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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
16 FINANCIAL PLANNING
CORPORATION,

17 Defendants.
18

Case No. 3:12-cv-02164-GPC-JMA

**REPORT AND
RECOMMENDATION REGARDING
COURSE OF ACTION FOR
GENERAL PARTNERSHIPS**

Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

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1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its
3 subsidiaries and the General Partnerships ("GPs") established by Western
4 (collectively, "Receivership Entities"), submits this Report and Recommendation
5 Regarding Course of Action for General Partnerships ("Report"). The Report is
6 submitted pursuant to the Court's Order Keeping General Partnerships Under
7 Receivership ("Order"). Dkt. No. 1003.

8 I. INTRODUCTION

9 On November 21, 2014, the Receiver filed his Report and Recommendation
10 Regarding General Partnerships ("GP Report"). Dkt. No. 852. Pursuant to the
11 Court's prior directions, the Receiver analyzed the financial health of the GPs and
12 placed them into categories. Dkt. No. 852-1, Exhibit B. Category A was for GPs
13 that could pay their expenses, including underlying mortgages as well as notes and
14 operational loans due to Western, for the duration of 2015 without raising additional
15 capital from their investors. Category B was for GPs that must raise additional
16 capital from their investors in order to pay their 2015 expenses, including
17 underlying mortgages as well as notes and operational loans due to Western. The
18 amount needed to be raised, however, was lower than the estimated net proceeds
19 from a sale of the property (based on the 2013 appraised value). Category C was for
20 GPs that have to raise additional capital from their investors in order to pay their
21 2015 expenses, including underlying mortgages as well as notes and operational
22 loans due to Western, and the amount needed to be raised was higher than the
23 estimate net sale proceeds from a sale of the property.

24 On March 4, 2015, the Court entered the Order, which provides the GPs will
25 remain in receivership and directs the Receiver to file (1) a comprehensive
26 informational packet by March 27, 2015, and (2) a "report and recommendation
27 regarding the appropriate course of action with regards to each GP in light of the
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1 Court keeping the GPs in receivership" by April 17, 2015. Dkt. No. 1003, p. 22.

2 With respect to the potential liquidation of some GP properties, the Order provides:

3 At this juncture, it is unclear whether liquidation of some
4 GP properties is appropriate. However, the Receiver's
5 Report and Recommendation appears to indicate that
6 liquidation of GPs that will be unable to pay their bills
7 may be warranted. It may also be the case that billing
8 investors to maintain GP properties is not the wisest
9 course of action based on the valuation of their GP and its
10 property. Thus the Court orders the Receiver to provide a
11 report and recommendation whether liquidation is
12 warranted for any GP that is unable to meet its payment
13 obligations.

9 *Id.* at p. 21.

10 The Receiver filed his proposed information packet on March 27, 2015. Dkt.
11 No. 1023. The Receiver herein presents his report and recommendation regarding
12 the appropriate course of action for each GP. Attached hereto as Exhibit A is an
13 updated analysis of the financial health of each GP, which is similar to Exhibit B to
14 the GP Report. The GPs are categorized as they previously were, using the same
15 Categories A, B, and C as described above.¹ A few adjustments have been made to
16 update information and correct errors in the prior financial health exhibit.

17 **II. RECOMMENDATION**

18 The primary goal of the receivership is to preserve and protect the value of all
19 receivership assets for the benefit of investors. The GPs have two primary assets -
20 their property interests and the cash balances in their bank accounts. When GPs
21 have insufficient cash to pay their mortgages, property taxes, insurance, and other
22 expenses, the value of their property interests quickly become impaired due to
23 defaults, late charges, penalties, and accrued interest. In these circumstances, the
24 only way to preserve the value of GP property interests is to sell them and stop the
25 accrual of these charges against the properties.

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28 ¹ One property, the Yuma III property, has been moved from Category B to
Category C as a result of updates and corrections to the financial health analysis
for the GPs that own the property.

1 With this in mind, the Receiver recommends the following courses of action
2 for the GPs based on their financial health (and therefore the category they are in):

3 **A. Category A**

4 As noted above, these GPs are able to pay their expenses, including
5 underlying mortgages as well as notes and operational loans due to Western, for the
6 duration of 2015 without raising additional capital from their investors. There is
7 also equity in the properties in that the 2013 appraised value exceeds the outstanding
8 balances of mortgages on the properties (if any). The Receiver will continue to
9 monitor these GPs closely, but otherwise no immediate action will be taken. The
10 investors in these GPs will receive the informational packet so they are informed
11 about the financial condition of their GPs.

12 The exception is the Dayton IV property. Based on the 2013 appraisal, this
13 property is underwater in that the outstanding balance on mortgages exceeds the
14 estimated net sale proceeds (based on the 2013 appraisal) by more than \$500,000.
15 The GPs that own Dayton IV have cash balances in their accounts that should be
16 preserved if in fact there will be no recovery from the property. Accordingly, the
17 Receiver will obtain an updated appraisal (per the Order) and consult with brokers
18 in the local area surrounding the property about proposed list prices. If the updated
19 appraisal and proposed list prices confirm the property is underwater, the Receiver
20 will make a further recommendation regarding the Dayton IV property that will
21 likely involve surrendering the property to the lender in full satisfaction of the debt
22 and preserving the cash balances in the four applicable GP accounts.

23 **B. Category B**

24 These GPs must raise additional capital from their investors in order to pay
25 their 2015 expenses, including underlying mortgages as well as notes and
26 operational loans due to Western. The amount needed to be raised, however, is
27 lower than the estimated net proceeds from a sale of the property, based on the 2013
28 appraised value. Based on the desires expressed by certain investors to hold the

1 properties, the Receiver recommends these GPs be given a chance to raise sufficient
2 capital to meet their payment obligations. Because the money will not be raised
3 until the second or third quarter of 2015 (depending on the timeline proposed
4 below), the Receiver recommends the amount required to be raised be sufficient to
5 meet the payment obligations of the applicable GPs through 2016. If not, the GPs
6 will soon be back in the position of exhausting their bank account balances and
7 making further capital calls to avoid defaults. If the GPs cannot raise the required
8 capital within a set period of time, the GPs will be unable to meet their payment
9 obligations and the properties should be sold.

10 For the GPs in Category B, the informational packet sent to investors should
11 be accompanied by a capital call stating the total amount that needs to be raised, the
12 amount due from each investor, and the deadline for payment. The letter to
13 investors that accompanies the capital call will make it clear their GP property
14 interest will be sold if they do not contribute the required capital by the deadline.
15 Once the deadline has passed, the Receiver will file a report with the Court stating
16 whether each GP has raised the required capital. Note, if investors want to
17 contribute more than their required share of capital needed to delay a sale of the
18 property or otherwise invest additional capital in their GP, such additional payments
19 should be permitted and such investors should receive additional GP units for each
20 dollar contributed, just as they do when they pay operational bills.

21 For GPs that do not raise the required capital, the capital contributions paid by
22 investors in response to the capital call will be returned to them and the property
23 will be moved to an orderly sale process (as discussed in Section III below). Note,
24 all GPs in a co-tenancy must raise the required capital - if one GP cannot pay its
25 share of the mortgage, property taxes, and other expenses, the value of the entire
26 property is impaired. This results from the co-tenancy structure of the GPs, in
27 which the GPs own undivided interests in the same property with other GPs as
28 co-tenants, pursuant to the Co-Tenancy Agreements.

1 The Receiver recommends the following timeline for the capital call:

- 2 • Informational packet and capital call goes out to investors within
3 30 days of entry of Court orders approving this Report and the
4 informational packet;
- 5 • Investors have 60 days from mailing of informational packet and
6 capital call to make capital contributions to their GPs; and
- 7 • The Receiver files a report on the amount raised by each GP within
8 15 days of expiration of the 60-day deadline.

9 It is important to remember that mortgage payments, property taxes, and other
10 payment obligations are accruing every week. Therefore, the time period for
11 investors to make their capital contributions should be relatively short. Some GPs in
12 Category B have already exhausted the cash in their accounts and others will do so
13 soon. Moreover, the reason many GPs in Category B are in poor financial condition
14 is their investors have failed to pay their operational bills in the past. Since 2013,
15 investors have only paid approximately 30% of their operational bills. Dkt.
16 No. 852-1, Exhibit C. The longer it takes to determine whether Category B
17 properties will be sold, the more those property interests will be impaired.
18 Therefore, although the Receiver recommends investors be given a chance to make
19 the required capital contributions, the process should not unduly delay a decision.

20 **C. Category C**

21 GPs in Category C have to raise additional capital from their investors in
22 order to pay their 2015 expenses, including underlying mortgages and as well as
23 notes and operational loans due to Western, and the amount needed to be raised is
24 higher than the estimate net sale proceeds (again, based on the 2013 appraisal). For
25 these GPs, there is no rational basis to make a capital call to investors when they
26 would need to contribute amounts well in excess of what would likely be recovered
27 through a sale. The only rational option is to sell the properties via an orderly sale
28 process. Accordingly, the Receiver recommends that these properties be moved to

1 an orderly sale process (as described below). For GPs in Category C, the
2 informational packet that is sent to investors should be accompanied by a letter
3 advising that the properties will be moved to an orderly sale process.

4 The exceptions are the Santa Fe and Yuma III properties. The Santa Fe
5 property is owned by Santa Fe View Partners, Pueblo Partners, and Pecos Partners.
6 This property is underwater in that the total amount owed on mortgages exceeds the
7 estimated net proceeds from a sale (based on the 2013 appraisal) by about \$58,000.
8 Accordingly, the Receiver will contact several brokers in the local area surrounding
9 the property regarding a list price for the property. If the proposed list prices
10 confirm the property is underwater, the Receiver will contact the lender to discuss a
11 foreclosure, deed in lieu of foreclosure, or similar surrender of the property in full
12 satisfaction of the outstanding debt.

13 The same applies to the Yuma III property. The total amount owed on
14 mortgages exceeds the estimated net sale proceeds by about \$84,000. Therefore, the
15 Receiver will follow the same process for Yuma III as described above for Santa Fe.

16 For GPs in Category C, the informational packet sent to investors should be
17 accompanied by a letter advising that their property interest will be sold pursuant to
18 the sale procedures described below (with the exception of Santa Fe and Yuma III,
19 which, unless the proposed list prices indicate otherwise, should advise investors
20 that the plan is to surrender the properties to the lenders).

21 The course of action for each Category of GPs is summarized in the flow
22 chart attached hereto as Exhibit B.

23 **III. ORDERLY SALE PROCESS**

24 As laid out in the GP Report, the process for selling GP properties should
25 include the following steps designed to obtain the highest and best price and allow
26 investors to have input in the process:

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- The Receiver will solicit proposed listing agreements from multiple qualified, licensed real estate brokers in the local area surrounding each GP property.
- The Receiver will then make a recommendation to the Court regarding the engagement of a particular broker. If the Court approves the recommendation, the Receiver will engage the applicable broker.
- When credible offers for properties are received, the Receiver will circulate those offers to investors with a recommendation regarding accepting the offer, making a counter-offer, or rejecting the offer. The Receiver will consult with the broker before making his recommendation to investors. Investor responses can be provided by e-mail or mail. After considering input from investors, the Receiver will instruct the broker to make the appropriate response to the prospective purchaser(s).
- If an agreement on price is reached with a prospective purchaser, the Receiver will report the same to investors and execute a purchase and sale agreement, subject to overbid and Court approval.
- Once the prospective purchaser's contingencies (other than Court approval) have been removed, the Receiver will file a noticed motion seeking approval of the sale, overbid procedures, and payment of the broker's commission. Notice of the sale motion will be provided to all investors in all GPs with an interest in the property. The Receiver will summarize the written responses from investors to the prospective purchaser's offer in his motion.
- The Receiver will instruct the broker to continue marketing the property to potential overbidders. If an overbid is received, the Receiver will request an auction take place at the hearing on the

1 motion. If no overbid is received, the Receiver will request approval of
2 the sale to the prospective purchaser.

3 This process will ensure the highest and best prices are obtained for GP
4 properties, allow investors to have input in the process and the Court to consider
5 their views, and provide an orderly and efficient sale process. The net sale proceeds
6 will be held in GP accounts pending further order of the Court.

7 Investor views on proposed sales should be considered by the Receiver and
8 the Court, but proposed sales should not be held up by taking investor votes. The
9 GP properties being moved to a sale process are in a financial position where their
10 value will rapidly diminish if action is not taken promptly. Investor views, while
11 certainly worth consideration, should not control the outcome, especially when the
12 GPs are unable to meet their expenses today because such a low percentage of prior
13 operational bills have been paid. Moreover, the history of investor votes taken on
14 offers received during the receivership shows that voter response rates are generally
15 low, meaning that opportunities to preserve the value of GP properties would likely
16 be lost because insufficient votes are received and/or the voting results are mixed.
17 Finally, taking investor votes consumes limited resources of the receivership estate -
18 indeed, receiving and summarizing input from investors in 86 GPs by itself involves
19 considerable expense. Accordingly, the proposed sale procedures provide for
20 consideration of investor views, but do not involve taking further investor votes.

21 **IV. CONCLUSION**

22 WHEREFORE, the Receiver requests approval of this Report and his
23 recommendations described above.

24 Dated: April 17, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

26 By: /s/ Ted Fates

27 TED FATES
Attorneys for Receiver
28 THOMAS C. HEBRANK

EXHIBIT INDEX

Exhibit A	Updated Analysis of Financial Health of Each GP	11
Exhibit B	Flowchart of Course of Action for Each Category of GPs	16

EXHIBIT A

EXHIBIT A

GP VALUATION ANALYSIS

Category A - Sufficient Capital to Pay Debts & Expenses

	December 2015 Ending Cash	GP Notes Payable as of 10/1/14	Mortgages as of 10/1/14		Proceeds from Land Sale
Silver Springs South					
Rail Road Partners (2006)	66,536	(12,515)	28,273	A	41,477
Spruce Heights Partners (2007)	88,977	(7,698)	28,273	A	41,477
Vista Del Sur (2007)	45,317	(74,017)	28,273	B+	41,477
Lahontan (2007)	69,649	(76,597)	28,273	A	41,477
	270,479	(170,827)	113,091		165,909

Washoe 5

Pyramid Highway 177 (2010)	19,804	(40,669)	60,843	A	22,857
Frontage 177 (2010)	28,214	(90,476)	60,843	B+	22,857
	48,018	(131,145)	121,686		45,714

Dayton I

Dayton View Partners (1999)	34,232	-	-	A	46,500
Fairway Partners (2000)	41,440	-	-	A	46,500
Green View Partners (2000)	45,030	-	-	A	46,500
Par Four Partners (2001)	44,619	-	-	A	46,500
	165,321	-	-		186,000

Dayton III

Gold Ridge Partners (2005)	171,277	(1,412)	-	A	11,625
Sky View Partners (2005)	219,871	(1,446)	-	A	11,625
Grand View Partners (2005)	206,689	-	-	A	11,625
Rolling Hills Partners (2006)	208,780	(2,428)	-	A	11,625
	806,617	(5,286)	-		46,500

Dayton IV

Eagle View Partners (2008)	188,363	(300,038)	169,703	A	(132,503)
Falcon Heights Partners (2008)	156,128	(272,131)	169,703	A	(132,503)
Night Hawk Partners (2009)	213,371	(240,367)	169,703	A	(132,503)
Osprey Partners (2010)	250,185	(229,431)	169,703	A	(132,503)
	808,047	(1,041,967)	678,811		(530,011)

Washoe 4

Rose Vista (2006)	25,716	(30,921)	20,002	A	67,186
Steam Boat Partners (2006)	48,085	(17,588)	20,002	A	67,186
Galena Ranch Partners (2006)	88,990	(13,094)	20,002	A	67,186
Redfield Heights Partners (2006)	60,841	(13,553)	20,002	A	67,186
	223,632	(75,156)	80,007		268,743

Tecate

ABL (1992)	CoTen	14,654	-	-	A	103,230
Mex-Tec (1993)	CoTen	28,654	-	-	A	103,230
		43,308	-	-		206,460

**Category B - Insufficient Capital to Pay Debts & Expenses without Investor Capital
Infusions; Current Net Value of Property Exceeds Capital Needed
to be Raised from Investors**

	December 2015 Ending Cash	GP Notes Payable as of 10/1/14	Mortgages as of 10/1/14		Proceeds from Land Sale
<u>Fernley I</u>					
Crystal Clearwater Partners (2011)	62,530	(61,238)	-	A	106,950
High Desert Partners (2011)	60,673	(115,492)	-	B	106,950
	123,203	(176,729)	-		213,900

Silver Springs North

North Springs (2007)	26,149	(39,183)	34,528	A	49,172
Rawhide (2007)	27,572	(43,687)	34,528	A	49,172
Highway 50 (2008)	(13,970)	(98,391)	34,528	C	49,172
Orange Vista (2008)	54,216	(46,394)	34,528	A	49,172
	93,967	(227,655)	138,111		196,689

Washoe 3

Spanish Springs Partners (2003)	(19,181)	-	-	B	162,750
Antelope Spring Partners (2004)	(6,453)	(3,144)	-	B	162,750
Wild Horse Partners (2004)	(20,853)	(23,539)	-	B	116,250
Big Ranch Partners (2004)	(22,572)	(29,243)	-	B	116,250
	(69,059)	(55,927)	-		558,000

Minden

Carson Valley Partners (1998)	(393)	-	-	B+	232,500
Heavenly View Partners (1998)	(3,936)	-	-	B	232,500
Sierra View Partners (1999)	7,975	-	-	A	232,500
Pine View Partners (1999)	363	-	-	A	232,500
	4,009	-	-		930,000

Stead

P-39 Aircobra Partners (2012)	114,089	(137,649)	-	B	91,838
P-40 Warhawk Partners (2012)	142,859	(145,613)	-	B	91,838
F-86 (2012)	66,116	(41,400)	-	A	183,675
	323,064	(324,662)	-		367,350

Bratton Valley

Valley Vista (1987)	IND	(5,226)	-	-	B	63,860
Bratton View (1987)	IND	(2,746)	-	-	B	63,860
Honey Springs (1988)	IND	(12,030)	-	-	B-	63,860
		(20,002)	-	-		191,580

Jamul Valley

Jamul Meadows (1988)		1,612	-	-	B	117,676
Lyons Valley (1988)		(1,609)	(67,229)	-	B	117,676
Hidden Hills (1988)		(12,850)	(85,055)	-	B-	117,676
		(12,847)	(152,284)	-		353,028

		December 2015 Ending Cash	GP Notes Payable as of 10/1/14	Mortgages as of 10/1/14		Proceeds from Land Sale
<u>Tecate</u>						
Borderland (1993)	CoTen	(7,137)	-	-	B	99,975
Prosperity (1994)	CoTen	(7,665)	(78,025)	-	B-	99,975
Vista Tecate (1990)	IND	(6,438)	-	-	B	88,691
International (1990)	IND	(16,232)	(34,231)	-	B-	70,754
Tecate South (1989)	IND	(3,590)	-	-	B	93,057
Twin Plant (1989)	IND	(5,014)	-	-	B-	86,743
		(46,076)	(112,256)	-		539,195

Yuma I

Gila View (2006)		(8,510)	(37,541)	7,290	B	74,860
Painted Desert (2006)		(13,702)	(36,446)	7,290	B	74,860
Snow Bird (2006)		(5,952)	(41,746)	7,290	B	74,860
		(28,164)	(115,733)	21,869		224,581

Yuma II

Desert View (2006)		(2,345)	(68,655)	4,159	C	59,778
Sonora View (2007)		79,421	(53,845)	4,159	A	59,778
Mesa View (2007)		60,940	(96,652)	4,159	B	59,778
Road Runner (2007)		80,842	(28,498)	4,159	A	59,778
		218,858	(247,650)	16,636		239,114

Las Vegas 1

Park Vegas Partners (2011)	IND	(5,744)	-	-	B	613,825
Production Partners (2010)	IND	(23,031)	-	-	B	2,511,000
Silver State Partners (2010)	IND	(3,091)	-	-	B	685,662
		(31,866)	-	-		3,810,487

Las Vegas 2

Rainbow Partners (1994)		5,439	-	-	B	439,425
Horizon Partners (1994)		(15,796)	(32,093)	-	B	439,425
		(10,357)	(32,093)	-		878,850

LV Kade Property

Hollywood Partners (1996)		(4,453)	-	-	B	945,985
BLA Partners (1997)		(5,552)	-	-	B	945,985
Checkered Flag Partners (1997)		(6,144)	-	-	B	945,985
Victory Lap Partners (1998)		(13,082)	-	-	B	945,985
		(29,231)	-	-		3,783,938

**Category C - Insufficient Capital to Pay Debts & Expenses without Investor Capital
Infusions; Current Net Value of Property is Less Than Capital Needed
to be Raised from Investors**

	December 2015 Ending Cash	GP Notes Payable as of 10/1/14	Mortgages as of 10/1/14		Proceeds from Land Sale
<u>Santa Fe</u>					
Santa Fe View (2008)	(28,942)	(113,988)	214,794	C	(19,494)
Pueblo (2009)	22,842	(50,875)	214,794	A	(19,494)
Pecos (2011)	55,296	(29,477)	214,794	A	(19,494)
	49,196	(194,340)	644,381		(58,481)

Dayton II

Storey County Partners (2005)	16,295	(1,219)		A	7,342
Comstock Partners (2005)	7,271	(9,607)		A	7,342
Silver City Partners (2005)	12,767	(19,305)		A	7,342
Nevada View Partners (2005)	(14,696)	(41,077)		C	7,342
	21,637	(71,207)			29,368

Washoe 1

Reno View (1981)	(1,042)	-	-	B+	46,500
Reno Vista (1981)	(4,304)	(37,521)	-	B-	46,500
Reno Partners (1982)	(624)	(142,388)	-	C	46,500
	(5,970)	(179,909)	-		139,500

Tecate

Freertrade (1991)	CoTen	(3,358)	-	-	B	95,171
Suntec (1991)	CoTen	(7,865)	(146,049)	-	C	95,171
Via 188 (1990)	CoTen	(4,420)	-	-	B	95,171
		(15,643)	(146,049)	-		285,512

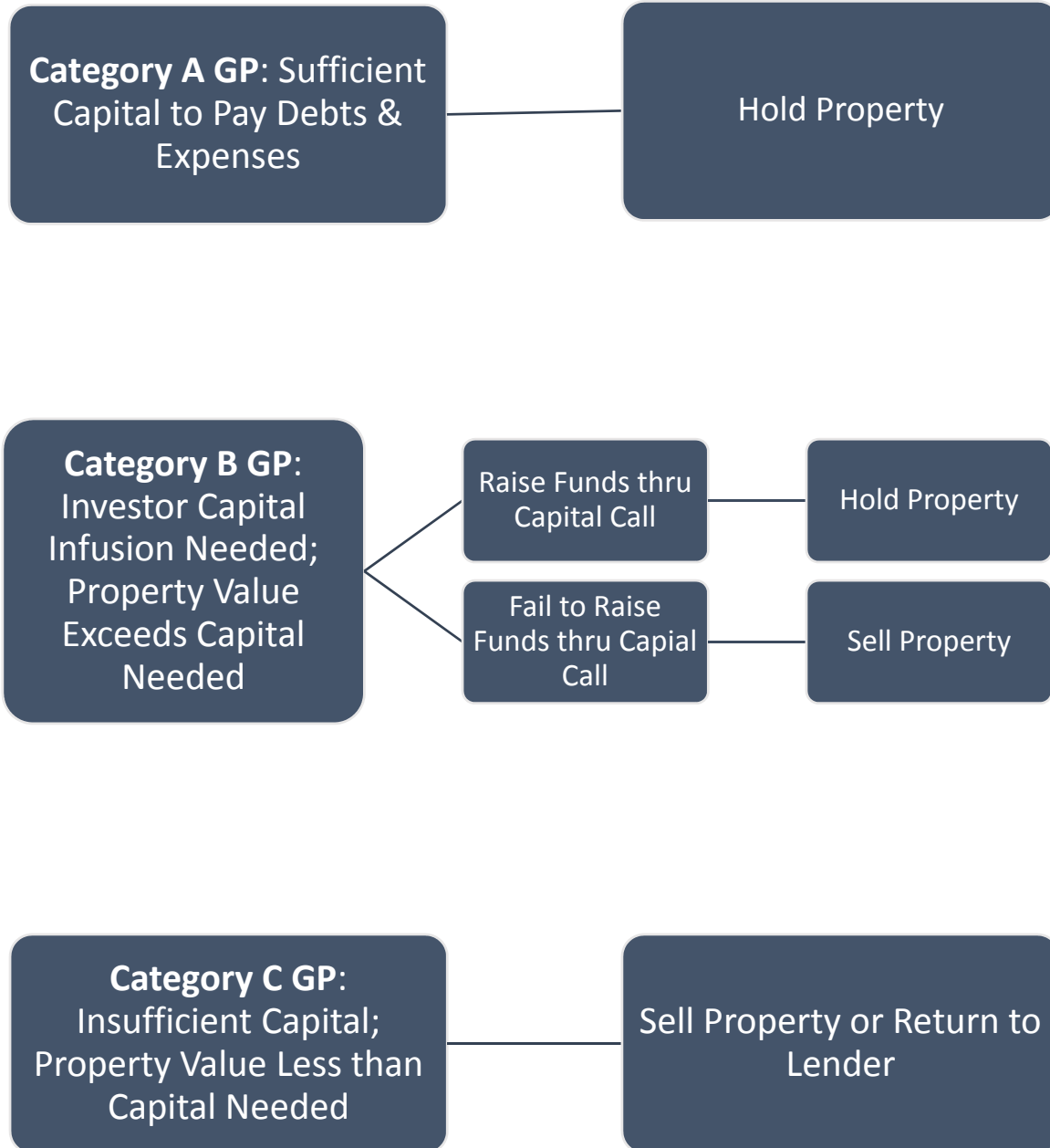
Yuma III

Mountain View (2008)		(31,096)	(41,532)	53,948	C	(21,166)
Ocotillo (2008)		34,417	(19,014)	53,948	A	(21,166)
Cactus Ridge (2008)		(28,294)	(47,015)	53,948	C	(21,166)
Mohawk Mountain Partners (2008)		13,353	(92,934)	53,948	C	(21,166)
		(11,620)	(200,496)	215,792		(84,662)

EXHIBIT B

EXHIBIT B

Western Financial Planning GP Recommendation



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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On April 2, 2015, I served the within document(s) described as:

➤ **REPORT AND RECOMMENDATION REGARDING COURSE OF ACTION FOR GENERAL PARTNERSHIPS**

on the interested parties in this action by:

BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"): the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On April 17, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address indicated below:

- Lynn M Dean - deanl@sec.gov; larofiling@sec.gov; berryj@sec.gov; irwinma@sec.gov; cavallones@sec.gov
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 17, 2015, at San Diego, California.

Ted Fates

(Type or print name)

/s/ Ted Fates

(Signature of Declarant)