

State of Utah

DEPARTMENT OF COMMERCE
Division of Securities

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160 East 300 South
P.O. Box 45808
Salt Lake City, Utah 84145-0808
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July 2, 1992

Mr. Leonard E. Neilson
455 South 300 East
Suite 300
Salt Lake City, Utah 84111

Re: Leasing Technology Incorporated File # 000-2169-17/A13964-21

Dear Mr. Neilson:

This letter is in response to your letters dated May 19, 1992 and June 19, 1992, regarding your request for a no-action letter for the offer and sale of Red Hawk Membership Reservation Gift Certificates (the "Certificates") to individuals or companies. Such transaction is more fully described in your letters.

You asked the Division of Securities ("Division") to address the following question:

Whether the offer and sale of Red Hawk Membership Reservation Gift Certificates to individuals or companies constitutes the sale of a security as defined by Section 61-1-13(22)(k) the Utah Uniform Securities Act ("Act"). Section 61-1-13(22)(k), defines a security as, among other things, an investment contract.

It is the opinion of the Division that such transaction, as described in your letters do not constitute a security as defined in Section 61-13(22)(k) of the Act.

In arriving at this position the Division notes, in particular, the following representations:

(a) Each Certificate will entitle the purchaser to the following:

- (i) One graphite driver.
- (ii) Twelve golf balls.
- (iii) One golf towel.
- (iv) One meal for two in St. George Utah.

- (v) A credit of \$2,640 towards the purchase of either a resident charter membership or non-resident charter membership in Red Hawk Country Club, or in the alternative, a \$2,640 credit toward the purchase of a building lot at Red Hawk.
- (vi) A discount of \$2,500 from the asking price of a building lot at Red Hawk and the "Priority Right" to select and purchase the building lot of choice from those recorded on the final recorded plot.
- (b) Item (i), (ii) and (iii) will be available to the Certificate holder within 90 days of the purchase of the Certificate. The club membership must be purchased before construction begins on the golf course. The right to buy the building lots must be exercised within 30 days from the date of the certificate. If the Certificate holder fails to purchase a club membership or a building lot, the \$2,640 will be forfeited.
- (c) Proceeds from the sale of Red Hawk Certificates are not to be used as start-up capital for the club.
- (d) Money derived from the sale of Red Hawk Certificates will be placed in an escrow account until such time as the first phase of the Red Hawk project is completed. If the project is not completed, the funds, less a marketing fee, will be returned to the purchasers.
- (e) Red Hawk has established the policy that Red Hawk Memberships are not assignable, transferable and may not be resold for a profit by the holders. Upon resignation of a member, the resigning member is required to tender their Red Hawk Membership back to Red Hawk and they are entitled to receive only their original purchase price. In no event whatsoever, may a member sell or otherwise dispose of their Red Hawk Membership for a profit.

Based upon the facts presented, the Division will not recommend any enforcement action for the offer and sale of Red Hawk Membership Reservation Gift Certificates to individuals or companies if the offers and sells are effected as described in your letter.

Because this position is based upon the representations made to the Division of Securities it should be noted that any different facts or conditions of a material nature might require a different conclusion. Further, this response does not purport to express any legal conclusion on the questions presented.

Mr. Leonard E. Neilson
June 25, 1992
Page 3

Please note that this no-action letter relates only to the referenced transaction and shall have no value for future similar offerings.

Very truly yours,

EARL S. MAESER, DIRECTOR
UTAH DIVISION OF SECURITIES



Steven J. Nielsen
Director of Registration

jmj

Leonard E. Neilson

A PROFESSIONAL CORPORATION

LEONARD E. NEILSON
ATTORNEY AT LAW

455 SOUTH 300 EAST, SUITE 300
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June 19, 1992

Utah Department of Commerce
Division of Securities
Attn: J. Matthew Jenkins
160 East 300 South
Salt Lake City, UT 84145-0808

Hand Delivered

Re: Leasing Technology Incorporated
Request for No-Action Letter
Supplemental Inquiry
File #000-2169-17/A13964-21

Dear Mr. Jenkins:

In response to your letter dated June 5, 1992, regarding the request on behalf of Leasing Technology Incorporated, a Utah corporation ("LTI" or the "Company"), for an interpretive opinion and no-action letter pursuant to the Utah Uniform Securities Act, please accept this supplemental letter of inquiry. This letter will address those issues raised in your letter and will set forth only those facts not previously presented in my letter dated May 19, 1992, two (2) copies of which are hereby attached for your reference.

Based upon representations of management of LTI, there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth herein. Further, management of LTI has represented that as of the date hereof it has not commenced sales or engaged in transactions that are the subject hereof.

I. ADDITIONAL BACKGROUND INFORMATION

In addition to the information previously set forth in the Letter dated May 19, 1992, please be advised that Red Hawk Country Club ("Red Hawk") has adopted the following rules and regulations relating to the transfer of Red Hawk Country Club Memberships ("Red Hawk Memberships").

Red Hawk Memberships, which holders of the Membership Reservation Gift Certificates (the "Red Hawk Certificates") are entitled to purchase, are not assignable or transferable and may not be resold by the holder. Upon the resignation of a member, the resigning member is required to tender their Red Hawk Membership back to Red Hawk and they are entitled to receive only their original purchase price. In no event whatsoever, may a member sell or otherwise dispose of their Red Hawk Membership for a profit.

II. ANALYSIS

It is our belief that the Red Hawk Certificate is not a security as defined by Section 61-1-13(22) of the Utah Uniform Securities Act (the "Utah Act") and is therefore not subject to the registration requirements of Section 61-1-7 of the Utah Act. Although the Red Hawk Certificate is not in the form of a traditional security, we are concerned because in isolated cases, a country club membership or other membership plan has been found to be a security by certain courts. Thus, if the underlying Red Hawk Membership was deemed to be a security, then it is logical to presume that sale of the Red Hawk Certificate would involve the sale of a security.

Courts finding country club memberships to be securities have usually applied the term "investment contract" to the memberships to bring them under the securities laws. The Utah Act includes investment contracts in its definition of security in Section 61-1-13(22)(k).

Investment Contracts

Prior to the enactment of the Securities Act of 1933 (the "Securities Act"), investment contract had been defined by the Minnesota Supreme Court in *State v. Gopher Tire & Rubber Co.*, 177 N.W. 937, 938 (Minn. 1920), as the "[t]he placing of capital or laying out of money in a way intended to secure income or profits from its employment..." This definition was uniformly applied by state courts to a variety of situations. Then in 1943, the United States Supreme Court applied the term investment contract in finding that the sale of interests in subleases to potential oil producing land in order to finance a test well on the land constituted the sale of a security in the form of an investment contract. *SEC v. Joiner Leasing Corporation*, 320 U.S. 344 (1943). *Joiner*, however, did not provide a conclusive definition for investment contract.

Three years after *Joiner*, the Supreme Court decided *SEC v. W. J. Howey Company*, 328, U.S. 293 (1946), and defined investment contract for purposes of the Securities Act as "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." *Id.* at 298-299. *Howey* has been considered the foremost case in interpreting the statutory definition of securities, however, the Supreme Court recently clarified that the *Howey* test only determined whether an instrument was a security by virtue of being an investment contract. *Reves v. Ernst & Young*, 110 S. Ct. 945 (1990). Thus, an instrument or investment scheme may still be considered a security even though it is not an investment contract.

By the nature and terms of the Red Hawk Certificate, it clearly does not fall within any of the categories set forth in the definition of security under the Utah Act Section 61-1-13, Subsections 22(a) through (j), and 22(l) through (p). Purchasers of Red Hawk Certificates receive merchandise, a credit towards the purchase of a country club membership, and a priority position for and a discount towards the purchase of real estate. Merchandise and real estate are most certainly not securities.

Subsection 22(q) states that a security may be "any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing." Neither a gift certificate entitling its holder to merchandise nor a club membership are commonly known as a security. The Red Hawk Certificate gives the holder the right to purchase a membership and therefore, only if the membership is determined to be a security, would the Certificate be a security under Subsection 22(q).

By process of elimination, the only possible category under Section 61-1-13(22) of the Utah Act that may include club memberships is Subsection 22(k), investment contract. Indeed, a purchaser of a Red Hawk Certificate does make an investment of money, \$3,000. However, because the purchaser's funds are held in an escrow account, the purchaser's risk is limited to the \$360 withheld for marketing expenses. Further, because the purchaser receives merchandise with a retail value of approximately \$516, it can be established that the purchaser's money is not at risk.

The second element of the *Howey* test is that an investment must be made into a "common enterprise". Although the Supreme Court has not defined common enterprise, lower courts have identified three basic approaches to the term. Three Circuit Courts of Appeal, the Third, Sixth and Seventh Circuits, have followed the "horizontal commonality" approach. See generally, *Salcer v. Merrill Lynch, Pierce, Fenner & Smith*, 682 F.2d 459 (3rd Cir. 1982); *Hart v. Pulte Homes of Michigan Corporation*, 735 F.2d 1001 (6th Cir. 1984); and *Milnarik v. M-S Commodities, Inc.*, 457 F.2d 274 (7th Cir. 1972). Under the horizontal commonality theory, the fortunes of the investor must be pooled together or shared with other investors and the success of any one investor must be directly tied to the success of the overall venture. In *Milnarik*, the court emphasized that absent a pooling of investors funds, it was unwilling to find a common enterprise. *Milnarik*, 457 F.2d 274,276-277.

With the Red Hawk Certificate, a purchaser is receiving merchandise and the opportunity to purchase real estate and a country club membership. There is no investment pool where success or failure is related to the success of the overall venture. If Phase I of Red Hawk is completed, holders of the Red Hawk Certificate have the opportunity to purchase a lot and a club membership. If Red Hawk is not completed, holders receive a return of their money.

An alternative or "vertical" approach, is followed by the courts in the Fifth and Eleventh Circuits. This "broad vertical commonality" approach requires merely that the fortunes of all investors be dependent upon the promoter's expertise. See *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 478-479 (5th Cir. 1974); *Villeneuve v. Advanced Business Concepts Corporation*, 698 F.2d 1121 (11th Cir. 1983). Even with this broad interpretation, there is no common enterprise with the Red Hawk Certificate because each Certificate is purchased separately, there is not a pooling of funds by investors nor a sharing of profits, and the fortunes of Red Hawk and LTI are not tied to the profitability of the investment of money by the purchasers.

The Ninth Circuit Court of Appeals follows a third, "narrow vertical commonality" approach, based upon the relationship between the investor and the promoter whereby the "fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties." See *SEC v. Glenn W. Turner Enterprise*, 474 F.2d 476,482 n.7 (9th Cir. 1973). Again with the Red Hawk Certificate, the fortunes of the purchaser are not interwoven with and dependent upon the efforts and success of LTI or Red Hawk. Red Hawk Certificate purchasers merely have the opportunity to purchase a lot and a Red Hawk Membership, or to receive a refund of their purchase price, less marketing fee, if the Red Hawk project is not completed by April 1, 1994.

Although the Tenth Circuit Court of Appeals has not articulated the parameters of vertical commonality, it has rejected the horizontal commonality approach as the standard for determining whether a common enterprise exists. See, *McGill v. American Land & Exploration*, 776 F.2d 923 (10th Cir. 1985). Therefore, it would be appropriate that only the vertical commonality approach be applied in this matter. As previously stated as to the purchase of a Red Hawk Certificate, there is not a pooling of funds by investors nor sharing of profits, and the fortunes of Red Hawk and LTI are not tied to the profitability of the investment of money by purchasers of Red Hawk Certificates.

Under the third element of the *Howey* test, there must be an expectation of profits as a result of having made an investment. In *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 (1975), the Court stated that "[b]y profits, the Court has meant either capital appreciation resulting from the development of the initial investment, as in *Joiner*... or a participation in earnings resulting from the use of investors' funds...." *Forman* represents the Court's view that the existence of a profit or a profit motive in a transaction is pivotal in determining whether a security is involved. Further, the Court emphasized that when "a purchaser is motivated by a desire to use or consume the item purchased - "to occupy the land or to develop it themselves," as the *Howey* Court put it,... the securities laws do not apply...." *Id.* at 853-853.

Purchasers of Red Hawk Certificates are motivated by a consumptive use of the items purchased, the merchandise, the club membership and the real estate. Red Hawk Memberships may not be resold at a profit. Presumably, purchasers of the real estate intend to occupy or develop the lots. Because no promise of profits is made in the marketing of the Red Hawk Certificates, there can be no expectation of profits and securities laws should not apply.

Because the Red Hawk Certificates do not hold out an expectation of profits, there is little need to explore the final element of the *Howey* test, whether the profits are to come solely from the efforts of others. It should be noted that in *Forman*, the Supreme Court deleted the word "solely" from the *Howey* test and restated the test as "an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others". 421 U.S. 837, 852. Even under this expanded definition, the Red Hawk Certificate does not offer any expectation of profits and therefore, the reliance upon any managerial expertise by the purchaser is immaterial.

In summary, it is clear that purchasers of Red Hawk Certificates are not investing in a common pool, the success of which is dependent upon the success of Red Hawk and/or LTI. There is no representation of potential profits nor is there a reasonable expectation of a profit from the purchase of a Red Hawk Certificate. Persons purchasing a Red Hawk Membership may not subsequently sell their membership at a profit. By its terms, the Red Hawk Certificate does not satisfy the elements of the *Howey* test for an investment contract and is therefore not a security.

Risk Capital

It is duly noted that a few jurisdictions, most notably California, have developed the "risk capital test" in determining the existence of a security. In *Silver Hills Country Club v. Sobieski*, 361 P.2d 906 (Calif. 1961) the California Supreme Court held that the sale of memberships in a country club could be securities even though a member had no rights in the income or assets of the club. In making its holding, the Court interpreted state securities laws as not using profit to the investor test as the determinative of the existence of a security, rather the objective of the California law was "to afford those who risk their capital at least a fair chance of realizing their objectives in legitimate ventures whether or not they expect a return on their capital in one form or another". *Id.* at 908-909. Thus, under the risk capital theory, when investors purchasing club memberships provide necessary start-up capital for a club, capital that is subject to risk of loss, the memberships are deemed to be securities. *Id.*

Money derived from the sale of Red Hawk Certificates will be placed in an escrow account until such time as the first phase of the Red Hawk project is completed. If the project is not completed, the funds, less a marketing fee, are returned to the purchasers. Proceeds from the sale of Red Hawk Certificates will not be used as start-up capital for a club. Further, because the funds are held in escrow and purchasers receive merchandise valued at approximately \$516, there is not a risk of loss to the purchaser should the Red Hawk project not be completed by April 1, 1994. Therefore, under the risk capital theory, there exists no grounds to hold that the Red Hawk Certificate is a security.

Transferability of Memberships

Finally, certain membership plans, including country club memberships, have been found to involve the issuance of securities. However, the SEC staff "consistently has taken a "no-action" position when memberships do not share in the "profits" of a country club and are not transferable." See, *Loss, Securities Regulation*, 981 (1989). In *Riverview Racquet Club, Inc.*, 1975-1976 Fed. Sec. L. Rep (CCH), ¶ 80,276 (Available Aug. 4, 1975), the SEC took the position that the sale of a club membership plan did not involve the sale of a security. Under the terms of the club memberships, the memberships were not transferable or assignable and upon the resignation of a member, the resigning member was to tender their membership certificate to the club and recover only their original investment.

Also, in *Bear's Paw Country Club*, 1980 Fed. Sec. L. Rep. (CCH) ¶ 76,426 (Available July 25, 1980), the SEC staff found the sale of a club membership not to be a security as memberships were not transferrable nor assignable and, upon resignation, the resigning member was required to return their membership to the club for repurchase. In this instance, the remaining member was paid the amount set from time to time by the club, less a transfer fee of 10%, and said amount was not to exceed the current membership fee nor would it be less than the lowest membership fee ever charged to new members. Members were not promised nor did they expect any economic profit from their membership.

Red Hawk has established the policy that Red Hawk Memberships are not assignable, transferable and may not be resold for a profit by the holders. Upon the resignation of a member, the resigning member is required to tender their Red Hawk Membership back to Red Hawk and they are entitled to receive only their original purchase price. In no event whatsoever, may a member sell or otherwise dispose of their Red Hawk Membership for a profit. Thus, as established in previous no-action letters by the SEC, because the Red Hawk Memberships are not transferrable and may not be resold for a profit, sale of the Red Hawk Memberships and the Red Hawk Certificates should not be deemed to be the sale of a security.

III. CONCLUSION

Purchasers of Red Hawk Certificates will immediately be entitled to merchandise and benefits with an approximate retail value of \$516, regardless of whether Red Hawk is completed. All proceeds from the sale of Red Hawk Certificates, with the exception of a 12% marketing fee (\$360), will be held in escrow for the benefit of the Red Hawk Certificate holder. Purchasers of Red Hawk Certificates are not placing their money in an investment pool, the success of which is dependent upon Red Hawk or LTI. Proceeds from the sale of Red Hawk Certificates are not to be used as start-up capital for the club. There is no expectation of profit held out to prospective purchasers of Red Hawk Certificates and subsequent purchasers of Red Hawk Memberships are unable to freely transfer, assign or derive a profit from their memberships.

On the basis of the terms of the Red Hawk Certificates and the underlying Red Hawk Memberships, it is our position that the Red Hawk Certificates are not "securities" as defined by § 61-1-13(22) of the Act, nor are they investment contracts, either under the traditional *Howey* test or the risk capital test. Therefore, it is believed that registration under Section 61-1-7 of the Utah Act is not required.

Matthew J. Jenkins
June 19, 1992
Page 7

It is hereby respectfully requested on behalf of Leasing Technology Incorporated, that the staff make a determination that it will recommend to the Division of Securities that no action be taken if the Red Hawk Certificates are offered and sold in the manner contemplated herein without registration under the Act.

Yours truly,



Leonard E. Neilson

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Enclosures

Leonard E. Neilson

A PROFESSIONAL CORPORATION

LEONARD E. NEILSON
ATTORNEY AT LAW

May 19, 1992

Utah Department of Commerce
Division of Securities
Attn: Steven J. Nielsen
160 East 300 South
Salt Lake City, UT 84145-0808

Hand Delivered

Re: Leasing Technology Incorporated
Request for No-Action Letter

Dear Mr. Nielsen:

This office represents Leasing Technology Incorporated, a Utah corporation ("LTI" or the "Company"). On behalf of LTI, it is requested that the staff of the Division of Securities state that it will not recommend that the Division take any action if LTI engages in the activities as set forth below.

I. BACKGROUND INFORMATION

LTI is developing the Red Hawk Country Club ("Red Hawk"), a master-planned residential golfing and recreational community situated on 616 acres three miles southwest of St. George, Utah, in the City of Washington. When completed, Red Hawk will include more than 886 building lots, a 27-hole golf course and country club, tennis courts, swimming pools and other recreational amenities. Phase I of the project will consist of development and sale of 150 lots and construction of the first 18 holes of the golf course.

LTI has completed necessary engineering on the property and has had preliminary meetings with the Planning and Zoning Commission of the City of Washington. Upon formal approval of the master plan by the Washington City Council, the master plan will be recorded and the Company will commence construction as soon as the necessary funding is arranged.

Management of LTI has developed a unique marketing plan for the offering of Red Hawk memberships and of building lots within the Red Hawk project (the "Marketing Plan"). This Marketing Plan consists of the offering and sale by LTI of Membership Reservation Gift Certificates (the "Certificates") for the sale price of \$3,000 (see Appendix "A" annexed hereto and by this reference made a part hereof).

II. MEMBERSHIP RESERVATION GIFT CERTIFICATE

Each Certificate will entitle the purchaser thereof to the following merchandise and benefits:

- (a) One (1) Red Hawk personalized "Bullet" B-52 Jumbo Graphite Driver (retail value \$200.00);
- (b) One dozen personalized "Bullet" golf balls (retail value \$35.00);
- (c) One (1) Red Hawk personalized Golf Towel (retail value \$6.00);
- (d) Lodging for two for three days and two nights at the Cotton Manor condominium development (subject to space availability) located in St. George (retail value \$250.00);
- (e) Dining for two at a restaurant in St. George (retail value \$25.00);
- (f) A credit of \$2,640 towards the purchase of either a resident charter membership (\$2,000 value) or a non-resident charter membership (\$5,000 value) in the Red Hawk Country Club, or in the alternative, a \$2,640 credit towards the purchase of a building lot at Red Hawk (certificate holders selecting the resident membership will receive a \$640 credit toward the future year dues); and
- (g) A discount of \$2,500 from the asking price of the building lot at Red Hawk and the "Priority Right" (right of first refusal) to select and purchase the building lot of choice from those recorded on the final recorded plot (priority to be determined by the sequential number on the Certificate purchased).

Merchandise depicted in paragraphs (a), (b) and (c) above will be made available within approximately ninety (90) days from the purchase of the Certificate. Charter memberships as set forth in paragraph (f) above must be purchased on or before the date construction of the first 18 holes of the golf course commences. Any balance remaining due on the membership purchase must be paid when the first 18 holes have been completed. Selection rights for building lots as per paragraph (g) above, must be exercised within thirty (30) days from the date the Certificate owner receives notice from Red Hawk that lot selection is available. Construction of the golf course and the sale of building lots may not commence until bonding of the Red Hawk project has been completed. In the event the Certificate holder fails to purchase a membership or a building lot, the \$2,640 held in escrow (see below) will be forfeited and delivered to Red Hawk Development Corporation.

Duane Marchant, President of LTI and a licensed real estate broker, will oversee the Marketing Plan. Sales of Certificates may be made by persons not necessarily holding either a real estate or securities license. Upon the exercise of the right to purchase a building lot, the transaction will be facilitated by a person licensed in real estate according to applicable real estate regulations. Initially, sales will be made only within the State of Utah, although, the Company intends to ultimately offer the Certificates in other states.

III. ESCROW OF FUNDS

All proceeds from the sale of Certificates, with the exception of the twelve percent (12%) marketing fee of \$360, will be placed in a special escrow account with the Valley Bank & Trust, 80 West Broadway, Salt Lake City, Utah. Funds placed in the escrow account will not be used for construction of the Red Hawk Country Club. In the event Phase I is not completed and/or the golf course is not open for play by April 1, 1994, all monies held in escrow (gross proceeds less the 12% marketing fee) will be returned to the purchaser. For purposes of the Certificate, completion of Phase I shall be defined as the completion of improvements to the 150 lots so that building permits may be issued, and the golf course is open for play. Certificate holders will retain all merchandise and benefits previously acquired under rights of the Certificate.

IV. SUMMARY

In summary, purchasers of the Certificate costing \$3,000 will be entitled to merchandise and benefits with an approximate retail value of \$516, regardless of whether Red Hawk is completed. When bonding has been obtained to construct Phase I (150 lots) and the first 18 holes of the golf course, each Certificate holder will be entitled to additional benefits worth \$5,140 if all purchase options are exercised, or a total benefit package of \$5,656. In the event Red Hawk is not completed prior to April 1, 1994, each Certificate holder will receive a refund from the escrow account of \$2,640.

Certificates to be offered and sold by LTI involve the sale of merchandise and property and do not constitute an investment. Referring to the definition of "security" contained in Section 61-1-13(17) of the Utah Uniform Securities Act, as amended (the "Act"), the Certificates are most assuredly not among the instruments depicted therein. Although purchasers must expend funds to acquire the Certificates, there is no expectation of profits, nor an expectation of profits solely from the efforts of others. Further, the maximum at risk by the purchaser of a Certificate is the \$360 marketing fee that is paid at the time of sale. Should Red Hawk not be completed, the purchaser will receive from the escrow account their entire investment except for the \$360, and will have previously received merchandise and benefits worth approximately \$516.

Steven J. Nielsen
May 19, 1992
Page 4

Because funds will be deposited in an escrow and may not be withdrawn by LTI until completion of improvements to Phase I (150 lots) and the opening of the golf course, the funds will not be available to the Company to complete the golf course or make the necessary improvements to Phase I prior to bonding. LTI will not use the proceeds for construction or development of the Red Hawk Country Club and thus, purchasers of club memberships are not providing risk capital to the development of the country club. It would therefore appear that the Certificates do not qualify as an investment contract, either under the traditional "Howey" theory or the "risk capital" theory.

On the basis of the above it is our position that the Certificates are not "securities" as defined by § 61-1-13(17) of the Act and that registration under the Act is not required. It is therefore respectfully requested that the staff make a determination as to whether it would recommend to the Division of Securities that no action be taken if the Certificates are offered and sold in the manner indicated without registration under the Act.

Also enclosed are two (2) checks in the aggregate amount of ONE HUNDRED TWENTY DOLLARS (\$120.00) for fees related to the filing of this letter. Also included is a copy of this letter and Appendix "A" for the convenience of the staff. If you have any questions concerning this matter, please feel free to contact this office for further information.

Yours truly,

/s/

Leonard E. Neilson

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Enclosures