

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - Interim Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

2016 JAN 25 PM 12 22

In the matter of:  
USA BARCELONA REALTY ADVISORS, LLC, an Arizona limited liability company,  
USA BARCELONA HOTEL LAND COMPANY I, LLC, an Arizona limited liability company,  
RICHARD C. HARKINS, an unmarried man,  
ROBERT J. KERRIGAN (CRD no. 268516) an unmarried man,  
GEORGE T. SIMMONS and JANET B. SIMMONS, husband and wife,  
BRUCE L. ORR and SUSAN S. ORR, husband and wife,  
Respondents.

DOCKET NO. S-20938A-15-0308

AMENDED TEMPORARY ORDER TO CEASE AND DESIST AND NOTICE OF OPPORTUNITY FOR HEARING

Arizona Corporation Commission  
DOCKETED

JAN 25 2016

DOCKETED BY

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent Richard C. Harkins is engaging in or is about to engage in, and that respondents Robert J. Kerrigan, George T. Simmons, Bruce L. Orr, USA Barcelona Realty Advisors, LLC, and USA Barcelona Hotel Land Company I, LLC have engaged in, acts and practices that constitute violations of A.R.S. § 44-1801, et seq., the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.





1 behalf of the Company in the sole and absolute discretion of the President” except for an  
2 enumerated list of “Major Decisions” which require approval by a majority of four “Executive  
3 Members,” one of whom is Harkins.

4 12. From at least March 26, 2013 to at least August 2014, Kerrigan, Simmons, and Orr  
5 were Executive Members of Barcelona Advisors. A majority of the Executive Members must approve  
6 Barcelona Advisors’ “Major Decisions,” including decisions to incur liability for borrowed money,  
7 issue any note, admit new company members, increase the number of membership units, create a  
8 new class of membership units, or adopt or modify a budget.

9 13. Barcelona Advisors’ non-executive members cannot take part in the control of  
10 management of the company’s business except to require majority-in-interest approval for actions  
11 that would materially diminish their membership interests and to remove Executive Members for  
12 cause by a majority-in-interest vote. As a result of the members’ limited voting rights, the  
13 Executive Members have control of the company through their exclusive power to approve all  
14 “Major Decisions.”

15 14. Since January 2014, Harkins has been the president of Barcelona Land Company. As  
16 president, Harkins has the power to oversee the day-to-day activities of the company and make all  
17 decisions other than an enumerated list of “Major Decisions” that require approval by the  
18 company’s manager, which is USA Barcelona Hotel Holding Company, LLC. From at least April  
19 2014 to at least August 2014, Harkins was the president of USA Barcelona Hotel Holding  
20 Company, LLC.

21 15. From at least April 2014 to at least August 2014, Simmons was the executive vice  
22 president of Barcelona Land Company and the executive vice president of Barcelona Land  
23 Company’s manager. As an officer of Barcelona Land Company, Simmons had the power to  
24 perform normal business functions and otherwise operate and manage the company’s business, to  
25 keep all books, accounts, and other records of the company, to enforce obligations of third parties  
26

1 to the company, pay all debts and other obligations of the company, and to execute agreements in  
2 connection with the company's assets.

3 16. Barcelona Land Company's members cannot take part in the control of management  
4 of the company's business except to require majority-in-interest approval for actions that would  
5 materially diminish their economic rights and to remove the manager for cause by a majority-in-  
6 interest vote. As a result of the members' limited voting rights, the manager has control of the  
7 company through its exclusive right to approve all "Major Decisions."

8 OCTOBER 2012 OFFERING

9 17. From at least October 26, 2012, until at least November 25, 2013, Harkins and  
10 Barcelona Advisors offered and sold promissory notes issued by Barcelona Advisors and  
11 investment contracts in the form of membership interests in Barcelona Advisors within and from  
12 Arizona (collectively the "October 2012 Offering").

13 18. The October 2012 Offering notes and investment contracts were not registered with  
14 the Commission.

15 19. Since at least March 7, 2013, Kerrigan offered and sold the October 2012 Offering  
16 within or from Arizona.

17 20. Since October 2012, Barcelona Advisors provided at least five offerees with a  
18 private placement memorandum describing the October 2012 Offering ("October 2012 PPM").

19 21. The October 2012 PPM offered combinations of promissory notes and membership  
20 interests in Barcelona Advisors with a total offering of \$1,000,000. The October 2012 PPM offered  
21 12% annual interest on the notes, paid quarterly, and a maturity date of December 31, 2014, with a  
22 6% bonus payment at the end of 2013 and a 12% bonus payment at the end of 2014. The October  
23 2012 PPM stated that members would receive annual distributions.

24 22. At least eight investors invested at least \$720,000 in the October 2012 Offering.

25 23. To date, investors in the October 2012 Offering have received a return of \$90,251 in  
26 interest payments, but none have received a refund of their principal investments.

1           24.     Barcelona Advisors' stated business plan during the October 2012 Offering was to  
2 be a real estate investment trust and to act as the advisor to a series of private funds that would  
3 raise capital to acquire apartments and hotels.

4           25.     At least ten of the investors in the October 2012 Offering learned about the offering  
5 from Kerrigan. One of these investors paid for his investment with funds from a stock account that  
6 Kerrigan managed for him. Kerrigan gave the October 2012 PPM to at least one of these investors  
7 and gave a written summary of the investment terms to at least four of them. Kerrigan told one of  
8 these investors in approximately May 2013 that money would be "rolling in" from the October  
9 2012 Offering.

10          26.     At least six of the investors in the October 2012 Offering were Kerrigan's clients  
11 through the registered securities dealer that employed him.

12          27.     The dealer with which Kerrigan was registered did not approve Kerrigan's sale of  
13 the October 2012 Offering, and Kerrigan's sales of the October 2012 Offering were not recorded  
14 on the records of the dealer.

15          28.     Harkins provided two of the investors in the October 2012 Offering with the  
16 October 2012 PPM, and in approximately May 2013 he told an investor that the investment would  
17 be good as long as the economy was stable.

18          29.     In 2013, Barcelona Advisors advertised the October 2012 Offering for sale in  
19 several print advertisements published in the Arizona Republic.

20          30.     Barcelona Advisors issued to investors in the October 2012 Offering promissory  
21 notes containing the same terms with respect to interest, maturity date, and bonus payments, and it  
22 issued subscription agreements reflecting membership interests in Barcelona Advisors.

23          31.     Harkins accepted and signed all of the subscription agreements and notes for the  
24 October 2012 Offering.

25          32.     The October 2012 PPM stated that, "[Harkins] has been involved in the real estate  
26 industry ... over the period 2002 through mid-2009 in the creation and executive management of

1 Arizona Village Communities Operating Company, Inc. ('AVC'), a land acquisition and  
2 investment company.”

3 33. The October 2012 PPM failed to disclose that the Arizona Village Communities  
4 venture failed, that three companies controlled by Harkins that were related to the venture filed for  
5 protection under the U.S. Bankruptcy Code, Chapter 11, and that the Arizona State Land  
6 Department cancelled the acquisition of the land for the fourth company related to the venture for  
7 nonpayment.

8 34. The October 2012 PPM also stated that, “The day-to-day business affairs of the  
9 Company shall be managed exclusively by its President. Richard Harkins is appointed ... for an  
10 initial term as President....”

11 35. The October 2012 PPM failed to disclose that Harkins, the president, was also  
12 closely assisted by Paul Meka (“Meka”), who worked for the company, maintained the company’s  
13 records, and prepared financial projections. Meka also had experience evaluating land parcels and  
14 commercial property and gave Barcelona Advisors input on acquiring multifamily projects, and  
15 Barcelona Advisors expected Meka to eventually have a significant role in the company to help  
16 locate land parcels, evaluate them, and do land entitlement work. Since June 19, 2006, Meka has  
17 been subject to a Maricopa Superior Court judgment permanently enjoining him from violating the  
18 Arizona Securities Act and ordering him to pay \$81,000 in disgorgement to investors. Meka was  
19 also a felon convicted of misprision of a felony in November 2010 due to his role in an investment  
20 fraud scheme in which Meka was paid to “rubber stamp” documents that his superiors used to  
21 defraud investors.

22 36. The October 2012 PPM included a description of Kerrigan, an Executive Member  
23 of Barcelona Advisors who had a vote in the approval of all Barcelona Advisors “Major  
24 Decisions.” The October 2012 PPM stated that, “Mr. Kerrigan is the President and sole shareholder  
25 of Personal Wealth Management Group, Inc [sic] and the Sole Managing Partner of Wealth Legacy  
26 Consultants, LLC. ... For the past (45) years [Kerrigan] has been active in the financial services

1 industry both as a provider of financial services to private clients and through ownership and  
2 management of several privately held companies both in manufacturing and service distribution.”

3 37. The October 2012 PPM failed to disclose that National Bank of Arizona was  
4 awarded over \$76,000 in judgments against Kerrigan in 2010 for failure to repay a line of credit  
5 debt and that Kerrigan had an unpaid tax balance of approximately \$80,000 from tax year 2010 that  
6 had not been fully paid.

7 38. Barcelona Advisors failed to disclose to investors who invested after June 30, 2013,  
8 that on that date, Barcelona Advisors defaulted on two \$30,000 promissory notes to Kerrigan.

9 39. Barcelona Advisors failed to disclose to at least one investor who invested after  
10 September 2013 that Barcelona Advisors had “shelved” its business plan in September 2013 and  
11 was in search of a new business plan.

12 40. The October 2012 PPM stated that after using \$50,000 of the October 2012 Offering  
13 proceeds to reimburse management for the time and expenses of organizing the company and after  
14 using \$30,000 of the October 2012 Offering proceeds to pay expenses related to the offering, “...  
15 all other Proceeds will be used by the Company to pursue the business plan outlined in this  
16 Memorandum.”

17 41. Barcelona Advisors failed to disclose to at least one investor who invested after  
18 October 1, 2013 that on that date, Barcelona Advisors issued a \$70,000 promissory note to  
19 Kerrigan promising that, “Principal and any earned and unpaid interest shall be paid from proceeds  
20 received by [Barcelona Advisors] from new investors in the ... [October 2012] Offering.”

21 R.E. AND M.E. OFFERINGS

22 42. After investing twice in the October 2012 Offering, married investors R.E. and M.E.  
23 made four more investments under different terms in Barcelona Advisors’ notes and rights to  
24 purchase investment contracts in the form of limited liability company membership interests  
25 (collectively, the “R.E. and M.E. Offerings”).  
26

1           43.     On December 30, 2013, Harkins, Kerrigan, Simmons, Orr, and Barcelona Advisors  
2 offered and sold to R.E. and M.E. a promissory note issued by Barcelona Advisors and rights to  
3 purchase membership interests in Barcelona Advisors (collectively, the “December 30, 2013,  
4 Investment”). Harkins, Kerrigan, Simmons, and Orr met with M.E. and requested that he make this  
5 investment. The December 30, 2013, Investment offered 12% annual interest on the note, a  
6 maturity date of March 31, 2014, and rights to purchase membership interests in Barcelona  
7 Advisors at an unspecified price.

8           44.     Investors R.E. and M.E. invested \$125,000 in the December 30, 2013, Investment.

9           45.     On February 28, 2014, Harkins, Kerrigan, Simmons, Orr, and Barcelona Advisors  
10 offered and sold to R.E. and M.E. a promissory note issued by Barcelona Advisors and rights to  
11 purchase investment contracts in the form of limited liability company membership interests in  
12 Barcelona Advisors (collectively, the “February 28, 2014, Investment”). Harkins, Kerrigan,  
13 Simmons, and Orr met with M.E. and requested that he make this investment. The February 28,  
14 2014, Investment offered 12% annual interest on the note, a maturity date of May 31, 2014, and  
15 rights to purchase membership interests in Barcelona Advisors at an unspecified price.

16          46.     Investors R.E. and M.E. invested \$125,000 in the February 28, 2014, Investment.

17          47.     On July 14, 2014, Barcelona Advisors offered and sold to R.E. and M.E. a  
18 promissory note issued by Barcelona Advisors (“July 14, 2014, Investment”). The July 14, 2014,  
19 Investment offered 8% annual interest on the note and a maturity date of October 14, 2014.

20          48.     Investors R.E. and M.E. invested \$15,000 in the July 14, 2014, Investment.

21          49.     On August 1, 2014, Barcelona Advisors offered and sold to R.E. and M.E. a  
22 promissory note issued by Barcelona Advisors (“August 1, 2014, Investment”). The August 1,  
23 2014, Investment offered 10% annual interest on the note and a maturity date of August 15, 2014.

24          50.     Investors R.E. and M.E. invested \$15,000 in the August 1, 2014, Investment.



1           59.     At least one of the investors in the January 2014 Offering was Kerrigan's client  
2 through the registered securities dealer that employed him.

3           60.     The dealer with which Kerrigan was registered did not approve Kerrigan's sale of  
4 the January 2014 Offering, and Kerrigan's sale of the January 2014 Offering was not recorded on  
5 the records of the dealer.

6           61.     Investors in the January 2014 Offering were issued promissory notes containing the  
7 same terms with respect to interest, maturity date, and bonus payments.

8           62.     Harkins accepted and signed at least one of the subscription agreements and signed  
9 at least two of the notes for the January 2014 Offering. Simmons also signed one of the January  
10 2014 Offering subscription agreements.

11          63.     The January 2014 PPM failed to disclose that on December 31, 2013, Barcelona  
12 Advisors failed to make interest payments due on the notes from its previous October 2012  
13 Offering.

14          64.     The January 2014 PPM stated that after using \$30,000 of the January 2014 Offering  
15 proceeds to pay expenses related to the offering, "... all other Offering Proceeds will be used by  
16 the Company to pursue the business plan outlined in this Memorandum."

17          65.     The January 2014 PPM failed to disclose that Barcelona Advisors also intended to  
18 use January 2014 Offering proceeds to make interest payments to investors from its October 2012  
19 Offering.

20          66.     The January 2014 PPM stated that, "We have an appropriate business model .... We  
21 have appropriately planned for the Company's capital requirements. ... We have organized and  
22 prepared to effectively raise the capital required ...."

23          67.     The January 2014 PPM failed to disclose that the current business model was  
24 Barcelona Advisors' "Plan B" after its first business model failed due to the inability to raise the  
25 necessary capital for the first business model.

26

1           68.     The January 2014 PPM stated that, “[Harkins’] experiences include land acquisition,  
2 development, financing and executive management involving over 675 individual hospitality and  
3 multifamily properties.” The January 2014 PPM also stated that, “Our management team has a  
4 combined experience which we believe to be significant and uniquely qualified to meet our  
5 business objectives.”

6           69.     The January 2014 PPM failed to disclose the failure of the AVC venture, as alleged  
7 in paragraph 33.

8           70.     The January 2014 PPM also stated that, “The day-to-day business affairs of the  
9 Company shall be managed exclusively by its President. Richard Harkins is appointed ... for an  
10 initial term as President....”

11          71.     The January 2014 PPM failed to disclose Meka’s role in the company, as alleged in  
12 paragraph 35.

13          72.     The January 2014 PPM included a description of Kerrigan, an Executive Member of  
14 Barcelona Advisors who had a vote in the approval of all Barcelona Advisors “Major Decisions.”  
15 The January 2014 PPM stated that, “For the past 45 years, Mr. Kerrigan has been active in the  
16 financial services industry both as a provider of financial services to private clients, and through  
17 ownership and management of several privately held companies both in manufacturing and service  
18 distribution.” The January 2014 PPM also stated that, “Our management team has a combined  
19 experience which we believe to be significant and uniquely qualified to meet our business  
20 objectives.”

21          73.     The January 2014 PPM failed to disclose the debt judgment against Kerrigan and  
22 his unpaid tax balance, as alleged in paragraph 37.

23          74.     Barcelona Advisors failed to disclose to investors who invested after June 30, 2013,  
24 that on that date, Barcelona Advisors defaulted on two \$30,000 promissory notes to Kerrigan.

25  
26

MAY 2014 OFFERING

1  
2 75. From at least April 16, 2014, until at least June 11, 2014, Harkins and Barcelona  
3 Land Company offered membership interests in Barcelona Land Company within and from Arizona  
4 (“May 2014 Offering”).

5 76. Barcelona Land Company provided at least one offeree with a private placement  
6 memorandum dated May 5, 2014, (“May 2014 PPM”). The May 2014 PPM offered Barcelona Land  
7 Company membership interests with a total offering of \$10,000,000. The May 2014 PPM  
8 forecasted 214% returns over four years.

9 77. Barcelona Land Company’s stated business was to complete the entitlement of land  
10 parcels and sell the parcels to other entities that would build select service hotels on them.

11 78. The May 2014 PPM referred to a specific major general contracting company  
12 (“Contractor”) and stated that, “Our Parent Company has reached agreement with [Contractor] to  
13 coordinate with us in the Entitlement work and handle all site development and construction  
14 requirements of the New Build Affiliates. We feel this strategic alliance adds a great deal of quality  
15 to both the Company’s investment Offering and the future offerings of the New Build Affiliates.  
16 [Contractor’s] over 50 years of experience across a broad spectrum of major construction projects  
17 and specifically numerous major hotels and resorts [sic] undertakings for both their own account  
18 and as agents for others is a major benefit to our investors and our Company.”

19 79. Contractor never reached any agreement with Barcelona Land Company’s parent  
20 company regarding entitlement work and site development.

21 80. The May 2014 PPM also stated that, “Mr. Harkins has over 40 years of background  
22 in the real estate industry. His experiences include land acquisition, development, financing and  
23 executive management involving over 675 individual hospitality and multifamily projects. ... Over  
24 the period 2002 through mid-2009 Mr. Harkins was [involved] in the creation and executive  
25 management of Arizona Village Communities Operating Company, Inc. (‘AVC’), a land  
26

1 development luxury community developer and real estate investment company, which ceased  
2 operations in 2009.”

3 81. The May 2014 PPM failed to disclose the failure of the AVC venture, as alleged in  
4 paragraph 33.

5 82. The May 2014 PPM also stated that Harkins was the president of USA Barcelona  
6 Realty Advisors, LLC and that, “USA Barcelona Realty Advisors, LLC ... will act as Advisor to  
7 the Company. Its management team has a combined experience which we believe to be significant  
8 and uniquely qualified to meet our business objectives.”

9 83. The May 2014 PPM failed to disclose Meka’s role in the company, as alleged in  
10 paragraph 35.

11 84. The May 2014 PPM also stated that, “Mr. Kerrigan advises on financial matters. ...  
12 For the past 45 years, Mr. Kerrigan has been active in the financial services industry both as a  
13 provider of financial services to private clients, and through ownership and management of several  
14 privately held companies ....”

15 85. The May 2014 PPM failed to disclose the debt judgment against Kerrigan and his  
16 unpaid tax balance, as alleged in paragraph 37.

17 JUNE 2014 OFFERING

18 86. From at least June 11, 2014, to June 16, 2014, Harkins and Barcelona Advisors  
19 offered and sold a combination of promissory notes issued by Barcelona Advisors and investment  
20 contracts in the form of limited liability company membership interests in Barcelona Advisors  
21 within and from Arizona (collectively the “June 2014 Offering”).

22 87. At least one investor invested at least \$5,000 in the June 2014 Offering.

23 88. To date, the investor in the June 2014 Offering has not received any interest  
24 payments or a refund of his principal investment.

25 89. Harkins sent at least thirteen offerees a letter dated June 11, 2014, (“June 2014 Offer  
26 Letter”) and signed by Harkins. The June 2014 Offer Letter offered promissory notes with a total

1 offering of \$150,000, 10% annual interest, a 3% bonus, and a ninety day maturity date. The June  
2 2014 Offer Letter also offered membership interests in Barcelona Advisors based on the amount of  
3 the promissory notes.

4 90. At least one investor in the June 2014 Offering was issued a promissory note signed  
5 by Harkins containing the same terms with respect to interest, bonus interest, and maturity date.

6 91. All offerees of the June 2014 Offering had previously invested in the October 2012  
7 Offering or the January 2014 Offering. Accordingly, the misstatements and failures to disclose in  
8 the October 2012 PPM and the January 2014 PPM, as described above, were also made in  
9 connection with the June 2014 Offering.

10 HARKINS' INTENT TO MAKE NEW OFFERINGS

11 92. Harkins sent at least thirteen potential investors a letter dated April 21, 2015 ("April  
12 2015 Letter"). The April 2015 Letter described investment contracts in the form of limited liability  
13 company membership interests in NewCo with a total offering of \$500,000. The April 2015 Letter  
14 also described 8% annual interest on the amount of the membership interest investment. The April  
15 2015 Letter also described a second class of membership interests in NewCo that entitled investors  
16 to a percentage of profits.

17 93. The April 2015 Letter described investment contracts, including limited liability  
18 company membership interests, that are not registered with the Commission.

19 94. In the April 2015 Letter, Harkins stated, "NewCo will operate more like a Fund than  
20 a real estate company. In fact, it may be a diversified fund that acquires interest in other funds and  
21 in both real estate companies and single purpose entities."

22 95. Harkins also stated his intention to offer these unregistered securities: "Within the  
23 next 30 days, I intend to present the Plan in its entirety to you. I will give you the right of first  
24 opportunity to acquire Class B Units."

25 96. Harkins sent at least one potential investor an e-mail dated May 5, 2015 ("May 2015  
26 E-mail"). The May 2015 E-mail offered unspecified "securities" in "The HourGlass Fund" with an

1 unspecified total offering amount. Harkins described the venture as an “Investment Fund ... that  
2 invests in established real estate investment companies. The idea is to spread Hour Glass Fund  
3 investments across 8 to 10 Funds each of which are invested in multiple real estate based  
4 investments.”

5 97. The securities described in the May 2015 E-mail are not registered with the  
6 Commission.

7 98. In the May 2015 E-mail, Harkins indicated that he would be seeking investors,  
8 stating, “As is always the case, the viability of this Plan falls on startup capital. This time around, I  
9 have none to start it with so it all have [sic] to come from outsiders.”

10 99. Harkins also stated his intention to offer these unregistered securities: “So, we’re  
11 close to putting the Plan out there. First to the Barcelona Advisors noteholders.”

12 100. Harkins still wants to proceed with the HourGlass Fund offering.

13 **IV.**

14 **VIOLATION OF A.R.S. § 44-1841**

15 **(Offer or Sale of Unregistered Securities)**

16 1. From on or about October 20, 2012, respondents Harkins, Kerrigan, and Barcelona  
17 Advisors offered or sold securities in the form of promissory notes and investment contracts, within or  
18 from Arizona.

19 2. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
20 Securities Act.

21 3. This conduct violates A.R.S. § 44-1841.

22 **V.**

23 **VIOLATION OF A.R.S. § 44-1842**

24 **(Transactions by Unregistered Dealers or Salesmen)**

25 4. Respondents Harkins and Barcelona Advisors offered or sold securities within or from  
26 Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.



1           c)     Although they described Kerrigan's financial services industry experience  
2 and credentials, Harkins, Kerrigan, Barcelona Advisors, and Barcelona Land Company failed to  
3 disclose that National Bank of Arizona was awarded over \$76,000 in judgments against Kerrigan in  
4 2010 for failure to repay a line of credit debt and that Kerrigan had an unpaid tax balance of  
5 approximately \$80,000 from tax year 2010 that had not been fully paid;

6                                   **Additional fraud related to October 2012 Offering**

7           d)     Harkins, Kerrigan, and Barcelona Advisors failed to disclose to investors  
8 who invested after June 30, 2013, that Barcelona Advisors had defaulted on two \$30,000 promissory  
9 notes to Kerrigan;

10          e)     Harkins, Kerrigan, and Barcelona Advisors failed to disclose to three  
11 investors who invested after September 2013 that Barcelona Advisors had "shelved" its business  
12 plan in September 2013 and was in search of a new business plan;

13          f)     Harkins, Kerrigan, and Barcelona Advisors failed to disclose to three  
14 investors who invested after October 1, 2013, that on that date, Barcelona Advisors issued a \$70,000  
15 promissory note to Kerrigan promising to pay him with their investment proceeds;

16                                   **Additional fraud related to January 2014 Offering and June 2014 Offering**

17          g)     Harkins, Kerrigan, and Barcelona Advisors failed to disclose to investors  
18 who invested after June 30, 2013, that Barcelona Advisors had defaulted on two \$30,000 promissory  
19 notes to Kerrigan;

20          h)     Harkins and Barcelona Advisors failed to disclose that on December 31,  
21 2013, it had failed to make interest payments due on its October 2012 Offering notes;

22          i)     Harkins and Barcelona Advisors failed to disclose that Barcelona Advisors  
23 intended to use January 2014 Offering proceeds to make interest payments to investors in the  
24 October 2012 Offering;

1           j)       Harkins and Barcelona Advisors failed to disclose that Barcelona Advisors'  
2 current business model was its "Plan B" after its first business model failed due to the inability to  
3 raise the necessary capital for the first business model;

4                                   **Additional fraud related to May 2014 Offering**

5           k)       Harkins and Barcelona Land Company misrepresented that USA Barcelona  
6 Realty Holding Company, LLC had reached an agreement with a major general contracting  
7 company regarding land entitlement work, site development, and construction when, in fact, no such  
8 agreement had been reached;

9           103.     This conduct violates A.R.S. § 44-1991.

10                                   **VII.**

11                                   **CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

12           104.     Respondents Harkins, Kerrigan, Simmons, and Orr directly or indirectly controlled  
13 Barcelona Advisors within the meaning of A.R.S. § 44-1999. Therefore, Harkins, Kerrigan,  
14 Simmons, and Orr are jointly and severally liable under A.R.S. § 44-1999 to the same extent as  
15 Barcelona Advisors for its violations of A.R.S. § 44-1991.

16           105.     Respondents Harkins and Simmons directly or indirectly controlled Barcelona Land  
17 Company within the meaning of A.R.S. § 44-1999. Therefore, Harkins and Simmons are jointly and  
18 severally liable under A.R.S. § 44-1999 to the same extent as Barcelona Land Company for its  
19 violations of A.R.S. § 44-1991.

20                                   **VIII.**

21                                   **REMEDIES PURSUANT TO A.R.S. § 44-1962**

22                                   **(Denial, Revocation, or Suspension of salesman registration; Restitution, Penalties, or other**  
23                                   **Affirmative Action)**

24           1.       Respondent Kerrigan's conduct is grounds to revoke respondent Kerrigan's  
25 registration as a securities salesman with the Commission pursuant to A.R.S. §44-1962.  
26 Specifically, Respondent has:

1 a) Violated A.R.S. §44-1962(A)(2) by fraud in connection with the offer or sale  
2 of securities, contrary to A.R.S. § 44-1991; and

3 b) Violated A.R.S. §44-1962(A)(10) by engaging in dishonest or unethical  
4 practices in the securities industry, as defined by R14-4-130(A), by:

5 i) employing, in connection with the sale of a security, a manipulative  
6 or deceptive device or contrivance, contrary to R14-4-130(A)(14); and

7 ii) while registered as a salesman, effectuating securities transactions  
8 which have not been recorded on the records of the dealer with whom Kerrigan was registered at the  
9 time of the transactions, contrary to R14-4-130(A)(17).

10 2. Respondent's conduct is grounds to assess restitution, penalties, and/or take  
11 appropriate affirmative action pursuant to A.R.S. § 44-1962.

12 **IX.**

13 **TEMPORARY ORDER**

14 **Cease and Desist from Violating the Securities Act**

15 THEREFORE, based on the above allegations of Harkins' stated intent in the April 2015  
16 Letter and May 2015 E-mail to offer and sell investment contracts and other securities that are not  
17 registered with the Commission, and because the Commission has determined that the public  
18 welfare requires immediate action,

19 IT IS ORDERED, pursuant to A.R.S. § 44-2032(1) and A.A.C. R14-4-307, that Harkins, his  
20 agents, servants, employees, successors, assigns, and those persons in active concert or participation  
21 with him CEASE AND DESIST from any violations of the Securities Act.

22 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in  
23 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

24 IT IS FURTHER ORDERED that if a request for hearing is made, this Temporary Order  
25 shall remain effective from the date a hearing is requested until a decision is entered unless  
26 otherwise ordered by the Commission.

1 IT IS FURTHER ORDERED that this Order shall be effective immediately.

2 **X.**

3 **REQUESTED RELIEF**

4 The Division requests that the Commission grant the following relief:

5 1. Order Respondents to permanently cease and desist from violating the Securities  
6 Act, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-1962;

7 2. Order Respondents to take affirmative action to correct the conditions resulting from  
8 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
9 A.R.S. § 44-2032 and A.R.S. § 44-1962;

10 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
11 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

12 4. Order the revocation or suspension of respondent Kerrigan's registration as a  
13 securities salesman pursuant to A.R.S. § 44-1962;

14 5. Order that the marital communities of Simmons and Orr, and their respective  
15 Respondent Spouses, be subject to any order of restitution, rescission, administrative penalties, or  
16 other appropriate affirmative action pursuant to A.R.S. § 25-215; and

17 6. Order any other relief that the Commission deems appropriate.

18 **XI.**

19 **HEARING OPPORTUNITY**

20 Each respondent, including Respondent Spouses, may request a hearing pursuant to A.R.S.  
21 § 44-1972 and A.A.C. Rule 14-4-307. **If a Respondent or a Respondent Spouse requests a**  
22 **hearing, the requesting respondent must also answer this Temporary Order and Notice.** A  
23 request for hearing must be in writing and received by the Commission within 20 days after service  
24 of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for  
25 hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix,  
26

1 Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477  
2 or on the Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

3 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10  
4 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,  
5 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**  
6 **Order shall remain effective from the date a hearing is requested until a decision is entered.**  
7 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,  
8 with written findings of fact and conclusions of law. A permanent Order may include ordering  
9 restitution, assessing administrative penalties, or other action.

10 If a request for hearing is not timely made, the Division will request that the Commission  
11 make permanent this Temporary Order, with written findings of fact and conclusions of law, which  
12 may include ordering restitution, assessing administrative penalties, or other relief.

13 Persons with a disability may request a reasonable accommodation such as a sign language  
14 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.  
15 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
16 Requests should be made as early as possible to allow time to arrange the accommodation.

## 17 XII.

### 18 ANSWER REQUIREMENT

19 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,  
20 the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to  
21 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona  
22 85007, within 30 calendar days after the date of service of this Temporary Order and Notice. Filing  
23 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the  
24 Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

25 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant  
26 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a

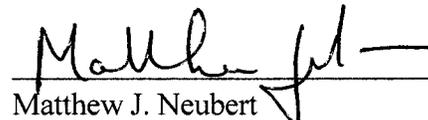
1 copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
2 addressed to Paul Kitchin.

3 The Answer shall contain an admission or denial of each allegation in this Temporary  
4 Order and Notice and the original signature of the answering respondent or the respondent's  
5 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial  
6 of an allegation. An allegation not denied shall be considered admitted.

7 When the answering respondent intends in good faith to deny only a part or a qualification  
8 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
9 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an  
11 Answer for good cause shown.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 22 day of  
13 January, 2016.

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15 Matthew J. Neubert  
16 Director of Securities  
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