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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  
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20  
21  
22

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RECEIVER'S MOTION FOR:**

**(A) AUTHORITY TO CONDUCT  
ORDERLY SALE OF GENERAL  
PARTNERSHIP PROPERTIES;**

**(B) APPROVAL OF PLAN OF  
DISTRIBUTING RECEIVERSHIP  
ASSETS; AND**

**(C) APPROVAL OF PROCEDURES  
FOR THE ADMINISTRATION OF  
INVESTOR CLAIMS**

Date: April 22, 2016  
Time: 1:30 p.m.  
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 listed in Schedule 1 to the Preliminary  
4 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"),  
5 submits this Motion for (A) Authority to Conduct Orderly Sale of General  
6 Partnership Properties, (B) Approval of Plan of Distributing Receivership Assets,  
7 and (C) Approval of Procedures for the Administration of Investor Claims  
8 ("Motion").

### 9 I. INTRODUCTION

10 Since the Receiver's appointment in September 2012, the values of most  
11 General Partnership ("GP") properties, which, on average, are only 10% to 15% of  
12 the amounts the GPs paid for the properties, have not measurably appreciated.  
13 Although some properties have appreciated in value and are discussed specifically  
14 below, most have not, and some have even lost value. In addition, due to the  
15 carrying costs of GP properties and very low rate of investor contributions to the  
16 GPs, the aggregate balance in GP accounts has steadily decreased. These factors  
17 translate to a receivership estate that, on the whole, is declining in value. This runs  
18 counter to the basic purpose of a receivership, which is to preserve, protect, and  
19 maximize the value of receivership assets. Accordingly, the Receiver proposes to  
20 sell GP properties, pursuant to the Court-approved orderly sale procedures, which  
21 will substantially advance the ball toward the conclusion of the receivership. The  
22 other key steps in working toward a conclusion of the receivership are to confirm  
23 the amounts of investor claims and distribute receivership assets to investors in  
24 accordance with their allowed claims. Accordingly, the Receiver herein  
25 recommends a plan for distributing receivership assets as well as procedures for the  
26 administration and determination of investor claims.

27 *This Motion and the Exhibits hereto contain various estimates and*  
28 *projections concerning sale proceeds, GP expenses, investor recoveries, and other*

1 *financial matters. It is very important to understand that, due to the fluid nature*  
2 *of GP finances, the estimates and projections contained herein and in the Exhibits*  
3 *are just that – estimates and projections only. The finances of each GP change*  
4 *from month-to-month and sometimes even week-to-week as amounts are collected,*  
5 *expenses are incurred, and payments become due. Moreover, many of the GPs*  
6 *are, and have been for some time, in default or on the verge of being in default on*  
7 *their obligations. Defaults, of course, have financial consequences and the*  
8 *consequences add further unknown variables to predicting ultimate outcomes.*  
9 *Further, many of the estimates and projections are based on anticipated sales of*  
10 *GP properties, including payoff of mortgages and other debts, using a*  
11 *hypothetical closing date for all sales of December 31, 2016. Of course, the actual*  
12 *sale closings may well occur considerably before or after that date. Accordingly,*  
13 *the estimates and projections discussed herein may well vary significantly from*  
14 *the ultimate actual numbers, which can only be determined when properties have*  
15 *been sold and distributions are ready to be made.*

## 16 **II. ORDERLY SALE OF GP PROPERTIES**

### 17 **A. GP Property Values and Cash Balances**

18 Over the last three years and four months since the GPs were placed into  
19 receivership, 14 of the 23 GP properties have not appreciated in value (or at least  
20 have not appreciated in value enough to cover the costs to carry the property). Some  
21 investors have asserted that certain of these GP properties were likely to appreciate  
22 significantly because they are in the path of future development. Unfortunately, this  
23 has not happened and, in some cases, the estimated values have gone down. The  
24 aggregate appraised value of these 14 GP properties in 2013 was \$4,137,000. In  
25 2015, the aggregate estimated value of these properties, based on appraisals for  
26 some properties and broker opinions of value for others, was \$3,732,815. A  
27 comparison of 2013 appraised values and 2015 appraisals/broker opinions of value  
28 for these properties is included in the upper half of Exhibit A. Although various

1 letters of intent and offers for these properties have been received over time, the  
2 offers have generally been at or below appraised values.

3 At the same time, because (a) GPs have to pay property taxes, property  
4 insurance premiums, notes owed to Western (so Western can pay underlying  
5 mortgages), GP administrator fees, and tax preparation fees, and (b) the vast  
6 majority of investors have stopped making contributions to their GPs, the balances  
7 in GP accounts has steadily declined. Specifically, the aggregate balance in all GP  
8 accounts has declined from approximately \$6.6 million in September 2012 to  
9 approximately \$3.5 million as of December 31, 2015, and is projected to be  
10 approximately \$1.8 million by the end of this year. This decline is shown on  
11 Exhibit B.

12 In other words, money is rapidly being spent to hold properties that are not  
13 measurably appreciating in value. This runs counter to the fundamental purpose of a  
14 federal equity receivership, which is to maximize the value in the receivership estate  
15 for the benefit of investors and creditors. As things currently stand, cash is  
16 dissipating with no corresponding appreciation in value of the properties.  
17 Accordingly, it is in the best interests of the receivership estate to conduct an orderly  
18 sale of these properties.

19 As indicated above, there are some exceptions – nine GP properties have  
20 appreciated in value to a significant degree (and in an amount greater than the  
21 carrying costs of the property between 2013 and 2015). These properties are shown  
22 on the lower half of Exhibit A. However, due to the circumstances of each property  
23 and their GPs, it is in the best interests of the receivership estate to sell these  
24 properties as well. The nine properties are as follows:

- 25 • **Bratton Valley** – the three GPs that own the Bratton Valley property  
26 (Bratton View, Honeys Springs, and Valley Vista) have exhausted the  
27 cash in their accounts. The capital call issued to investors failed to  
28 raise sufficient capital to meet projected GP operating expenses through

1 the end of 2016 ("2016 Expenses"). In fact, the three GPs collectively  
2 are projected to be \$81,980 behind on their operating expenses by the  
3 end of 2016. Accordingly, if the property is not sold, property taxes  
4 will go unpaid and penalties and interest will accrue on the past due  
5 amounts. The cost to hold the Bratton Valley property is  
6 approximately \$48,500 per year. The Court recently authorized the  
7 Receiver to list this property for sale with a licensed broker. Dkt.  
8 Nos. 1166, 1168.

- 9 • **Dayton Valley I** – the four GPs that own the Dayton Valley I property  
10 (Dayton View, Fairway, Green View, and Par Four) are actually  
11 relatively stable from the standpoint of having sufficient cash to meet  
12 their 2016 Expenses. However, the cost to hold the Dayton Valley I  
13 property is approximately \$20,000 per year. There is no way to know  
14 if the property has continued to appreciate since the 2015 appraisal was  
15 obtained or whether the property will appreciate in the future.
- 16 • **Jamul Valley** – the Court has already authorized the Receiver to sell  
17 this property. Dkt. No. 1088. Even if the previously authorized sale  
18 does not close, this property should be moved to the orderly sale  
19 process. The three GPs that own the property (Jamul Meadows, Lyons  
20 Valley, and Hidden Hills) have exhausted the cash balances in their  
21 accounts. In fact, the three GPs collectively are projected to be  
22 \$120,200 behind on their operating expenses by the end of 2016.  
23 Accordingly, if the property is not sold, property taxes will go unpaid  
24 and penalties and interest will accrue on the past due amounts. The  
25 cost to hold the Jamul Valley property is approximately \$77,000 per  
26 year.
- 27 • **Las Vegas 1** – the Las Vegas 1 property is actually made up of three  
28 separate properties, each of which is owned outright by one GP (*i.e.*, no

1 co-tenancy). The three GPs are Park Vegas, Production, and Silver  
2 State. All three have exhausted the cash in their accounts and,  
3 collectively, they are projected to be \$86,850 behind on their expenses  
4 by the end of 2016. A capital call was issued to the investors in these  
5 three GPs on December 16, 2015, and none of them have raised  
6 anything close to the amount needed. Accordingly, if the property is  
7 not sold, property taxes will go unpaid and penalties and interest will  
8 accrue on the past due amounts. The combined cost to hold the  
9 Las Vegas 1 properties is approximately \$48,000 per year.

- 10 • **Las Vegas 2** – the two GPs that own the Las Vegas 2 property  
11 (Rainbow and Horizon) have exhausted the cash in their accounts. The  
12 capital call issued to investors failed to raise sufficient capital to meet  
13 their 2016 Expenses. The two GPs combined are projected to be  
14 \$95,026 behind on their operating expenses by the end of 2016.  
15 Accordingly, if the property is not sold, property taxes will go unpaid  
16 and penalties and interest will accrue on the past due amounts. The  
17 cost to hold the Las Vegas 2 property is approximately \$58,000 per  
18 year.
- 19 • **LV Kade** – the four GPs that own the LV Kade property (Hollywood,  
20 BLA, Checkered Flag, Victory Lap) have exhausted the cash in their  
21 accounts. The capital call issued to investors failed to raise sufficient  
22 capital to meet their 2016 Expenses. The four GPs collectively are  
23 projected to be \$99,279 behind on their operating expenses by the end  
24 of 2016. Accordingly, if the property is not sold, property taxes will go  
25 unpaid and penalties and interest will accrue on the past due amounts.  
26 The cost to hold the LV Kade property is approximately \$78,000 per  
27 year. The Court recently authorized the Receiver to list this property  
28 for sale with a licensed broker. Dkt. Nos. 1166, 1168.



- 1           • **Minden** – the four GPs that own the Minden property (Carson Valley,  
2           Heavenly View, Sierra View, Pine View) have exhausted the cash in  
3           their accounts. In fact, the four GPs collectively are projected to be  
4           \$15,827 behind on their operating expenses by the end of 2016. A  
5           capital call was issued to the investors in these four GPs on January 18,  
6           2016, and none of them have yet raised anything close to the amount  
7           needed. Accordingly, if the property is not sold, property taxes will go  
8           unpaid and penalties and interest will accrue on the past due amounts.  
9           The cost to hold the Minden property is approximately \$20,000 per  
10          year.
- 11          • **Santa Fe** – there are three GPs that own the Santa Fe property (Santa  
12          Fe View, Pueblo, and Pecos). Although Pueblo and Pecos have some  
13          cash in their accounts, Santa Fe View has exhausted the cash in its  
14          accounts. The capital call issued to the investors in Santa Fe View  
15          failed to raise sufficient capital to meet its 2016 Expenses. A letter to  
16          the investors of cotenant GPs Pueblo and Pecos failed to raise enough  
17          to cover the Santa Fe View shortfall. Santa Fe View is projected to be  
18          \$35,890 behind on its operating expenses by the end of 2016.  
19          Accordingly, if the property is not sold, Santa Fe View's share of  
20          property taxes will go unpaid and penalties and interest will accrue on  
21          the past due amounts. In addition, there is a mortgage on the property  
22          and the three GPs do not pay Western enough in GP notes to make the  
23          monthly payments. The Receiver has been making partial mortgage  
24          payments from the GP notes payments collected. The cost to hold the  
25          Santa Fe property is approximately \$115,000 per year. The Court  
26          recently authorized the Receiver to list this property for sale with a  
27          licensed broker. Dkt. Nos. 1166, 1168.
- 28

- 1           • **Washoe 3** – the Washoe 3 property is made up of two properties, each  
2 owned by two cotenants. Spanish Springs and Antelope Springs own  
3 one property and Wild Horse and Big Ranch own the other property.  
4 All four GPs have exhausted the cash in their accounts. The capital call  
5 issued to investors failed to raise sufficient capital to meet their 2016  
6 Expenses. The four GPs collectively are projected to be \$99,700  
7 behind on their operating expenses by the end of 2016. Accordingly, if  
8 the property is not sold, property taxes will go unpaid and penalties and  
9 interest will accrue on the past due amounts. The combined cost to  
10 hold the two Washoe 3 properties is approximately \$100,000 per year.

11           Accordingly, although these nine properties have appreciated in value to a  
12 significant degree, the financial circumstances of the properties and their GPs are  
13 such that moving the properties into the orderly sale process is the best course of  
14 action in terms of protecting their value and maximizing the net recovery.

15           **B. Sale of GP Properties**

16           Early in the case, Defendants sought to have the GPs removed from the  
17 receivership. Dkt. No. 195. After many briefs and reports were filed, several  
18 hearings were held, several orders were issued, and an appeal was even taken, the  
19 Court ultimately determined to keep the GPs in the receivership. Dkt. No. 1003. In  
20 doing so, the Court recognized all investors had a potential interest in the value of  
21 all GP properties because Western has a financial stake in each GP, both in the form  
22 of equity interests and loans, and all investors had potential claims against Western.  
23 *Id.* at pp. 18-20.

24           The Court then granted summary judgment in favor of the Securities and  
25 Exchange Commission ("Commission"), finding that Schooler and Western violated  
26 securities laws by selling unregistered securities and determined that Schooler and  
27 Western must disgorge more than \$136 million. Dkt. No. 1074. The Court then  
28 granted in part and denied in part the Commission's motion for summary judgment

1 on its first and second claims for relief, granting both causes of action as to all  
2 elements with regards to the fair market value representation of the Stead property  
3 in Western's sales brochure. Dkt. No. 1081. Just recently, the Court granted the  
4 Commission's motion for permanent injunction, monetary remedies, and final  
5 judgment against Schooler, ordering Schooler to pay \$136,654,250 in disgorgement,  
6 \$10,956,030 in prejudgment interest, and \$1,050,000 in civil penalties. Dkt.  
7 No. 1170.

8 In light of these orders, and as the Court anticipated in keeping the GPs in the  
9 receivership, all investors have claims against Western for their investment losses.  
10 In terms of investor recoveries, Western's assets are already in receivership and it is  
11 unknown how much will be collected from Schooler. Therefore, the primary  
12 sources of investor recoveries will likely be the assets of the Receivership Entities  
13 (the GPs and Western).

14 Because Western has significant equity interests in the GPs, as well as loans  
15 owed to it by the GPs, and all investors have claims against Western, all investors  
16 have a very important interest in maximizing the value of all GP assets (even GPs in  
17 which they do not have a direct interest). This is because the value of GP assets  
18 directly effects the value of Western's equity interests and its ability to collect loans  
19 owed to it by the GPs. Accordingly, considering that the value of GP assets is  
20 steadily declining, it is in the best interests of the receivership estate and investors as  
21 a whole to conduct an orderly sale of GP properties. This will then also allow for an  
22 orderly distribution of receivership assets and closure of the receivership.

23 The Court unquestionably has discretion to authorize the sale of GP properties  
24 through an orderly sale process designed to maximize the net recovery from the  
25 properties. *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
26 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*  
27 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
28 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). Pursuant to that

1 discretion, the Court has already authorized the Receiver to sell Western assets  
2 (automobile and gold coins) and one GP property (the Jamul Valley property), has  
3 approved an orderly sale process for GP properties (Dkt. No. 1069), and has  
4 authorized the Receiver to list five GP properties for sale with licensed brokers (Dkt.  
5 No. 1168).

6 For ease of reference, the steps of the Court-approved orderly sale process for  
7 GP properties are laid out on Exhibit C hereto. The Receiver proposes all GP  
8 properties go through the orderly sale process and that each GP property go through  
9 the sale process independently of other GP properties. The Receiver believes a sale  
10 of GP properties on a one-by-one basis will yield a greater net recovery than  
11 packaging properties together and trying to sell them in bulk.

### 12 **C. Anticipated Investor Objections**

13 Investors, naturally, will consider the issues presented herein and argue for  
14 what they believe will enhance the outcome for them personally. For example,  
15 some GPs owe large amounts on mortgages and loans to Western, meaning their  
16 investors may recover little or nothing from a sale. In these circumstances, investors  
17 may argue not to sell the GP property. With little to lose, they would rather take the  
18 chance that an offer well above the appraised value will suddenly be received.  
19 Other investors, however, would be harmed by such risk-taking. At a minimum, the  
20 GP would spend its available cash on the carrying costs of the property. Further, in  
21 the event GPs runs out of cash (many of which already have), mortgages and  
22 property taxes would go unpaid, substantially impairing property values. If GP cash  
23 balances are exhausted and the value of GP properties is impaired with mortgage  
24 defaults, tax liens, penalties, and interest, Western's equity interests will diminish in  
25 value and it will be unable to collect loans owed by the GPs. Again, all investors  
26 have a claim to Western's assets and therefore would be harmed by the personally-  
27 motivated risk-taking of a subset of investors. Therefore, the personal financial  
28

1 motivations of investors should not dictate the disposition of GP properties at the  
2 potential expense of all other investors.

3         Additionally, despite all the motions, reports, recommendations, and Court  
4 orders telling them otherwise, some investors still believe their properties will  
5 immediately go to a "fire sale," the properties will be sold below market values, and  
6 the sale proceeds will be used to pay fees and costs of the receivership. As noted  
7 above, however, the Court has already approved an orderly sale process for GP  
8 properties that have been unable to raise sufficient capital to pay their expenses.  
9 Dkt. No. 1069. The Receiver now proposes all GP properties go through the orderly  
10 sale process, which includes all the customary steps for listing, marketing,  
11 negotiating, documenting, and closing a sale of real property. The process includes  
12 a noticed motion for Court approval of each sale.

13         Moreover, real property is routinely sold out of receivership and there is no  
14 reason to believe market values will not be obtained. In fact, there are now two  
15 independent estimates of value – one from 2013 and one from 2015 – as well as  
16 comparable sales in the surrounding areas to compare to offers to ensure market  
17 values are obtained.

18         Finally, the Court has explained that fees and costs of the receivership are  
19 paid strictly from the assets of Western and that amounts the GPs owe Western  
20 would be collected whether a receivership was in place or not. Dkt. No. 1003, p. 7.  
21 Even those who have challenged the collection of loans owed to Western, including  
22 Schooler, have acknowledged the loans are valid and would be fully repaid when  
23 GP properties are sold. Dkt. No. 590-1, Declaration of Louis Schooler, ¶ 4 ("It was  
24 my intent, as President of Western, for the loans from Western to the GPs not to be  
25 called for repayment until the GPs sold their properties."). Further, the Court  
26 reviews all fees and costs of the receivership to ensure all amounts requested are  
27 reasonable. *Id.* Therefore, these arguments against selling GP properties should  
28 once again be rejected.



1 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
2 953 F.2d 1560, 1569 (11th Cir. 1992).

3 District courts have the broad power of a court of equity to determine the  
4 appropriate action in the administration and supervision of an equity receivership.  
5 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
6 Circuit explained:

7 A district court's power to supervise an equity receivership and  
8 to determine the appropriate action to be taken in the  
9 administration of the receivership is extremely broad. The  
10 district court has broad powers and wide discretion to determine  
11 the appropriate relief in an equity receivership. The basis for  
12 this broad deference to the district court's supervisory role in  
13 equity receiverships arises out of the fact that most  
14 receiverships involve multiple parties and complex transactions.  
15 A district court's decision concerning the supervision of an  
16 equitable receivership is reviewed for abuse of discretion.

13 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
14 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
15 and 'we generally uphold reasonable procedures instituted by the district court that  
16 serve th[e] purpose' of orderly and efficient administration of the receivership for  
17 the benefit of creditors."). Accordingly, the Court has broad discretion in  
18 determining the allowed amounts of claims, approving a plan of distribution, and  
19 authorizing distributions.

20 Here, in whatever way the Court determines to distribute funds, some  
21 investors will be favored over others. The goal should be to establish a distribution  
22 approach that treats all investors as fairly and equitably as possible. Based on his  
23 investigation into the affairs and operations of the Receivership Entities, forensic  
24 accounting of the Receivership Entities' financial transactions, and management of  
25 the Receivership Entities over the past three years and four months, the Receiver  
26 believes there are two viable approaches to distributing receivership assets:

27  
28



1       **One Pot Approach:** Under this approach, all net sale proceeds from all GP  
2 properties are pooled and distributed *pro rata* to all investors based on the  
3 total funds they invested in all GPs;

4       OR

5       **Two Tier Approach:** Under this approach, the net sale proceeds from the  
6 sale of each GP property go to the GPs that own that property in accordance  
7 with their cotenant ownership interests. The debts of each GP are then paid  
8 and the remaining net proceeds are distributed directly to investors in  
9 accordance with their GP units. The debts paid by the GPs include amounts  
10 owed to Western and Western also receives its share of the net proceeds in  
11 accordance with the GP units it owns. All investors then share *pro rata* in the  
12 assets of Western based on the total funds they invested in all GPs.

13       The Receiver estimates that, after Court-approved fees and costs of the  
14 receivership, fees owed to GP administrator Lincoln Property Group, and any  
15 federal or state taxes owed by the GPs and Western are paid, the total cash available  
16 to distribute from the sale of GP properties, cash on hand in GP accounts, the sale of  
17 Western's properties, and the recovery on Western's remaining assets (including the  
18 judgment against LinMar III) will be approximately \$21,804,826.<sup>1</sup> Under the One  
19 Pot Approach, the full approximately \$21,804,826 would be distributed to all  
20 investors *pro rata* and investors are projected to recover 13.40% of the amounts they  
21 invested in their GPs.

22       Under the Two Tier Approach, approximately \$20,582,303 would be  
23 distributed to investors from the first tier (*i.e.*, directly from GPs to their investors  
24 according to their GP units), and approximately \$1,222,523 would be distributed to  
25 all investors *pro rata* from the second tier. However, because the majority of the  
26

27 \_\_\_\_\_  
28 <sup>1</sup> As a reminder, this is an estimate only and there are many variables that will  
affect the ultimate amount, meaning it could vary significantly one way or the  
other.



1 funds are distributed from the first tier and the financial circumstances of each  
2 property and each GP differ so greatly, the projected percentage recoveries for  
3 investors under the Two Tier Approach vary from as little as 0.75% to as much as  
4 194.07%. The projected percentage recoveries are reflected in Exhibit D hereto. It  
5 is important to understand that the projected percentage recoveries are based on the  
6 2015 appraised values of GP properties and a sale date of December 31, 2016 for all  
7 GP properties. Of course, GP properties will be sold at different times and at  
8 different amounts depending on when reasonable offers are received, Court approval  
9 is obtained, and the transactions close. Therefore, actual recoveries may vary  
10 significantly from these projections.

11 Both approaches – One Pot and Two Tier – favor some investors over others,  
12 but this is unavoidable when the assets of the receivership estate are insufficient to  
13 pay all claims in full. As discussed above, the personal financial interests of  
14 investors will shape their views. In fact, it appears two investor groups have already  
15 formed; the Receiver has been contacted by two law firms, each of which has  
16 indicated it will be retained by a group of investors. Which group investors join  
17 appears to be based on their personal financial views on whether or not receivership  
18 assets should be pooled for distribution.

19 The Receiver has met and conferred with counsel for the Commission, which  
20 supports the One Pot Approach. The Receiver has also met and conferred with  
21 counsel for Schooler, who indicated he would wait to see the filed motion before  
22 taking a position.

23 **A. Receiver's Recommended Distribution Plan**

24 In the majority of federal equity receivership cases, receivership assets are  
25 pooled and distributed to investors on a *pro rata* basis. *See e.g., Capital*  
26 *Consultants*, 397 F.3d at 750; *Topworth*, 205 F.3d at 1116; *SEC v. Credit*  
27 *Bancorp, Ltd.*, 290 F.3d 80 (2d Cir. 2002); *SEC v. Forex Asset Mgmt., LLC*,  
28 242 F.3d 325 (5th Cir. 2001); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657

1 (6th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992) *rev'd in part on other*  
2 *grounds*, 998 F.2d 922 (11th Cir. 1993); *see also United States v. Real Property*  
3 *Located at 13328 and 13324 State Highway 75 N.*, 89 F.3d 551, 553-54 (9th Cir.  
4 1996) (affirming allocation of proceeds of disgorged property *pro rata* regardless of  
5 whether claimants can trace their funds). This is because, in most circumstances,  
6 the similarities in the way investors were harmed outweigh the differences in the  
7 way they invested, and, on balance, it is more equitable for all investors to receive  
8 the same percentage of their losses than for some investors to recover a large  
9 percentage, while others recover little or nothing.

10 Here, after much litigation over whether the GPs were independent from  
11 Defendants or under Defendants' management and control, the Court found the  
12 Partnership Agreements and Co-Tenancy Agreements did not convey any powers on  
13 investors at the time of investment, and therefore the GP units sold to investors are  
14 securities. *See* Dkt. No. 583, pp. 14-17. The Court later determined there were  
15 material misrepresentations made to investors about the value of the Stead property.  
16 Dkt. No. 1081.

17 Moreover, in analyzing the exemption claimed by Defendants under  
18 Rule 506(d), the Court recognized the similarities in the GP offerings and  
19 determined that "Western's sales of GP units for all the GPs [was] a single,  
20 integrated offering." Dkt. No. 1074, p. 8. The Court explained:

21 The sales of GP units were part of a single plan to finance  
22 Western's operations. (See ECF No. 182, at 7  
23 ("Approximately 93% of the actual cash collected by the  
24 GPs was transferred to Western.") The sales of GP units  
25 were of the same class because they were all general  
26 partnership interests for GPs that owned the same type of  
27 property, undeveloped real estate. (ECF No. 980-2 ¶ 8  
28 ("the GPs were established for the sole purpose of owning  
raw land in fractional interests for eventual resale to  
developers."); ECF No. 14-1, Ex. 1 (sample partnership  
agreement).) All investors bought GP units using the  
same type of consideration: cash and notes. (ECF No. 182,  
at 6.) The sales of GP units were all made for the same  
purpose: financing Western's operations through creating  
GPs to buy and hold undeveloped real estate. (ECF  
No. 980-2 ¶ 8); *cf. Donohoe v. Consolidated Operating &*

1           *Prod. Corp.*, 982 F.2d 1130, 1140 (7th Cir. 1992) ("The  
2 term 'same general purpose' suggests a level of generality  
3 to the integration analysis that may be satisfied by the  
observation that the purpose of each partnership was to  
drill for oil.") (citation omitted).

4 *Id.* at 7-8.

5           Considering the similarities found by the Court in the way GP units were sold  
6 to investors and the enormous amounts GP properties were marked up, it is very  
7 possible, if not probable, that material misrepresentations similar to those made  
8 about the Stead property were made to investors about the values of other GP  
9 properties. However, although this is a logical conclusion, it is not critical to  
10 determining which distribution approach is more fair and equitable to investors as a  
11 whole.

12           Pooling of assets for distribution has been approved, even in the absence of  
13 fraud, where distinctions between similarly situated claimants are based primarily  
14 on timing or luck. *See Torres v. Eastlick (In re North American Coin &*  
15 *Currency, Ltd.)*, 767 F.2d 1573 (9th Cir. 1985). *Torres* involved a precious metal  
16 dealer that began experiencing financial difficulty. The principals of the entity,  
17 North American, recognized the severity of the problem but postponed ceasing  
18 operations until after a scheduled shareholders' meeting in the hope that new equity  
19 would be invested. The principals did, however, segregate funds received for new  
20 orders in a separate trust account during the one week period in the event additional  
21 equity was not obtained and North American was unable to fill the orders of those  
22 customers.

23           After the chapter 11 filing, those customers whose investment funds had been  
24 segregated demanded that those funds be returned. The Court denied the request.  
25 Other customers of the debtor had placed orders and remitted funds before the  
26 debtor began segregating funds and were left to seek redress from the assets in the  
27 bankruptcy estate. After concluding that there was no fraud on which to base a  
28 theory of constructive trust, the court concluded: "We fail to discern the equitable

1 principle that requires us to protect the plaintiffs' investments fully, at the expense of  
2 these other creditors." *Id.* at 1579.

3 Here, although both distribution approaches discussed above are viable, on  
4 balance, the One Pot Approach is more fair and equitable. Most importantly, what  
5 investors would receive under the Two-Tier Approach would vary greatly in relation  
6 to what they invested and the disparate outcomes would be based primarily on  
7 timing and luck.

8 Specifically, although it appears some investors researched the GP property in  
9 which they invested and chose one GP over another on the basis of that research,  
10 many investors did not. Moreover, the current value of a GP property is only one of  
11 many factors that would determine what investors receive under the Two-Tier  
12 Approach. The other factors are financial aspects of the GPs that were unknown to  
13 investors, including:

- 14 • The purchase price paid by Western for the property and the purchase  
15 price paid by the GPs for the property, the difference between the two  
16 prices being the markup, which ranged from 109% to 1800% (as shown  
17 on Exhibit A);<sup>2</sup>
- 18 • How much each cotenant GP paid for its interest in the property (which  
19 was not equal among cotenant GPs – the earlier GPs paid less than later  
20 GPs);
- 21 • The fact that, on average, 93% of the funds raised from investors went  
22 to Western and was used by Western in many ways, including to pay  
23 Schooler, pay Western expenses, pay commissions to sales agents, and  
24

---

25 <sup>2</sup> With respect to the Stead property, because of the markup, the Court found it  
26 "incontrovertible that investors suffered a significant and substantial risk of loss  
27 the instant they purchased the property." Dkt. No. 1170, p. 6. How great each  
28 investor's potential loss was at the time they invested varied from GP property to  
GP property and was, of course, completely unknown to investors. The markup  
for each GP property, to the extent the information is available, is reflected on  
Exhibit A.

1 in some cases, was but back into Western and used to prop up failing  
2 GPs (*See* Receiver's Forensic Accounting Report: Part Two, Dkt.  
3 No. 504);

- 4 • The mortgages on GP properties, how much was owed to lenders, and  
5 the payment terms;
- 6 • The GP notes owed to Western as a result of investors financing their  
7 purchase of GP units and how much was owed on such notes;
- 8 • The operational/shortfall loans owed to Western because certain GPs  
9 were unable to pay their operating expenses (about which investors  
10 were never told); and
- 11 • Western stopped collecting note payments from certain GPs in the total  
12 amount of approximately \$3.3 million so GP shortfalls would not be  
13 detected.

14 Another important factor in the outcome under the Two-Tier Approach is how  
15 many investors would make note payments due on the financing for their purchase  
16 of GP units – amounts that go to their GP so their GP can repay Western – and how  
17 many investors would pay their operational bills when the GP needed cash to pay  
18 operating expenses. Like the factors listed above, this factor was completely  
19 unknown and outside the control of investors when they invested. Some GPs still  
20 owe substantial amounts to Western, meaning the unknown debt owed to Western  
21 would make a significant difference in what investors in different GPs recover.

22 1. Comparison of Cotenant GPs Under Two Tier Approach

23 For example, with respect to the Jamul Valley property, under the Two Tier  
24 Approach, each of the three GPs that own the property - Jamul Meadows, Hidden  
25 Hills, and Lyons Valley - would each receive one-third of the net sale proceeds from  
26 the property. However, because Hidden Hills and Lyons Valley owe GP notes and  
27 operation loans to Western, the net result for investors in the three GPs would be  
28 very different. Investors in Jamul Meadows would receive approximately \$133,023

1 in first and second tier distributions (or approximately 14.50% of their total  
 2 investment), but investors in Hidden Hills and Lyons Valley would receive only  
 3 \$7,549 and \$7,339, respectively, which in both cases would translate to 0.75%  
 4 recovery for investors. This is because investors in Lyons Valley and Hidden Hills  
 5 would receive no distribution from their GP and only receive a distribution from the  
 6 second tier (*i.e.*, Western's assets). Therefore, even investors who researched the  
 7 Jamul Valley property and invested in Jamul Meadows, Hidden Hills, or Lyons  
 8 Valley based on that research would recover very different amounts depending on  
 9 when they happened to invest (*i.e.*, which GP was being offered at the time) and  
 10 how much their GP happens to owe Western.

## 11 2. Comparison of Similar GP Properties Under Two Tier Approach

12 The same is true when you compare GP properties with similar appraised  
 13 values under the Two Tier Approach. For example, the Dayton II, Dayton III, and  
 14 Dayton IV properties were (a) all purchased for similar amounts (\$1,800,000,  
 15 \$1,804,625, and \$2,130,943, respectively) (b) all sold to the GPs that own them  
 16 during the 2005-2010 time period, and (c) all have similar 2015 appraised values  
 17 (\$190,000, \$60,000, and \$220,000, respectively).<sup>3</sup>

18 Despite, the similar purchase prices, timing of the sales to GPs, and 2015  
 19 appraised values, the outcomes for investors in the various GPs would be very  
 20 different. Specifically, as reflected in Exhibit D, investors in the GPs that own  
 21 Dayton II are projected to receive a total of \$363,188 in first and second tier  
 22 distributions, investors in the GPs that own Dayton III are projected to receive a  
 23

24 <sup>3</sup> The \$60,000 appraised value of the Dayton III property is lower than the other  
 25 two properties because a large portion of the property (480 acres out of a total of  
 26 620 acres) was taken by eminent domain in a case filed by Sierra Pacific Power  
 27 Corporation ("SPPC") in February 2008. As a result of the eminent domain case,  
 28 the four GPs that own the Dayton III property received a total award of  
 \$4,433,910.44. The GPs each received a share of the total funds, reserved a  
 certain amount for future expenses, and distributed the rest to their investors. If  
 the 480 acres taken by SPPC had not been taken, the appraised value of the  
 Dayton III property would likely be in line with the appraised values of the  
 Dayton II and Dayton IV properties.



1 total of \$840,624 in first and second tier distributions, and investors in the GPs that  
2 own Dayton IV are projected to receive a total of \$689,498 in first and second tier  
3 distributions. In terms of percentage recoveries for investors, which is determined  
4 on a GP by GP basis (not a property by property basis), this translates into a range of  
5 percentage recoveries between 1.73% (investors in Nevada View – Dayton II) and  
6 9.09% (investors in Sky View - Dayton III). Further, this does not take into account  
7 the pre-receivership distributions already received by investors in Sky View because  
8 of the eminent domain award (see footnote 3 above), so the disparity in outcomes is  
9 actually much greater.

10 The factors that result in the different outcomes for these investors include  
11 (a) as shown on Exhibit A, the Dayton IV property was sold to the GPs for  
12 \$23,207,000 (989% markup), whereas the Dayton II property was sold to the GPs  
13 for \$8,994,800 (400% markup) and the Dayton III property was sold to the GPs for  
14 \$10,391,360 (476% markup), (b) the Dayton IV property is close to being  
15 underwater (as discussed above), (c) the Nevada View partnership has exhausted the  
16 cash in its account and has an unpaid GP note balance owed to Western, while the  
17 other three GPs that own Dayton II have cash in their accounts and no loans owed to  
18 Western, and (d) the GPs that own Dayton IV collectively owe approximately  
19 \$446,693 in GP notes to Western. None of these factors were known or could have  
20 been predicted by investors at the time they invested. As discussed above, pooling  
21 of receivership estate assets is appropriate when distinctions between investor  
22 outcomes are based primarily on timing or luck.

23 As noted above, the Two-Tier Approach would produce dramatically  
24 different outcomes for investors, leaving some investors with a nominal recovery,  
25 while others receive a significant profit on their investment. Indeed, in one GP -  
26 Park Vegas Partners (which, although it has always been grouped under the  
27 Las Vegas 1 property with two other GPs, owns its property outright) - investors  
28 would recover an estimated 194.07% of their investment. The projected percentage

1 recoveries for investors in each GP under the Two Tier Approach is shown on  
2 Exhibit D hereto. In contrast, under the One Pot Approach, the Receiver estimates  
3 all investors will recover approximately 13.40% of the amounts they invested in  
4 their GPs (including amounts they paid in operational bills). Investors in 69 of the  
5 86 GPs are projected to receive a greater recovery under the One Pot Approach than  
6 under the Two Tier Approach.

7 The factors supporting the Two Tier Approach are that some investors  
8 conducted research on the GP properties before investing in their GPs and each  
9 investor signed a Partnership Agreement that laid out the rights of investors in the  
10 GP. Although these are legitimate factors to consider, on balance, the numerous  
11 factors discussed above supporting the One Pot Approach significantly outweigh  
12 them, making the One Pot Approach more fair and equitable to investors as a whole.  
13 Accordingly, the Receiver recommends distributions of receivership assets be made  
14 pursuant to the One Pot Approach and that, once GP properties are sold and  
15 Western's remaining assets are liquidated, all investors receive a *pro rata*  
16 distribution of the total cash in the receivership estate after Court-approved fees and  
17 costs of the receivership, amounts owed to Lincoln Property Group, and any federal  
18 and state taxes owed are paid.

19 The Receiver anticipates one or two interim distributions will be made as  
20 properties are sold and net sale proceeds are received. The Receiver will seek  
21 authority to make such interim distributions via noticed motion and will propose a  
22 total amount to be distributed and a total to be held in reserve.

23 **B. Distribution Plan**

24 Attached hereto as Exhibit E is a proposed Distribution Plan consistent with  
25 the One Pot Approach described above. The Distribution Plan provides specific  
26 definitions of key terms, lay outs how claims are calculated and treated, and  
27 provides the mechanics of making distributions. It is important that, to the extent  
28 possible, there be no confusion or ambiguity as to how claims will be calculated and



1 treated, and how distributions will be made. Once final distributions are made, they  
2 cannot be undone and there will be no assets left in the receivership estate to address  
3 complaints that claimants were not treated fairly or in accordance with the Court's  
4 orders. Accordingly, the Receiver requests specific approval of the Distribution  
5 Plan.

6 The Distribution Plan provides for treatment of uncashed distribution checks.  
7 In summary, the Receiver will use reasonable efforts to locate a good address for the  
8 Claimant and reissue the check. If those efforts are unsuccessful, the Claimant's  
9 claim will be automatically extinguished. Investors have been advised repeatedly  
10 throughout the case to promptly advise the Receiver in the event their contact  
11 information changes. Limited receivership resources should not be consumed on  
12 extensive searches for investor addresses, reissuing and remailing checks on  
13 multiple occasions, and monitoring whether such checks are cashed.

14 **C. Other Changes Associated With Recommended Distribution Plan**

15 If the Court approves the proposed Distribution Plan and the One Pot  
16 Approach incorporated therein, there are certain other changes to the administration  
17 of the receivership estate that logically follow therefrom. Specifically, if the assets  
18 of the receivership estate are being pooled for *pro rata* distribution to all investors,  
19 continuing to collect investor note payments no longer makes sense. All investors  
20 will all have an interest in the assets of the receivership estate consistent with the  
21 amounts they have invested. Collecting further funds from certain investors, of  
22 which they are projected to only recover 13.40%, would be inequitable. Instead,  
23 balances in GP accounts should be pooled into one account and mortgage payments,  
24 property taxes, insurance premiums, and other carrying costs of the properties  
25 should be paid from the pooled account until properties are sold. Continuing to pay  
26 carrying costs on a GP-by-GP basis would be inconsistent with the One Pot  
27 Approach. These steps would have the added benefits of stabilizing the properties,  
28

1 avoiding default penalties and interest pending sale, and eliminating administrative  
2 costs associated with collecting investor note payments and GP note payments.

3 **IV. CLAIM PROCEDURES**

4 Finally, procedures for the administration of investor claims should be  
5 established so that there is no confusion concerning the proper calculation of  
6 investor distributions. For the past three years, the Receiver has provided a K-1 tax  
7 statement to each investor that lists the total amount each investor has contributed to  
8 his or her GP. No investors have questioned the accuracy of these statements. In  
9 addition, investors have never received distributions from Western or their GPs  
10 (except as noted below), making the calculation relatively straight forward.  
11 Accordingly, the Receiver does not believe a lengthy claims process is necessary.

12 Instead, the Receiver proposes investors be sent a letter along with their  
13 2015 K-1 statement. The letter will inform investors that if they dispute the amount  
14 on their K-1, as adjusted to account for any unpaid note balances or other  
15 delinquencies<sup>4</sup> (which amount will be used to determine their claim), they must  
16 respond in writing within 30 days, state the nature of their dispute, and provide  
17 documentation supporting their position. The Receiver will consider all such  
18 responses, attempt to resolve disputes with applicable investors, and if a resolution  
19 cannot be reached, file a motion requesting the Court determine the applicable  
20 claims. The Receiver will then file a schedule of allowed claim amounts for each  
21 investor. This abbreviated claims process will effectively resolve any and all claim  
22 disputes while minimizing administrative expenses.

23  
24

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25 <sup>4</sup> Amounts reported on investor K-1s do not always correspond to actual payments  
26 investors have made to their GPs. This is because investors who financed their  
27 notes are given credit for purchasing their GP units in full even though they have  
28 only partially paid for them and continue to owe monthly payments. The claim  
amounts contained in letters to investors, however, will subtract unpaid balances  
on investor notes and therefore reflect the actual total paid by investors to their  
GPs.

1 It should be noted that investors in the four GPs that own the Dayton III  
2 property – Gold Ridge, Sky View, Grand View, and Rolling Hills – previously  
3 received a distribution when a portion of the Dayton III property was taken by  
4 eminent domain. The four GPs each received a cash payment from the award in the  
5 eminent domain action and, after reserving a portion of the cash payment in the GP  
6 accounts, each GP distributed the remainder to its investors in accordance with their  
7 GP units.

8 Additionally, investors in Park Vegas, Production, and Silver State, each of  
9 which owns a separate property grouped together under the name Las Vegas 1 also  
10 received pre-receivership distributions from their GPs. These three GPs each  
11 separately sold their properties to buyers with seller financing. The buyers later  
12 defaulted on the loans and the three GPs took back the properties through separate  
13 foreclosures.

14 In cases in which the assets of the receivership estate are insufficient to pay  
15 investor direct losses, the appropriate method of calculating investor claims is the  
16 amount invested in the enterprise, less the amount received on account of the  
17 investment (also known as "money in, money out"). *See Capital Consultants*,  
18 397 F.3d at 738 (describing a net claim calculation as "an administratively workable  
19 and equitable method of allocating the limited assets of the receivership");  
20 *Topworth*, 205 F.3d at 1116. Accordingly, any and all distributions or other  
21 amounts investors received from their GPs or Western prior to the receivership  
22 should be deducted from their claims such that their claim amounts reflect their  
23 actual net losses from their investments.

24 Finally, for the reason discussed above, investor claims should not include  
25 amounts above and beyond their direct net losses. Indirect losses or consequential  
26 damages, such as interest, attorney fees, IRA fees, opportunity costs, and other fees  
27 or costs investors may have incurred should not be added to allowed claims. The  
28 assets of the receivership estate are woefully insufficient to pay investor direct

1 losses, so allowing investors to tack on claims for additional indirect losses is not  
2 appropriate. Moreover, the need to review and object to such claims would  
3 unnecessarily increase administrative expenses.

4 **V. CONCLUSION**

5 For the reasons discussed above, the Receiver requests that the Court issue an  
6 order (a) authorizing all GP properties to be moved to the previously approved  
7 orderly sale process, to be sold pursuant to the steps of that process, subject to final  
8 Court approval of all sales, (b) approving the One Pot Approach to distributing  
9 receivership assets, as described above, (c) approving the Distribution Plan attached  
10 hereto as Exhibit E, and (d) approving the proposed procedures for the  
11 administration of investor claims, as described above.

12  
13 Dated: February 4, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

14  
15 By:           /s/ Ted Fates          

TED FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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# EXHIBIT A

# EXHIBIT A

	Markup Analysis			Land Value Analysis	
	Price at Which Western Purchased Land	Price at Which GPs Purchased Land From Western	Markup Percent	2013 Appraised Value	2015 Appraised/ Estimated Value
<b>Properties with Little/No Value Appreciation</b>					
<b>Dayton Valley II</b>					
Comstock Partners	450,000	2,214,500	392%	25,000	47,500
Nevada View Partners	450,000	2,349,400	422%	25,000	47,500
Silver City Partners	450,000	2,280,900	407%	25,000	47,500
Storey County Partners	450,000	2,150,000	378%	25,000	47,500
<b>Total</b>	<b>1,800,000</b>	<b>8,994,800</b>	<b>400%</b>	<b>100,000</b>	<b>190,000</b>
<b>Dayton Valley III</b>					
Gold Ridge Partners	451,156	2,483,760	451%	12,500	15,000
Grand View Partners	451,156	2,635,100	484%	12,500	15,000
Rolling Hills Partners	451,156	2,714,200	502%	12,500	15,000
Sky View Partners	451,156	2,558,300	467%	12,500	15,000
<b>Total</b>	<b>1,804,625</b>	<b>10,391,360</b>	<b>476%</b>	<b>50,000</b>	<b>60,000</b>
<b>Dayton Valley IV</b>					
Eagle View Partners	532,736	5,547,100	941%	40,000	55,000
Falcon Heights Partners	532,736	5,713,500	972%	40,000	55,000
Night Hawk Partners	532,736	5,884,900	1005%	40,000	55,000
Osprey Partners	532,736	6,061,500	1038%	40,000	55,000
<b>Total</b>	<b>2,130,943</b>	<b>23,207,000</b>	<b>989%</b>	<b>160,000</b>	<b>220,000</b>
<b>Fernley I</b>					
Crystal Clearwater Partners	229,500	1,620,000	606%	115,000	105,000
High Desert Partners	229,500	1,650,500	619%	115,000	105,000
<b>Total</b>	<b>459,000</b>	<b>3,270,500</b>	<b>613%</b>	<b>230,000</b>	<b>210,000</b>
<b>Silver Springs North</b>					
Highway 50 Partners	340,688	2,036,800	498%	90,000	80,000
North Springs Partners	340,688	1,920,000	464%	90,000	80,000
Orange Vista Partners	340,688	2,097,900	516%	90,000	80,000
Rawhide Partners	340,688	1,977,500	480%	90,000	80,000
<b>Total</b>	<b>1,362,750</b>	<b>8,032,200</b>	<b>489%</b>	<b>360,000</b>	<b>320,000</b>

	Markup Analysis			Land Value Analysis	
	Price at Which Western Purchased Land	Price at Which GPs Purchased Land From Western	Markup Percent	2013 Appraised Value	2015 Appraised/ Estimated Value
<b>Silver Springs South</b>					
Lahontan Partners	614,250	3,014,450	391%	75,000	110,000
Rail Road Partners	614,250	2,758,600	349%	75,000	110,000
Spruce Heights Partners	614,250	2,841,400	363%	75,000	110,000
Vista Del Sur Partners	614,250	2,926,650	376%	75,000	110,000
<b>Total</b>	2,457,000	11,541,100	370%	300,000	440,000
<b>Stead</b>					
P-39 Aircobra Partners	461,962	2,504,300	442%	98,750	105,000
P-40 Warhawk Partners	461,962	2,579,400	458%	98,750	105,000
F-86	461,962	966,238	109%	-	-
P-51 LLC	461,962	-	-	197,500	210,000
<b>Total</b>	1,847,848	6,049,938	227%	395,000	420,000
<b>Tecate</b>					
ABL Partners	unknown	1,433,000	unknown	111,000	90,000
Mex-Tec Partners	unknown	1,576,300	unknown	111,000	90,000
<b>Total</b>	unknown	3,009,300	unknown	222,000	180,000
Borderland Partners	unknown	1,173,500	unknown	107,500	61,928
Prosperity Partners	unknown	1,197,000	unknown	107,500	61,928
<b>Total</b>	unknown	2,370,500	unknown	215,000	123,856
Free Trade Partners	217,500	1,050,000	383%	105,667	60,319
SunTec Partners	217,500	875,000	302%	105,667	60,319
Via 188 Partners	217,500	780,500	259%	105,667	60,319
<b>Total</b>	652,500	2,705,500	315%	317,000	180,957
International Partners	142,500	704,000	394%	77,000	59,835
Tecate South Partners	unknown	969,600	unknown	104,000	59,884
Twin Plant Partners	unknown	1,090,000	unknown	125,000	39,607
Vista Tecate Partners	unknown	940,000	unknown	96,000	42,856
<b>Total All Properties</b>	unknown	11,788,900	unknown	1,156,000	686,995



	Markup Analysis			Land Value Analysis	
	Price at Which Western Purchased Land	Price at Which GPs Purchased Land From Western	Markup Percent	2013 Appraised Value	2015 Appraised/ Estimated Value
<b>Washoe County 1</b>					
Reno Partners	unknown	771,750	unknown	50,000	32,250
Reno View Partners	unknown	756,000	unknown	50,000	33,700
Reno Vista Partners	unknown	441,000	unknown	50,000	22,250
<b>Total</b>	unknown	1,968,750	unknown	150,000	88,200
<b>Washoe IV</b>					
Galena Ranch Partners	295,000	1,870,470	534%	93,750	87,500
Redfield Heights Partners	295,000	1,926,590	553%	93,750	87,500
Rose Vista Partners	295,000	1,763,000	498%	93,750	87,500
Steamboat Partners	295,000	1,815,890	516%	93,750	87,500
<b>Total</b>	1,180,000	7,375,950	525%	375,000	350,000
<b>Washoe County 5</b>					
Frontage 177 Partners	266,655	1,464,800	449%	90,000	120,000
Pyramid Highway 177 Partners	266,655	1,422,200	433%	90,000	120,000
<b>Total</b>	533,310	2,887,000	441%	180,000	240,000
<b>Yuma I</b>					
Gila View Partners	126,667	1,470,500	1061%	88,333	51,000
Painted Desert Partners	126,667	1,514,615	1096%	88,333	51,000
Snow Bird Partners	126,667	1,560,100	1132%	88,333	51,000
<b>Total</b>	380,000	4,545,215	1096%	265,000	153,000
<b>Yuma II</b>					
Desert View Partners	94,183	1,642,000	1643%	68,750	48,750
Mesa View Partners	94,183	1,739,000	1746%	68,750	48,750
Road Runner Partners	94,183	1,789,700	1800%	68,750	48,750
Sonora View Partners	94,183	1,689,800	1694%	68,750	48,750
<b>Total</b>	376,731	6,860,500	1721%	275,000	195,000
<b>Yuma III</b>					
Cactus Ridge Partners	493,818	1,786,100	262%	35,250	39,905
Mohawk Mountain Partners	493,818	1,839,700	273%	35,250	39,905
Mountain View Partners	493,818	1,683,600	241%	35,250	39,905
Ocotillo View Partners	493,818	1,734,100	251%	35,250	39,905
<b>Total</b>	1,975,270	7,043,500	257%	141,000	159,620
<b>Total</b>				<b>4,137,000</b>	<b>3,732,815</b>

Markup Analysis			Land Value Analysis	
Price at Which Western Purchased Land	Price at Which GPs Purchased Land From Western	Markup Percent	2013 Appraised Value	2015 Appraised/ Estimated Value

**Properties with Value Appreciation**

**Bratton Valley**

Bratton View Partners	unknown	755,400	unknown	68,667	270,236
Honey Springs Partners	unknown	841,000	unknown	68,667	243,094
Valley Vista Partners	unknown	740,000	unknown	68,667	243,218
<b>Total</b>	unknown	2,336,400	unknown	206,000	756,548

**Dayton Valley I**

Dayton View Partners	270,000	1,636,000	506%	50,000	90,000
Fairway Partners	270,000	1,685,100	524%	50,000	90,000
Green View Partners	270,000	1,735,700	543%	50,000	90,000
Par Four Partners	270,000	1,787,800	562%	50,000	90,000
<b>Total</b>	1,080,000	6,844,600	534%	200,000	360,000

**Jamul Valley**

Hidden Hills Partners	unknown	809,700	unknown	131,667	173,460
Jamul Meadows Partners	unknown	734,400	unknown	131,667	173,460
Lyons Valley Partners	unknown	771,100	unknown	131,667	173,460
<b>Total</b>	unknown	2,315,200	unknown	395,000	520,380

**Las Vegas 1**

Park Vegas Partners	1	unknown	300,000	unknown	665,000	925,000
Production Partners	1	unknown	1,050,000	unknown	2,700,000	3,300,000
Silver State Partners	1	unknown	430,000	unknown	740,000	1,050,000
<b>Total</b>		unknown	1,780,000	unknown	4,105,000	5,275,000

**Las Vegas 2**

Horizon Partners		316,759	756,500	139%	472,500	687,500
Rainbow Partners		316,759	715,250	126%	472,500	687,500
<b>Total</b>		633,517	1,471,750	132%	945,000	1,375,000

**LV Kade**

BLA Partners		unknown	1,887,000	unknown	1,027,500	2,065,000
Checkered Flag Partners		unknown	1,957,000	unknown	1,027,500	2,065,000
Hollywood Partners		unknown	1,850,000	unknown	1,027,500	2,065,000
Victory Lap Partners		unknown	2,321,000	unknown	1,027,500	2,065,000
<b>Total</b>		unknown	8,015,000	unknown	4,110,000	8,260,000

	Markup Analysis			Land Value Analysis	
	Price at Which Western Purchased Land	Price at Which GPs Purchased Land From Western	Markup Percent	2013 Appraised Value	2015 Appraised/ Estimated Value
<b>Minden</b>					
Carson Valley Partners	225,000	1,182,300	425%	250,000	450,000
Heavenly View Partners	225,000	1,217,800	441%	250,000	450,000
Pine View Partners	225,000	1,291,900	474%	250,000	450,000
Sierra View Partners	225,000	1,254,300	457%	250,000	450,000
<b>Total</b>	900,000	4,946,300	450%	1,000,000	1,800,000
<b>Santa Fe</b>					
Pecos Partners	500,000	2,851,500	470%	210,000	273,333
Pueblo Partners	500,000	2,768,400	454%	210,000	273,333
Santa Fe View Partners	500,000	2,687,800	438%	210,000	273,334
<b>Total</b>	1,500,000	8,307,700	454%	630,000	820,000
<b>Washoe County 3</b>					
Antelope Springs Partners	447,500	1,968,450	340%	175,000	240,000
Spanish Springs View Partners	447,500	1,911,000	327%	175,000	240,000
Big Ranch Partners	231,000	2,088,450	804%	125,000	230,000
Wild Horse Partners	231,000	2,027,504	778%	125,000	230,000
<b>Total</b>	1,357,000	7,995,404	489%	600,000	940,000
<b>Total</b>				12,191,000	20,106,928
<b>Grand Total</b>				<b>16,328,000</b>	<b>23,839,743</b>

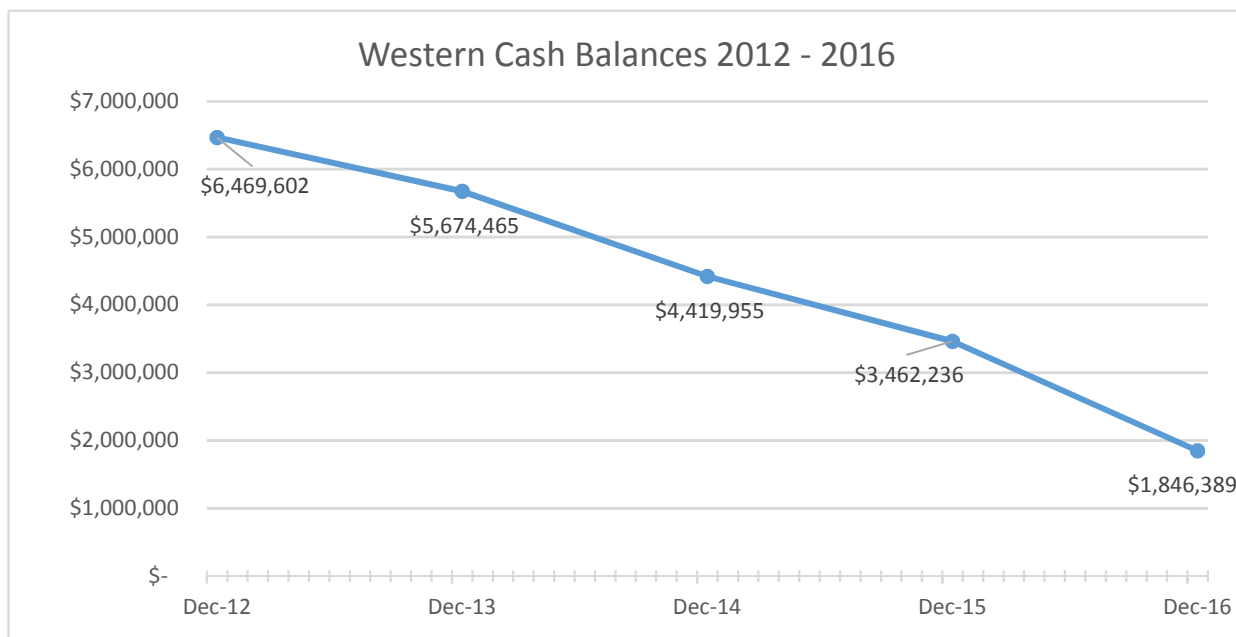
<sup>1</sup> Property is individually owned by GP and is not part of a co-tenancy.

# EXHIBIT B

# EXHIBIT B

### Cash Balances in GP Accounts Starting September 6, 2012

9/6/2012	\$	6,592,470
Dec-12	\$	6,469,602
Dec-13	\$	5,674,465
Dec-14	\$	4,419,955
Dec-15	\$	3,462,236
Dec-16	\$	1,846,389



# EXHIBIT C

# EXHIBIT C

### ORDERLY SALE PROCESS

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

# EXHIBIT D

# EXHIBIT D



## PROJECTED RECOVERIES FOR INVESTORS UNDER ONE POT AND TWO TIER APPROACHES

	Total Amount Invested	One Pot Distribution		Two Tier Distribution	
		Projected Amount to be Distributed	Projected Percentage Recovery for Investors	Projected Amount to be Distributed	Projected Percentage Recovery for Investors
<b>Bratton Valley</b>					
Bratton View Partners	885,696	118,659	13.40%	197,943	22.35%
Honey Springs Partners	1,119,387	149,967	13.40%	152,253	13.60%
Valley Vista Partners	902,678	120,934	13.40%	208,696	23.12%
<b>Total</b>	<b>2,907,762</b>	<b>389,559</b>	<b>13.40%</b>	<b>558,892</b>	<b>19.22%</b>
<b>Dayton Valley I</b>					
Dayton View Partners	1,635,830	219,156	13.40%	119,783	7.32%
Fairway Partners	1,684,804	225,717	13.40%	125,744	7.46%
Green View Partners	1,735,437	232,500	13.40%	130,331	7.51%
Par Four Partners	1,787,475	239,472	13.40%	128,432	7.19%
<b>Total</b>	<b>6,843,546</b>	<b>916,844</b>	<b>13.40%</b>	<b>504,289</b>	<b>7.37%</b>
<b>Dayton Valley II</b>					
Comstock Partners	2,214,392	296,667	13.40%	116,649	5.27%
Nevada View Partners	2,370,035	317,518	13.40%	40,953	1.73%
Silver City Partners	2,280,811	305,565	13.40%	80,997	3.55%
Storey County Partners	2,149,930	288,031	13.40%	124,589	5.80%
<b>Total</b>	<b>9,015,168</b>	<b>1,207,781</b>	<b>13.40%</b>	<b>363,188</b>	<b>4.03%</b>
<b>Dayton Valley III</b>					
Gold Ridge Partners	2,483,448	332,713	13.40%	186,735	7.52%
Grand View Partners	2,634,132	352,900	13.40%	206,241	7.83%
Rolling Hills Partners	2,713,311	363,508	13.40%	215,078	7.93%
Sky View Partners	2,557,847	342,680	13.40%	232,570	9.09%
<b>Total</b>	<b>10,388,738</b>	<b>1,391,801</b>	<b>13.40%</b>	<b>840,624</b>	<b>8.09%</b>
<b>Dayton Valley IV</b>					
Eagle View Partners	5,544,907	742,863	13.40%	161,736	2.92%
Falcon Heights Partners	5,711,878	765,232	13.40%	136,570	2.39%
Night Hawk Partners	5,883,431	788,215	13.40%	197,906	3.36%
Osprey Partners	6,049,618	810,480	13.40%	193,286	3.20%
<b>Total</b>	<b>23,189,834</b>	<b>3,106,790</b>	<b>13.40%</b>	<b>689,498</b>	<b>2.97%</b>
<b>Fernley I</b>					
Crystal Clearwater Partners	1,619,423	216,957	13.40%	110,757	6.84%
High Desert Partners	1,649,816	221,029	13.40%	65,022	3.94%
<b>Total</b>	<b>3,269,239</b>	<b>437,987</b>	<b>13.40%</b>	<b>175,779</b>	<b>5.38%</b>
<b>Jamul Valley</b>					
Hidden Hills Partners	1,005,016	134,644	13.40%	7,549	0.75%
Jamul Meadows Partners	917,523	122,922	13.40%	133,023	14.50%
Lyons Valley Partners	984,985	131,960	13.40%	7,399	0.75%
<b>Total</b>	<b>2,907,524</b>	<b>389,527</b>	<b>13.40%</b>	<b>147,971</b>	<b>5.09%</b>
<b>Las Vegas 1</b>					
Park Vegas Partners	402,172	53,880	13.40%	780,487	194.07%
Production Partners	1,360,689	182,294	13.40%	2,635,250	193.67%
Silver State Partners	550,976	73,815	13.40%	814,649	147.86%
<b>Total</b>	<b>2,313,837</b>	<b>309,989</b>	<b>13.40%</b>	<b>4,230,387</b>	<b>182.83%</b>

	Total Amount Invested	One Pot Distribution		Two Tier Distribution	
		Projected Amount to be Distributed	Projected Percentage Recovery for Investors	Projected Amount to be Distributed	Projected Percentage Recovery for Investors
<b>Las Vegas 2</b>					
Horizon Partners	894,601	119,851	13.40%	485,809	54.30%
Rainbow Partners	870,818	116,665	13.40%	522,349	59.98%
<b>Total</b>	<b>1,765,419</b>	<b>236,517</b>	<b>13.40%</b>	<b>1,008,158</b>	<b>57.11%</b>
<b>LV Kade</b>					
BLA Partners	2,056,920	275,570	13.40%	1,873,387	91.08%
Checkered Flag Partners	2,103,065	281,752	13.40%	1,854,281	88.17%
Hollywood Partners	1,998,934	267,801	13.40%	1,833,610	91.73%
Victory Lap Partners	2,453,938	328,759	13.40%	1,794,268	73.12%
<b>Total</b>	<b>8,612,856</b>	<b>1,153,882</b>	<b>13.40%</b>	<b>7,355,547</b>	<b>85.40%</b>
<b>Minden</b>					
Carson Valley Partners	1,186,336	158,936	13.40%	418,166	35.25%
Heavenly View Partners	1,221,801	163,687	13.40%	388,544	31.80%
Pine View Partners	1,291,852	173,072	13.40%	407,364	31.53%
Sierra View Partners	1,254,172	168,024	13.40%	404,418	32.25%
<b>Total</b>	<b>4,954,161</b>	<b>663,719</b>	<b>13.40%</b>	<b>1,618,492</b>	<b>32.67%</b>
<b>Santa Fe</b>					
Pecos Partners	2,841,623	380,698	13.40%	97,985	3.45%
Pueblo Partners	2,767,231	370,732	13.40%	147,937	5.35%
Santa Fe View Partners	2,687,275	360,020	13.40%	45,743	1.70%
<b>Total</b>	<b>8,296,129</b>	<b>1,111,449</b>	<b>13.40%</b>	<b>291,665</b>	<b>3.52%</b>
<b>Silver Springs North</b>					
Highway 50 Partners	2,036,503	272,834	13.40%	15,297	0.75%
North Springs Partners	1,919,082	257,103	13.40%	112,757	5.88%
Orange Vista Partners	2,096,739	280,904	13.40%	131,646	6.28%
Rawhide Partners	1,976,827	264,840	13.40%	120,689	6.11%
<b>Total</b>	<b>8,029,151</b>	<b>1,075,682</b>	<b>13.40%</b>	<b>380,389</b>	<b>4.74%</b>
<b>Silver Springs South</b>					
Lahontan Partners	3,014,249	403,825	13.40%	192,843	6.40%
Rail Road Partners	2,758,042	369,501	13.40%	200,288	7.26%
Spruce Heights Partners	2,839,880	380,465	13.40%	203,008	7.15%
Vista Del Sur Partners	2,926,418	392,058	13.40%	159,396	5.45%
<b>Total</b>	<b>11,538,589</b>	<b>1,545,848</b>	<b>13.40%</b>	<b>755,536</b>	<b>6.55%</b>
<b>Stead</b>					
P-39 Aircobra Partners	2,504,015	335,468	13.40%	110,983	4.43%
P-40 Warhawk Partners	2,578,827	345,491	13.40%	145,165	5.63%
F-86	966,239	129,449	13.40%	72,131	7.47%
P-51 LLC	-	-	0.00%	-	0.00%
<b>Total</b>	<b>6,049,081</b>	<b>810,408</b>	<b>13.40%</b>	<b>328,278</b>	<b>5.43%</b>

	Total Amount Invested	One Pot Distribution		Two Tier Distribution	
		Projected Amount to be Distributed	Projected Percentage Recovery for Investors	Projected Amount to be Distributed	Projected Percentage Recovery for Investors
<b>Tecate</b>					
ABL Partners	1,528,080	204,720	13.40%	100,515	6.58%
Mex-Tec Partners	1,659,977	222,390	13.40%	117,831	7.10%
	3,188,056	427,110	13.40%	218,345	6.85%
Borderland Partners	1,277,140	171,101	13.40%	42,611	3.34%
Prosperity Partners	1,328,308	177,956	13.40%	9,977	0.75%
	2,605,448	349,057	13.40%	52,588	2.02%
Free Trade Partners	1,144,903	153,385	13.40%	47,218	4.12%
SunTec Partners	1,024,197	137,214	13.40%	7,693	0.75%
Via 188 Partners	891,438	119,428	13.40%	47,286	5.30%
	3,060,539	410,027	13.40%	102,197	3.34%
International Partners	968,755	129,786	13.40%	7,277	0.75%
Tecate South Partners	1,134,020	151,927	13.40%	43,621	3.85%
Twin Plant Partners	1,330,519	178,252	13.40%	9,994	0.75%
Vista Tecate Partners	1,069,168	143,239	13.40%	24,556	2.30%
<b>Total</b>	<b>13,356,506</b>	<b>1,789,398</b>	<b>13.40%</b>	<b>458,577</b>	<b>3.43%</b>
<b>Washoe County 1</b>					
Reno Partners	859,152	115,102	13.40%	6,453	0.75%
Reno View Partners	826,152	110,681	13.40%	33,148	4.01%
Reno Vista Partners	508,425	68,115	13.40%	3,819	0.75%
<b>Total</b>	<b>2,193,728</b>	<b>293,898</b>	<b>13.40%</b>	<b>43,420</b>	<b>1.98%</b>
<b>Washoe County 3</b>					
Antelope Springs Partners	2,077,181	278,284	13.40%	222,747	10.72%
Spanish Springs View Partners	1,999,491	267,876	13.40%	205,238	10.26%
Big Ranch Partners	2,182,869	292,443	13.40%	145,486	6.66%
Wild Horse Partners	2,152,315	288,350	13.40%	207,356	9.63%
<b>Total</b>	<b>8,411,856</b>	<b>1,126,954</b>	<b>13.40%</b>	<b>780,826</b>	<b>9.28%</b>
<b>Washoe IV</b>					
Galena Ranch Partners	1,870,157	250,549	13.40%	200,727	10.73%
Redfield Heights Partners	1,925,232	257,927	13.40%	162,794	8.46%
Rose Vista Partners	1,762,523	236,129	13.40%	126,588	7.18%
Steamboat Partners	1,815,651	243,246	13.40%	158,964	8.76%
<b>Total</b>	<b>7,373,563</b>	<b>987,851</b>	<b>13.40%</b>	<b>649,074</b>	<b>8.80%</b>
<b>Washoe County 5</b>					
Frontage 177 Partners	1,464,123	196,152	13.40%	37,949	2.59%
Pyramid Highway 177 Partners	1,421,620	190,457	13.40%	60,964	4.29%
<b>Total</b>	<b>2,885,743</b>	<b>386,609</b>	<b>13.40%</b>	<b>98,913</b>	<b>3.43%</b>

	Total Amount Invested	One Pot Distribution		Two Tier Distribution	
		Projected Amount to be Distributed	Projected Percentage Recovery for Investors	Projected Amount to be Distributed	Projected Percentage Recovery for Investors
<b>Yuma I</b>					
Gila View Partners	1,475,742	197,708	13.40%	36,695	2.49%
Painted Desert Partners	1,518,964	203,499	13.40%	49,836	3.28%
Snow Bird Partners	1,559,914	208,985	13.40%	24,786	1.59%
<b>Total</b>	<b>4,554,620</b>	<b>610,192</b>	<b>13.40%</b>	<b>111,317</b>	<b>2.44%</b>
<b>Yuma II</b>					
Desert View Partners	1,641,732	219,946	13.40%	16,941	1.03%
Mesa View Partners	1,738,395	232,896	13.40%	93,878	5.40%
Road Runner Partners	1,788,674	239,632	13.40%	111,670	6.24%
Sonora View Partners	1,688,527	226,215	13.40%	97,338	5.76%
<b>Total</b>	<b>6,857,328</b>	<b>918,690</b>	<b>13.40%</b>	<b>319,828</b>	<b>4.66%</b>
<b>Yuma III</b>					
Cactus Ridge Partners	1,785,864	239,256	13.40%	13,414	0.75%
Mohawk Mountain Partners	1,839,475	246,438	13.40%	13,817	0.75%
Mountain View Partners	1,683,201	225,502	13.40%	12,643	0.75%
Ocotillo View Partners	1,733,607	232,255	13.40%	54,305	3.13%
<b>Total</b>	<b>7,042,147</b>	<b>943,451</b>	<b>13.40%</b>	<b>94,179</b>	<b>1.34%</b>
	<b>162,756,525</b>	<b>21,804,826</b>	<b>13.40%</b>	<b>21,804,826</b>	<b>13.40%</b>

# EXHIBIT E

# EXHIBIT E

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6 Attorneys for Receiver  
7 THOMAS C. HEBRANK

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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No. 3:12-cv-02164-GPC-JMA  
**DISTRIBUTION PLAN**

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

1 Thomas C. Hebrank ("Receiver"), the Court-appointed permanent receiver for  
2 First Financial Planning Corporation d/b/a Western Financial Planning Corporation,  
3 its subsidiaries, and the General Partnerships listed in Schedule 1 to the Preliminary  
4 Injunction Order entered on March 13, 2013, Dkt. No. 174, (collectively,  
5 "Receivership Entities"), hereby submits this Distribution Plan.

## 6 I. INTRODUCTION

7 This Distribution Plan, when approved by the Court, will be the vehicle by  
8 which Allowed Claims against the Receivership Entities are satisfied. Further  
9 information about the Receivership Case and distribution of Receivership Estate  
10 assets proposed herein is contained in the Receiver's Notice of Motion and Motion  
11 for (A) Authority to Conduct Orderly Sale of General Partnership Properties,  
12 (B) Determination of Plan of Distributing Receivership Assets, and (C) Approval of  
13 Procedures for the Administration of Investor Claims; Memorandum of Points and  
14 Authorities.

## 15 II. DEFINITIONS

16 Unless the context otherwise requires, the following terms have the following  
17 meanings when used in their capitalized forms herein. Such meanings are equally  
18 applicable to both the singular and plural forms of the terms.

19 **Administrative Claim.** Claims for goods or services provided to the  
20 Receivership Entities pursuant to the Court's orders and/or the authority granted to  
21 the Receiver under such orders, including services rendered by the Receiver or for  
22 the Receiver by attorneys and accountants, and goods and services provided by  
23 vendors during the receivership.

24 **Allowed Claim.** Any Claim allowed by the Court pursuant to an order  
25 entered in the Receivership Case.

26 **Cash.** All cash and cash equivalents of the Receivership Entities held by the  
27 Receiver.

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1 Estate shall be paid by the Receiver in the ordinary course, without approval of the  
2 Court. Upon entry of an order by the Court, Reserve Cash shall be established in an  
3 amount approved by the Court. Administrative Claims arising on and after approval  
4 of the Reserve Cash amount, after proper application and approval by the Court,  
5 shall be paid directly from Reserve Cash.

6 **B. Allowed Claims**

7 Investor Claims shall be determined by the total payments made by each  
8 investor to the Receivership Entities, less all payments received by each investor  
9 from the Receivership Entities. Amounts paid to the Receivership Entities after the  
10 Receivership Date shall be included in Investor Claims. Non-Investor Claims, if  
11 any, will be determined by the amounts owed for goods or services provided prior to  
12 the Receivership Date (not including late charges, penalties, interest, attorney fees,  
13 or any other amounts not directly related to goods or services provided), less  
14 amounts paid for such goods or services.

15 After all Administrative Claims have been paid in full, all Claimants shall  
16 receive Cash in an amount equal to such Claimant's Pro Rata Share of total Cash to  
17 be distributed to all Allowed Claims. Unless subordinated by the Court, Non-  
18 Investor Claims shall also receive a Pro Rata Share of total Cash to be distributed to  
19 all Allowed Claims.

20 **IV. DISTRIBUTIONS**

21 **A. Distribution Payments**

22 Allowed Claimants shall be paid from Cash other than Reserve Cash as soon  
23 as practicable after the Court has entered orders approving this Distribution Plan,  
24 setting the allowed amount of all Claims, and authorizing the Receiver to make  
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1 interim distributions ("Approval Orders"). Claimants shall receive an initial  
2 Pro Rata Share distribution from Cash other than Reserve Cash as soon as  
3 practicable after the Court has entered the Approval Orders. All distributions shall  
4 be made in Cash in the form of a check in U.S. dollars. Unless the Claimant  
5 requests otherwise, Distributions shall be directed to the name and address contained  
6 in the records of the Receivership Entities or provided to the Receiver in writing by  
7 the Claimant.

8 In his discretion, the Receiver may apply for authority to make interim  
9 distributions. The total amount to be distributed in interim distributions and the total  
10 amount to be held in Reserve Cash will be determined by the Court.

11 At or near the conclusion of the Receivership Case, the Receiver shall seek  
12 final approval of all fees and costs incurred by himself and his professionals,  
13 approval of a specified amount of Reserve Cash necessary to close the Receivership  
14 Case, and authority to make a final distribution of all remaining Cash in the  
15 Receivership Estate.

16 **B. Uncashed Distributions**

17 The Receiver shall conduct a reasonable investigation into distribution  
18 payments that remain uncashed 90 days after they were issued for the purpose of  
19 identifying correct addresses for the applicable Claimants. If a correct address can  
20 be identified, the payment shall be reissued as soon as practicable. If a correct  
21 address cannot be identified, the Claimant's Claim will be automatically and  
22 permanently extinguished. Any funds remaining in receivership accounts 120 days  
23 after all final distribution checks have been issued shall be transferred to the  
24 Commission.

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**V. RETENTION OF JURISDICTION**

The Court shall have and retain exclusive jurisdiction of matters arising out of, and related to the Receivership Case and the Distribution Plan, among other things, for the following purposes:

1. To consider any modifications to the Distribution Plan, to cure any defect or omission, or reconcile any inconsistency in the Distribution Plan or any order of the Court;
2. To hear and determine any objection or other dispute with respect to Claims;
3. To protect the property of the Receivership Estate from adverse Claims or interference inconsistent with the Distribution Plan;
4. To issue such orders in aid of execution of the Distribution Plan as may be necessary and appropriate;
5. To hear and determine all applications for compensation and reimbursement of expenses of the Receiver and his professionals;
6. To recover all assets of the Receivership Estate, wherever located;
7. To hear and determine all litigation, causes of action and all controversies, suits, and disputes that may arise in connection with the interpretation, implementation, or enforcement of the Distribution Plan; and
8. To enter a Final Decree closing the Receivership Case and discharging the Receiver.

**VI. MISCELLANEOUS PROVISIONS**

The Distribution Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Distribution Plan. The headings used herein are inserted for convenience only and

1 neither constitute a portion of the Distribution Plan nor in any manner shall affect  
2 the provisions or interpretation(s) of the Distribution Plan. All notices, requests, and  
3 demands to or upon the Receiver to be effective shall be in writing (including,  
4 without limitation, by email or facsimile transmission) addressed as follows:

5 Thomas C. Hebrank, Receiver  
6 401 West A Street, Suite 1830  
7 San Diego, California 92101

8 with a copy to:

9 Ted Fates, Esq.  
10 Allen Matkins Leck Gamble  
11 Mallory & Natsis LLP  
12 501 West Broadway, 15th Floor  
13 San Diego, California 92101-3541

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Dated: February 4, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Ted Fates            
TED FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK