



State of Utah
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

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June 13, 1997

Ms. Polly F. Powell
Baker & Botts, L.L.P.
98 San Jacinto Blvd Suite 1600
Austin TX 78701-4039

Re: The World of ResidenSea
File #005-9072-50/A61002-50
Request for Interpretive Opinion

Dear Ms. Powell:

This is in response to your letter dated April 28, 1997, wherein you requested an interpretive opinion from the Utah Division of Securities ("Division"). You ask the Division to opine whether The World of ResidenSea Limited may enter into contractual arrangements with each prospective purchaser for 1) the exclusive right to occupy and use an apartment aboard a passenger ship ("Residence Agreements") and 2) a non-equity club membership on board the ship ("Memberships"), without such agreements being deemed to involve the offer or sale of a security as such term is defined in § 61-1-13(24) of the Utah Uniform Securities Act ("Act"). The Division understands the relevant facts to be as follows:

The World of ResidenSea Limited ("Ship Owner"), a subsidiary of ResidenSea Limited ("ResidenSea"), a corporation formed and existing under the laws of the Bahamas, will enter into contractual arrangements with prospective purchasers (a "Resident") for the exclusive right to occupy and use a luxury apartment ("Residence") aboard a luxury passenger ship (the "Ship") which will be constructed in the future. All economic benefits from the day-to-day operations of the Ship will accrue to the benefit of ResidenSea by having all earnings passed to ResidenSea from the Ship Owner.

The Ship Owner will enter into agreements granting the Resident a contractual right to exclusive occupation and use of a particular Residence and certain rights to use the public areas aboard the Ship. The term of the exclusive occupation will be 50 years.

Approximately \$450 million (net of all costs associated with the sales) will be raised from



the sales of Residences with prices ranging from approximately \$1.2 million to \$4.5 million per Residence. In addition, Residents will incur a quarterly maintenance obligation to fund the Ship Owner's current operations. In view of the substantial cost of acquiring and maintaining a Residence, prospective Residents will be required to meet standards of suitability, including, a minimum financial net worth of \$5 million. A construction contract will be entered into and become effective no later than December 31, 1997.

The rights of the Residents will be limited generally to the following areas: (i) the right to cause a sale of the Ship, subject to Ship Owner's consent during the first 20 years, (ii) the right to elect whether to cause Ship Owner to repair, restore or rebuild the Ship in the event of uninsured damage in excess of \$25 million, and (iii) changes to the terms and conditions of the residence agreements that might reasonably be expected to affect Residents generally.

Residents will have the right, subject to restrictions, to assign their exclusive right to occupy and use a Residence for all or part of the term of the agreement. Neither ResidenSea nor its affiliates will offer the opportunity for Residents to participate in rental pool arrangements, nor will any such arrangements be authorized by ResidenSea. Nor will the Residence Agreements require use of an exclusive rental agent or place limitations on the time the Resident may occupy and use the Residence. The Residences will not be marketed through advertising that emphasizes economic benefit to the Residents from the efforts of ResidenSea or its affiliates in renting the Residences. The Residences will not be marketed as investment opportunities nor will the Residents have any expectations of sharing in the Ship's revenues.

The club memberships may only be transferred through the club. A club member will not: (i) receive any ownership interest in the club or its facilities, ResidenSea, Ship Owner or the Ship; (ii) receive any dividends or other distributions of income from the club; or (iii) share in any of the appreciation of the value of their memberships. Furthermore, club memberships merely convey a revocable right to use the club facilities and all potential members will be informed that the memberships are not an investment vehicle through which profits can be expected.

Finally, Ship Owner will secure financing, separate from funds received from Residents, for the construction and delivery of the Ship. The payments made by Residents for the Residences and any and all membership deposits or annual dues that are collected by the Club will be placed in an escrow account in a reputable U.S. bank and in the event the Ship is not delivered, payments will be required to be returned to the payers with interest.

With regards to Utah securities law, the definition of "security" is provided in § 61-1-13(24)(a) of the Act which, in addition to a number of types of securities, provides that an "investment contract" is a security. In defining the term "investment contract," the Utah Supreme

Court, in *Payable Accounting Corp. v. McKinley*, 667 P.2d 15 (Utah 1983), looked to the opinion of the U.S. Supreme Court in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946). To determine whether a particular transaction is an investment contract, a multi-prong test must be applied. The prongs are satisfied if there is an investment of money in a common enterprise with an expectation of profit to be derived from the essential managerial efforts of others which affect the failure or success of the business.

In reviewing the proposed transactions, it appears that neither the Residence Agreements nor the Memberships would meet all of the prongs to be considered investment contracts. Nor would they be considered securities under any other provision.

With respect to the Residence Agreements, while purchasers are making an investment of money there is no indication that such purchases will be made in a common enterprise. The funds paid pursuant to Residence Agreements are for the right to exclusive occupation and use of luxury apartments aboard the ship, not for the Ship Owner or ResidenSea to run their respective businesses. Furthermore, Residents lack the expectation of profit. *The Residents will have no right to participate* in or expect profit from the Ship, the Ship Owner, or ResidenSea in general. The Resident's only interest will be in the Residence itself, of which the value is expected to fluctuate and eventually decline as the ship ages without any expectation of special tax incentives. Also, Residences will not be offered or sold in a manner which emphasizes economic benefits to the purchasers and no rental pool or time-sharing will be required or offered.

With respect to the Memberships, there is also no expectation of profit. By purchasing a Residence, Residents receive a non-equity membership which will entitle them to full use of the club's recreational facilities. Such memberships will not entitle members to an ownership interest in or right to receive distributions of profits from the club, the Ship, the Ship Owner or ResidenSea. Memberships may only be conveyed in connection with the disposition of a Residence, while non-Residence club members may under no circumstances convey their memberships. Rather, members which desire to resign will receive a refund of their membership deposit after which their membership will be reissued by the club to a new member.

Finally, funds provided for Residences and Memberships will not be subjected to the initial risks of the enterprise. The construction of the ship will not be financed from the Residents' money. All initial payments for Residences and Memberships will be placed in escrow and in the event the ship is not delivered, payments will be returned with interest.

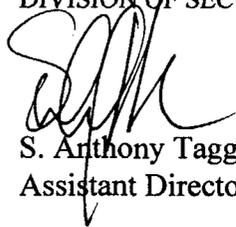
For the foregoing reasons, it is the opinion of the Utah Division of Securities that the described transactions involving the sale of Residence Agreements and Memberships do not constitute transactions which involve the offer or sale of a security as defined in § 61-1-13(24) of the Utah Uniform Securities Act.

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Please note that this opinion relates only to the offering discussed and will have no value for future similar offerings. Because this opinion is based on representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion.

Very truly yours,

MARK J. GRIFFIN, DIRECTOR
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April 28, 1997

VIA OVERNIGHT DELIVERY

Mr. Mark J. Griffin, Director
Department of Commerce
Division of Securities
160 East 300 South
Salt Lake City, UT 84111

Re: "The World of ResidenSea" Luxury Passenger Vessel and Marketing of Residence Apartments

Dear Mr. Griffin:

On behalf of ResidenSea Limited ("ResidenSea"), a corporation formed and existing under the laws of the Bahamas, we request that the staff (the "Staff") of the Utah Division of Securities provide interpretive advice confirming our opinion that The World of ResidenSea Limited, a wholly owned subsidiary of ResidenSea ("Ship Owner"), may enter into contractual arrangements ("Residence Agreements") with each prospective purchaser (a "Resident") for the exclusive right to occupy and use a luxury apartment ("Residence") aboard a luxury passenger vessel (the "Ship") to be constructed, owned and operated by Ship Owner, in the manner described below, without such Residence Agreements being deemed to involve the offer or the sale of a security, as such term is defined in the Utah Uniform Securities Act or provide a no-action letter that the Staff will not recommend enforcement action in connection with the above sales of Residence Agreements for the Residences.

The commercial facilities on board the Ship will also include a non-equity club ("Club") which will offer memberships ("Memberships") to Residents and other individuals and corporations.

The staff of the Division of Corporation Finance of the Securities and Exchange Commission ("SEC") has issued a no-action letter with respect to offers and sales of the Residence

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Agreements. The SEC letter regarding the Residence Agreements is attached hereto, along with a copy of our no-action request. At the request of the SEC, we did not include a discussion of the ResidenSea Club in our no-action request discussed below, but are making a similar request with respect to the Club Memberships at this time. As noted by the SEC in their discussions with us, there is a well-established line of SEC no-action authority to the effect that non-equity club memberships will not be deemed securities for purposes of the federal securities laws, and we understand that the Club Memberships will follow these precedents. Accordingly, we expect to receive a favorable response from the SEC with respect to the Club Memberships which we will transmit to you as soon as we receive it.

Part I of this letter, the Background, contains a detailed presentation of facts surrounding the offers and sales of the Residences and draws upon our SEC no-action request. Part II sets forth a summary of the federal securities law analysis. Part III sets forth the Utah securities law analysis.

Also please find enclosed copies of (i) the main brochure and related sales materials and (ii) the Confidential Information Memorandum, in draft form, which will be utilized in connection with offers and sales of the Residences. The Confidential Information Memorandum describes the manner of the offering of the Residences. These materials contain the most recent information to be distributed, but please be aware that these items may undergo changes in response to marketing indications and to insure conformance with the requirements of the SEC letter. We expect any changes generally to be more favorable to the prospective Residents and we undertake to furnish to you any updated materials as soon as they are available.

Because ResidenSea determined it would be more helpful to you to be able to include the SEC no-action letter in its initial filing, awaiting the SEC letter has made timeliness of great importance. We would greatly appreciate an initial review from you within the next two weeks. We expect ResidenSea to maintain strict marketing controls in your state until your opinion is given, but they hope to commence mailing brochures into the United States around the second week of May, if possible. Marketing has already commenced in Europe. Your assistance in helping us keep their schedule will be greatly appreciated.

Please especially note that prospective Residents will be required to have a minimum financial net worth of \$5,000,000.

I. Background.

A. The Ship, Ship Owner and ResidenSea.

The Ship will be configured with spacious, luxurious, and fully-serviced apartments, and smaller, less numerous suites ("Guest Suites"). The Residences will represent about 87-88%, and the Guest Suites about 12-13%, of the non-crew living accommodations on board the Ship. The Ship will also offer various facilities, including amenities typically found at five-star resorts, on cruise ships and at country clubs.

Ship Owner will be incorporated in 1997, under the laws of the Bahamas, for the purpose of constructing, owning and operating a luxury passenger ship.¹ The officers, directors, organizers and promoters of ResidenSea and Ship Owner are presently citizens and residents of Norway. We are advised that they may be considered experienced and well-known members of the Norwegian shipping and business community.

ResidenSea and the Ship Owner will enter into a management agreement ("Management Agreement") pursuant to which, for a management fee plus reimbursement of expenses, ResidenSea will assume responsibility for the management of the Ship, including the Guest Suites and Residences.

B. Organization and Capitalization of Ship Owner.

The Ship Owner expects to contract for construction of the Ship as a luxury passenger ship.² ResidenSea will own one hundred percent (100%) of the common stock of the Ship Owner, and will operate it as a separate subsidiary. The developers intend that the authorized share capital of Ship Owner will be US\$50 million. ResidenSea will contribute initial capital of US\$100,000 upon incorporation of the Ship Owner and increase its capital contribution to US\$10 million when the contract for construction of the Ship is confirmed. All economic benefits from the day-to-day operations of the Ship, including revenues from leasing of the Guest Suites, and revenues on the retail and other on-board recreational facilities, will inure to the benefit of ResidenSea through leasing of such facilities to ResidenSea or by the payment of dividends or other distributions by the Ship Owner. All earnings will be passed through to ResidenSea, rather than retained by Ship Owner.

¹ ResidenSea was incorporated in December, 1995, for the purpose of organizing, promoting and developing Ship Owner and other similar ship-owning entities.

² If more than one ship is built, each ship will be constructed, financed and owned by a separate company.

C. Residence Agreements: Terms.

Ship Owner will enter into the Residence Agreements granting the Resident a contractual right to exclusive occupation and use, for permitted, residential or similar recreational purposes, of a particular Residence, and certain rights to use the public areas aboard the Ship, for a term of 50 years (subject to possible renewal and extension options). It is contemplated that approximately US\$450 million will be raised from the sale of Residences (net of all costs associated with such sale) with sales prices ranging from approximately US\$1.2 million to US\$4.5 million per Residence. The consideration paid by each Resident, for the rights granted by the Residence Agreements, will vary according to the location, size, amenities and appointments of any Residence, but will be payable in three installments.

In addition, Residents will incur a quarterly maintenance obligation to fund Ship Owner's current operations, calculated as that proportional amount of the Ship Owner's cash requirements which the square footage of the particular Residence bears to the total square footage of all Residences and Guest Suites on the Ship.³ The Ship Owner's cash requirements to be reimbursed by such maintenance payments will consist of the estimated amount of funds necessary for proper operation, maintenance, alteration and improvement of the Ship, the creation of reserves for contingencies, and payment of obligations and liabilities related to the operation of the Ship.⁴ Each Resident will also pay a security deposit on the Residence in an amount equal to one quarterly installment of the estimated annual obligation for the particular Residence.

During the period prior to the delivery of the Ship, ResidenSea will take precautions to protect the payments made by Residents from the risks associated with construction and other contingencies: payments⁵ will be placed in an escrow account in a reputable U.S. bank (contemplated to be Chase Manhattan in New York), and in the event the Ship is not delivered, payments will be required to be returned to the payors with interest. The escrow arrangement is intended to address potential risk capital considerations in the proposed transaction.

³ The first payment will include an additional sum to cover costs related to the commissioning and start-up operations of the Ship.

⁴ A portion of the Ship's cash requirements will be partially borne by ResidenSea as lessee of onboard facilities herein described.

⁵ Although some prospective Residents will pay a fully refundable deposit of US\$5,000 to reserve a particular Residence, these payments will be maintained by ResidenSea in a special purpose bank account until they are either (i) returned to the payor (if no construction contract is entered into) or (ii) placed towards a Resident's down payment upon such Resident's execution of the Residence Agreements, at which time such funds will be transferred into the escrow account. They will not be applied to costs of construction of the Ship.

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Notwithstanding that the Residence Agreements do not involve securities, in view of the substantial cost of acquiring and maintaining a Residence, prospective Residents will be required to meet standards of suitability, including, a minimum financial net worth of US\$5 million. In addition, the Ship Owner will assess the creditworthiness of each prospective Resident.

Ship Owner will not confirm the contract for the construction of the Ship unless (i) a minimum of 75 Residence Agreements are entered into⁶ and (ii) Ship Owner has secured financing that will provide for the construction and delivery of the Ship. The contract for the construction of the Ship is not anticipated by ResidenSea to be executed prior to commencement of the sale of the Residence Agreements.

The principals of ResidenSea expect that the construction contract will be entered into and become effective no later than December 31, 1997. The contractual arrangement between Ship Owner and the Residents for the use of the Residences will be a contractual right and, as described below, the status of the Resident will be that of a creditor as to a portion of certain proceeds of insurance or sale in the event of termination of such contractual right by Ship Owner or ResidenSea.

D. The ResidenSea Concept.

The ResidenSea concept will involve the marketing of distinct products, as described below.

Guest Suites: The Ship Owner will use and lease to third parties certain common areas and the Guest Suites on board the Ship.⁷ The Ship Owner will offer the opportunity to rent Guest Suites on the Ship for specific cruise itineraries, or as resort or hotel space for particular time periods. As is the case with cruise, hotel or resort operators, charges will be made to the customer, dependent upon the accommodation, length of stay, and amenities and services provided. Residents will have no right to receive dividends, if any, or participate in the profits, if any, resulting from the operation of the Guest Suites.

Residences: Ship Owner will offer and sell the contractual right to exclusive occupancy and use of the individual Residences. Each Residence will be marketed as an alternative to a traditional home, yacht or villa. The Residences will offer Residents the benefits of having their own home, with the unique feature of mobility. The ResidenSea concept, including the opportunity to acquire the exclusive right to use a Residence, would be marketed to very wealthy individuals and corporations through the use of sales tools such as brochures, illustrations of the deck plans and unit plans, reprints of publicity, videos and displays. ResidenSea also plans to conduct a public relations campaign for the Ship. In addition, ResidenSea intends to engage prestigious real estate brokerage

⁶ A total of 250 Residence Agreements are expected to be offered.

⁷ The Ship Owner will also have the right to convert Guest Suites to Residences.

houses to act as ResidenSea's marketing representatives in conducting promotional activities for the Residences. Promotional efforts will be focused upon the United States, Germany, France, the Scandinavian countries, Switzerland, Hong Kong, Singapore and the U.K.

The end-users of the Residences will be Residents (who may be year-round occupants of their Residences), their families and friends, business associates, guests⁸ and approved assignees. ResidenSea contemplates promoting the Residences to prospective Residents who are attracted by the unique lifestyle which access to the Residences will afford. The Ship's home port and flag is anticipated to be the Bahamas.

Residences will range in size from 100 to 280 square meters, approximately 1,100 to 3,000 square feet. Residences are being offered to Residents fully furnished. If, however, a Resident wishes to decorate its Residence or cause it to be decorated after construction of the Ship is completed, a Resident is free to do so.⁹

Club: The Club will be a non-equity club owned and operated by either Ship Owner or ResidenSea. The Club is contemplated to operate on three decks of the Ship and is expected to offer facilities including 7 restaurants, lounges, bars, casino, nightclub, 2 swimming pools, tennis courts, whirlpools, roman spa and health and fitness center, jogging, track, gold academy, driving ranges, putting greens, theater/cinema, activity rooms, game rooms and shops. Club Members are also expected to have access to other clubs and resorts through agreements between the Club and other club and resort owners.

Residents will be granted Memberships (considered Platinum Memberships) in the Club through the Residence Agreements. Residents will not be required to pay a membership deposit for their Memberships and their club dues will be subsumed as part of quarterly maintenance charges which will be required under the Residence Agreements in connection with their Residences.

The Club will also offer up to 1500 "Gold Memberships" to non-Residents, which will have first priority access to the Guest Suites, as well as the Club's facilities, activities and services. Non-Resident members will pay a fully refundable membership deposit and annual dues, in addition to food and beverage fees. For tax purposes, the membership deposit will be structured as a 30-year loan. Any and all membership deposits or annual dues that are collected by the Club prior to the delivery of the Ship will be placed in an escrow account in a reputable U.S. bank

⁸ It may be necessary for the Ship Owner to restrict the number of guests on board the Ship at any particular time for reasons of limits imposed by passenger certification requirements.

⁹ The prices for unfurnished Residences is expected to be approximately 10-15% less than the prices for the same Residences furnished.

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(contemplated to be Chase Manhattan in New York), and in the event the Ship is not delivered, payments will be required to be returned to the prospective Members with interest. Both Resident and Non-Resident Members of the Club will be required to pay all fees and charges applicable to certain specific uses of the Club.

The Memberships may only be transferred through the Club. Members desiring to resign their Membership must give notice of such intent to the Club and the Club will make the membership available for reissuance to a new member. The membership deposit of a Non-Resident Member who has resigned will be refunded within 30 days after the reissuance of such resigned membership by the Club to a new Member. Resident Members will only be able to assign or transfer their Memberships in connection with the assignment of their rights to a Residence under the Residence Agreements. Therefore, "Gold Members" can not sell their Memberships to a third-party and "Platinum Members" can only sell their Memberships in connection with disposition of their rights under the Residence Agreements.

Memberships will be documented through a Membership Plan to be executed by every Member. The Membership Plan will contain a bold-faced legend stating: "Memberships at the Club are being offered exclusively for the purpose of permitting members the recreational use of the Club facilities. Membership should not be viewed as an investment and no member should expect to derive any economic profits from membership at the Club."

E. Consents, Approvals.

The Ship's itinerary will be determined by ResidenSea during the first two years after the Ship's delivery and by Ship Owner in consultation with the Residents thereafter.

The rights of Residents in substantive decision making with regard to the Ship will be limited generally to the following areas:¹⁰ (i) the right to cause a sale of the Ship, subject to Ship Owner's consent during the first 20 years, (ii) the right to elect whether to cause Ship Owner to repair, restore or rebuild the Ship in the event of uninsured damage in excess of \$25 million, and (iii) changes to the terms and conditions of the Residence Agreements that might reasonably be expected to affect Residents generally. It is also contemplated that Residents will have certain limited rights to be consulted on such general matters as taste, enjoyment and satisfaction with

¹⁰ In addition, Residents will have the right to approve the budget for operating expenses for which Residents will be assessed in the form of quarterly maintenance payments.

facilities and services, and the standard of other amenities.¹¹ The Residents will have no rights to manage the Ship, and no right to nominate, vote for or elect any directors of Ship Owner.

F. Assignments and Subleases: No Rental Pool, Exclusive Rental Arrangements or Rental Agency Services.

Residents will have the right, subject to restrictions consistent with the residential nature of the Ship, to assign their exclusive right to occupy and use a Residence for all or part of the term of the Residence Agreements, pursuant to the rules set forth in the Residence Agreements and the Ship Rules (the latter document being similar to the house rules of a condominium or cooperative apartment).

Neither ResidenSea nor its affiliates will offer the opportunity for Residents to participate in rental pool arrangements, whereby ResidenSea or a third party would undertake to rent the unit on behalf of the Resident during that period of time when the Residence is not in use by the Resident, nor will any such arrangements be authorized by ResidenSea. Nor will the Residence Agreements require use of an exclusive rental agent, designated by ResidenSea, or place limitations on the time the Resident may occupy and use the Residence. Moreover, the Residences will not be marketed through advertising that emphasizes economic benefit to the Residents from the efforts of ResidenSea or its affiliates in renting the Residences. Finally, Residents will not receive rental brokerage services from ResidenSea or its affiliates or be offered referrals to other rental agents from ResidenSea or its affiliates on an unsolicited basis.¹²

G. Absence of Expectation of Profit to Resident.

Residences will not be marketed as investment opportunities--indeed, as the Ship ages, its value is expected to fluctuate and eventually to decline significantly. By virtue of being the only shareholder in the Ship Owner, ResidenSea will be the sole entity having the right to receive dividends. Nor will the Residents have any expectation of sharing in the Ship's revenues derived from its continuing, day-to-day operations including the operations of the commercial areas or maintenance fees.

¹¹ A Residents' Committee, to be initially appointed by ResidenSea, and later elected by Residents, will liaise with Ship Owner and ResidenSea on matters relating to the services and amenities available on the Ship and other matters pertaining to the lifestyle of the Residents.

¹² ResidenSea will offer referrals to third-party rental agents only in the event that a Resident specifically requests such a referral. In no event shall ResidenSea receive any fee or commission for providing such referrals. Neither ResidenSea nor its affiliates will make unsolicited referrals of third-party rental agents to Residents.

Termination Payment in Certain Events: Residents will have purchased the right to occupy and use their Residence for the term of their Residence Agreements with the Ship Owner. That right will be secured by a security trust for all the Residents: that is, in the event of termination of the rights of Residents for certain events, the Residence Agreements will provide for a payment (the "Termination Payment") to the Residents¹³, consisting of the gross proceeds of insurance or disposition, (i) less taxes and expenses incurred in connection with the gross proceeds, (ii) plus or minus, as the case may be, the net value of assets and liabilities directly attributable to the ordinary operation of the Ship, (iii) less a discharge of a working capital mortgage contemplated to be established by Ship Owner to cover the Ship's day-to-day operations, and, in the case of disposition or sale of the Ship after the first 20 years, (iv) less compensation to the Ship Owner expected to amount to two times the average net profit (before depreciation and taxes) of the previous two years.¹⁴

The Residence Agreements will provide that a Resident shall be entitled to a Termination Payment only in the event of certain, specified events: that is, (i) in the event of a sale of the Ship, (ii) in the event the Ship shall become a total loss, constructive total loss or negotiated total loss, (iii) in the event of any requisition or condemnation of the Ship, or (iv) in the event of uninsured damages in excess of US\$25 million and a decision is made not to repair and the Ship is sold. The Termination Payment payable in such circumstances will be computed as such Resident's pro rata share of such available net proceeds as the percentage which the original purchase price of such Resident's Residence bears to the aggregate original purchase prices of all the Residences. Except as such available net proceeds may exist for such purpose, Residents will have no right to expect ResidenSea or Ship Owner to furnish, out of their corporate funds, a Termination Payment; and the Residence Agreements will provide that neither ResidenSea, Ship Owner, or their principals will have any personal or recourse obligations to furnish funds for such purpose.

¹³ The Residents will receive the portion of the Termination Payment equal to the proportion of square footage that all of the Residences bear to the total square footage of all the Residences and Guest Suites aboard the Ship. The Ship Owner will retain the portion of the Termination Payment equal to the ratio that the square footage of the Guest Suites bears to the aggregate square footage of all of the Residences and Guest Suites on the Ship.

¹⁴ Ship Owner and the Residents in the Residence Agreements will agree that Ship Owner's obligations to the Residents with respect to the Termination Payments will be secured in accordance with and subject to the terms of a Bahamian statutory mortgage through an assignment of insurances and a security trust deed. The security trust deed will provide that the sale proceeds of the Ship as well as the insurance proceeds will be paid to a trustee for the benefit of the Residents with respect to their right to the Termination Payment. The net proceeds available for the Termination Payment are expected to be calculated as set forth above.

The provisions for a Termination Payment do not hold out the expectation of profit on sale of the Ship. Rather, they offer some security to the Residents that either they will enjoy substantially the period of enjoyment and use provided by the 50-year term of the Residence Agreements or they have an expectation of the return of the substantial amounts expended initially by them to purchase their use rights. Although realization of residual values over such amounts is possible on sale of the Ship, the Ship Owner has a right of consent, in the nature of a veto, during the first twenty (20) years of the Ship's life. Moreover, if the ResidenSea concept is successful, and ResidenSea succeeds in realizing substantial revenues from operation of the Ship, the rights of Residents to a Termination Payment operates as a substantial disincentive for Ship Owner consenting to a sale. Furthermore, as is the custom in maritime operations, ResidenSea will likely cause the Ship to be covered by hull and machinery insurance of at least 125% of the initial contract value. However, there could be no assurance to prospective Residents of the occurrence or timing of events requiring proceeds of insurance to be paid to the Residents.

Termination Payments may not be sufficient to return to Residents any accrued and owing amounts in excess of prepaid operating expenses, security payments and their original purchase price; and, indeed, ResidenSea represents that no assurances of a return on investment will be made in the marketing of the Residence Agreements. To the contrary, the Residences will be marketed only to individuals and institutions who have a use for and can afford a seagoing luxury residence.

It is respectfully submitted, therefore, that the possibility of a return to a Resident of capital appreciation or residual value, in the form of a Termination Payment in excess of the Resident's out-of-pocket cost, is sufficiently remote so as not to render the Residence Agreements an investment contract.

As a general matter, U.S. tax law does not provide any unique, special tax incentives which could be viewed as driving a decision to acquire Residences; and the purchase of the right to use a Residence will not be marketed with an emphasis on tax benefits. Depending on the circumstances of the Resident, the tax consequences of a Residence Agreements could vary: for example, use of a Residence in a trade or business could result in some of the costs associated with acquiring and maintaining the Residence being tax-deductible. If used by the Resident for residential purposes, mortgage interest expense may be deductible, if the Resident is treated as an owner for tax purposes.¹⁵

¹⁵ Prospective Residents will be cautioned to consult with their own tax advisor before entering into the Residence Agreements.

II. Status Under the Federal Securities Laws.

ResidenSea has received a no-action letter from SEC regarding offers and sales of the Residence Agreements and expects to receive a similar letter regarding the Memberships shortly. The SEC Residence Agreements letter is attached, the Membership letter will be submitted as soon as it is received.

As discussed in the SEC request letter, the business plan of ResidenSea, and the sale of the rights to occupy and use the Residences under the Residence Agreements, fit comfortably within the limits of prior SEC provisions on condominiums and similar residential properties and lodgings, where no security was deemed to exist:

1. The Residences are not being offered and sold with emphasis on economic benefits to the purchaser to be derived from the managerial efforts of ResidenSea, the Ship Owner or others in renting the Residences;
2. No rental pool or time-sharing is required of Residents or authorized or offered to them by ResidenSea or its affiliates;
3. The Resident is not required to hold or make available the Residence to Ship Owner for any part of a year;
4. No rental agency services or unsolicited referrals will be offered by ResidenSea or its affiliates to Residents; and
5. Although the Resident may independently enter into a non-pooled rental arrangement with an agent, for purposes of assigning or subletting a Residence, any such agent will not be designated or required to be used as a condition to the acquisition of the Residence.

These restrictions more than satisfy the conditions under which the SEC has permitted sales of condominium units to proceed without causing a sale of a security to be involved in the sale of the unit. Guidelines as to the Applicability of the Federal Securities Laws to Offers and Sales of Condominiums or Units in a Real Estate Development. Securities Act Release No. 5347 (January 4, 1973).

In this case, the Residence Agreements conforms generally to those arrangements in which it has long been settled that condominium ownership rights did not create a security. No plan to avoid the registration requirements of the securities laws is involved, as demonstrated by the high suitability standards imposed on prospective registrants. The coincidental circumstances that make condominium ownership impossible or impracticable for ocean-going residential vessels should not

result in an anomalous application of the securities laws to a business plan which was not designed to be marketed on expectation of profits to purchasers of Residences.

III. Status Under Utah Securities Laws.

Section 61-1-13(22) of the Utah Code Annotated, 1953, as amended, defines "security" to include an "investment contract."

ResidenSea views the right being offered to Residents, for exclusive occupation and use of a Residence, as well as the Memberships, as lacking the essential attributes of an investment contract or any other type of security: to the contrary, the principals of ResidenSea have envisioned and will market the Ship as offering a luxury residence, with exceptionally fine recreational amenities. The execution of the Residence Agreements will represent a contractual arrangement for use of a residential asset, not an ownership interest in the Ship or the Ship Owner. Residents will have no rights to elect the board of directors of Ship Owner, only limited decisional rights, and no rights to dividends, or rights to participation in or expectation of profit from the sale of Ship Owner's stock.

Indeed, in accordance with the developers' concept, they structured the interests in the Residences in a manner in which attributes of ownership or control and concomitant expectation of profits would be avoided. The developers consider the contractual right to occupy a Residence to be dissimilar to ownership of a security for many reasons, including the following: (i) the corporate structure of Ship Owner and the Ship's use by Residents are closely analogous to non-equity clubs, in which the owners' interests are not deemed securities; (ii) the Residents do not hold stock in or otherwise control the Ship Owner; (iii) no rental pool arrangement will be offered or authorized by ResidenSea or its affiliates; (iv) Residents will not be required by Ship Owner to use an exclusive rental or brokerage agent, and each Resident may individually contract for brokerage services; (v) no obligation will exist to make Residences available for timesharing or rental; (vi) no rental agency services or unsolicited referrals will be offered by ResidenSea or its affiliates to Residents; and (vii) no expectation of profit to Residents via dividends or other, similar distributions will be held out in marketing the Residences. *No realistic expectation of profit through the efforts of others will exist, as each Resident will have responsibility for its own Residence to the same extent that a condominium or cooperative owner would.*

In this regard, all promotional and offering materials by Ship Owner will indicate that the interest being sold consists of a contractual right to use a residential product, because the developers envision the product as a lavish, floating residence, as distinguished from an investment vehicle for profit. Moreover, the offering material provided to every prospective Resident will specifically state that no person is authorized to represent on behalf of the Ship Owner that the acquisition of the product is expected to confer economic benefits from resale or leasing, profit or long-term capital appreciation or other gains from the ownership and disposition of the product.

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We believe the analysis of the Residence Agreements is analogous to sales of interests in condominiums, note the federal securities law analysis in Part II. above. Although there do not appear to be any cases or Staff opinions directly on point, in 1987, Staff issued a no-action letter regarding continued care contracts. See 1987 Utah Sec. No-Act. LEXIS 18. The benchmark case for defining an "investment contract" is *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 ("Howey"). The *Howey* test is "an investment of money in a common enterprise with the expectation of profit solely from the efforts of others." While certain elements of the test have been modified, the expectation of profit has not and there is no expectation of profit in our circumstances. As discussed under Part I.G. of this letter, the Residents will not share in any revenues from day-to-day operations of the Ship and there are no unique, special tax incentives. There is no rental pool and any assignment of a Resident's right to occupy or use a Residence for all or part of the term of the Residence Agreements must be in accordance with the rules set forth in the Residence Agreements and Ship Rules. The Residences will not be marketed as investment opportunities--the value of the Residences is expected to fluctuate and eventually to decline significantly. The general thrust of the ResidenSea idea is for the Residents to have purchased a home, not a vacation time-share, not a yacht, but a home.

Similarly, with respect to the Memberships, members of the Club will not: (i) be entitled to receive any ownership interest in the Club or its facilities, ResidenSea, Ship Owner or the Ship; (ii) be entitled to any dividends or other distributions of income from the Club; or (iii) be entitled to share in any of the appreciation of the value of their memberships. Furthermore, potential Club members will be informed that the Memberships should not be viewed as an investment and should be acquired only with a view towards use of the Club facilities. Indeed, Club Membership merely conveys a revocable right to use Club facilities and all potential members will be informed that the Memberships are not an investment vehicle through which profits can be expected.

We believe the analysis involving club memberships is relevant to the determination of whether the Residence Agreements are securities, as well as whether the Memberships are securities. In 1992, Staff issued a no-action letter with respect to Gift Certificates for merchandise and credits toward memberships in a country club. See 1992 Utah Sec. No-Act. LEXIS 6.

With respect to the "risk capital" test, which originated with *Silver Hills Country Club, et al. v. John G. Sobieski*, 361 P.2d 906 ("Silver Hills"), the circumstances surrounding the offers and sales of Residence Agreements and Memberships are very different from *Silver Hills*. The Ship will not be constructed with either Residents' or Members' money since the Residents' and Members' payments will be placed in escrow with a reputable New York bank (contemplated to be Chase Manhattan in New York) and will be returned to the Residents and Members if the Ship is not delivered. The Ship Owner will not even confirm the contract for the construction of the Ship unless a minimum of 75 Residence Agreements are entered into and Ship Owner has secured financing that will provide for the construction and delivery of the Ship. Therefore, the Residents' and Members' money is not at any risk. The benefits to the Residents and Members materialize at the same time

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dependent upon any risk of their money. This is very different from paying initial value for the future construction of facilities which may or may not be completed.

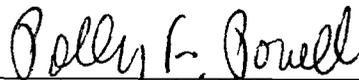
Accordingly, neither the Residence Agreements nor the Memberships resemble any interest known as a security. Moreover, the background of the developers is in the luxury cruise ship industry, not in the sale of securities or investments.

IV. Conclusion

For the foregoing reasons, we respectfully request that you indicate your concurrence with our opinion that the business plan of ResidenSea described herein with respect to the Residence Agreements and Memberships does not involve the offer and sale of a security, as such term is defined in the Utah securities laws or issue a no-action letter to the effect that no enforcement action will be recommended with respect to the offer and sale of Residence Agreements and Memberships in Utah.

Please call me collect at (512) 322-2510 if you have any questions or require anything further.

Respectfully submitted,



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