KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR CHRIS BIGGS, COMMISSIONER

March 2, 2008

Raymond J. Gaskill 7 Westport Irvine, CA 92620-2656

Re:

Request for Opinion No. 2008-003,

Sale of Timeshare Interests for Welk Resorts Platinum Program

File No 2008X0000004

Synopsis:

The sale of timeshare interests does not constitute the sale of securities where the purchaser's bone fide motivation is the purchase of the timeshare interest for personal use and enjoyment. Additionally, land on which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years is exempt from registration under the Uniform

Land Sales Practice Act pursuant to K.S.A. 58-3303(a)(3).

Dear Mr. Gaskill:

You have requested an opinion concerning the sale of timeshare interests by Welk Resorts Group, Inc. in the resort called Welk Resort Platinum Program. I incorporate by reference the facts as represented in your letter and materials dated January 3, 2008.

To determine whether a timeshare interest is a security, our agency applies the test for an investment contract that was originally adopted in S.E.C. v. Howey, 328 U.S. 295 (1946), and was applied to condominium or multi unit housing interests in S.E.C. Release 5347, dated January 4, 1973. Within the context of a timeshare interest, the outcome of the Howey test typically hinges on whether the seller's primary marketing emphasis is upon the economic benefits to the purchaser that is derived through the efforts of the timeshare management, or whether the purchaser's motivation is the purchase of the timeshare interest for personal use and enjoyment. If the true thrust of the transaction is personal use and enjoyment of the property, the timeshare interest is not a security because the

purchase is not in the nature of an investment and there is no significant expectation of profits.

According to your January 3, 2008, the developer will not make any representations that the purchaser should expect appreciation or profits, and it appears that the timeshare interests are promoted for personal use rather than investment. Therefore, staff concludes that the sale of timeshares interest by Welk Resort Group does not involve the sale of a security as that term is defined and used in the Kansas Uniform Securities Act. Therefore, our agency will take no enforcement action if the interests are offered and sold in Kansas without registration under the Kansas Uniform Securities Act.

Your January 3, 2008, letter represents that construction of all accommodations and amenities is complete, with the exception of Phase I of the Welk Resorts Mountain Villas, which is estimated to be completed by December 2008. Pursuant to the K.S.A. 58-3303(a)(3), the Uniform Land Sales Practices Act creates an exemption from registration for dispositions of land upon which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years. Based upon the representations regarding the existence of the current accommodations and amenities as well as the Welk Resort Mountain Villas, the sales are exempt from the provisions of the Kansas Uniform Land Sales Practices Act, and this agency will take no action against the developer if it proceeds with the offer and sale of timeshare interests without registering under the Act.

This opinion is based upon the facts as represented in your letter. Any variance from those facts could result in a different conclusion. You are advised that this opinion is intended solely as an expression of enforcement policy and is not binding on any court or other tribunal.

Sincerely,

Erin M. Hoestje

Associate General Counsel