

DENISE VOIGT CRAWFORD  
SECURITIES COMMISSIONER



DAN R. WALLER  
MEMBER

JOHN R. MORGAN  
DEPUTY SECURITIES COMMISSIONER

NICHOLAS C. TAYLOR  
MEMBER

## State Securities Board

MAIL: P.O. BOX 12167  
AUSTIN, TEXAS 78711-2167

200 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Phone (512) 505-8300  
FAX (512) 505-8310  
<http://www.ssb.state.tx.us>

JOSE ADAN TREVIÑO  
MEMBER

May 14, 1997

Ms. Polly F. Powell  
Baker & Botts, L.L.P.  
1600 San Jacinto Center  
98 San Jacinto Boulevard  
Austin, Texas 78701-4039

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

Dear Ms. Powell:

This is in response to your letter dated April 16, 1997, and received by this Agency April 17, 1997.

Your letter and the enclosures, including, among others, Management's Discussion of Financial Information, a Confidential Information Memorandum, and a no-action letter from the Securities and Exchange Commission dated March 28, 1997, describe an arrangement whereby a prospective purchaser (a "Resident") would enter into contractual arrangements ("Residence Agreements") with The World of ResidenSea Limited ("Ship Owner"), a wholly-owned subsidiary of ResidenSea Limited ("ResidenSea") a corporation formed and existing under the laws of the Bahamas, 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. The commercial facilities on board the ship will also include a non-equity club which will offer memberships ("Memberships") to Residents and other individuals and corporations. You have asked whether the staff of this Agency would recommend no action to require the registration of the offer and sale of Residence Agreements and Memberships.

As set forth in the Residence Agreements, 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 will be 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 Agreement must be in accordance with the rules set forth in the Residence Agreement and ship rules. The Residences will not be marketed as investment opportunities as the value of the Residences is expected to fluctuate and eventually to decline significantly. The general thrust of the offering has been characterized by your letter as the purchase of a home, not a vacation time-share, not a yacht, but a home.

**Ms. Polly F. Powell**

**May 14, 1997**

**Page 2**

**You have submitted that 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. Your letter states that the execution of a Residence Agreement 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.**

**According your letter, the developers' concept was to structure the interests in the Residences in a manner in which the attributes of ownership or control and concomitant expectation of profits would be avoided. It is stated in your letter that the contractual right to occupy a Residence is dissimilar to ownership of a security for the following reasons: (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 own 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. Additionally, you have asserted that 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.**

**As stated in your letter and reflected in the enclosures, 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. Also, the offering material provided to every prospective Resident will specifically state that no person is authorized to represent on behalf of 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.**

**Similarly, you have indicated that, 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 value of their memberships. Further, 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. Club Membership will merely convey a revocable right**

Ms. Polly F. Powell  
May 14, 1997  
Page 3

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.

Residents will be granted 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 Memberships may only be transferred through the club. Members desiring to resign their Memberships must give notice of such intent to the club and the club will make the membership available for reissuance to a new member, in connection with the disposition of the resigning member's rights under the Residence Agreements. Additionally, a limited number of club Memberships will be available to non-Residents, who will pay a fully refundable membership deposit and annual dues, in addition to food and beverage fees. The Memberships of these non-Residents must, likewise, be surrendered to the club only for reissuance.

In view of the above, you have inquired whether the Residence Agreements and Memberships would constitute "securities" for purposes of the Texas Securities Act or whether the staff will not recommend enforcement action in connection with the sale of the Residence Agreements and Memberships for the Residences. Based upon the foregoing understanding, the staff of the State Securities Board will not recommend any action to require registration of the Residence Agreements or Memberships as long as they are structured and sold in accordance with the representations made in your letter and enclosures. In addition, the staff will recommend no action to require Ship Owner or its agents to register as a dealer in connection with offers and sales of such Residence Agreements or Memberships. Please bear in mind that even slight changes in the Residence Agreements and Memberships themselves or the manner in which they are marketed could result in a different conclusion.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the no-action position stated above would be void.

I trust this answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD  
Securities Commissioner

David Weaver  
General Counsel

/dw