No. 16-55850

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. SECURITIES & EXCHANGE COMMISSION,
Plaintiff – Appellee,

v.

LOUIS V. SCHOOLER; FIRST FINANCIAL PLANNING CORPORATION,
DBA Western Financial Planning Corporation,
Defendants – Appellees,

SUSAN GRAHAM, ET AL.
Intervenors – Appellants,

THOMAS C. HEBRANK,
Receiver – Appellee.

On appeal from the United States District Court
for the southern District of California, Case No. 3:12-cv-02164-GPC-JMA

APPELLANTS' REPLY TO RECEIVER'S OPPOSITION TO URGENT MOTION UNDER CIRCUIT RULE 27-3(b) FOR STAY PENDING APPEAL

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I. Introduction

This brief replies to several common contentions made by the receiver, Thomas Hebrank ("Hebrank"), and the Securities and Exchange Commission ("SEC"), as specified below and all other contentions made by Hebrank in opposition to the motion by Susan Graham and 191 investors ("Appellants"), who are listed on Attachment 1, for a stay pending appeal.

As an overview, Appellants contend the SEC and Hebrank are pressing to extend the frontiers of the SEC, its receivers, and the district court power in receivership cases beyond those defined by existing case law limiting subject matter jurisdiction, protecting investors' due process rights, and limiting the use pro rata distribution plans. Conceptually, it may be helpful to compare this case to the expansion of a cube. If each side of a three-inch cube is increased by one third, the volume of the cube increases from 27 cubic inches to 64. The SEC and Hebrank would realize the same expansion of power if the three parameters at issue in this case are extended as the SEC and Hebrank propose.

Worse yet, while arguing the expansion of the SEC, Hebrank, and the district court's power, the SEC and Hebrank also argue this Court should narrow its scope of jurisdiction. Appellants respectfully submit the stay must be issued so this Court can carefully consider the full scope of the power already granted to the SEC, Hebrank and the district court and whether any further expansion of that power is

warranted. This case strongly argues too much power has already been vested in those holding the controls in SEC receivership cases. This Court, the Second Circuit, and respected legal publications have spoken forcefully to the need to curb the runaway use of SEC receiverships as a substitute for bankruptcy. *SEC v. Lincoln Thrift Asso*., 577 F.2d 600 (9th Cir. 1978); *SEC v. Am. Bd. of Trade, Inc*., 830 F.2d 431, 437-438 (2d Cir. N.Y. 1987).[1]

II. This Court Has Jurisdiction over The Pending Appeals

Hebrank reargues this Court should narrow its jurisdiction a step beyond what it proposed in his motion to dismiss. In that motion, Hebrank argued the order approving his liquidation plan was not appealable, because it did not finally resolve "the disposition of any receivership asset." DE 3 at 6.[2] He now argues the Court should deny its jurisdiction to review the *final* confirmation of the Jamul Valley property sale, citing *SEC v. Am. Principals Holdings, Inc.*, 817 F.2d 1349, 1350 (9th Cir. 1987). *Am. Principals* does not deal with the sale of real property or anything else. It holds an "order of a payment to the receiver from assets of the leasing partnerships" is not appealable. *Id*., at 1350. But *Am. Principals* did cite *U.S. v. "A" Manufacturing Co.*, 541 F.2d 504 (5th Cir. 1976) "permitting appeal

[1] See also See also Megan E. Smith, Comment, *SEC Receivers and the Presumption of Innocence: The problem with Parallel Proceedings in Securities Cases and the Ever Increasing Powers of the Receivers*, 11 HOUS. BUS. & TAX L.J. 1, 203-31 (2011).

[2] "D." refers to the corresponding docket entry in *SEC v. Schooler*, No. 12-cv-02164 (S.D. Cal.); "D.E." refers to docket entries with this Court.

under 1292(a)(2) from an order confirming a sale of property by a receiver." See also *Am. Bd. of Trade*, 829 F.2d at 344 ("Certainly, an order confirming a judicial sale is final and appealable.") The May 25, 2016, order (D. 1304) is appealable just as this Court decided the order in *U.S. v. Elmore*, 437 Fed. Appx. 543, 545 (9th Cir. 2011) was appealable: There was "nothing to be done but to make the sale and pay out the proceeds."

III. Hebrank Does Not Oppose Treating This Motion as Urgent

Though Hebrank complains about the 30-day delay in Appellants' filing of a motion for a stay, he does not oppose treating it as urgent.

IV. Hebrank Does Not Oppose the Term of the Stay Requiring Him to Report Individual Transactions if the Stay Is Granted

Like the SEC, Hebrank opposes the motion for any stay. But he does not oppose the term of the stay requiring him to report his individual transactions. Again, the SEC's argument is academic, since Hebrank already has the duty to record his cash transactions.

V. Appellants Are Likely to Succeed on Appeal.

A. The District Court Lacks Subject Matter Jurisdiction over the GPs

Hebrank offers three reasons to further expand the district court's jurisdiction in SEC receivership cases. First, he argues Appellants are not "interested parties," as the district court held, because the GPs will not be dissolved. While it never used

the term "dissolve," his court-approved plan strips each GP of all its assets and redistributes the cash to strangers. It leaves each GP an empty shell.

Second, Hebrank argues the district court has territorial jurisdiction, because he filed notices pursuant to 28 U.S.C § 754. But Appellants dispute the district court's *subject matter* not its *territorial jurisdiction*. And those are different issues.

Finally, just as the SEC, Hebrank argues the district court had subject matter jurisdiction over the GPs, because the GP interests were held to be securities. As Appellants *repeatedly* argued to the district court and this Court, the *relevant* issue is whether Western controlled the GPs *when the SEC filed its complaint* (DE 5-1 at 8-11, 12 at 16, and 16-1 at 6-9), not whether the GP interests were securities when sold to investors. The refusal of the SEC and Hebrank to address the *relevant* issue and their insistence in arguing the *irrelevant* issue concedes the *relevant* issue. Also, Appellants submit Judge Burns correctly held Western lacked *de facto* control of the GPs at any time. D. 44 at 9-10. The GP agreement terms empowering investors are quoted in the Aguirre Declaration filed herewith, ¶¶ 4- 5, Ex. 2.

B. Appellants Were Denied Due Process (Notice)

Hebrank and the SEC claim the district court's equitable powers in an SEC receivership case trump Appellants' due process rights. According to them, due process is satisfied, because (1) dozens of the 3,370 investors sent letters to the

court, (2) Hebrank created a website, and (3) he sent some emails, two letters, and a postcard to investors. Appellants agree investors were told the receivership existed.

But the adequacy of notice raises a different issue: Did Hebrank apprise interested parties of the pendency of the action and afford them an opportunity to present their objections as *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and its progeny require? Two critical events required notice: (1) Hebrank's permanent appointment early in the case and (2) his liquidation plan. The SEC argues that due process has been satisfied "if the non-party owner receives actual notice and an opportunity for a hearing 'before a material deprivation of a property interest occur[s],'" citing *In re San Vicente Med. Partners Ltd.*), 962 F.2d 1402, 1407-08 (9th Cir. 1992). DE 13 at 12. But the SEC does not grasp the approximately 163 orders the district court issued over 45 months—all "binding" upon Appellants according to the SEC, Hebrank and the district court—had the same substantive effect on Appellants' rights as the single decision divesting them of their property. As discussed below, this is clearest in the SEC's and Hebrank's reliance on the district court's prior orders defending their "one pot" distribution plan, orders issued before Appellants were "heard."

Local Rule ("L.R.") 66.1 embeds due process early in receivership proceedings. To excuse the departure from L.R. 66.1, the SEC relies on *Prof'l Programs Grp v. Dep't of Commerce*, 29 F.3d 1349, 1353 (9th Cir. 1994): "Local rules have the

'force of law' and are binding upon the parties and upon the court, and a departure from local rules that affects 'substantial rights' requires reversal." DE 13 at 13. The departure from L.R. 66.1 cost investors two noticed hearings to challenge Hebrank's appointment within 60 days of the filing, before the issuance of 163 orders and before Hebrank spent $19 million of their money.

On September 6, 2012, as required by L.R. 66.1.a.2, the district court signed the SEC's proposed order setting a hearing for September 17, 2012, on Hebrank's permanent appointment and directed Hebrank to *give notice by certified mail to all partners* of that hearing. D. 10 at 20. Hebrank admits he had the addresses for all but 24 investors. D. 1393 at 2 and 1393-3 ¶ 5. The last day to send the notice was September 10, 2012. No notice was sent.

Within 30 days of his permanent appointment, L.R. 66.1.e required Hebrank to (1) file a report with the district court with his "recommendation as to the continuance of the receivership and the receiver's reasons" and (2) set a second hearing on his report with two-week's notice to all investors. Both orders—the one making his appointment permanent and the one refusing to terminate the receivership—are appealable under 28 U.S.C. § 1292(a)(2). We submit the departure from the terms of L.R. 66.1 affects investors' substantial rights.

The SEC correctly argues that its proposed 23-page order included a term complying with L.R. 66.1 setting the first hearing with notice by mail (before the

hearing) to all investors. However, the SEC did not provide this Court with the dialogue when the district court asked the SEC for guidance on the notice issue:

> **The Court**: The notice would be—if I sustain the injunction at this point or continue it on as a preliminary Injunction, the notice would be something to the effect that the court has determined that these may be securities and that there may be a requirement that they be registered before these investments can be made and has, therefore, issued an injunction?
> **Ms. White (SEC counsel)**: Actually, the notice issue for us refers to the receiver. Right now there is a temporary receiver in place. I didn't hear in your tentative what your intentions were with respect to the receiver. But if there is—if the court is going to make the receiver a permanent receiver, then notice needs to be given that the general partnerships have been placed in receivership. That is really the crux of our concern. And how that notice—what that looks like is not as significant as long as they know.

Reporter's Transcript Sep. 17, 2012, hearing at 51-52. This was the wrong answer. The SEC's counsel should have replied, "Judge, L.R. 66.1 requires all partners be given prior notice by mail of the hearing on the receiver's permanent appointment."

No notice of the two hearings was ever sent, because the hearings were never set. Instead, the district court issued 163 orders and held they bound Appellants. D. 1304 at 12. The summary proceeding on May 20, 2016, that divested Appellants of their property was far too little due process coming far too late.

The SEC argues the failures to comply with L.R. 66.1 should be excused, because the district court held a hearing two years later. By that time, it had issued 163 orders, which it held were all binding on investors. *Id*. Hebrank "served the notice" of the October 2014 hearing by email that failed to reach at least one third

of investors (D. 1393 at 10), but investors contend more than half got no notice. *Id*. At 11 and 1393-2 ¶ 8. The actual number is unknown, because Hebrank has never filed a proof of service. D. 1368-1 at 6 and 1368-2 ¶ 11. The procedure allowed only the GPs, controlled by Hebrank, to be heard and only in relation to the district court's tentative order whether the GPs could exit the receivership before the end of the case. Investors could file a short statement, but only if they disagreed with their GP. That notice itself required investors to analyze a nine-page order. (Aguirre Decl., ¶ 3, Ex. 1).

Others got even less due process than Appellants. In this regard, Hebrank has recently conceded his "email notices," including the one for the liquidation plan, did not reach one third of investors. D. 1393 at 10. Appellants contend more than half of investors received inadequate or no notice of Hebrank's plan. *Id*., at 11. Appellants in Case No. 16-56362 will seek a stay pending appeal if the district court denies their application for a stay, set for hearing on November 10, 2016.

C. Appellants were denied Due Process (Notice)

The issues raised by the oppositions were addressed in the opening brief.

D. The SEC and Hebrank's Defense of the "One Pot" Plan Misstates the Law and Facts

The SEC and Hebrank's arguments in support of the "one pot" plan rely on many "facts" supposedly decided by the district court in the 163 orders Appellants never had the opportunity to oppose, yet were bound by. D. 1304 at 12. Appellants pointed

out Hebrank and the SEC misstate these facts, e.g., the alleged scope of defendants' fraud. But there is a second issue. *San Vicente Med.* requires that "before a material deprivation of a property interest occur[s],'" 962 F.2d at 1407-08. Yet, the SEC and Hebrank argue orders by the district court may be used to strip Appellants of their property. It is exactly the same result. In this way the due process issues spill over into this issue and should preclude the use of such evidence to strip Appellants of the property rights.

Hebrank and the SEC ask this Court to approve their extension of *pro rata* distribution plans beyond the class of cases allowed by the Supreme Court in *Cunningham v. Brown*, 265 U.S. 1, 13 (1924) in holding: "when the fund with which the wrongdoer is dealing is wholly made up of the fruits of the frauds perpetrated against a myriad of victims." The SEC itself cited *Cunningham* as the authority for the court's use of pro rata plans in receivership cases where investors' funds had been commingled. D. 1232 at 5.

The SEC and Hebrank press for pro rata distribution plans to be used in two new classes of cases. Both argue they should be allowed to seize and redistribute assets in the possession and control of investors (third parties), even without proving pervasive fraud or pervasive commingling. No case has gone that far.

The SEC cites four cases to support its proposed extension of *Cunningham*: *CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107 (9th Cir. 1999); *U.S. v. 13328 &*

13324 State Hwy. N., 89 F.3d 551 (9th Cir. 1996); *Quilling v. Trade Partners, Inc.*, 572 F.3d 293 (6th Cir. 2009); and *SEC v. Forex Asset Mgt., LLC*, 242 F.3d 325 (5th Cir. 2001). None supports the SEC's argument. In *State Hwy*., this Court agreed with the district court the commingled funds would not be traced. 89 F.3d at 553-554. In *Topworth*, defendants "commingled investors' funds with general operating funds, and then transferred the money to Topworth's Hong Kong bank accounts, where it was promptly withdrawn." 205 F.3d at 1110. The court in *Quilling* found both commingling and fraud. 572 F.3d 300-301. In *Forex Asset*, the objectors were defrauded by the same scheme as the other investors, but failed to raise the priority "argument in the district court" and therefore "forfeited" it. 242 F.3d at 332. Appellants submit this Court should at least have this case fully briefed before extending the SEC's and its receivers power in this way.

For his part, Hebrank argues investors holding properties that increased in value were just lucky. He cites no legal principle or evidence. This is cut from whole cloth. The declarations of two investors refute his contentions. See Declarations of James Dolgas and Janice Marshall filed herewith.

VI. The Balancing of the Interests Favors the Issuance of a Stay

The factors considered in issuing a stay are balanced on a "sliding scale." Thus, the Court may order a stay if there are "serious questions" going to the merits and

"the balance of hardships tips sharply in [the applicant's] favor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011).

Hebrank argues that he speaks for 95% of investors in opposing the stay. That is myth. A survey of investors taken in May 2016 shows their support for Appellants' objectives:

Question	Total	Yes	% Yes	No	% No
1. Investors want GPs removed from Receivership	1045	977	93.49%	68	6.51%
2. Investors to decide when to sell GPs	1046	1009	96.46%	37	3.54%
3. Investors want an accounting	1047	1019	97.33%	28	2.67%

The irreparable harm in this case is not merely the divesture of investors' property and its redistribution. It is the deprivation of investors' rights to have a voice in what is done with their property and the lack of transparency in Hebrank's handling of their money. We respectfully refer the court to our opening brief where we address these issues. DE 12 at 31-32.

Dated: October 19, 2016

Respectfully submitted,

By: /s/ Gary J. Aguirre

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Receiver – Appellee.

On appeal from the United States District Court
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DECLARATION OF GARY J. AGUIRRE IN SUPPORT OF APPELLANTS' REPLY TO RECEIVER'S OPPOSITION TO URGENT MOTION UNDER CIRCUIT RULE 27-3(b) FOR STAY PENDING APPEAL

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I, Gary J. Aguirre, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am the attorney for the 192 of the investor-partners ("Appellants") on whose behalf I filed the notice of appeal on this action on June 14, 2016. Their names are listed in Attachment 1 filed herewith. To the best of my knowledge, there is no dispute regarding Appellants' purchase and current ownership of interests as general partners in the 87 general partnerships ("GPs") which are the subject matter of the complaint filed by the Securities and Exchange Commission ("SEC") in this case.

3. A true and correct copy of the email of August 4, 2014, sent by the receiver, Thomas C. Hebrank, to investors purporting to give notice of the district court's July 22, 2014, order and said order is attached hereto and incorporated herein as Exhibit 1.

4. A true and correct copy of the Statement and Agreement of Partnership of Wild horse Partners ("Partnership Agreement") is attached hereto and incorporated herein as Exhibit 2. Appellants previously referred to the Partnership Agreement in our opening brief (DE 12 at 15-16), but for the convenience of the Court we submit it now.

5. These are the same terms of the agreement referred to in pages 15-16 of our opening brief. *Id*. At page 15, Appellants stated that the summary by the district court enumerated some of the Partnership Agreement terms empowering investors. The terms empowering investors and disempowering defendants in relation to the control of the GPs are itemized below:

5.1. "General Partners' Right to Control the Partnership."

5.1.1. "Each Partner (other than the Non-Voting Partners defined below) shall participate in the control, management, and direction of the business of the Partnership."

5.1.3. Defendants are "Non-Voting Partners" and have no voting privileges.

5.1.2. All GP decisions are made in accordance with a vote of the Voting Partners holding a majority of the capital contributed to the GP. Each ownership unit is entitled to one vote. "Partnership decisions may be made at meetings of the Partners or by written assent of the Partners."

4.5 New Partners may be admitted to the GP only upon the approval in writing of a majority in interest of the capital contributed to the GP.

2.3. "No portion of the capital contributed to the Partnership may be withdrawn at any time without the written consent of the Partnership."

2.6 "At all reasonable times, any of the Partners shall have access to, and may inspect and copy, any of the Partnership records or books."

4.2.3. The Signatory Partner (the investor authorized by the other partners to perform ministerial tasks, i.e. executing contracts and other documents on behalf of the GP) may be removed by an affirmative vote of the partners holding a majority of the capital contributed to the GP. The partners elect the replacement.

7.1. One of the three events that may end the GP is the decision of the partners holding the majority of capital to end it.

7.5.2. The majority in interest of the capital in the GP may elect to distribute any promissory note or other obligation payable to the GP in kind and administered through a collection agency, rather than selling the note at a discount.

8.1.1.iii(c)The signatory partner may amend or change the GP agreement with the consent of a majority in interest or other required percentage of the Partners.

2.1. The Partners' contact information and percentage of ownership interest in the GP in units is provided to all partners as an exhibit to the GP agreement.

5.2. "Any Partner may request that an issue be decided by written assent of the Partners. The Signatory Partner shall send notice of such issue to all Partners at the addresses listed in the most recent Exhibit 'A' attached hereto. If the Signatory Partner receives from the Partners within three (3) months the necessary majority vote in writing, a Partnership decision shall be deemed to be made."

Executed this 19th day of October 2016, at San Diego, California.

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

/s/ Gary J. Aguirre
GARY J. AGUIRRE

Exhibit 1

From: WFP
To: WFP
Subject: SEC v. First Financial Planning, et. al.
Date: Monday, August 04, 2014 4:10:19 PM
Attachments: 2014-07-22 0629 Order Re Sua Sponte Reconsideration of 8-16 Order.pdf

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The Court has instructed me to deliver a copy of this Order to you via email.

Pursuant to that Order see the attached Order dated July 22, 2014. Please read and consider the Order carefully. In particular take notice of the dates and deadlines provided therein.

Sincerely,

Thomas C. Hebrank
Receiver for First Financial Planning, et. al.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LOUIS V. SCHOOLER and FIRST FINANCIAL PLANNING CORPORATION, dba Western Financial Planning Corporation, Defendants.	Case No. 3:12-cv-2164-GPC-JMA **ORDER ON SUA SPONTE RECONSIDERATION OF AUGUST 16, 2013 ORDER TO RELEASE GENERAL PARTNERSHIPS FROM RECEIVERSHIP**

On March 13, 2013, the Court issued its Preliminary Injunction Order and Order Appointing Thomas C. Hebrank Permanent Receiver ("Injunction Order"). (ECF No. 174.) The Injunction Order provides that Mr. Hebrank ("Receiver") be appointed over defendant Western, the entities it controls, and the several general partnerships ("GPs") that Defendants organized to hold interests in real property.

On August 16, 2013, the Court issued its Order Granting in Part and Denying in Part Defendants' Motion to Modify Preliminary Injunction Order ("Modification Order"). (ECF No. 470.) The Modification Order provided, among other things, that

the GPs should be released from the receivership upon satisfaction of certain conditions. (Id. at 25-27.) Defendants and the SEC each appealed the Modification Order. (ECF Nos. 499, 514.)

On April 25, 2014, the Court issued its Order Denying Defendants' Motion for Partial Summary Judgment and Granting in Part and Denying in Part Plaintiff's Motion for Partial Summary Judgment ("Summary Judgment Order"). (ECF No. 583.) In the Summary Judgment Order, the Court concluded the interests in real property that Defendants sold to investors are, as a matter of law, securities in the form of investment contracts. Per this conclusion, the Court found good cause to reconsider whether to release the GPs from the receivership.

After the Court indicated it would reconsider the Modification Order, the SEC moved for and was granted a stay of the parties' cross-appeals before the Ninth Circuit. (ECF No. 604.) The Ninth Circuit remanded the case for the express purpose of allowing this Court to reconsider the Modification Order.

This Court asked the parties to brief the following three issues: (1) "how the parties' cross-appeals to the Ninth Circuit affect the Court's desire to reconsider" the Modification Order; (2) "whether, given the Court's conclusion that the GP units are securities, the Court should reconsider its order removing the GPs from the receivership"; and (3) "the need to provide investors with an opportunity to file briefs and appear at the July 18, 2014 hearing." The parties filed opening and responsive briefs on these issues. (ECF Nos. 586, 588, 589, 591.) The Court also received dozens of letters from investors. (See, e.g., 611, 615, 622, 624, 628.) After considering the parties' and investors' positions, the Court held a hearing on July 18, 2014. (ECF No. 626.) The Court now addresses the three foregoing issues in turn.

1. Effect of Parties' Cross-Appeals

Because the Ninth Circuit has remanded the case "for the limited purpose of permitting th[is] [C]ourt to reconsider the August 16, 2013 order," (ECF No. 604), this Court proceeds with reconsidering the Modification Order.

2. Reconsideration of August 16, 2013 Modification Order

Generally, "any order . . . that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b).

While the Federal Rules of Civil Procedure do not set forth a standard for reconsidering interlocutory rulings, the "law of the case" doctrine and public policy dictate that the efficient operation of the judicial system requires the avoidance of re-arguing questions that have already been decided. See Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 n.5 (9th Cir. 1989). As such, most courts adhere to a fairly narrow standard by which to reconsider their interlocutory rulings. This standard requires: (1) an intervening change in the law; (2) additional evidence that was not previously available; or (3) that the prior decision was based on clear error or would work manifest injustice. Id.; Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir.2009); Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.1993).

Defendants argue the Court's conclusion that the GP units are, as a matter of law, securities in the form of investment contracts is irrelevant to whether the GPs should be released from the receivership. The Court finds Defendants' arguments are, however, asserted on behalf of the GPs, which the Court has previously found to be inappropriate, given the actual conflict of interest that exists between Defendants and the GPs. (See ECF No. 511 at 8.)

Investors are concerned with three main issues: (1) the GPs being included in the receivership when investors have themselves engaged in no apparent wrongdoing; (2) the GPs having not yet been provided a hearing on whether they should be included in the receivership; and (3) the costs of the receivership.

The SEC asserts the Court's conclusion that the GP units are securities in the form of investment contracts is not only relevant to whether the GPs should remain in

the receivership, but indeed requires that the GPs remain in the receivership. The SEC asserts that "investment contracts," by definition, involve promoters who "manage, control, and operate the enterprise," and that, "[b]ecause of this dependence, the [R]eceiver, who has merely stepped into Western's shoes, is necessary to ensure the continued management, control, and operation of the enterprise."

At the July 18, 2014 hearing, counsel for the Receiver asserted that management of the GPs is more complicated than previously thought by the Court. Counsel for the Receiver argued the following facts, as supported by the record in this matter, illustrate the GPs' historic reliance on the efforts of others to manage their investments: (1) when the receivership was implemented, property taxes on certain GP properties were past due; (2) Western has bought out the interests of investors in certain GPs who were dissatisfied with their investments and replaced those investors with new investors in the same GPs; (3) Western has loaned certain GPs over $500,000 to cover funding shortfalls; (4) at least one GP property was subject to condemnation proceedings in Nevada; (5) certain GP properties have water rights requiring active management; (6) at least one GP property had or has tenants living rent-free on it; and (7) county officials have approached the owners of one GP property for permission to construct an easement across the property.

Here, as a preliminary matter, the Court concludes it is appropriate to reconsider the August 16, 2013 Modification Order because, when the Court issued the Modification Order, it was unknown whether the GP units were securities and because the Court, in issuing the Modification Order, erroneously focused on only some of the GPs' day-to-day operations.

"The power of a district court to impose a receivership . . . . derives from the inherent power of a court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986). A district

court may therefore institute "reasonable procedures" to effect this purpose. Id.

Having considered the parties' submissions, the record in this matter, the many letters from individual investors, and the applicable law, the Court concludes the GPs should remain in the receivership.

First, the Court has concluded that the GP units are–as a matter of law–securities in the form of investment contracts. Because an investment contract is "a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party," SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946), it follows that the GPs in this case have been found to depend on Defendants for a return on their investments. See also Hocking v. Dubois, 885 F.2d 1449, 1455 (9th Cir. 1989) (explaining that the Ninth Circuit has "dropped the term 'solely' and instead require[s] that 'the efforts by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise'").

The conclusion that the GPs have been found to depend on Defendants is supported by the analysis set forth in the Court's Summary Judgment Order. There, the Court concluded that–at the time they invested–investors had no formal power to control their investments because the agreements they signed were not, by their own terms, legally effective until months or years after investors turned their money over to Defendants. The Court further concluded that disputes of material fact exist with regard to investors' actual knowledge of general business matters and the precise degree of dependance that investors had on Defendants' unique entrepreneurial and/or managerial abilities. Therefore, additional bases for concluding the GP units are securities may still be established.

Second, because the GPs have been found to depend on Defendants' efforts for a return on their investment, it follows that a receiver undertaking the same efforts that Defendants historically undertook is appropriate. The primary efforts that investors (once organized into GPs and co-tenancies by Defendants) have historically relied on

Defendants to undertake, include: (1) receiving and evaluating offers to buy GP properties, (2) communicating offers to investors with recommendations, and (3) coordinating decisions amongst GPs/co-tenants. Defendants' efforts, however, went further than this.

While most of the GPs' day-to-day operations are uncomplicated, as the Court explained in the Modification Order, the Court finds the GPs' day-to-day operations are not as simple as the Court previously thought them to be. As the Receiver's counsel pointed out, the GPs' everyday responsibilities go beyond, for example, paying property taxes. The GPs—under Defendants' or the Receiver's management—have handled condemnation proceedings, water rights, and residential tenants living rent-free on a GP property. Defendants have, in the past, bought out the interests of dissatisfied investors and loaned money to certain GPs so those GPs could stay afloat. The Receiver has ensured that investors in certain GPs were permitted to vote on whether to extend their GP terms, as their GP terms had expired or were set to expire in the near future. These are significant efforts to manage GP interests.

Perhaps the strongest indication that the GPs should remain in the receivership is that the GPs are organized into co-tenancies, whereby each co-tenant (i.e., each GP) generally owns only an undivided fraction of a given property. Most of these co-tenancies require a unanimous vote before any action may be taken with regard to the underlying property. Because each GP may consist of hundreds of investors from around the country, and because each co-tenancy may consist of several GPs, it is clear that hundreds, if not thousands of investors, would have to communicate and collaborate before a property may, for example, be sold. Defendants have always coordinated such communication and collaboration among investors.

One investor, Ms. Nancy Kemper ("Kemper") has, in the past couple of months, attempted to coordinate the sale of a property owned by two GPs: Rainbow Partners and Horizon Partners. (See ECF No. 624-3 at 16 through ECF No. 624-7 at 31.) As noted by the Receiver's counsel at the July 18, 2014 hearing, however, the listing price

Kemper acquired for the sale of this property is based on the erroneous assumption that the property is zoned for commercial, as opposed to residential, use. The listing price is therefore severely overinflated. The Receiver's counsel moreover noted that the voting requirements set forth in the applicable GP and co-tenancy agreements were not followed. In response to Kemper's efforts, the Receiver spoke with a listing agent who knew nothing of Kemper's listing price or the appraisal previously obtained by the Receiver. This third agent came up with a listing price that is based on the correct assumption that this property is zoned for residential use and that closely approximates the appraisal obtained by the Receiver.

Based on the foregoing, the Court finds that keeping the GPs in the receivership, under the same type of management that Defendants have historically provided, will promote the orderly and efficient administration of the GP properties for the benefit of investors during the pendency of this litigation. See Hardy, 803 F.2d at 1038.

3. Due Process

In its Modification Order, the Court concluded that, because the GPs had not been deprived of a material property interest (i.e., ownership of the underlying properties), the GPs' due-process rights had not yet been infringed. Then, because the Court ruled that the GPs should be released from the receivership upon satisfaction of certain conditions, it became unnecessary to provide the GPs with an opportunity to be heard.

Because the Court now concludes that the GPs should remain in the receivership, the Court finds it appropriate to give the GPs—all of which already have notice of this action—an opportunity to be heard. See In re San Vincente Med. Partners Ltd., 962 F.2d 1402, 1407 (9th Cir. 1992).

CONCLUSION & ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

1. Before the Court vacates the portion of its August 16, 2013 Modification Order releasing the GPs from the receivership, the GPs shall have an

opportunity to be heard.

2. The Court sets a hearing on **October 10, 2014, at 1:30 p.m.**, at which time the GPs will be permitted to respond to the Court's decision to keep the GPs in the receivership.

3. While the Receiver maintains control over the GPs, the GPs will be permitted to provide a response to the Court's decision without the response being reviewed or approved by the Receiver. The GPs may, however, consult with the Receiver on formulating a response.

4. Each GP may file a single brief, not to exceed fifteen (15) pages, in response to the Court's decision to keep the GPs in the receivership. Briefs should state whether the GP wants to be heard in open court at the October 10, 2014 hearing.

5. If a GP does not wish to file a brief, but does wish to be heard in open court at the October 10, 2014 hearing, the GP shall file a notice of intention to appear at the hearing.

6. If an individual investor within a particular GP disagrees with his or her GP's official response to the Court's decision, the individual's points of disagreement shall be included in a separate section of his or her GP's official response. In this situation, a GP's brief may not exceed twenty (20) pages.

7. All official responses must include an attachment that lists the names of the individual investors that have signed on to the official response.

8. All official responses must be filed with the Court on or before **September 12, 2014**.

9. Any response by the parties or the Receiver to the GP briefs shall be filed on or before **September 26, 2014**. The parties and the Receiver are directed to consolidate any response into one responsive brief per party. No replies will be permitted.

10. At the October 10, 2014 hearing, each GP that has stated an intention to be heard in open court will be given up to fifteen (15) minutes to address the Court, subject to extension for good cause shown.

11. The Receiver is directed to disseminate this Order by: (1) posting it on the website designated for this litigation, (2) emailing it to individual investors, and (3) mailing it to the address of record for each GP.

DATED: July 22, 2014

HON. GONZALO P. CURIEL
United States District Judge

Exhibit 2

STATEMENT AND AGREEMENT OF PARTNERSHIP

OF

WILD HORSE PARTNERS

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STATEMENT AND AGREEMENT OF PARTNERSHIP OF

WILD HORSE PARTNERS

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

1. **NATURE OF PARTNERSHIP**

1.1. Name of Partnership. The name of the Partnership shall be Wild Horse Partners.

1.2. Statement of Partnership. The Partnership shall promptly cause this Statement and Agreement to be recorded in San Diego County, California and in each county in Nevada in which the Partnership owns or contemplates owning real property or any interest in real property.

1.3. Fictitious Business Name Statement. The Signatory Partner shall sign, concurrently with the execution of this Agreement, a Fictitious Business Name Statement, for the Partnership under the name of Wild Horse Partners, and shall cause the Certificate to be filed with the County Clerk of San Diego County.

1.4. Description of Partnership Business. The Partnership is formed for the primary purpose of acquiring, maintaining and holding unimproved real property (referred to herein as the "Partnership Property") for investment purposes. The Partnership Property may be encumbered by deed(s) of trust securing promissory note(s) (referred to herein as the "Acquisition Note(s)") given by, or assumed by (including "subject to") the Partnership. The Partnership shall enter into a Co-Tenancy Agreement with one (1) other general partnership. Each Co-Tenant shall hold an undivided one-half (1/2) interest in real property.

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

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

2. **FINANCIAL**

2.1. Contribution to Capital. The names and addresses of all Partners, the initial number of their Partnership Units, and their initial percentage of ownership interest in the Partnership represented by those units are listed in Exhibit "A," attached hereto and incorporated as though fully set forth at length herein.

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

(i) $ 1.00 in cash upon execution of this Agreement (such Partners are referred to herein as the "All Cash Partners"); or

(ii) $ 0.32 in cash and $ 0.68 by delivery of a full recourse promissory note ("Promissory Note") payable in one hundred twenty (120) equal monthly installments ("such Partners are referred to herein as the "Leveraged Partners"). Interest payments on any Leveraged Partner's Promissory Note shall not be considered to be capital contributed to the Partnership.

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

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

2.1.4. Each Partner hereby authorizes the Partnership to establish a VISA© and MasterCard© credit card acceptance account, so that a Partner's additional capital contributions for operational purposes, as set forth in the Section titled Additional Contributions of Capital, and the entire balance owing, but not the monthly payments, on such Partner's Promissory Note, if any, shall be payable by VISA© or MasterCard©.

2.2. Additional Contributions to Capital.

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

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

Each Partner's pro rata share of the required amounts shall be determined by a fraction, the numerator of which is each respective Partner's number of Units owned and denominator of which is the number of Units owned by all Partners. The numbers of such Units shall be determined by reference to the most recent Exhibit "A" of this Agreement as it may be modified to reflect additional capital contributions, or in the most recent supplemental agreement executed pursuant to the Section titled "New Partners."

2.2.3. At least 15 days preceding the due date of any required amounts under subsection 2 of this Section, the Signatory Partner shall notify each Partner in writing, setting forth in such notice the amount of the payments due, the due date and such Partner's pro rata share thereof. Each Partner shall remit to the Partnership, in care of the Signatory Partner, such Partner's share of such payment.

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

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

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

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

2.5. Books of Account. Complete and accurate accounts of all transactions of the Partnership shall be kept by an agent of the Partnership to be designated by the Signatory Partner.

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

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

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

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

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

2.11. Distributions. Distributions shall decrease the Partners' capital accounts in the same ratio as the Partners' ownership interest in the Partnership, as set forth in the most recent Exhibit "A" of this Agreement. The Partnership is unlikely to make any distributions before the sale of its real property.

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

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

3. SECURITY AGREEMENT

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

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

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

4. PARTNERS

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

4.2. Signatory Partner. Each Partner hereby agrees that _____ _____ shall serve as the "Signatory Partner."

4.2.1. The Signatory Partner is hereby empowered to:

(i) sign documents on behalf of the Partnership at any time during the term of the Partnership, including, but not limited to, the Purchase Agreement by which the Partnership will acquire the Partnership Property and all related documents acquisition and financing of the Partnership Property, including, but not limited to, related note(s) and deed(s) of trust;

(ii) hire a secretary to administer notices and tax bills, and to pay said secretary $100.00 per month from Partnership funds;

(iii) hire a collection agent to administer collection and disbursement of funds;

(iv) hire any persons or entities, as an employee and/or an independent contractor, as C.P.A., accountant, computer consultant and/or bookkeeper to do all partnership accounting, bookkeeping and preparation of year end tax returns. The Signatory Partner may authorize payment to all such persons fees in the approximate annual total amount of $7,500.00 from Partnership funds;

(v) approve and execute any documents that grant access for ingress and egress to the Partnership Property.

(vi) obtain a liability insurance policy covering the Partnership Property and pay the premium for such policy from Partnership funds; and

(vii) approve and execute the Purchase Agreement and Co-Tenancy Agreement on behalf of the Partnership.

4.2.2. Any person, including, but not limited to, title companies, lenders, escrow companies, purchasers, and trustees, may rely upon written documents signed by any Signatory Partner, including, but not limited to, escrow instructions, notes, deed(s) of trust, grant deeds, checks and contracts.

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

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

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

(i) The TMP will be responsible for notifying the Internal Revenue Service of Partners' names and current addresses to ensure proper notification of all Partners in the event of an administrative proceeding;

(ii) The TMP will keep Partners informed of all administrative and judicial proceedings to the extent required by the Treasury Regulations;

(iii) The TMP will act on behalf of the Partnership in negotiating tax settlement agreements and/or requesting administrative adjustments (however, this provision does not restrict or otherwise limit the rights of individual Partners to participate in such proceedings as provided in the Code);

(iv) In accordance with the Code, the TMP will have the exclusive right to appeal any final Partnership administrative adjustment within the first ninety (90) days after the mailing of such notice (in the event that such appeal is not made within the 90 day period, individual Partners may then appeal on behalf of the Partnership during the immediately succeeding sixty (60) day period);

(v) The TMP may, by writing, extend the period for tax assessment with respect to Partnership items, and such an extension will be binding on all Partners; and

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

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

4.4. Retirement Plan Owner. Anything in this Agreement to the contrary notwithstanding, if an IRA or other qualified retirement plan (collectively referred to herein as an "IRA") is a Partner, the IRA owner may make any additional capital contribution required of the IRA. In that event, the IRA owner shall become a Partner and own, in an individual capacity, an interest in the Partnership equal to the capital contributed to the Partnership by the IRA owner. Unless the IRA owner is already an individual Partner, the books and records of the Partnership shall reflect the admission of the IRA owner as a new individual Partner separate and distinct from the IRA Partner. The Partnership and the new IRA owner Partner shall comply with all provisions of the Section titled "New Partners" except for the written approval of a majority vote of the Partnership.

When an IRA owner makes a contribution to the capital contributed to the Partnership, in lieu of the IRA Partner doing so, the IRA Partner shall not be in default. The rights and procedures described in this section are available only to IRA Partners and IRA owners. Nothing described in this section shall be deemed to be a sale or a transfer of an interest in the Partnership

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

4.5.1. The amount of the Partnership capital and allocation thereof among the Partners;

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

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

5. RIGHTS AND DUTIES OF PARTNERS

5.1. General Partners' Right to Control the Partnership.

5.1.1. Notwithstanding the provisions of the Section titled "Signatory Partner," each Partner (other than the Non-Voting Partners defined below) shall participate in the control, management, and direction of the business of the Partnership.

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

5.1.3. Louis V. Schooler, Western Financial Planning Corporation and any and all persons or entities entering into a sale or exchange of any property with the Partnership or receiving compensation of any kind from either Louis V. Schooler and/or Western Financial Planning Corporation shall be "Non-Voting Partners." Non-Voting Partners shall not be entitled to any of the voting privileges described in this Agreement. However, Non-Voting Partners shall be entitled to all other rights and privileges granted to all other General Partners by the terms of this Agreement.

5.2. Written Assent of Partners. Any Partner may request that an issue be decided by written assent of the Partners. The Signatory Partner shall send notice of such issue to all Partners at the addresses listed in the most recent Exhibit "A" attached hereto. If the Signatory Partner receives from the Partners within three(3) months the necessary majority vote in writing, a Partnership decision shall be deemed to be made.

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

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

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

6. **DEFAULT**

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

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

6.1.2. The failure of a Partner to pay any installment described an such Partner's Promissory Note(s), if any, when due;

6.1.3. If a Partner shall fail to promptly pay or perform, when due, any obligation secured by this Agreement or the security interest created by this Agreement;

6.1.4. If there is any misstatement or false statement or representation in connection with this Agreement.

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

6.2. Rights and Remedies. Upon the occurrence of any default, if such default is not cured within thirty (30) days after written notice of such default is given to the defaulting Partner, the Partnership shall have the option of pursuing any and all (i) rights and remedies afforded a secured party by the chapter on "Default" of Division 9 of the Uniform Commercial Code of California and (ii) other rights and remedies available, including, but not limited to, the following:

6.2.1. If the default is monetary or nonmonetary, WFP or any of its affiliated entities may purchase the entire Partnership interest of such defaulting Partner at a purchase price equal to fifty percent (50%) of the defaulting Partner's "reduced capital account." For purposes of this agreement, reduced capital account shall be determined by subtracting each of the following items from the defaulting Partner to the Partnership, the full amount of the default and accrued interest, expenses, costs, finance charges, and fees caused by damages resulting from the default. WFP or its affiliated entity shall also assume the defaulting Partner's Promissory Note(s), if any.

6.2.2. If WFP or one of its affiliated entities does not elect to purchase the defaulting Partner's interest, the Partnership may do so on the terms described above. If the Partnership elects to purchase the Partnership interest of a defaulting Partner, the Partnership shall also elect to: (i) disburse such Partnership interest to the remaining Partners in proportion to the remaining Partners' then current interest in the Partnership capital; or (ii) sell such Partnership interest.

6.2.3. If the Partnership does not elect to purchase the defaulting Partner's interest other Partners may do so on the terms described above. If two or more Partners do not wish to purchase the defaulting Partner's interest, a single Partner may do so, and if no Partners wish to purchase it, a third party may do so. Any purchase by Partners, a single Partner or a third party will be conditioned upon payment directly to the Partnership of that portion of the purchase price equal to the amount of the default, plus

accrued interest, expenses, costs, finance charges and fees caused by damages resulting from the default. The remaining portion of the purchase price shall be payable to the defaulting Partner pursuant to subsection 1 of this Section. If the sale is to a third party, it shall be subject to the right of first refusal provisions of the Section titled "Right of First Refusal on Sale or Transfer of Partnership Interest" hereof, except that the notice period may be reduced from thirty (30) to seven (7) days at the option of the Partnership. No public notice of sale or public bidding shall be required. As a condition to any purchase of the defaulting Partner's interest, the purchaser shall assume all of the defaulting Partner's liability on any Promissory Notes, personal promissory notes, guarantees or other obligations in connection with the Partnership.

6.2.4. In the event that the defaulting Partner's interest is not purchased under the provisions of this Section, and the default is not cured within one hundred twenty (120) days, then WFP or any of its affiliated entities may cure the default. In the event of such a cure of a default by WFP or any of its affiliated entities, all Units attributable to the payment for such default shall accrue to the curing entity.

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

(i) All unpaid installments of such defaulting Partner's Promissory Note(s) shall then become due and payable; and

(ii) The unpaid installments of such defaulting Partner's Promissory Note(s) shall continue to bear interest at the highest lawful rate.

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

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

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

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

Agreement, for the entire period during which such default shall have continued until a sale of the defaulting Partner's interest.

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

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

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

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

7. TERMINATION OF PARTNERSHIP RELATION

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

7.1.1. The expiration of twenty-five years from the date of this Agreement;

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

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

7.2. Transfer of a Partnership Interest.

7.2.1. A Partner may not sell, transfer, assign or subject to a security interest such Partner's interest in the Partnership or any part thereof to any party other than WFP, except as provided herein. A Partner's interest may be made subject to a security interest held by WFP, so long as that interest is subordinate to the rights of the Partnership with regard to the security interest created in this Agreement. Any assignment or other transfer contrary to this provision shall be void and of no effect.

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

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

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

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

7.3.3. Any Partner may transfer its entire Partnership interest to WFP or any of its affiliated entities without obtaining the written approval ("Transfer Approval") of a majority in interest of the capital contributed to the Partnership and without making a Transfer Offer.

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

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

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

7.5. Liquidation of the Partnership.

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

(i) The expenses of liquidation and debts of the Partnership, other than debts owing to the Partners, shall be paid.

(ii) Such debts as are owing to the Partners, including unpaid fees, loans and advances made to the Partnership shall be paid.

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

7.5.2. Any gain or loss arising out of the disposition of Partnership assets during the course of liquidation shall be increased or decreased to the Partners in the same proportions as profits and losses were distributed prior to liquidation. A negative balance in the capital account of any Partner, after all the debts of the Partnership are paid and the posting of profits is completed, shall constitute an obligation from that Partner to the other Partners, to be paid forthwith, upon demand. At the election of a majority in interest of the capital contributed to the Partnership, any promissory note or other obligation payable to the Partnership (other than a Partner's Promissory Note) may be distributed to Partners "in kind" and administered through a collection agency, rather than selling the note at a discount.

7.6. Right to Sell and Compensation Therefor. Should the Partnership elect to sell any Partnership real property, the Partnership hereby grants to WFP, as additional compensation for its organizational services, the right to represent the Partnership as its Broker for the sale of said property. WFP may also assign its rights and/or delegate its duties as Broker to an affiliate. WFP, or an affiliate, shall receive, as compensation for consummating any sale, an amount equal to ten percent (10%) of the selling price of any unimproved real property and six percent (6%) of the selling price of any improved real property. For purposes of this section, "improved real property" shall mean real property with a building(s) on it. This exclusive right shall expire as of midnight on December 31, 2029.

8. **SPECIAL POWER OF ATTORNEY**

8.1. Appointment of Signatory Partner.

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

(i) To make all agreements amending this Agreement, as now and hereafter amended, that may be appropriate to reflect:

(a) A change of the name or the location of the principal place of business of the Partnership.

(b) The disposal by any Partner of his/her interest in the Partnership in any manner permitted by the Agreement, and any return of the capital contribution of a Partner (or any part thereof) provided for by the Agreement.

(c) A person becoming a Partner of the Partnership as permitted by the Agreement.

(ii) To make such certificates, instruments and documents as may be required by, or may be appropriate under, the laws of any state or other jurisdiction in which the Partnership is doing or intends to do business, in connection with the use of the name of the Partnership by the Partnership.

(iii) To make such certificates, instruments and documents as may be required of the Partners or as may be appropriate for the Partners to make, by the laws of any state or other jurisdiction, to reflect:

(a) A change of address of said Partners.

(b) Any changes in or amendments of the Agreement, or pertaining to the Partnership, of any kind referred to in subsection 1 of this Section.

(c) Any other changes in or amendments of the Agreement, but only if and when the consent of a majority in interest or other required percentage of the Partners has been obtained.

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

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

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

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

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

9. **GENERAL PROVISIONS**

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

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

9.3. Examination. Each party has relied upon its own examination of the entire Agreement, and the warranties, representations, and covenants expressly contained in the Agreement itself. The failure or refusal of either party to inspect the Agreement or other documents, or to obtain legal advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based upon such reading, inspection or advice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.16. Amendment. This Partnership Agreement may be amended upon the written consent of a majority of the interests in the capital contributed to the Partnership. Neither the Partners nor the

Partnership shall amend this Agreement in a way that diminishes the rights or increases the obligations of any Non-Voting Partner (described in Section 5.1.3.).

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

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

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

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

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

PARTNERS

_____ _____

State of California)
)ss.
County of)

The undersigned, each for himself or herself, being duly sworn, deposes and says that:

I am a partner in the partnership named in the above statement of partnership, and that I have read the foregoing statement of partnership and know the contents thereof. I hereby declare that all of the facts stated in the foregoing statement of partnership are true.

I declare, under penalty of perjury, that the above is true and correct and that this declaration was executed as of _____, _____, at _____, California.

_____

_____

_____

_____

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

_____
Notary Public in and for said County and State

State of California)
)ss.
County of)

On _____, _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

(SEAL)

WITNESS my hand and official seal.

_____
Notary Public

State of California)
)ss.
County of)

On _____, _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

(SEAL)

WITNESS my hand and official seal.

_____
Notary Public

PARTNER'S REPRESENTATIONS

In connection with my desire to acquire an ownership interest (referred to herein as the "Partnership Interest" in Wild Horse Partners, a California general partnership, referred to herein as the "Partnership," I hereby make the following representations and warranties:

1. I am at least eighteen (18) years of age.

2. I have such knowledge and experience in financial matters and I am capable of evaluating the merits and risks of the investment in the Partnership. Furthermore, I am able to bear the economic risk if my investment in the Partnership ultimately should be determined to be worthless.

3. This Partnership Interest is being acquired for my own account, for investment purposes and without any present intention of distributing or selling such interest.

4. I have adequate means of providing for my current needs and possible personal contingencies, and have no need for liquidity of my investment in the Partnership.

5. I can bear the economic risk of losing my entire investment in the Partnership.

6. I am aware that the Partnership has no financial or operating history and that the Partnership Interests are speculative investments. I understand that this investment involves a high degree of risk and I could lose my entire investment in the Partnership.

7. I understand that transferability of my Partnership Interest is restricted and I cannot expect to be readily able to liquidate this investment in case of an emergency. Before deciding to invest in the Partnership, I gave substantial consideration to all factors relevant to my personal situation, including, but not limited to, the age, health, income, savings and foreseeable obligations of each of the members of my family. That process has convinced me that despite the *long term* nature of this partnership investment, my investment in the Partnership is warranted.

8. In determining the advisability of this investment, I am not relying on any representations by any partner, or other person as to the present or the projected future value of any real property that may be acquired by the Partnership, or any other projection of any kind or nature which might be related to the value of any real property acquired.

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

10. I understand that: (i) the Partnership, although still in formation, has entered into a contract to purchase certain real property (the "Partnership Property"); (ii) before and during formation, all capital contributions will be passed through the Partnership to the Seller of such real property pursuant to the contract; and (iii) if the Partnership does not complete formation, the contract will be terminated and all money refunded.

11. I do not look to the efforts of any other partner, nor to any person, corporation, or entity for the management, development, maintenance or farming of the Partnership Property in order to make a profit. I look solely to the potential appreciation in value of the Partnership Property over the years for any profit I may derive from this transaction.

12. I have received copies of the Statement and Agreement of Partnership of Wild Horse Partners and any Appendices or Exhibits thereto (including, but not limited to, the Purchase Agreement for the Partnership Property and the related note(s) and deed(s) of trust) all of which documents are collectively referred to herein as the "Partnership Agreement." Along with the Partnership Agreement documents, I have also received a copy of "Seller's Real Property Disclosure Form" and "Information Statement Disclosing Homeowner's rights and Obligations."

I have carefully reviewed the Partnership Agreement; and I understand it. I have been given the opportunity to make any further inquiries concerning the proposed operations of the Partnership. I understand that by signing the Partnership Agreement, I am authorizing the Signatory Partner to sign the Purchase Agreement and all other documents related to the acquisition of the Partnership Property and the financing thereof, including, but not limited to, the documents described above and related note(s) and deed(s) of trust, on behalf of the Partnership.

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

14. I understand that if I elect to purchase Units with cash and a Note, I will be charged a monthly collection fee in the approximate amount of Five Dollars ($5.00) in addition to the monthly payment called for in the Note.

15. I have read the Sections titled "Contributions to Capital" and "Additional Contributions to Capital" of the Partnership Agreement and am aware that additional capital contributions will have to be made from time to time during the life of the Partnership. I am also aware that if I fail to make any required additional capital contributions or Promissory Note payments, my Partnership Interest may be purchased by the Partnership, or by other partners, for substantially less than the sum of all capital I have contributed. I acknowledge and agree that any delinquency of ninety (90) days or more in payment of Partnership capital contributions may be reported to credit reporting agencies. Partnership capital contributions will be billed to the Partners and collected starting with the quarter following the close of escrow for acquisition of the Partnership Property. I understand that I may make additional capital contribution payments by VISA® and MasterCard®, direct payment (ACH Debits) automatically taken from my checking account quarterly, or pay by check annually for which I will pay a $3.50 check processing fee.

Initials _____ _____

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

Initials _____ _____

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

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

19. I understand that the Partnership Property shall generate a negative cash flow which may necessitate assessments of the partners by the Partnership.

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

21. I understand that as part of the initial capitalization of the Partnership, approximately One Hundred Twenty-Nine Thousand Five Hundred Ninety-Five and 84/100 Dollars ($129,595.84) will be allocated as a fund available to meet Partnership expenses as they arise. This money will be held in an account, in the name of the Partnership, as a Partnership asset.

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

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

24. I understand that the Partnership will enter into a Co-Tenancy Agreement with one (1) other general partnership. Each co-tenant will own an undivided one-half (1/2) interest in real property.

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

26. I am aware that any real property (the "Partnership Property") owned by the Partnership is presently undeveloped. I understand that easements encumber the Partnership Property to provide: (i) access to other parcels of land and (ii) installation and maintenance of utilities to other land.

27. I have received a summary of a Feasibility Study of certain land, known as Pyrenees Estates. This Feasibility Study was prepared by FPE Engineering and Planning and is dated February 25, 2002. Pyrenees Estates contains sixty-two (62) parcels of land. The Partnership Property is an undivided one-half interest in twenty (20) of those sixty-two (62) parcels of Pyrenees Estates. The summary of the Feasibility Study discusses a number of important areas impacting the prospects for future development (and thereby the value) of the Partnership Property. A complete Technical Feasibility Study, which includes an ALTA survey that plots the location of easements referred to above and various other encumbrances on the Partnership Property. I understand that the complete Feasibility Study, and all documentation referred to in the summary, is available for my review at any time.

28. I understand that neither the seller nor any other partner is responsible for law changes or any governmental actions, including, but not limited to, ballot initiatives and regulations, planning, zoning, improvements required,

or the lack of such actions. I also understand that such governmental actions can increase or decrease the value of the Partnership Property.

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

30. I am aware that the tax aspects of an investment in the Partnership are not susceptible to absolute prediction. New developments in rulings of the Internal Revenue Service, audit adjustments, court decisions or legislative changes may have an adverse effect on one or more of the tax consequences of investing in the Partnership.

31. I understand the Partnership intends to claim the organizational fee paid to Western Financial Planning Corporation as a deduction for federal income tax purposes. I understand there can be no assurance that such deduction will not be contested or disallowed by the IRS or that the IRS will not challenge the amount of such deduction or the period or year in which it may be claimed.

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

33. I represent that Western Financial Planning Corporation has not given me tax advice and/or opinions regarding this investment but has merely administrated organization of the Partnership. I am relying on my own advisors for legal and tax counsel.

34. I am aware that attorney Russell M. Goldberg represents Western Financial Planning and Louis V. Schooler in various legal matters, including the drafting of various documents relating to this investment. I understand no fiduciary duty exists between Mr. Goldberg and me.

35. I am aware that Mark P. Mandell has been retained by Western Financial Planning and Louis V. Schooler solely as a business consultant in various matters, including this transaction and other business transactions. I understand no fiduciary duty exists between Mr. Mandell and me.

36. I am aware that First Financial Planning Corporation is a Nevada corporation doing business in California as Western Financial Planning Corporation.

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

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

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

40. I have been fully informed that E.B.S. Land Company, Western Financial Planning Corporation, First Financial Planning Corporation and/or Louis V. Schooler, as owner or seller or both, will be making a very

substantial profit in the sale of the real property to the Partnership. Therefore, as between those entities and myself there exists a conflict of interest and *no* fiduciary relationship.

41. I am aware that Western Financial Planning Corporation shall receive Two Hundred Thousand Ten and 48/00 Dollars ($200,010.48) from Partnership funds as consideration for its services in organizing the Partnership.

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

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

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

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

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

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

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

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

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IT IS HEREBY ACKNOWLEDGED THAT I, _____ _____, HAVE READ THIS DOCUMENT IN ITS ENTIRETY, UNDERSTAND IT FULLY AND AGREE WITH THE PROVISIONS CONTAINED HEREIN.

EXECUTED at _____, _____, as of _____, _____.

_____ _____

Partner's Signature Partner's Signature

_____ _____

Partner's Name (Printed) Partner's Name (Printed)

Social Security #_____ Social Security #_____

_____

Address

Telephone Number (_____)_____

No. 16-55850

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. SECURITIES & EXCHANGE COMMISSION,
Plaintiff – Appellee,

v.

LOUIS V. SCHOOLER; FIRST FINANCIAL PLANNING CORPORATION,
DBA Western Financial Planning Corporation,
Defendants – Appellees,

SUSAN GRAHAM, ET AL.
Intervenors – Appellants,

THOMAS C. HEBRANK,
Receiver – Appellee.

On appeal from the United States District Court
for the southern District of California, Case No. 3:12-cv-02164-GPC-JMA

DECLARATION OF JANICE MARSHALL IN SUPPORT OF APPELLANTS' REPLY TO RECEIVER'S OPPOSITION TO URGENT MOTION UNDER CIRCUIT RULE 27-3(b) FOR STAY PENDING APPEAL

GARY J. AGUIRRE (Bar No. 38927)
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Phone: 619-400-4960
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Attorney for Appellants
Susan Graham, et al.

I, Janice Marshall, declare:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I invested in BLA Partners in 1996 and in Carlson Valley Partners in 1998.

3. According to the projections of the receiver, Thomas C. Hebrank, ("Receiver") under the two-tier distribution, my investment in Carlson Valley Partners would yield a recovery of $5,287. Under the one-pot distribution, my investment in Carlson Valley Partners would yield a recovery of $2,010.

4. According to the Receiver's projections, my investment in BLA Partners would yield a recovery of $15,301 under the two-tier distribution and $2,251 under the one-pot distribution.

5. I would recover $20,588 for both investments under the two-tier distribution, whereas I would recover only $4,261 under the one-pot distribution.

6. When I invested in mutual funds, I did so knowing that I was investing in a pool and I had no control where my funds were invested.

7. When I made my investments in Carson Valley Partners and in BLA Partners, I carefully chose the properties I felt were the best investment for me. There were other properties I considered, but chose not to invest in them.

8. I oppose the Receiver's plan that would seize the properties owned by my two partnerships, sell off those assets, and redistribute 99% of the cash to individuals who have no legal claim to the assets of either partnerships.

9. I am aware that Alan Nevin of Xpera Group believes that my interest in BLA Partners will experience substantial appreciation over the next ten years and is expected to double in value over the next five years.

10. I cannot understand why the SEC believes my decision should be discarded in favor of the decision of a court-appointed receiver.

Executed this 19th day of October 2016, at San Marcos, California.

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

Janice Marshall

Janice Marshall

No. 16-55850

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. SECURITIES & EXCHANGE COMMISSION,
Plaintiff – Appellee,

v.

LOUIS V. SCHOOLER; FIRST FINANCIAL PLANNING CORPORATION,
DBA Western Financial Planning Corporation,
Defendants – Appellees,

SUSAN GRAHAM, ET AL.
Intervenors – Appellants,

THOMAS C. HEBRANK,
Receiver – Appellee.

On appeal from the United States District Court
for the southern District of California, Case No. 3:12-cv-02164-GPC-JMA

DECLARATION OF JAMES S. DOLGAS IN SUPPORT OF APPELLANTS' REPLY TO RECEIVER'S OPPOSITION TO URGENT MOTION UNDER CIRCUIT RULE 27-3(b) FOR STAY PENDING APPEAL

GARY J. AGUIRRE (Bar No. 38927)
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Email: gary@aguirrelawapc.com
Attorney for Appellants
Susan Graham, et al.

I, James S. Dolgas, declare:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I invested in BLA Partners in 1996, in Victory Lap Partners in 1997 and 1998, and in Green View Partners in 200.

3. According to the projections of the receiver, Thomas C. Hebrank, ("Receiver") under the two-tier distribution, my investment in Victory Lap Partners would yield a recovery of $6,068. Under the one-pot distribution, my investment in Victory Lap Partners would yield a recovery of $1,112.

4. According to the Receiver's projections, my investment in BLA Partners would yield a recovery of $45,540 under the two-tier distribution and $6,700 under the one-pot distribution.

5. According to the Receiver's projections, my investment in Green View Partners would yield a recovery of $751 under the two-tier distribution and $1,340 under the one-pot distribution.

6. I would recover $52,359 for mt investments under the two-tier distribution, whereas I would recover only $9,152 under the one-pot distribution.

7. When I started my investments in BLA Partners, Victory Lap Partners and Green View Partners 20 years ago, I did so with the clear understanding these

partnerships were individual plots of vacant land. I did my due diligence, researched the values of the areas in which I was investing, and felt that over a long period of time the land had potential to be sold at a profit in the future.

8. I paid every bill, every tax, every improvement requested. I also paid to infuse additional capital when requested.

9. I feel penalized for complying with my obligations as investor, since per the Receiver's plan, I will only receive 13.4 cents for each dollar I paid. In other words, I will lose 86.6 cents for each dollar I paid, while those who did not comply with their payments will lose nothing.

Executed this 19th day of October 2016, at Howell, Michigan.

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

James S. Dolgas

James S. Dolgas