

ROBB EVANS OF ROBB EVANS & ASSOCIATES LLC

Receiver of

Homestead Properties, L.P., Homestead Limited, LLC, et al.

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

Securities and Exchange Commission v. Homestead Properties, L.P., et al.

CASE No. SACV 09-01331 CJC (MLGx)

**Opposition to Motion to Permit
Election of a New General Partner for Homestead Properties, LP**

Filed December 19, 2011

1 GARY OWEN CARIS (SBN 088918)
E-mail: gcaris@mckennalong.com
2 LESLEY ANNE HAWES (SBN 117101)
E-mail: lhawes@mckennalong.com
3 MCKENNA LONG & ALDRIDGE LLP
300 South Grand Avenue, 14th Floor
4 Los Angeles, CA 90071
Telephone: (213) 688-1000
5 Facsimile: (213) 243-6330

6 Attorneys for Receiver
ROBB EVANS & ASSOCIATES LLC
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
11

12 SECURITIES AND EXCHANGE
13 COMMISSION

14 Plaintiff,

15 v.

16 HOMESTEAD PROPERTIES, L.P.;
17 HOMESTEAD LIMITED, L.L.C.;
18 CALIFORNIA WEALTH
MANAGEMENT GROUP, d.b.a. IFC
19 ADVISORY; HEATH M.
TAK,
20 BIDDLECOME; and WILLIAM C.
TAK,

21 Defendants,

22 HOMESTEAD NORTHLAND MHC,
23 LLC and JACKSON MHC, L.L.C.,

24 Relief Defendants.

CASE NO. SACV09-01331 CJC (MLGx)

**OPPOSITION TO MOTION TO
PERMIT ELECTION OF A NEW
GENERAL PARTNER FOR
HOMESTEAD PROPERTIES, LP**

Date: January 9, 2012
Time: 1:30 p.m.
Place: Courtroom 9B

25 COMES NOW, Receiver Robb Evans & Associates LLC ("Receiver") and
26 submits the following opposition to the Motion to Permit Election of a New General
27 Partner for Homestead Properties, L.P. ("Motion") filed on behalf of several
28 investors.

1 **I. INTRODUCTION**

2 For several months, the Receiver and Plaintiff Securities and Exchange
3 Commission (“SEC”) have been in communication with counsel for the moving
4 parties, Andrew Holmes, expressing concerns raised by the Motion and attempting
5 to work out a resolution of the Motion and related issues. On September 14, 2011, a
6 meeting was held in the Receiver’s counsel’s law offices with Mr. Holmes, three of
7 the moving parties, counsel for the SEC, Brick Kane on behalf of the Receiver, and
8 the Receiver’s counsel. Since that time, it was believed that a stipulation would be
9 prepared and circulated by Mr. Holmes for the consideration of the SEC and the
10 Receiver in an effort to resolve this Motion. Several continuances were sought and
11 approved by the Court, including the last one in which counsel for the moving
12 parties represented that he was in the process of drafting a written stipulation
13 regarding the election process and other issues intended to resolve the Motion.

14 Notwithstanding Mr. Holmes’ repeated promises, and despite the passage of
15 several months, he has never submitted to the SEC or the Receiver for their
16 consideration a draft stipulation resolving this Motion. Therefore, the Receiver is
17 compelled to file this opposition and suggest an alternative framework believed by
18 the Receiver and the SEC to adequately address moving parties’ concerns.

19 **II. THE MOTION IS PREMATURE AND MAY UNNECESSARILY**
20 **USURP THE PROPER ROLE OF THE RECEIVER**

21 Homestead Properties, L.P. (“Homestead Properties”) is a receivership entity
22 subject to this Court’s *ex parte* Temporary Restraining Order and Order to Show
23 Cause dated November 16, 2009 and the Preliminary Injunction and Other
24 Provisional Relief filed December 18, 2009 (Doc. No. 42) (collectively, the
25 “Receivership Orders”). Pursuant to the Receivership Orders, the Receiver alone is
26 responsible for custody, control and possession and to take charge of all of the assets
27 of Homestead Properties and for taking all actions necessary and appropriate to
28 prevent the dissipation of those assets. (Temporary Restraining Order, pp. 5-6;

1 Preliminary Injunction, p. 6.) By the Motion, a minority of investors seek to direct
2 an election for a new general partner authorizing that new general partner “to act
3 pursuant to the authority granted a General Partner under the Partnership/Operating
4 Agreement.” (Memorandum, p. 2:3-6.) In addition, the Motion suggests that a
5 “Special Master with no prior affiliation with the Partnership” supervise the voting
6 process. (Memorandum, p. 7:2-5.) However, there is no explanation as to the extent
7 to which the Receiver’s powers and duties will be eliminated or whether the
8 Receiver will be discharged as a result of such an election as to Homestead
9 Properties or the other entities subject to the Receivership Orders. In short, the
10 Motion proposes to introduce at least two new players – a new general partner and a
11 special master – without any explanation as to how the receivership will be affected
12 thereby. The Motion is hopelessly uncertain, unsupported by any evidence as to the
13 need for the relief sought, and should be denied.

14 **III. IT IS PREMATURE TO ELECT A NEW GENERAL PARTNER**
15 **UNTIL OR UNLESS THE COURT IMPLEMENTS A DETAILED SET**
16 **OF PROCEDURES TO EFFECTUATE A RESTRUCTURE OF**
17 **HOMESTEAD PROPERTIES**

18 The Receiver does not object per se to a set of procedures whereby the
19 Receiver’s responsibilities ultimately will terminate if in fact a weighted majority¹ of
20 the limited partners elect to preserve Homestead Properties and continue its
21 operations. Until such time as that is determined, however, it is premature to elect a
22 new general partner. Alternatively, the Receiver suggests and the SEC supports the
23 outline of an alternative proposal as set out below:

24 **A. Alternative Procedures Requested to be Adopted**

25 Initially, the limited partners would be asked to vote on whether or not they
26 want Homestead Properties to be dissolved. The vote would be weighted based

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28 ¹ The concept of weighting the voting rights of each limited partner is discussed below.

1 upon the outstanding claims held by each limited partner and the claims would be
2 allowed and calculated upon a “net investment” basis whereby each claim is
3 determined based on actual cash paid into Homestead Properties less actual cash
4 paid out to the investor, irrespective of whether such cash paid out was previously
5 designated as “interest” on the investment.² Prior to the vote, the Receiver would
6 provide the investors with a detailed valuation as to the assets held in the
7 receivership estate, including its ownership interest in two mobile home parks in
8 Ohio and Michigan, its ownership of a promissory note secured by a junior interest
9 in another mobile home park referred to as Lake Villa, as well as all cash on hand.
10 That asset valuation would be provided to investors along with the Receiver’s
11 calculation of an approximate return that each investor could be expected to receive
12 from his or her ownership interest in Homestead Properties if it were liquidated. By
13 way of example only, assuming investor claims total \$9 million and assuming
14 further the receivership estate has a present value of \$5.4 million, each investor’s
15 interest would be worth 60% of that investor’s allowed claim.

16 If a weighted majority of investors, based upon investors’ allowed claim
17 amounts, vote to dissolve Homestead Properties, the Receiver would thereafter
18 proceed to liquidate the remaining assets, distribute those assets pro rata to investors,
19 and wind up the receivership estate. No election of a general partner will be
20 necessary in such event.

21 Alternatively, in the event that a weighted majority of investors vote against
22 dissolution, the Receiver proposes an opt-out procedure so that those who elect to
23 opt out and no longer remain investors in Homestead Properties can be cashed out
24 based upon the valuation provided to the investors prior to the initial vote. Using the
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26 ² A complete discussion as to why this claims calculation method is appropriate is
27 set out in the Receiver’s Motion to Approve (1) Receiver’s Proposed Interim
28 Distribution of Receivership Assets to Investor Creditors; and (2) Proposed
Procedures for Final Claims Filing and Allowance For All Creditors filed April 28,
2010. See, Document No. 65-2, at pp. 5-7.

1 example set forth above, those investors electing to opt out would each receive 60%
2 of their allowed claims, in cash. Because the Receiver holds approximately \$6
3 million in cash, the Receiver will always have sufficient funds on hand to pay to
4 those electing to opt out. In the event that a majority vote in favor of keeping
5 Homestead Properties in operation, a second vote could then be held to elect a new
6 general partner, as sought in the instant Motion.

7 Therefore, in lieu of the proposal suggested in the Motion, which is premature
8 and does not address the effect such an election will have on the Court's
9 Receivership Orders and the continuing responsibilities of the Receiver, it is
10 respectfully requested that the Court direct the Receiver to implement alternative
11 procedures generally set forth above. The Receiver suggests that the Court instruct
12 the Receiver to prepare a detailed set of procedures along the lines generally
13 described above for the Court's further review, approval and implementation by
14 subsequent Court order.

15 **IV. CONCLUSION**

16 For the reasons set forth herein, it is respectfully requested that this Court
17 deny the Motion and instruct the Receiver to prepare for the Court's consideration a
18 detailed set of procedures as generally described herein.

19 Dated: December 19, 2011

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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23 By: /s/ Gary Owen Caris

Gary Owen Caris
Attorneys for Receiver
ROBB EVANS & ASSOCIATES
LLC