

ROBB EVANS & ASSOCIATES LLC

Receiver of

**High Park Investment Group, Inc. and
Harbor Financial Investment Group, Inc., et al.**

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**Securities and Exchange Commission v. High Park Investment Group, Inc., et al.
CASE No. SACV 05-1090 CJC (MLGx)**

**Supplemental Declaration of Kenton Johnson in Support of
Consolidated Replies to Oppositions to Motion by Receiver for
Instructions and Orders Re:**

- (1) Invalidating Purported Notes and Liens Securing Notes of Investors as Secured Debts;**
- (2) Administration and Sale of Real Properties Including Request for Modification of Sale Procedures of 28 U.S.C. Sections 2001 and 2002; and**
- (3) Authorizing Sale of Personal Property and Modifying Procedures of 28 U.S.C. Sections 2002 and 2004 in Connection Therewith**

Filed April 17, 2006

FILED

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

6 Attorneys for Permanent Receiver
ROBB EVANS & ASSOCIATES LLC

06 APR 15 PM 2: 37

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 HIGH PARK INVESTMENT GROUP,
15 INC., a Nevada corporation, HARBOR
FINANCIAL INVESTMENT GROUP,
16 INC., a Nevada corporation, EDWARD
R. SHOWALTER,

17 Defendants.
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CASE NO. SACV 05-1090 CJC
(MLGX)

**SUPPLEMENTAL DECLARATION
OF KENTON JOHNSON IN
SUPPORT OF CONSOLIDATED
REPLIES TO OPPOSITIONS TO
MOTION BY RECEIVER FOR
INSTRUCTIONS AND ORDERS
RE: (1) INVALIDATING
PURPORTED NOTES AND LIENS
SECURING NOTES OF
INVESTORS AS SECURED DEBTS;
(2) ADMINISTRATION AND SALE
OF REAL PROPERTIES,
INCLUDING REQUEST FOR
MODIFICATION OF SALE
PROCEDURES OF 28 U.S.C.
SECTIONS 2001 AND 2002; (3)
AUTHORIZING SALE OF
PERSONAL PROPERTY AND
MODIFYING SALE PROCEDURES
OF 28 U.S.C. SECTIONS 2002 AND
2004 IN CONNECTION
THEREWITH**

**DATE: APRIL 24, 2006
TIME: 1:30 P.M.
PLACE: COURTROOM 9B**

1 I, Kenton Johnson, declare:

2 1. I am a member of Robb Evans & Associates LLC, the duly appointed
3 Permanent Receiver ("Receiver") of High Park Investment Group, Inc. ("High
4 Park") and Harbor Financial Investment Group, Inc. ("Harbor") and their
5 subsidiaries and affiliates ("Receivership Entities"). If called upon to testify as to
6 the facts set forth in this declaration, I could and would testify competently thereto
7 as the facts are true and within my personal knowledge.

8 2. I was one of the members of Robb Evans & Associates LLC
9 (Receiver) that prepared the Report of Temporary Receiver's Activities for the
10 period November 9 – 14, 2005, which was filed with this Court on November 22,
11 2005. The information in the Temporary Receiver's Report, including property
12 details and estimated valuations, was based on data and opinions available at that
13 time. The receivership estate initially was and continues to be insolvent. When the
14 Receiver took control of the bank accounts of the receivership defendants, the total
15 bank balance was negative (\$3,700). The Temporary Receiver did not and
16 currently does not have authority to sell any real or personal property.

17 3. When the Temporary Receiver was appointed as the Permanent Equity
18 Receiver on December 13, 2005 it began a comprehensive program to address all
19 real and personal property issues, despite having no funds to pay for repairs, clean-
20 up expenses, utilities, appraisals, and title reports. The Receiver was able to
21 persuade contractors, appraisers, other real estate professionals, and the title
22 company to provide service with a deferred payment arrangement until the estate
23 became solvent. The Receiver has been careful to keep these administrative
24 expenses to a minimum given that the receivership estate is insolvent, having
25 incurred approximately \$54,000 in such expenses. These were critical expenditures
26 to secure and weatherproof property, to perform work required by city
27 governments, to obtain title commitments to determine the true state of liens and
28 encumbrances on the 17 properties, and to obtain appraisals to be able to

1 understand the value of estate assets. This does not include extensive fees and costs
2 incurred by the Receiver, its staff and its outside counsel. The Receiver worked on
3 and completed or is still completing tasks and duties associated with the real and
4 personal property in the following broad categories described below.

5 **Securing and Repairing Properties**

6 4. The Receiver has secured control of residential properties and, when
7 necessary, installed protection from the elements and protected building materials
8 from damage or theft. We have engaged a qualified and licensed contractor to
9 correct health and safety violations issued by two cities and to complete clean up
10 and repairs either required or strongly requested by municipal personnel. The
11 Receiver has also requested and received contractor estimates to finish the
12 incomplete repairs (required and cosmetic) to prepare the properties for marketing
13 and sale.

14 **Establishing and Preserving Values; Confirming Title Information**

15 5. The Receiver has engaged qualified and licensed appraisers to provide
16 appraisals on 12 of the 15 residential properties in order to have credentialed
17 evaluations that are an important part of the analysis to formulate a disposition
18 strategy. We also have engaged qualified and licensed real estate professionals to
19 provide a broker's opinion of resale value and general market observations to be
20 used as part of the analysis to formulate a disposition strategy. The Receiver
21 obtained preliminary title reports on each of the 17 properties to confirm title
22 vesting and the amount and priority of recorded liens. Finally, we have
23 communicated with institutional lenders and some investors to enforce the stay of
24 litigation and foreclosure actions initiated both prior to and after the Receiver was
25 appointed.

26 **Preparing Disposition Strategies**

27 6. The Receiver prepared a disposition strategy that could be
28 implemented as soon as the Court approved and authorized our sale of property.

1 The strategy included identifying properties that should be immediately marketed
2 and properties that would require an additional cost benefit analysis in order to
3 maximize market value.

4 **Maintaining Contact with All Potential Buyers**

5 7. Throughout this initial period, the Receiver has initiated and
6 maintained contact with all brokers, pre-receivership contract parties, and all
7 persons expressing an interest in any property or forwarding unsolicited offers to
8 purchase. Each of these tasks is now described in further detail.

9 **SECURING AND REPAIRING PROPERTIES**

10 8. A member of the Receiver's staff toured all Orange County properties
11 with a pre-receivership listing agent, Gary Ceasar. Declarant Sasan Aval, who was
12 a pre-receivership listing agent, was not available to tour properties. Mr. Aval's
13 broker at ReMax had terminated all listings when the Receiver was appointed. To
14 date, the Receiver's staff has responded to 18 emails and 20 telephone calls from
15 Declarant Aval and also completed a lengthy meeting with one of Mr. Aval's
16 clients. The Receiver's staff member visited the Orange County properties a
17 second time, and the Mulholland property, with a licensed and qualified contractor
18 to inspect and evaluate the condition of the properties and generate repair estimates.

19 9. The Receiver's staff met with officials from the Cities of San
20 Clemente and Dana Point. Later, site visits were conducted with Building
21 Department officials from both cities. Because of the number of properties located
22 in San Clemente, the City requested several follow-up meetings to review
23 completed repairs. The City agreed to cooperate with the Receiver and extend
24 existing building permits, and agreed to require only necessary maintenance items.
25 The Receiver hired the contractor to work on 12 properties and, as needed, to
26 secure and weather proof, to eliminate health and safety issues and other municipal
27 concerns, and to prevent any additional damage to building materials.

28

1 10. The Receiver's staff contacted pre-receivership listing agents in
2 Mammoth Lakes to insure that the undemolished residence was secured, weather
3 proofed and receiving required utility service and maintenance to prevent additional
4 damage from the winter weather.

5 **Establishing and Preserving Values; Confirming Title Information**

6 11. The Receiver's staff interviewed and hired appraisers to conduct *As Is*
7 and *As Repaired* appraisals on the properties determined to be the most likely
8 candidates for immediate sale in the event that authority to sell was obtained from
9 this Court. The Receiver's staff also interviewed and hired prospective listing
10 agents to conduct *As Is* and *As Repaired* Broker's Opinions of Value (BOVs) on the
11 subject properties. The Receiver's staff reviewed all completed appraisals and
12 BOVs and discussed values, assumptions, and market conditions with professionals
13 to properly estimate listing prices and sale prices in anticipation of Court approval
14 of marketing and sale procedures.

15 12. The Receiver's staff ordered title commitments on all receivership
16 properties. Staff members then reviewed the title commitments to determine the
17 amount of debt (institutional lenders and investors), the priority of deeds of trust,
18 liens filed pre- and post-receivership, and taxes due.

19 13. The Receiver's staff corresponded with 33 conventional lenders and
20 homeowner associations to provide notice of the receivership including the court-
21 ordered stay provision. The staff completed an extensive amount of follow-up calls
22 and letters required to respond primarily to Notices of Default and Notices of
23 Trustee's Sale, and also to respond to delinquency situations. In several instances,
24 at the request of the investors, the Receiver's staff provided an explanation of case
25 issues to lenders.

26 14. The Receiver's staff met with officers of Executive Escrow, Inc. and
27 successfully obtained an agreement to remove a Deed of Trust for \$154,000 that it
28 recorded on each of 14 properties.

1 15. Declarant Earl Coleman discusses six of the receivership residential
 2 properties in San Clemente and states "...a completion of the remodels of several
 3 High Park properties would result in significant increases in their market values."
 4 [Declaration of Earl Coleman, Paragraph 10.] Declarant Coleman then introduces
 5 the following property summary:

| ADDRESS | MARKET VALUE IN COMPLETED STATE | COST TO COMPLETE | RECEIVER'S "AS IS" VALUE |
|--|--|---------------------|--------------------------------|
| 408 Calle Vista Torito, S.C. | \$1,150,000 | \$ 75,000 | \$ 850,000 |
| 215 Calle Tinaja, S.C. | 1,150,000 | 125,000 | 750,000 |
| 3 Marbella, S.C. | 2,400,000 | 100,000 | 1,900,000 |
| 424 Avenida Salvador, S.C. | 2,200,000 | 150,000 | 1,500,000 |
| 27091 Calle Juanita, Dana Point, CA | 900,000 | 50,000 | 800,000 |
| 24602 La Hermosa, Laguna Niguel, CA | 1,150,000 | 125,000 | 700,000 |
| TOTALS: | \$8,950,000 | \$625,000 | \$6,500,000 |

18 16. Declarant Coleman then states, "By completing the remodels of the
 19 above-referenced properties, their market values would increase approximately
 20 \$2,450,000, which is \$1,825,000 more than the estimated cost to complete."
 21

22 [Declaration of Earl Coleman, Paragraph 10.]

23 17. The Receiver's analysis and conclusion as to the benefit of completing
 24 the remodels of these properties is very different from the conclusion stated in the
 25 declaration of Earl Coleman. The Receiver obtained firm estimates to complete the
 26 remodels from a licensed contractor well-experienced with comparable remodeling
 27 projects for similar properties. Two of his estimates were confirmed by other
 28

1 contractors. The Receiver has obtained appraisals for three of the residences and
2 BOVs for two of them. The Receiver's calculations are presented below.

| 3 | 4 | 5 | 6 | |
|---|--|---------------------|--------------------------------|-------------|
| ADDRESS | MARKET VALUE IN COMPLETED STATE | COST TO COMPLETE | RECEIVER'S "AS IS" VALUE | |
| 7 408 Calle Vista Torito, S.C. | \$1,000,000 | \$ 268,500 | \$ 850,000 | |
| 8 215 Calle Tinaja, S.C. | 1,150,000 | 238,000 | 750,000 | |
| 9 3 Marbella, S.C. | 1,875,000* | 289,000 | 1,507,000* | |
| 10 424 Avenida Salvador, S.C. | 1,720,000 | 279,000 | 1,500,000 | |
| 11 27091 Calle Juanita, Dana Point, CA | 900,000 | 121,800 | 800,000 | |
| 12 24602 La Hermosa, Laguna Niguel, CA | 1,150,000** | 196,500 | 700,000 | |
| 13 | TOTALS: | \$7,795,000 | \$1,392,800 | \$6,107,000 |

14 *Based on an appraisal and BOVs received after the Receiver's Motion was filed,
15 the "As Is" value of this property is about \$400,000 lower than previously reported.
16 The Market Value in Completed State is supported by the appraisal and BOVs.
17

18 **This value has not been confirmed and may be based on a large addition not
19 included in the cost to complete.
20

21
22 18. The Receiver has calculated that by completing the remodels of the
23 above-referenced properties, their market values would increase approximately
24 \$1,688,000. However, the amount is only \$295,200 more than the cost to complete.
25 Additionally, the \$295,200 gain is centered in two residences, both of which do not
26 have current appraisals or BOVs. The Receiver will obtain valuations for these
27 residences and complete a more detailed cost benefit analysis for each property to
28 confirm whether the repairs and improvements will increase market value well in

1 excess of the construction cost. Any decision to invest over \$1 million that could
2 be distributed to the defrauded investors requires a thorough and careful analysis,
3 which the Receiver must still complete.

4 19. Relying on the Receiver's initial report, declarant Earl Coleman states
5 that the 22.43 acre property in Bullhead City Arizona has the potential to be worth
6 in excess of \$7,000,000 after someone invests \$3,200,000 to develop the property
7 to a lot-ready stage and the 151 lots are fully leased for 35 years. The Receiver is
8 not prepared to agree that an investment of \$3,200,000 would produce a real
9 property value of \$7,000,000. Furthermore, the Receiver cannot agree, at this stage
10 of the receivership, to divert potential distributions of \$3,200,000 from the
11 defrauded investors and direct that sum to an uncertain investment in a potential
12 residential subdivision in the Arizona desert. The conclusions from additional data
13 and evaluations, and a complete cost benefit analysis, will direct the Receiver's
14 recommendation as to this property.

15 20. Robb Evans, the Chief Executive Officer of Robb Evans & Associates
16 LLC, was in Bullhead City on December 2, 2005. He was closing a \$10 million
17 sale of a nearby residential lot development project, which was the last major asset
18 of another regulatory action in U. S. District Court in Santa Ana (Securities and
19 Exchange Commission vs. TLC Investments and Trade Company, et al. Case
20 number SACV 00-960-DOC (EEx)). Without charge to this estate, Robb Evans
21 drove to and viewed the 22.43 acre, site, met with the prior seller of the property,
22 and discussed market trends and conditions.

23 21. Mr. M. Val Miller, a member of the Receiver's firm, has extensive
24 experience in the development and marketing of potential residential subdivision
25 property in the Bullhead City area. Mr. Miller made separate trips to the Bullhead
26 City area and has contacted former owners, listing agents, appraisers, prospective
27 buyers, and contractors. He was able to discuss the property and to begin gaining
28 an understanding of the current fair market value and potential future market value.

1 He is continuing his evaluation and development of resolution scenarios for this
2 property and will be completing the required cost benefit analysis.

3 **Preparing Disposition Strategies**

4 22. The Receiver inspected all properties except the two residences in
5 Mammoth. The Receiver's staff reviewed all completed appraisals and BOVs, and
6 discussed values and assumptions with professionals to properly estimate listing
7 prices and sale prices in anticipation of the Court's approval of marketing and sale
8 procedures.

9 23. The Receiver is analyzing an appraisal and an environmental
10 evaluation of the former headquarter's property at 621 W. Rosecrans Avenue in
11 Gardena. One of the investors, Mr. Starflinger, is claiming ownership of the
12 property and the Receiver is continuing discussions with his counsel.

13 24. The Receiver has developed an initial disposition strategy for the 15
14 residential properties. The Receiver has determined that 11 properties could and
15 should be immediately marketed as is, or with minimal repair (i.e., repairs for less
16 than \$10,000). Several of the properties require additional appraisals or BOVs to
17 confirm the Receiver's initial analysis of As Is Values and Market Values in
18 Completed State.

19 25. The 11 properties include three residences identified by declarant Earl
20 Coleman that could benefit from completing remodeling projects (3 Marbella; 424
21 Avenida Salvador; and 27091 Calle Juanita). The Receiver has determined that
22 there will be no meaningful net benefit to the market value of these three residences
23 if the remodeling were to be completed. The final decision to immediately market
24 27091 Calle Juanita is subject to additional appraisals and BOVs to confirm the
25 Receiver's initial analysis of As Is Values and Market Values in Completed State.

26 26. Four of the 15 residential properties will require detailed cost benefit
27 analyses to determine whether certain repairs and improvements should be
28 completed to increase market value well in excess of the construction cost.

1 **Maintaining Contact with All Potential Buyers**

2 27. The Receiver corresponded with all prospective pre-receivership
3 buyers and/or their agents to discuss the sale process in receivership if the Court
4 approved the Receiver’s proposed sale procedures. To foster maintaining the
5 interest of these prospective purchasers, the Receiver’s staff attended subsequent
6 meetings, conference calls and completed site visits. The Receiver continues to
7 maintain contact with all prospective pre-receivership buyers.

8 28. The Receiver’s staff or its outside counsel answered or returned all
9 calls from investors, attorneys, vendors, agents, escrow companies and prospective
10 purchasers relating to any aspect of the receivership. The Receiver’s staff
11 encouraged callers making unsolicited verbal offers to prepare written contracts that
12 could be negotiated if and when the Court approved the Receiver’s proposed sale
13 procedures. The Receiver holds 14 post-receivership contracts for nine of the
14 properties. Three of the properties have multiple offers.

15 **Comment on Hard Money Loans**

16 29. Mr. Douthit challenges my credentials to opine on hard money lending
17 practices. By way of response, I would note that prior to becoming a member of
18 Robb Evans & Associates LLC, I was in the banking industry for over 25 years,
19 and was at various times chief executive officer and senior credit officer at
20 commercial banks in California. In my capacity as a banker, I had numerous bank
21 customers who were in the hard money lending business and who collateralized
22 loans from the commercial banks for whom I worked with portfolios of hard money
23 loans. In that context, I had occasion to analyze dozens of hard money loans.

24 30. A hard money lender is a lender that relies entirely on the value of the
25 collateral securing the loan rather than on the assets of the borrower or the income
26 stream of the collateral. Hard money lenders typically will not lend at a loan to
27 value ratio over 70% and more frequently require a loan to value ratio not
28

1 exceeding 50%. A true real estate hard money lender would not lend without
2 obtaining title insurance.

3 31. The notes and other documentation taken by the investors in this case
4 are not at all typical of hard money loan documentation. While hard money lenders
5 often charge substantially higher interest rates than commercial banks charge and
6 often times charge points for the loans made, the loan documentation clearly
7 discloses the interest rates charged, and any other points and fees charged. While a
8 hard money lender might charge points for a loan and deduct (i.e., pay itself) the
9 points from the loan proceeds, I have never seen hard money lenders hide the rate
10 of return by inflating or "grossing up" the promissory note and then showing no
11 interest on the face of the note. I have never seen, as with Mr. Adli's documents,
12 notes split where one note is for an amount none of which was actually paid to High
13 Park. These rates appear to be constructed in a manner intentionally designed to
14 disguise or hide huge rates of return.

15 **Payments by Nguyen and Miller**

16 32. Attached collectively hereto as Exhibit 1 are true and correct copies of
17 receipts provided to Messrs. Timothy Nguyen and John Miller from High Park for
18 their investments which were located in the High Park files at the time the Receiver
19 took control of the business premises.

20 I declare under penalty of perjury that the foregoing is true and correct and
21 this declaration was executed this 17th day of April 2006 at Sun Valley, California.

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23 
24 _____
25 KENTON JOHNSON
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