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Richard C. Harkins
4422 E. Lupine Ave.
Phoenix, AZ 85028
Telephone 602-694-3589

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 MAR 15 PM 2 33

Pro se

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

Arizona Corporation Commission
DOCKETED
MAR 15 2016

DOCKETED BY 

In the matter of:

USA BARCELONA REALTY ADVISORS,
LLC, an Arizona limited liability company,

DOCKET NO. S-20938A-15-0308

USA BARCELONA HOTEL LAND
COMPANY I, LLC, an Arizona limited
liability company,

**ANSWER OF RESPONDENT
RICHARD C. HARKINS TO AMENDED
TEMPORARY ORDER TO CEASE
AND DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

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 C. ORR,
husband and wife,

Respondent Richard C. Harkins ("*Mr. Harkins*") answers or otherwise responds to the allegations of the Securities Division (the "*Division*") of the Arizona Corporation Commission (the "*Commission*") set forth in the Amended Temporary Order to Cease and Desist and Notice of

1 to an original Notice dated August 26, 2015. An Amended Notice dated January 22, 2016 was
2 filed January 25, 2016.

3 Mr. Harkins denies engaging in any acts, practices or transactions that constitute violations
4 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (the "**Securities Act**"), and denies that
5 the public welfare requires immediate action.

6 Mr. Harkins denies that he ever directly or indirectly controlled USA Barcelona Realty
7 Advisors, LLC ("**Barcelona Advisors**") within the meaning of A.R.S. § 44-1999, and denies that
8 he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as Barcelona Advisors
9 for any alleged violations of the Securities Act.

10 Mr. Harkins denies that he directly or indirectly controlled USA Barcelona Hotel Land
11 Company I, LLC ("**Barcelona Land Company**") within the meaning of A.R.S. § 44-1999, and
12 denies that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as Barcelona
13 Land Company for any alleged violations of the Securities Act.

14 Mr. Harkins responds to specific allegations of the Notice as follows:

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17 **I.**

18 **JURISDICTION**

- 19 1. Answering paragraph 1, Mr. Harkins admits only that the Commission has
20 jurisdiction over certain matters pursuant to Article XV of the Arizona Constitution
21 and the Securities Act.
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II.

RESPONDENTS

2. The allegations of paragraph 2 do not all specifically pertain to Mr. Harkins. He admits that he has been a resident of Arizona since October 2012 and has been a single man since November 28, 2012 and is not a licensed securities salesman or dealer. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 2, and on that basis, the allegations are denied.

3. The allegations of paragraph 3 do not specifically pertain to Mr. Harkins, and Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 3, and on that basis, the allegations are denied.

4. The allegations of paragraph 4 do not specifically pertain to Mr. Harkins.

5. The allegations of paragraph 5 do not specifically pertain to Mr. Harkins.

6. Mr. Harkins admits that Barcelona Advisors is a limited liability company that was organized under Arizona law, and that Respondents Bruce Orr ("Orr"), Robert J. Kerrigan ("*Kerrigan*") and George T Simmons ("*Simmons*") were Members of Barcelona Advisors. Mr. Harkins avers that he was and remains the President of Barcelona Advisors and that Barcelona Advisors is not registered by the Commission as a securities salesman or dealer. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the other allegations in paragraph 6, and on that basis, those allegations are denied.

7. Mr. Harkins admits that Barcelona Land Company is a limited liability company that was organized under Arizona law, that Barcelona Advisors was a member of Barcelona Land Company, and that USA Barcelona Hotel Holding Company, LLC was named as manager. Mr.

1 Harkins avers that Barcelona Advisors is not registered by the Commission as a securities salesman
2 or dealer.

3 8. The allegations of paragraph 8 do not specifically pertain to Mr. Harkins.

4 9. The allegations of paragraph 8 do not specifically pertain to Mr. Harkins.

5 10. Agreed.
6

7 **III.**

8 **FACTS**

9 11. Mr. Harkins agrees with the assertions of paragraph 11 subject to the limits of his
10 authority imposed by the Barcelona Advisors operating agreement, which are substantial.

11 12. Agreed.

12 13. Agreed.

13 14. Agreed.

14 15. Paragraph 15 over-reaches the role Mr. Harkins had in the Company and on that
15 basis, the allegations are denied.
16

17 16. Answering paragraph 16, there was one member and it controlled the entity, and on
18 that basis the allegations are denied.

19 17. The allegations in paragraph 17 misstate the role Mr. Harkins had in Barcelona
20 Advisors as he made one presentation to one prospective investor, Kelly Bair, and on that basis,
21 those allegations are denied
22

23 18. Agreed, nor were they required to be. It is asserted that the offering complied with
24 requirements of an exempt offering and thereby was exempt from registration.

25 19. The allegations of paragraph 5 do not specifically pertain to Mr. Harkins.
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1 20. Mr. Harkins agrees that it is his general knowledge that several individuals were
2 presented with offering memorandum and it is his belief that all person presented with said offering
3 memorandum were accredited investors and Arizona residents.

4 21. Agreed.

5 22. Agreed.

6 23. Agreed.

7 24. Answering paragraph 24, the paragraph is incorrect in that Barcelona Advisors did
8 not intend to operate as a REIT nor did its documents state such. Otherwise, Mr. Harkins avers that
9 the "*stated business plan*" referred to in the October 2012 Offering speaks for itself and any
10 allegations made to the contrary are denied.
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12 25. The allegations in paragraph 25 do not apply to Mr. Harkins; thus, no response from
13 him is required. To the extent that Mr. Harkins must respond to these allegations, he notes that
14 there are eight (8) persons who invested in the October 2012 Offering; further, Mr. Harkins lacks
15 sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph
16 25, and on that basis, the allegations are denied.
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18 26. Mr. Harkins agrees with paragraph 26 that Mr. Kerrigan had a pre-existing consulting
19 relationship with numerous people but lacks sufficient knowledge and information to form a belief
20 as to the truth of the allegations in paragraph 26, and on that basis, the allegations are denied.
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22 27. The allegations in paragraph 27 do not apply to Mr. Harkins; thus, no response from
23 him is required. To the extent that Mr. Harkins must respond to these allegations, he lacks sufficient
24 knowledge and information to form a belief as to the truth of the allegations in paragraph 27, and
25 on that basis, the allegations are denied.
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1 28. The allegations in paragraph 28 are incorrect as to the number of persons who
2 subscribed to the Offering receiving the October 2012 Offering from Harkins and Mr. Harkins has
3 no recollection of having said what is represented in paragraph 28 but seriously doubts in any such
4 thing was said as a stand-alone statement. The October 2012 Offering contains numerous risk
5 factors that in aggregate are paramount to any singular one being recanted to a prospective investor.
6 Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the
7 allegations in paragraph 28, and on that basis, the allegations are denied.
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9 29. Mr. Harkins recalls an ad was placed for a proposed offering, that if brought forward,
10 would have been designed to qualify for exemption under AZ 140, which would allow public
11 solicitation. Otherwise, Mr. Harkins lacks sufficient knowledge and information to form a belief as
12 to the truth of the allegations in paragraph 29, pertaining to the October 2012 Offering, although it
13 would have substantially met the qualifications of AZ 140 (maximum of one million dollars, all
14 accredited investors, all Arizona residents, among other less imposing requirements), and on that
15 basis, the allegations are denied.
16

17 30. Agreed.

18 31. Mr. Harkins concurs that as an officer of Barcelona Advisors he accepted the
19 subscription agreements of all subscribers to the October 2012 Offering. Further, he avers that each
20 subscriber to the October 2012 Offering avowed in their subscription documents to be an accredited
21 investor and asserted they read the memorandum, including the risk factors and were fully capable
22 of assuming the risks described under which the offering was made, and could afford a total loss
23 of their investment, should any such risks occur and result in such total loss. Further, any allegations
24 made to the contrary are denied.
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26 32. Agreed.
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1 33. Mr. Harkins brings to the Commissions attention that AVC was disclosed in the 2012
2 Offering Memorandum and that it was included and clearly stated that the outcome of the company
3 (AVC) was that it closed in 2009. The AVC company was not owned by Mr. Harkins, he was one
4 of several individuals and companies that formed the company, including Coldwell Banker Success
5 Realty's Builders Developers Services and Kitchell Corporation's Kitchell Custom Builders and
6 others. AVC was managed by a board directors, the majority of whom were independent directors,
7 and as AVC's President, Mr. Harkins served at the will of AVC's board. AVC was betaken by the
8 collapse of the national and international economy in 2007/2008. The story of AVC to that point
9 was a very good one and the issues with which it dealt were public knowledge via the news media
10 and the internet. It is a gross mischaracterization to say that AVC was Harkins' company or that
11 Mr. Harkins was in any way responsible for the difficulties that resulted from the worst recession
12 in the history of the United States. The placement into Chapter 11 of three controlled affiliates of
13 AVC was an AVC board decision, managed by Mr. Harkins in concert with third party legal
14 counsel. In the seven plus years that have transpired since AVC placed the three affiliates into
15 Chapter 11, there have been no formal complaints or lawsuits brought by any investor against any
16 current or former officer, director or employee of AVC. It was understood at the time, by all
17 involved in AVC, both inside and outside the company, what the circumstances were that brought
18 AVC to cease active business operations. AVC did not file Chapter 11. AVC and the Arizona State
19 Land Department agreed to the termination of AVC's rights to ownership of the Carefree land
20 (referred to in the notice as "land for the fourth company") rather than for "nonpayment" as alleged
21 in the Notice. Further, any allegations made to the contrary are denied.
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25 34. Agreed. The document speaks for itself.
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1 35. Mr. Harkins admits that Paul Meka ("*Meka*") had experience evaluating land parcels
2 and commercial property. Mr. Meka did not have the far reaching duties described in paragraph 35.
3 In fact, the Notice does not state the Commission's issue with Mr. Meka working at Barcelona
4 Advisors, except to insinuate some wrong doing on the part of Barcelona Advisors for Mr. Meka's
5 involvement as an employee. Mr. Harkins avers that there was no relevant reason for any disclosure
6 in the October 2012 PPM regarding Mr. Meka's employment by Barcelona Advisors.
7

8 36. The October 2012 PPM speaks for itself and any allegations made to the contrary are
9 denied.

10 37. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the
11 truth of the allegations in paragraph 37, and on that basis, the allegations are denied. Further
12 answering, the October 2012 PPM speaks for itself and any allegations made to the contrary are
13 denied.
14

15 38. Mr. Kerrigan was an insider who made gap loans to the company to cover needs that
16 were not otherwise fulfilled by those, including Mr. Kerrigan, responsible for raising capital, as
17 programmed, for the company. On that basis, the allegations are denied.

18 39. Mr. Harkins has stated to the Commission in his deposition that the company did not
19 shelve its business plan, it adjusted how the business plan was executed under a changing
20 environment, otherwise , any allegations made to the contrary are denied.
21

22 40. Agreed. The document speaks for itself.

23 41. Mr. Harkins states that there was no need to disclose insider loans. Further, the
24 business plan stated that funds received from the sale of the Offering were to be used for those
25 purposes stated in the Offering. One use was working capital which among all company needs is
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1 used to service then existing financial obligations. Further, any allegations made to the contrary are
2 denied.

3 42. Mr. Harkins avers that the person referred to in the Notice as "*married investor R.E.*"
4 is in fact Rodney Eaves ("Eaves"), who served for some time as an officer and later an Executive
5 Member of Barcelona Advisors. Mr. Harkins avers that with the exception of Mr. Eaves purchase
6 on a \$250,000 interest in the October 2012 Offering, the remaining five transactions, (one of which
7 was a subsequent \$250,000 investment in the October 2014 Offering, which, at Mr. Eaves
8 agreement, was later reclassified as a loan with Mr. Eaves), did not constitute Offerings, as alleged
9 in the Notice, and on that basis, the allegations are denied.

11 43. Mr. Harkins concurs that Mr. Eaves made several loans to Barcelona Advisors as
12 outlined in paragraphs 43 through 52 and that Mr. Eaves was apprised of the working capital needs
13 of the company and that the proceeds of these loans would be used by the company to meet those
14 needs. Mr. Eaves was fully aware that the company was seeking a mid-term solution to its working
15 capital requirements, as the commitments made by others to provide those funds were either (i)
16 defaulted or (ii) currently not occurring, and that the terms and conditions of his loans may require
17 amendment along the way so as to allow the company to perform thereon. It was during the period
18 that Mr. Eaves was making the loans that he became closely involved in company meetings,
19 discussions and planning; and, became first an officer and then an Executive member of the
20 company. In fact, in the Fall of 2013, Mr. Eaves participated in two day company business retreat
21 where the history of the company, the current status of the company and the future plans of the
22 company were presented by numerous people involved with the company and discussions were
23 held on these matters. Mr. Harkins avers that from the Fall of 2013 through September 2014, a
24 period of time that covers the dates on which the Eaves loans were made to the company, there was
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1 nothing about the company's operations and plans of which Mr. Eaves was not fully advised and
2 therefore any allegation contained in paragraph 43 to the contrary is denied.

3 44. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
4 Commissions as to his answer and position to this paragraph 44.

5 45. Mr. Harkins avers that his reply contained in paragraph 45 is to be taken by the
6 Commissions as to his answer and position to this paragraph 44.

7 46. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
8 Commissions as to his answer and position to this paragraph 46.

9 47. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
10 Commissions as to his answer and position to this paragraph 47.

11 48. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
12 Commissions as to his answer and position to this paragraph 48.

13 49. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
14 Commissions as to his answer and position to this paragraph 49.

15 50. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
16 Commissions as to his answer and position to this paragraph 50.

17 51. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
18 Commissions as to his answer and position to this paragraph 51.

19 52. Mr. Harkins avers that his reply contained in paragraph 43 is to be taken by the
20 Commissions as to his answer and position to this paragraph 52.

21 53. Answering paragraph 53, Mr. Harkins denies that he ever offered or sold promissory
22 notes issued by Barcelona Advisors in the January 2014 Offering. The two notes sold in the January
23 2014 Offering were sold by Kerrigan and on that basis, those allegations are denied.

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54. Agreed.

55. Agreed.

56. Agreed and further answering, the stated business plan speaks for itself and any allegations made to the contrary are denied.

57. Agreed and further answering, the December 31, 2013 letter speaks for itself and any allegations made to the contrary are denied.

58. Mr. Harkins avers neither Mr. Harkins or that Barcelona Advisors made any offering of the January 2014 Offering. Any such offering was made by others. Further answering, the January 2014 PPM, as defined in the Notice (the "*January 2014 PPM*") speaks for itself and any allegations made to the contrary are denied.

59. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 59, and on that basis, the allegations are denied.

60. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 60, and on that basis, the allegations are denied.

61. Agreed.

62. Agreed.

63. As known by the Commission, the interest payments referred to in paragraph 63 were deferred under a written notice of same given to the then existing noteholders, categorically without objection, and subsequently, said interest was paid along with additional bonus interest. Further answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are denied.

64. Agreed

1 65. Mr. Harkins avers that the January 2014 Offering stated that funds received from the
2 sale of the Offering were to be used for those purposes stated in the Offering. On stated use was
3 working capital, and working capital is used to service existing financial obligations. Further
4 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
5 denied.

6 66. Agreed. Further answering, the January 2014 PPM speaks for itself and any
7 allegations made to the contrary are denied.

8 67. Mr. Harkins avers that the business plan of Barcelona Advisors was executed under
9 an ever changing business environment and the direction the company took was consistent with the
10 description of the business plan as contained in the October 2012 Offering and the January 2014
11 Offering, and on that basis, the allegations are denied. Further answering, the January 2014 PPM
12 speaks for itself and any allegations made to the contrary are denied.

13 68. Agreed. Further answering, the January 2014 PPM speaks for itself and any
14 allegations made to the contrary are denied.

15 69. Mr. Harkins refers to his answer in paragraph 33 herein. Further answering, the
16 January 2014 PPM speaks for itself and any allegations made to the contrary are denied.

17 70. Agreed. Further answering, the January 2014 PPM speaks for itself and any
18 allegations made to the contrary are denied.

19 71. Mr. Harkins refers to his answer in paragraph 34 herein. Further answering, the
20 January 2014 PPM speaks for itself and any allegations made to the contrary are denied.

21 72. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the
22 truth of the allegations in paragraph 72, and on that basis, the allegations are denied. Further
23

1 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
2 denied.

3 73. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the
4 truth of the allegations in paragraph 73, and on that basis, the allegations are denied. Further
5 answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are
6 denied.
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8 74. Mr. Harkins avers that the Kerrigan loans were insider loans and were subject to
9 verbal agreements among the Executive Members as to modification of the terms of any such loans
10 and otherwise Executive Member loans were subject to terms of repayment as contained in the
11 Barcelona Advisors operating agreement. Further, on that basis, the allegations are denied.
12

13 75. Mr. Harkins avers that there was no final offering document as described in the
14 Notice as the May 2014 Offering and that no offering was made and no subscriptions were rendered
15 pertaining to the May 2014 Offering, and on that basis, the allegations are denied.

16 76. Mr. Harkins denies that any person was solicited to subscribe to the May 2014
17 Offering, as no such final offering document existed and restates the point made in paragraph 75,
18 there was no final offering document completed for the May 2014 Offering. Mr. Harkins avers that
19 numerous draft private placement memorandums for Barcelona Land Company were created of the
20 May 2014 Offering; however, no private placement memorandum as defined in the Notice (the
21 "**May 2014 PPM**"), was ever published or approved for use or used to make an investment offer.
22 Mr. Harkins restates that Barcelona Land Company never offered or sold any membership interests,
23 and that no "**May 2014 Offering**", as defined in the Notice, ever occurred as alleged. Mr. Harkins
24 avers that parties both inside the company and outside may be or have been in possession of some
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1 evolution of a draft of the Barcelona Land Company's planned offering, as defined in the Notice
2 as the May 2014 Offering, and on that basis, the allegations are denied.

3 77. Agreed.

4 78. Answering paragraph 78, Mr. Harkins admits that the 2014 Draft Memorandum
5 referred to Chanen Construction Company, Inc. ("Chanen"), a specific major general contracting
6 company (defined in the Notice as the "*Contractor*"), and avers that the 2014 Draft Memorandum
7 contains draft disclosures approved by Chanen that accurately describe an agreement in principle
8 that had been negotiated with Chanen. Mr. Harkins avers that it was the desire of both Barcelona
9 Advisors and the stated desire Chanen to move forward and conclude such an agreement and to
10 execute the plans thereto, further, that point of finality was not reached as the financial needs of
11 Barcelona Advisors made it imprudent to continue to formalize the Chanen agreement, at that time,
12 and this was stated by Mr. Harkins in a private meeting between Mr. Harkins and Steve Chanen.
13 These events curtailed the completion of a final Barcelona Land Company offering memorandum.
14 Mr. Harkins restates that no final agreement was signed with Chanen, and no offering
15 memorandum, referred to in the Notice as the May 2014 Offering, was ever approved for use.
16 Further answering, Mr. Harkins avers that no version of the planned May 2014 offering was ever
17 used in connection with an offer or sale of securities, that the May 2014 PPM speaks for itself and
18 any allegations to the contrary are denied.

19 79. Mr. Harkins denies the allegations in paragraph 79, and avers that an agreement in
20 principle was reached with Chanen, and that Chanen approved draft disclosures that were set forth
21 in the 2014 Draft Memorandum, and any allegations to the contrary are denied.

22 80. Agreed.

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81. Mr. Harkins refers to his answer in paragraph 33 herein. Further answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are denied.

82. Mr. Harkins avers that the May 2014 PPM speaks for itself, that the May 2014 PPM was never approved for use, nor was it used, for the offer or sale of securities, and any allegations to the contrary are denied.

83. Mr. Harkins refers to his answer in paragraph 35 herein. Further answering, the January 2014 PPM speaks for itself and any allegations made to the contrary are denied.

84. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 84, and on that basis, the allegations are denied. Further answering, Mr. Harkins avers that the May 2014 PPM speaks for itself, that the May 2014 PPM was never approved for use, nor was it used, for the offer or sale of securities, and any allegations to the contrary are denied.

85. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the truth of the allegations in paragraph 85, and on that basis, the allegations are denied. Further answering, Mr. Harkins avers that the May 2014 PPM speaks for itself, that the May 2014 PPM was never approved for use, nor was it used, for the offer or sale of securities, and any allegations to the contrary are denied.

June 2014 Offering

86. Mr. Harkins avers that one note was placed in the amount of \$5,000 and this did not constitute an offering and on that basis, the allegations are denied.

87. Mr. Harkins avers that one note was placed in the amount of \$5,000 and this did not constitute a securities offering and on that basis, the allegations are denied.

88. Agreed

1 89. Mr. Harkins agrees that a letter, approved by the Barcelona Advisors Executive
2 Committee, was sent by Barcelona Advisors over Mr. Harkins name as its President to existing
3 investors in Barcelona Advisors informing them of the current need for capital and proposed terms
4 for a borrowing were outlined, otherwise, the allegations are denied.

5 90. Mr. Harkins avers that one note was placed in the amount of \$5,000 and this did not
6 constitute a securities offering and on that basis, the allegations are denied.

7 91. Mr. Harkins lacks sufficient knowledge and information to form a belief as to the
8 truth of the allegations in paragraph 91, and on that basis, the allegations are denied.

9 92. Mr. Harkins avers that the April 2015 Letter with existing Barcelona Advisor
10 investors was simply communication to present his current thoughts as to how Barcelona Advisors'
11 investors could have a successful continuation of their investment interest. It was a talking paper
12 and not any form of an offering, and on that basis, the allegations are denied.

13 93. Mr. Harkins restates his position in paragraph 92, and on that basis, the allegations
14 are denied.

15 94. Mr. Harkins restates his position in paragraph 92, and on that basis, the allegations
16 are denied.

17 95. Mr. Harkins restates his position in paragraph 92, and on that basis, the allegations
18 are denied.

19 96. Mr. Harkins avers that the May 2015 E-mail with one or more existing Barcelona
20 Advisor investors was simply communication to present his current thoughts as to how Barcelona
21 Advisors' investors could have a continuation of their investment interest. It was a talking paper
22 and not any form of an offering, and on that basis, the allegations are denied.

1 the meaning of A.R.S. § 44-1999, and denies that he is therefore jointly and severally liable under
2 A.R.S. § 44-1999 to the same extent as Barcelona Advisors for any alleged violations of A.R.S.
3 § 44-1991.

4 105. Mr. Harkins denies the allegations in paragraph 105, which call for legal conclusions.
5 Mr. Harkins specifically denies that he directly or indirectly controlled Barcelona Land Company
6 within the meaning of A.R.S. § 44-1999, and denies that he is therefore jointly and severally liable
7 under A.R.S. § 44-1999 to the same extent as Barcelona Land Company for any alleged violations
8 of A.R.S. § 44-1991. Mr. Harkins denies that Barcelona Land Company ever offered or sold
9 securities in Arizona.
10

11 **VIII.**

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

13 **(Denial, Revocation, Or Suspension of Salesman Registration; Restitution, Penalties, or**
14 **Other**

15 **Affirmative Action)**

16 1. The allegations in paragraph 1, Part VIII of the Notice do not apply to Mr. Harkins;
17 thus, no response from him is required. To the extent that Mr. Harkins must respond to these
18 allegations, he lacks sufficient knowledge and information to form a belief as to the truth of the
19 allegations, and on that basis, the allegations are denied.
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21 2. Mr. Harkins denies the allegations of paragraph 2, Part VIII of the Notice, which call
22 for a legal conclusion.
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IX.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

108. Responding to the Division’s request for a Temporary Order against Mr. Harkins, he restates categorically his answers herein and denies that his business activities and conduct have not been a detriment to the public’s welfare such as to cause the Commission to require immediate attention. Further, Mr. Harkins brings to the attention of the Commission, to the extent it is already not aware if not learned from depositions of Barcelona Advisors’ members and employees, that all investors in Barcelona Advisors October 2012 Offering and January 2014 Offering were (i) accredited investors, (ii) comprised a small number of persons (10), and (iii) with one exception, Kelly Bair, each of whom had a substantial prior relationship with the person whom made the investment offering to them, one by Harkins (Kelly Bair) , one by Jim Wilkerson (Richard Andrade) and eight by Kerrigan.

X.

REQUESTED RELIEF

109. Responding to the Division’s request for relief against Mr. Harkins, Mr. Harkins requests that the Commission dismiss the Complaint and deny the Division’s request for relief in its entirety, including but not limited to: (1) a “cease and desist order”; (2) an order to take corrective action, including restitution; (3) an order to pay administrative penalties; or (4) any other relief.

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XI.

HEARING OPPORTUNITY

110. Mr. Harkins previously filed a request for hearing and a pre-hearing conference. Mr. Harkins reiterates his request for a hearing.

XII.

ANSWER REQUIREMENT

111. Mr. Harkins reiterates his request for a hearing, and files this Answer to the Notice as required.

GENERAL DENIAL

112. Mr. Harkins expressly denies each and every allegation of the Notice not expressly admitted above. Mr. Harkins avers that he has never violated any Arizona securities law, nor has he been a control person of any entity which has violated any Arizona securities law, nor has he authorized any other person to violate any Arizona securities law on his behalf.

AFFIRMATIVE DEFENSES

113. Mr. Harkins alleges that the Notice fails to state a claim upon which relief can be granted, and this matter should be dismissed against Mr. Harkins in its entirety, with prejudice.

114. Mr. Harkins alleges that to the extent that any securities were involved in the alleged transactions, the securities, and/or the transactions in which they were offered and sold, were exempt from the registration and/or licensing provisions of the Securities Act.

115. Mr. Harkins alleges that he did not improperly offer or sell any securities under Arizona law, or was he a control person of any entity, including Barcelona Advisors or Barcelona Land Company, which is alleged to have offered or sold securities under Arizona law.

1 116. Mr. Harkins alleges that the alleged investors did not rely, reasonably or otherwise,
2 on any misrepresentation made by Mr. Harkins.

3 117. Mr. Harkins alleges that he has not taken any illegal or improper actions within or
4 from the State of Arizona.

5 118. Mr. Harkins alleges that the claims in the Notice are barred by applicable statutes of
6 limitation.

7 119. Mr. Harkins alleges that the claims in the Notice are barred by the doctrines of waiver,
8 estoppel, laches, unclean hands, and contributory negligence.

9 120. Mr. Harkins alleges that the claims in the Notice are barred by assumption of risk.

10 121. Mr. Harkins alleges that the Commission has failed to allege securities fraud with
11 reasonable particularity as required by applicable law and the Arizona Rules of Civil Procedure.

12 122. Mr. Harkins alleges that he did not know, and in the exercise of reasonable care,
13 could not have known, of any untrue statements or material omissions as alleged in the Notice.

14 123. Mr. Harkins alleges that he did not act with the requisite scienter.

15 124. Mr. Harkins alleges that he did not employ a deceptive or manipulative device, or
16 scheme or artifice to defraud in connection with the offer, purchase or sale of any security.

17 125. Mr. Harkins alleges that he did not make any misrepresentations or omissions,
18 material or otherwise, in connection with the offer or sale of any securities.

19 126. Mr. Harkins alleges that violations of the Securities Act, if any, were proximately
20 caused and contributed to by the improper conduct of intervening acts of the other persons or
21 entities named in the Notice and/or other third persons who were not named in the Notice.

22 127. Mr. Harkins alleges that he acted in good faith and did not directly or indirectly
23 induce any of the conduct at issue.

1 128. Mr. Harkins alleges that no investors have suffered any damages as a result of any
2 acts or omissions of Mr. Harkins.

3 129. Mr. Harkins alleges that any damages alleged to have been suffered by investors were
4 caused by the actions of parties not under the control of Mr. Harkins.

5 130. Mr. Harkins alleges that the investors relied on other culpable parties in connection
6 with the matters alleged in the Notice.

7 131. Mr. Harkins alleges that restitution is barred because damages, if any, were caused
8 by the investors' own acts or omissions and/or by the investors' failure to mitigate their damages.

9 132. Mr. Harkins alleges that certain claims in the Notice are barred, in whole or in part,
10 because the investors' damages, if any, were caused by the acts of other persons or entities that Mr.
11 Harkins did not control, and for which Mr. Harkins is not legally responsible.

12 133. Mr. Harkins alleges that certain claims in the Notice are barred, in whole or in part,
13 because the investors' damages, if any, were caused by the intervening and superseding acts of
14 other persons or entities that Mr. Harkins did not control, and for which Mr. Harkins is not legally
15 responsible.

16 134. Mr. Harkins alleges that certain claims in the Notice are barred, in whole or in part,
17 because of mutual mistake.

18 135. Mr. Harkins alleges that certain claims in the Notice are barred, in whole or in part,
19 because of payments, accord and satisfaction.

20 136. Mr. Harkins alleges that certain claims in the Notice are precluded, in whole or in
21 part, by offsets.

22 137. Mr. Harkins alleges that certain claims in the Notice are barred, in whole or in part,
23 because the investors acted in bad faith.

1 138. Further investigation and discovery in this matter may reveal the existence of
2 additional affirmative defenses. Therefore, Mr. Harkins reserves as possible defenses all other
3 defenses available under the Arizona Rules of Civil Procedure.

4 139. Mr. Harkins reserves the right to amend this Answer to assert additional affirmative
5 defenses after completion of investigation and discovery.

6 **WHEREFORE**, having fully answered the Notice, there is no basis for imposing liability
7 of any kind against Mr. Harkins, and he asks that:
8

- 9 A. The Notice be dismissed with prejudice against Mr. Harkins; and there should be no
10 order of any kind against him;
11 B. Mr. Harkins' request for a hearing, which was previously filed, be reaffirmed; and
12 C. Mr. Harkins be awarded such other and further relief as may be appropriate under the
13 circumstances.
14

15 DATED this 15 day of March, 2016.

16
17 By: 
18 Richard C. Harkins
19 4422 E. Lupine Ave.
20 Phoenix, AZ 85028

21 ORIGINAL and thirteen copies of the foregoing
22 filed this 15 day of March, 2016 with:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, AZ 85007

27 COPY of the foregoing hand-delivered
28 This ___ day of March, 2016 to:

Matthew J. Neubert

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Securities Division
2 Arizona Corporation Commission
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3 Phoenix, AZ 85007
4
5 Hearing Officer
Hearing Division
Arizona Corporation Commission
6 1200 W. Washington Street
Phoenix, AZ 85007
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9 Arizona Corporation Commission
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