership Administrator, in writing, of the amount of the payments due, the due date and such Co-Tenant's share thereof. Each

Co-Tenant shall remit to the Co-Tenancy or directly to the payee of such Required Payment such Co-Tenant's share of the payment. The failure of any Co-Tenant to contribute, in the manner and on or before the due date herein specified, an amount equal to such Co-Tenant's share of the required amounts shall be deemed a "default."

2.1.3. Upon the occurrence of any default, if such default is not cured within two (2) weeks after written notice of such default is given to the defaulting Co-Tenant, the Co-Tenancy or the non-defaulting Co-Tenants shall have the option of pursuing any and all rights and remedies available, including, without limitation, the following:

(i) If the default is monetary, any of the other Co-Tenants may advance a sum sufficient to pay the defaulted amount. The Co-Tenant or Co-Tenants making the advance shall be referred to herein as the "Lending Entity."

(ii) Such advance shall commence to bear interest at the maximum rate allowed by law from the data of the advance and shall become immediately due and payable to the Lending Entity. Thereafter, all sums otherwise due or payable by any person or entity to the defaulting Co-Tenant shall be paid instead to the Lending Entity until the advance is fully repaid with interest.

(iii) The defaulting Co-Tenant shall have the right to cure the default at any time by paying to the Lending Entity the full amount thereof, plus interest accruing at the maximum rate allowed by law from the date of the advance until payment in full, together with all expenses, costs, finance charges, attorneys' fees, collection expenses or other damages resulting from the default (such amounts shall be referred to herein as the "Cure Amount").

(iv) The defaulting Co-Tenant shall have no vote during the pendency of any default.

(v) The defaulting Co-Tenant hereby appoints the nondefaulting Co-Tenants, or any of them, as attorney-in-fact to execute such documents as may be necessary or desirable in order to transfer the defaulting Co-Tenant's Co-Tenancy interest in the manner selected by the Co-Tenancy. If the Co-Tenancy interest is sold, the defaulting Co-Tenant shall have no right, title or interest in or to the Co-Tenancy, its assets, the return of any capital, or any income therefrom.

2.2. Withdrawal of Funds. No Co-Tenancy funds may be withdrawn at any time without the written consent of a majority of the Co-Tenants.

2.3. Books of Account. Complete and accurate accounts of all transactions of the Co-Tenancy shall be kept by an agent of the Co-Tenancy.

2.4. Inspection of Books. The books of account and other records of the Co-Tenancy shall, at all times, be kept at 5186 Carroll Canyon Road, #100, San Diego, California, 92121 and/or at

such other place(s) as may from time to time be designated by the Co-Tenancy. At all reasonable times, any of the Co-Tenants shall have access to, and may inspect and copy, any of the Co-Tenancy records or books.

3. RIGHTS AND DUTIES OF CO-TENANTS

3.1. Power to Incur Liabilities. Each Co-Tenant agrees to: (i) be responsible for one-quarter (1/4) of any Co-Tenancy liability, (ii) indemnify the other Co-Tenants (with respect to such liability) from any liability in excess of that other Co-Tenant's one-quarter (1/4) share; and (iii) secure such indemnification of any other Co-Tenant(s) by collateral mutually satisfactory to all of the Co-Tenants.

3.2. Limitation of Co-Tenants' Liability. Despite any legal requirement that all Co-Tenants are jointly and severally liable to Co-Tenancy creditors for Co-Tenancy obligations, the Co-Tenants hereby agree that, as between the Co-Tenants, each Co-Tenant's liability on any promissory note or other obligation of the Co-Tenancy as a whole, including any Required Amounts, described above, shall be limited to such Co-Tenant's one-quarter (1/4) share. Each Co-Tenant agrees to pay, if required by law, any such obligation of the Co-Tenancy or with regard to the Co-Tenancy Property to the extent of such one-quarter (1/4) share at the time such obligation matures.

3.3. Reimbursement of Expenses. Should the Co-Tenancy incur any liability because of the act of any Co-Tenant not contemplated by this Agreement, such Co-Tenant shall reimburse the Co-Tenancy on demand for all costs, expenses, attorneys' fees and liabilities arising in connection therewith. The Co-Tenancy shall reimburse the Co-Tenants for expenses beyond each Co-Tenant's one-quarter (1/4) share when such expenses are incurred by a Co-Tenant on behalf of the Co-Tenancy in good faith and in accordance with this Agreement.

3.4. Shared Member Information and Communication. Each Co-Tenant, being a general partnership, agrees to provide the contact information for all of its partner members to all of the partner members of the other Co-Tenant(s), understanding that partner members of one Co-Tenant will be able to contact partner members of the other Co-Tenant regarding matters relevant to the Co-Tenancy. This responsibility and action is undertaken so as to most efficiently provide for communication and the sharing of relevant information between the Co-Tenants and their partner members and the timely execution and operation of the Co-Tenancy and all matters relevant to the Co-Tenancy Property. Each Co-Tenant will undertake to provide the other Co-Tenant(s) with updated contact information for its partner members on a periodic basis.

3.5. Initiation of Matters for Co-Tenant Consideration. Recognizing the importance of the efficient sharing of relevant information and the timely execution of Co-Tenancy matters, each Co-Tenant agrees to provide adequate procedures to facilitate communication between the Co-Tenants and their respective partner members, including providing for the following:

3.5.1. Written Requests. Any partner member of one Co-Tenant may initiate a matter for Co-Tenancy consideration by submitting a written request to the other Co-Tenant(s) specifying one of the following actions:

(i) Distribution of Information: Any partner member of one Co-Tenant may submit a written request for distribution of information relevant to the Co-Tenancy to the partner members of the other Co-Tenant(s) by submitting the relevant information to its Partnership Administrator, who will in a prompt manner transmit that request to the other Co-Tenant(s).

(ii) Ballot Vote of a Co-Tenant: Any partner member of one Co-Tenant may submit a written request for a vote of the partner members of the other Co-Tenant(s) regarding any matter relevant to the business and operation of the Co-Tenancy and the Co-Tenancy Property by submitting such request and any relevant information to its Partnership Administrator, who will in a prompt manner transmit the request to the other Co-Tenant(s).

3.6. Agreement to Honor Co-Tenant Requests. Each Co-Tenant agrees as set forth in this Agreement to honor and promptly act upon all communications and written submissions received from the other Co-Tenant(s) and/or from partner members of the other Co-Tenant(s) on matters relevant to and regarding the Co-Tenancy and the Co-Tenancy Property in the same manner and with the same care that each Co-Tenant would exhibit in handling and responding to such communications and requests had such communications or requests originated from its own respective partner members.

4. TERMINATION OF CO-TENANCY RELATIONSHIP

4.1. Duration of Co-Tenancy. The Co-Tenancy shall begin as of the date of this Agreement and shall continue until the first to occur of the following event:

4.1.1. The sale of all, or substantially all, of the Co-Tenancy assets; or

4.1.2. The mutual consent of all Co-Tenants.

4.2. Right of First Refusal on Sale or Transfer of Co-Tenancy Interest. Subject to the restrictions contained in this Section, any Co-Tenant may sell or transfer its interest in the Co-Tenancy and the Co-Tenancy Property or any portion thereof. Such Co-Tenant is referred to herein as the "Selling Co-Tenant." However, the Selling Co-Tenant shall first offer to sell its one-quarter (1/4) interest to the remaining Co-Tenant(s) in proportion to their respective interests in the Co-Tenancy upon the same terms and conditions which the Selling Co-Tenant is willing to accept from any person or persons not then a Co-Tenant. The Selling Co-Tenant shall put this offer in writing and give the other Co-Tenant(s) a minimum of thirty (30) days from the date of making said offer in which to accept or reject said offer. The offer shall identify the prospective purchaser and the specific terms of the prospective transaction. If a Co-Tenant does not elect to purchase its respective share of the interest offered for sale by the Selling Co-Tenant, the other Co-Tenant(s), if any, may purchase the share not taken. The offer shall be deemed rejected in its entirety unless the acceptance by any Co-Tenant or Co-Tenants applies to the entire interest offered for sale. If said offer is accepted in its entirety, the Co-Tenant or Co-Tenants accepting said offer shall have an additional sixty (60) days in which to raise the funds necessary to net the terms of the offer. In any event, the Selling Co-Tenant may not sell its one-quarter (1/4) interest to any party for a purchase price that exceeds the purchase price paid by the Selling Co-Tenant for its one-quarter (1/4) interest in the Co-Tenancy Property.

4.3. Transfer of a Co-Tenancy Interest. A Co-Tenant may not sell, transfer, assign or subject to a security interest such Co-Tenant's interest in the Co-Tenancy, the Co-Tenancy Property, or any part thereof except as provided herein. Any assignment or other transfer contrary to this provision shall be void and of no effect.

4.4. Written Instrument. Any sale, assignment or transfer shall be made by written instrument, accompanied by such assurance of the genuineness and effectiveness of each signature. Before any assignment or other transfer is made, the transferor and/or transferee shall reimburse the Co-Tenancy for all expenses it has incurred, including, but not limited to, attorneys fees.

5. ARBITRATION

5.1. Dispute Between Co-Tenants. In the event of any dispute or disagreement between any of the Co-Tenants affecting the Co-Tenants' respective rights relating to this Agreement, or involving the interpretation or application of any of the terms, covenants or conditions of this Agreement, one Co-Tenant shall set forth that Co-Tenant's respective positions and disagreements in writing and give notice of the same to the other Co-Tenant(s). The Co-Tenants shall make a good faith effort to resolve the dispute or disagreement. If the dispute is not settled at the expiration of fifteen (15) days from the time such notice is received, then the entire matter shall be submitted to arbitration.

5.2. Voting Deadlock. In the event that there are an even number of Co-Tenants and a matter requiring a majority vote arises, if the Co-Tenants are unable to agree as to a decision regarding such matter, then, following the procedure set forth in the Section titled "Dispute Between Co-Tenants" above, the entire matter shall be submitted to arbitration.

5.3. Rules Governing Arbitration. The arbitrator shall comply with and be governed by the provisions of the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure (or any equivalent successor statute that is applicable), except to the extent that the Co-Tenants may agree upon other rules. The arbitrator shall be bound to the strict interpretation and observation of the terms of this Agreement.

5.4. Arbitrator's Decision Binding. The arbitrator's decision shall be binding and conclusive on the Co-Tenants. The submission of a dispute to an arbitrator and the rendering of the arbitrator's decision shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award of the arbitrator may be rendered by any Superior Court having jurisdiction; or such Court may vacate, modify, or correct the award in accordance with the prevailing sections of the California Arbitration Act.

5.5. Cost of Arbitration. The costs and attorneys fees attributed to such arbitration shall be borne by the losing Co-Tenant or in such proportions as the arbitrator shall determine.

6. GENERAL PROVISIONS

6.1. Employees. The fact that a Co-Tenant or a member of the Co-Tenant is employed by, or is directly or indirectly interested in or connected with any firm or corporation employed by the Co-Tenancy to render or perform a service, or from whom or which the Co-Tenancy may buy merchandise or other property, or from whom or which the Co-Tenancy may lease or

purchase real property, shall not prohibit the Co-Tenancy from executing a lease or purchase agreement with or employing any such person, firm or corporation or from otherwise dealing with the Co-Tenant or it in transactions entered into in good faith.

6.2. 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 Co-Tenant, or, in lieu of such personal service, when deposited in the United States mail, certified, postage prepaid, addressed to such Co-Tenant at 5186 Carroll Canyon Road, #100, San Diego, California, 92121, or to such other place as may from time to time be specified in a notice, given pursuant to this Section, at the address for service of notice on such Co-Tenant.

6.3. Gender and Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

6.4. Litigation. In the event of litigation between the parties for the judicial interpretation, enforcement or rescission of this Agreement or of any other contract relating to the Co-Tenancy or relating in any manner to Co-Tenancy affairs or this Agreement, the prevailing party shall be entitled to a judgment against the other(s) 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 natters, not necessarily the one in whose favor a judgment is rendered.

6.5. 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 Co-Tenancy and the achievement of its purposes.

6.6. Representative Capacity. Anything herein to the contrary notwithstanding, during any period that any Co-Tenancy 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 Co-Tenancy, 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 Co-Tenancy affairs.

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

6.8. Counterparts. This Agreement may be executed in any number of counterparts and, when so executed, all of such counterparts shall constitute a single instrument binding upon all parties hereto. Each Co-Tenant hereby authorizes the other Co-Tenants 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 Co-Tenants will be physically attached to the one document.

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

6.10. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of California.

6.11. Amendment. This Agreement may be amended upon the written consent of a majority of the Co-Tenants.

6.12. Binding on Heirs and Assigns. All provisions of this Agreement shall extend to and bind, or inure to the benefit of not only the Co-Tenants, but to each and every one of their heirs, executors, representatives, successors, and assigns.

6.13. Captions. Captions in this Agreement are used for convenience or reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof.

6.14. Unenforceable Previsions. 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.

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

6.16. Exhibits. Any exhibits or addenda referred to herein and attached hereto are incorporated into this Agreement as though fully set forth herein.

This Agreement has been executed at San Diego County, California, as of the day and year first above indicated.

P-39 Aircobra Partners

By: _____
its Signatory Partner

F-86 Partners

By: _____
its Signatory Partner

P-40 Warhawk Partners

By: _____
its Signatory Partner

F-100 Partners

By: _____
its Signatory Partner

EXHIBIT "A"

LEGAL DESCRIPTION OF THE CO-TENANCY 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:

NORTH PROPERTY

That certain real property situate within a portion of the Southwest One-Quarter(SW 1/4) of Section One (1), Township Twenty (20) North, Range Eighteen (18) East, Mount Diablo Meridian, Washoe County, Nevada, being more particularly described as follows:

PARCEL 2A:

Commencing at the southwest corner of Section 1, Township 20 North, Range 18 East, M.D.B.&M.; thence South 89°07' East along the southern line of said Section 1 a distance of 1244.71 feet; thence North 14°08' East 61.64 feet to the northern line of a 60 foot road, the last described point being the true point of beginning; thence North 14°08' East 752.70 feet to the southern line of a 60 foot road; thence South 75°52' East along said southern line of said 60 foot road 834.84 feet to the western line of the parcel of land described in the deed to Alfred J. Harris and wife, recorded in Book 570, File no. 331658, Deed Records; thence South 14°08' West 556.12 feet to the northern line of said 60 foot road; thence North 89°07' West along the last mentioned line 857.68 feet to the true point of beginning. Situate in the Southwest 1/4 of said Section 1.

Together with a non-exclusive easement and right-of-way (60 feet wide) for roadway purposes over the south 60.00 feet of the Southwest 1/4 of Section 1, Township 20 North, Range 18 East, M.D.B.&M.

PARCEL 2B:

A parcel 50 feet wide more or less that is described as follows:

Bounded on the north by the southerly right-of-way line of U.S. Highway 395, on the east by the westerly line and said line extended southerly parcel conveyed to Mark S. Whittle, et ux, by deed recorded March 17, 1950, under Document No. 182352, Washoe County, Nevada, Records; on the south by the northerly line of parcel conveyed to Lyle E. Lyder, by deed recorded July 28, 1965, under Document No. 34704, Official Records; and on the west by the easterly line and said line extended southerly conveyed to Claude Pulati, et ux, by deed recorded November 29, 1957, under Document No. 281425, Washoe County, Nevada, Records.
APN: 081-031-27

PARCEL 3:

Beginning at a point from which the corner common to Sections 1, 2, 11 and 12, Township 20 North, Range 18 East, M.D.B.&M., bears South 49°51' West a distance of 1357.80';

Thence S 75°52' E a distance of 417.42'; thence South 14°08' West a distance of 715.94'; thence South 89°07' West a distance of 432.18'; thence North 14°08' East a distance of 827.89' to a point of beginning.

Said premises situated in the SW 1/4 of Section 1, Township 20 North, Range 18 East, M.D.B.&M.

EXCEPTING THEREFROM all that portion described in deed recorded October 15, 1959 in Book 525, Page 649 as Document No. 310193, Deed Records, more particularly described as follows:

Beginning at a point from which the corner common to Sections 1, 2, 11, 12, Township 20 North, Range 18 East, M.D.B.&M., bears South 49°51' West, a distance of 1357.80 feet; thence South 75°52' East a distance of 208.71 feet; thence South 14°08' West, a distance of 417.42 feet; thence North 75°52' West, a distance of 208.71 feet; thence North 14°08' East, a distance of 417.42 feet to the point of beginning.
APN: 081-031-28

PARCEL 4:

Beginning at a point from which the corner common to Sections 1, 2, 11, 12, Township 20 North, Range 18 East, M.D.B.&M., bears South 49°51' West, a distance of 1357.80 feet; thence South 75°52' East a distance of 208.71 feet; thence South 14°08' West, a distance of 417.42 feet; thence North 75°52' West, a distance of 208.71 feet; thence North 14°08' East, a distance of 417.42 feet to the point of beginning. Said premises situate in the SW 1/4 of Section 1, Township 20 North, Range 18 East, M.D.B.&M.
APN: 081-031-29

PARCEL 5:

A portion of the SW 1/4 of Section 1, Township 20 North, Range 18 East, M.D.B.&M., more particularly described as follows:

Beginning at a point from which the section corner common to Sections 1, 2, 11, 12 Township 20 North, Range 18 East bears South 11°57' West a distance of 1102 ft. Thence South 75°52' East 784.84 ft. to a point thence South 14°08' West a distance of 866.9 ft. to the North side of a proposed 60 ft roadway; thence North 89°10' West along the North side of said proposed roadway a distance of 377.5 ft. to a point thence North 14°08' East a distance of 536 ft. to a point thence North 75°52' West a distance of 417.42 ft. to a point thence North 14°08' East a distance of 417.42 ft. to the point of beginning.

EXCEPTING THEREFROM that portion described as:

Beginning at a point from which the corner of Sections 1, 2, 11 & 12, Township 20 North, Range 18 East, m.d.b.&m., bears South 11°57' West, a distance of 1102 feet; thence South 75°52' East, 208.71 feet to the true point of beginning; thence from said true point of beginning, South 75°52' East, 417.42 feet; thence South 14°08' West, 905.5 feet to the North line of a proposed 60-foot roadway; thence North 89°10' West, 214.46 feet; thence, North 14°08' East, 536.3 feet; thence North 75°52' West, 208.71 feet; thence North 14°08' West, 417.42 feet to the true point of beginning.

ALSO EXCEPTING that portion described as:

Commencing at a point from which the section corner of sections 1, 2, 11 and 12, Township 20 North, Range 18 East, M.D.B.&M., bears South 11°57' West a distance of 1102 feet; thence South 75°52' East 784.84 feet to the true point of beginning; thence South 14°08' West a distance of 100 feet; thence North 75°52' West a

distance of 158.71 feet; thence North 14°08' East a distance of 100 feet; thence South 75°52' East 158.71 feet to the true point of beginning.
APN: 081-031-30 & 081-031-33

PARCEL 6:

A portion of the SW 1/4 of Section 1, Township 20 North, Range 18 East, M.D.D.&M., more particularly described as follows:

Commencing at a point from which the section corner common to Sections I, 2, 11 and 12, Township 20 North, Range 18 East, M.D.B&M., bears South 11°57' West a distance of 1102 feet; thence South 75°52' East 784.84 feet to the true point of beginning; thence South 14°08' West a distance of 100 feet; thence North 75°52' West a distance of 158.71 feet; thence North 14°08' East a distance of 100 feet; thence South 75°52' East 158.71 feet to the true point of beginning.
APN: 081-031-31

PARCEL 7:

All that piece or parcel of land lying and being in the SW1/4 of SW 1/4 of Section 1, Township 20 North, Range 18 East, M.D.B.&M., Washoe County, Nevada, and more particularly described as follows:

Beginning at a point on the section line between Sections 1 and 2 of Township 20 North, Range 18 East, M.D.B.&M., said point being on the north right-of-way line of a proposed roadway, and from which said point in the southwest corner of Section 1, Township 20 North, Range 18 East, M.D.B.&M., bears South 0°13' West a distance of 700.15 feet; more or less, and running thence along the north right-of-way line of said proposed roadway South 75°52' East 127.92 feet; thence North 14°08' East 417.42 feet to a point on the south right-of-way line of proposed roadway; thence along the south right-of-way line of said proposed roadway North 75°52' West 231.35 feet to a point on the section line between Sections 1 and 2 of Township 20 North, Range 18 East, M.D.B.&M.; thence along said section line South 0°13' West 430.04 feet to the point of beginning.
APN: 081-031-34

PARCEL 8:

A strip of land 60.00 feet in width, lying within the south half of the south half of Section 1, Township 20 North, Range 18 East, M.D.B.&M., Washoe County, Nevada, the centerline of which is described as follows:

Commence at the southwest corner of Section 1, Township 20 North, Range 18 East, M.D.B.&M.; thence northerly along the west line of said Section 1, 668.5 feet, more or less, to a point on the centerline of a 60.00 foot wide roadway and utility easement; thence South 75°52' East and parallel to the northerly line of the A. & D. Duffney property on the south of said roadway 538.0 feet, more or less, to the west line of the S. East & East J. Timko property, the point of ending.
APN: 081-031-35

PARCEL 10:

All that piece or parcel of land lying and being in the West 1/2 of the Southwest 1/4 of Section 1, Township 20 North, Range 18 East, M.D.B.& M., Washoe County, Nevada, more particularly described as follows:

Beginning at a point on the southerly right-of-way line of U.S. Highway 395, said point also being on the westerly right-of-way line of a proposed roadway and from which said point the SW corner of Section 1, Township 20 North, Range 18 East, M.D.B.& M., bears South 39°26' West a distance of 1741.61 feet more or less, and running thence along said westerly right-of-way line of a proposed roadway, South 14°08' West, 417.42 feet; thence North 75°52' West, 784.84 feet; thence North 14°08' East, 371.87 feet to the southerly right-of-way line of the old paved highway; thence along the said southerly right-of-way line of the old paved highway, North 88°02' East, 164.29 feet to the southerly right-of-way line of U.S. Highway 395; thence along the southerly right-of-way line of U.S. Highway 395, South 75°52' East, 627.00 feet to the point of beginning.

EXCEPTING THEREFROM all that portion deeded to the State of Nevada by deed recorded March 5, 1974 in Book 800, Page 247 as Document No. 319008 of Official Records, and more particularly described as follows:

BEGINNING at a point 364.00 feet left of and measured radially for the "AS" centerline for U.S. -395 (S.R. -70) (project DP-RF-003-2(26)); at highway engineer's station "as" 215 + 67.58 P.O.C.; said point of beginning is further described as bearing North 41°32'11" East, a distance of 1659.68 feet from the southwest corner of Section 1, Township 20 North, Range 18 East, M.D.B.& M.; thence North 84°37'53" West, along the left or southerly highway right-of-way line for said U.S. -395 (S.R. -70) a distance of 18.37 feet to a point; thence for a tangent which bears North 86°33'48" West, curving to the right, along said highway right of way line, with a radius of 1050.00 feet, through an angle of 10°35'59", an arc distance of 194.25 feet to a point; thence North 75°57'49" West, along said highway right of way line, a distance of 136.13 feet to a point; thence North 74°39'17" West, along said highway right of way line, a distance of 80.00 feet to a point; thence North 15°20'43" East, along said highway right of way line, a

distance of 99.07 feet to a point; thence North 75°57'49" West, along said highway right of way line, a distance of 357.81 feet to an intersection with the westerly boundary of grantor's property; thence North 14°56'53" East, along said westerly boundary, a distance of 78.70 feet to the northwest corner of said grantor's property; thence North 88°50'53" East, along the northerly boundary of said grantor's property, a distance of 344.62 feet to a point in the centerline of present U.S. -395 (S.R. -70); thence South. 75°03'07" East, along said centerline of present U.S. -395 (S.R. -70), a distance of 453.73 feet to a point; thence South. 14°56'53" West, along the easterly boundary of said grantor's property, a distance of 141.08 feet to the point of BEGINNING.
APN: 081-031-49

PARCEL 11:

Beginning at a point from which the corner of Sections 1, 2, 11 & 12, Township 20 North, Range 18 East, M.D.B.& M., bears South 11°57' West, a distance of 1102 feet; thence, South 75°52' East, 208.71 feet to the true point of beginning; thence from said true point of beginning, South 75°52' East, 417.42 feet; thence South 14°08' West, 905.5 feet to the north line of a proposed 60-foot roadway; thence, North 89°10' West, 214.46 feet; thence, North 14°08' East, 536.3 feet; thence, North 75°52' West, 208.71 feet; thence, North 14°08' West, 417.42 feet to the true point of beginning.
APN: 081-031-32

SOUTH PROPERTY

That certain real property situate within a portion of the Northwest One-Quarter (NW ¼) of Section Twelve (12), Township Twenty (20) North, Range Eighteen (18) East, Mount Diablo Meridian, Washoe County, Nevada, being more particularly described as follows:

The South One-Half (S1/2) of the Northwest One-Quarter (N/W ¼) of said Section Twelve (12), according to official plat thereof.

EXCLUDING, however, any railroads lands

And also specifically **EXCEPTING THEREFROM** that portion described in deed recorded August 15, 1917, in Book 50, Page 251, as Document No. 12331 of Deed Records.

APN: 081-024-07(Spring Property), 081-031-40(Pond Property) & Splinter Property

Note: All of the above metes and bounds legal description appeared previously in that certain document recorded June 1, 2006 as Document No. 3395665.

EXHIBIT 2

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© and MasterCard© 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© or MasterCard©.

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:

PHILIP H. DYSON, Esq.
Law Office of Philip H. Dyson
State Bar No. 097528
8461 La Mesa Boulevard
La Mesa, California 91942
(619) 462-3311

Attorney for Defendants LOUIS V. SCHOOLER
and FIRST FINANCIAL PLANNING CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiffs, vs. LOUIS V. SCHOOLER, and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION, Defendants.	Case No. 12 CV 2164 GPC JMA PROOF OF SERVICE

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PROOF OF SERVICE

CASE NAME: SECURITIES AND EXCHANGE COMMISSION v. LOUIS V. SCHOOLER
CASE NUMBER: 12 CV 2164 GPC JMA
COURT: UNITED STATES DISTRICT COURT - SOUTHERN DISTRICT

I, Jodi Dossegger, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and that I am employed in the County of San Diego, State of California, in which county the within-mentioned service occurred. My business address is 8461 La Mesa Boulevard, La Mesa, California 91942.

On July 1, 2013, I served the following documents entitled:

1. DEFENDANTS' OPPOSITION TO RECEIVER'S REPORT AND RECOMMENDATIONS REGARDING VALUATION OF REAL ESTATE ASSETS OF RECEIVERSHIP ENTITIES

to the party(ies) at the address(es) shown below.

Sara D. Kalin, Esq. U.S. Securities & Exchange Commission 5670 Wilshire Boulevard 11th Floor Los Angeles, CA 90036	Attorney for Plaintiff Securities and Exchange Commission Tel: (323) 965-3860 Fax: (323) 965-3815 Email: kalins@sec.gov
Sam Puathasnanon, Esq. Securities and Exchange Commission 5670 Wilshire Boulevard Suite 1100 Los Angeles, CA 90036-3648	Attorney for Plaintiff Securities and Exchange Commission Tel: (323) 965-3998 Fax: (323) 965-3812 Email: puathasnanons@sec.gov
Edward G. Fates, Esq. Allen Matkins Leck Gamble Mallory & Natsis 501 West Broadway Fifteenth Floor San Diego, CA 92101-3547	Attorney for Receiver Thomas C. Hebrank Tel: (619)233-1155 Fax: (619)233-1158 Email: tfates@allenmatkins.com

[X] **(BY ELECTRONIC FILING)**: I caused a transmission electronically of the above listed documents to the attorneys and parties to the case who have supplied their e-mail addresses to the Court.

Executed on July 1, 2013, at La Mesa, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jodi Dossegger
JODI DOSSEGGER

POS #12 Opposition to Receiver's Report 070113.wpd