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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

- MARC SPITZER, Chairman
- JIM IRVIN
- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON

In the matter of:

YUCATAN RESORTS, INC.,
 3222 Mishawaka Avenue.
 South Bend, IN 46615;
 P.O. Box 2661
 South Bend, IN 46680;
 Av. Coba #82 Lote 10, 3er. Piso
 Cancun, Q. Roo
 Mexico C.P. 77500

DOCKET NO. S-03539A-03-0000

YUCATAN RESORTS, S.A.,
 3222 Mishawaka Avenue.
 South Bend, IN 46615;
 P.O. Box 2661
 South Bend, IN 46680;
 Av. Coba #82 Lote 10, 3er. Piso
 Cancun, Q. Roo
 Mexico C.P. 77500

FIRST AMENDED TEMPORARY
ORDER TO CEASE AND DESIST
AND NOTICE OF OPPORTUNITY
FOR HEARING

Arizona Corporation Commission

DOCKETED

SEP 19 2003

**RESORT HOLDINGS INTERNATIONAL,
 INC.,**
 3222 Mishawaka Avenue
 South Bend, IN 46615;
 P.O. Box 2661
 South Bend, IN 46680;
 Av. Coba #82 Lote 10, 3er. Piso
 Cancun, Q. Roo
 Mexico C.P. 77500

DOCKETED BY	<i>CAH</i>
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 S.A.,**
 3222 Mishawaka Avenue
 South Bend, IN 46615;
 P.O. Box 2661
 South Bend, IN 46680;
 Av. Coba #82 Lote 10, 3er. Piso
 Cancun, Q. Roo
 Mexico C.P. 77500

1 **WORLD PHANTASY TOURS, INC.,**)
 a/k/a **MAJESTY TRAVEL**)
 2 a/k/a **VIAJES MAJESTY**)
 Calle Eusebio A. Morales)
 Edificio Atlantida, P Baja)
 3 APDO, 8301 Zona 7 Panama,)
)
 4 **AVALON RESORTS,**)
 Av. Coba #82 Lote 10, 3er. Piso)
 5 Cancun, Q. Roo)
 Mexico C.P. 77500)
 6)
 7 **MICHAEL E. KELLY and LORY KELLY,**)
 husband and wife,)
 29294 Quinn Road)
 8 North Liberty, IN 46554;)
 3222 Mishawaka Avenue)
 9 South Bend, IN 46615;)
 P.O. Box 2661)
 10 South Bend, IN 46680,)
)
 11 Respondents.)
)

13 **NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**
 14 **EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING**
 15 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

16
 17 The Securities Division ("Division") of the Arizona Corporation Commission
 18 ("Commission") alleges that Respondents Yucatan Resorts, Inc., Yucatan Resorts, S.A., Resort
 19 Holdings International, Inc., Resort Holdings International, S.A., World Phantasy Tours, Inc. (a/k/a
 20 Majesty Travel and Viajes Majesty), Avalon Resorts, Michael E. Kelly and spouse Lory Kelly have
 21 engaged in or are about to engage in acts, practices, and transactions that constitute violations of the
 22 Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and that immediate action is
 23 required in the name of public welfare.

24 ...
 25 ...
 26 ...

1 I.

2 JURISDICTION

3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
4 Constitution and the Securities Act.

5 II.

6 RESPONDENTS

7 2. Respondent Yucatan Resorts, Inc., ("YUCATAN"), is an internationally-based
8 corporation orchestrating a purported timeshare program out of Cancun, Mexico and other Central
9 American locales. The company's current United States business address is 3222 Mishawaka
10 Avenue, South Bend, Indiana, 46615, together with mailing address P.O. Box 2661, South Bend,
11 Indiana, 46680.

12 3. Respondent Yucatan Resorts, S.A., ("YUCATAN SA"), is a counterpart to YUCATAN
13 with headquarters in the United States, Mexico and Panama. YUCATAN SA contracts with
14 Arizona sales agents and assists in operating the aforementioned Yucatan timeshare program. The
15 company's current United States business address is 3222 Mishawaka Avenue, South Bend,
16 Indiana, 46615, together with mailing address P.O. Box 2661, South Bend, Indiana, 46680.

17 4. Respondent Resort Holdings International, Inc., ("RHI"), is affiliated with YUCATAN
18 and YUCATAN SA and is the primary distributor for the aforementioned Yucatan timeshare
19 program throughout North America. In this capacity, RHI provides promotional services and is
20 responsible for the recruitment of "timeshare" sales agents. RHI's current United States business
21 address is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, together with mailing address
22 P.O. Box 2661, South Bend, Indiana, 46680.

23 5. Respondent Resort Holdings International, S.A., ("RHI-SA"), is the counterpart to RHI
24 and is headquartered in the United States, Mexico and Panama. RHI-SA coordinates with RHI to
25 provide promotional assistance and to perform various administrative functions in connection with
26 the aforementioned Yucatan timeshare program. RHI-SA's current United States business address

1 is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, together with mailing address P.O. Box
2 2661, South Bend, Indiana, 46680.

3 6. Respondent World Phantasy Tours, Inc., a/k/a Majesty Travel and Viajes Majesty,
4 ("WORLD PHANTASY"), is a purported resort management and travel agency operating as the
5 designated servicing agent for the aforementioned Yucatan timeshare program. WORLD
6 PHANTASY's last known address is listed as Calle Eusebio A. Morales, Edificio Atlantida, P
7 Baja, APDO, 8301 Zona 7 Panama.

8 7. Respondent Avalon Resorts ("AVALON") is a resort development company associated
9 with YUCATAN, YUCATAN SA, RHI and RHI-SA. AVALON is the exclusive developer of
10 resort properties throughout Mexico and Central America for inclusion into the aforementioned
11 Yucatan timeshare program. The company's last known business address is Av. Coba #82 Lote
12 10, 3er. Piso Cancun, Q. Roo Mexico C.P. 77500, the same Mexican business address as that of
13 YUCATAN, YUCATAN SA, RHI, and RHI-SA.

14 8. Respondent Michael E. Kelly ("KELLY") is the founder and president of YUCATAN, the
15 owner, president and director of RHI, and the founder and chairman of AVALON. In these varying
16 capacities, KELLY directly oversees and/or controls the aforementioned Yucatan timeshare
17 program, its sales operations, and the expenditure of investor funds. KELLY'S last known United
18 States addresses are 29294 Quinn Road, North Liberty, Indiana, 46554, and 3222 Mishawaka
19 Avenue, South Bend, Indiana, 46615 (company headquarters).

20 9. Respondent Lory Kelly is joined in this action under A.R.S. § 44-2031(C) solely for
21 purposes of determining the liability of the marital community. Lory Kelly's last known residential
22 address is 29294 Quinn Road, North Liberty, Indiana, 46554.

23 10. At all times relevant hereto, KELLY and Lory Kelly were acting for their own benefit, and
24 for the benefit or in furtherance of the marital community.

25 ...

26 ...

1 11. YUCATAN, YUCATAN SA, RHI, RHI-SA, WORLD PHANTASY, AVALON and
2 KELLY may collectively be referred to as "RESPONDENTS." Lory Kelly may be referred to as
3 "Respondent Spouse."

4 **III.**

5 **FACTS**

6 12. Since at least 1999, RESPONDENTS have been directly or indirectly engaged in the offer
7 and sale of securities to the general public in Arizona in the form of investment contracts as defined
8 by Arizona Revised Statutes (A.R.S.) § 44-1801(25).

9 13. To date, a minimum of five Arizona-based sales agents have been identified as selling
10 RESPONDENTS' timeshare investment product to well over three hundred investors.

11 14. RESPONDENTS' investment opportunity is based on what they term the "Universal
12 Lease" Program, a scheme that purportedly offers investors the opportunity to purchase timeshare
13 units in one of various AVALON resort properties throughout Mexico and Central America.

14 15. RHI and RHI-SA are currently responsible for marketing this Universal Lease Program,
15 both by generating/distributing various promotional materials and brochures and by recruiting
16 sales agents throughout the United States.

17 16. Under this Universal Lease 'opportunity,' investors are required to invest a minimum of
18 \$5,000 dollars to participate in the program, but they may invest any amount in excess of this sum.
19 Investment funds are then wired to YUCATAN's Indiana-based bank account, which funds are
20 subsequently disbursed for undisclosed purposes.

21 17. Although several different company brochures and promotional materials are distributed
22 to prospective investors, Universal Lease investors are never apprised as to the financial condition
23 of YUCATAN, YUCATAN SA, RHI, RHI-SA or AVALON, are never informed as to the uses of
24 Universal Lease investment funds, and are never afforded financial statements reflecting the
25 degree of solvency of any of the RESPONDENTS.

26 ...

1 18. According to training materials provided to Universal Lease sales agents, the agents are
2 instructed to tell prospective investors that the investment funds are “basically being used” to
3 purchase more resort properties, evidencing the fact that investor funds are being pooled to
4 provide financing for new acquisitions.

5 19. As part of RESPONDENTS’ sales strategy, prospective investors are given the option to
6 roll part or all of their IRA portfolios into the Universal Lease Program. In doing so, investors are
7 effectively replacing their existing retirement savings with the Universal Lease timeshare program.
8 The Universal Lease application even contains a specific form to facilitate the transfer of
9 investors’ retirement portfolios into RESPONDENTS’ program.

10 20. At a seminar in Scottsdale, Arizona, a recruiter for YUCATAN SA informed prospective
11 Universal Lease sales agents that approximately 40 percent of all funds coming through the
12 Universal Lease Program will originate out of investor IRAs or other similar retirement accounts.

13 *Specifics of the Universal Lease Plan*

14 21. Under RESPONDENTS’ Universal Lease Program, and as represented in RHI’s associated
15 promotional materials, investors are purportedly afforded the opportunity to select one of three
16 separate Universal Lease “options.” In actuality, options 1 and 2 are illusory choices, effectively
17 leaving option 3 as sole Universal Lease Program alternative.

18 22. Evidencing this point, recruiters for prospective YUCATAN SA sales agents coach their
19 trainees that the Universal Lease’s “third option,” *i.e.* the investment selection, is the only selection
20 that need be promoted, offered and sold.

21 23. Under the Universal Lease’s alleged “Option 1,” investors can purportedly choose to forego
22 any returns on their investments, and instead chose to utilize a timeshare unit themselves. Under this
23 option, RHI assigns to the investor, at RHI’s own choosing, a specific unit, for a specific week,¹ and
24

25 ¹ According to the promotional materials, a \$5,000 Universal Lease investor electing the purported
26 “option 1” receives access to the assigned timeshare unit only *every other* year, or only 12 to 13 weeks
during the 25 year lease period.

1 at a specific location, and only after the \$5,000 sum (or more) is received by RHI. The investor has
2 no input into the date, quality or location of this timeshare assignment.

3 24. Moreover, the Option 1 purchaser must pay annual management fees to RHI for this
4 particular election, ranging from \$380 to \$645 per year (with such amounts subject to Consumer
5 Price Index increases). This translates into an RHI surcharge of \$9,000 to \$16,125 (or more) over the
6 life of the 25 year timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total
7 payment of at least \$14,000 in return for 12 weeks of timeshare access (over a 25 year period) at an
8 undisclosed location during an undisclosed time of year.

9 25. Consistent with these uninviting terms, this vacationing selection is largely ignored in
10 Universal Lease promotional materials, and the selection receives no coverage in Universal Lease
11 recruitment seminar for prospective salesmen. Equally relevant, this option would simply have no
12 applicability to the many investors rolling retirement funds into the Universal Lease program.

13 26. The Universal Lease "Option 2," which ostensibly allows RESPONDENTS' customers to
14 rent out assigned timeshare units themselves, contains many of the same prohibitive costs and
15 conditions as that of Option 1. This Option again requires the purchaser to forego any guaranteed
16 investment returns, and instead imposes substantial annual maintenance fees on the purchaser for the
17 full 25 year lease term. Prospective Option 2 purchasers must also await a determination by RHI,
18 after the purchase has been made, as to the location, resort type and permitted dates of use for the
19 timeshare. The undesirability of this selection is further conveyed by RHI's brochure warning that
20 this self-renting option will not bring in the same level of revenues as would a professional third
21 party servicing agent.

22 27. Beyond the apparent financial disincentives, RESPONDENTS' promotional materials
23 provide no discussion, comments or guidance over the advantages of selecting option 2, other than
24 the brief suggestion that this self-renting option could be carried out through the "simple placing of
25 an advertisement in the local paper." This "tip" conspicuously omits any insight into the risks and
26

1 logistics associated with such an undertaking. Nor does it address the challenges presented in
2 overseeing the rental of a weekly timeshare unit hundreds or even thousands miles away.

3 28. As with Option 1, Option 2 of the Universal Lease Program is also conspicuously
4 overlooked in connection with RESPONDENTS' efforts to recruit and train additional sales agents.
5 Far from providing an overview of Option 2, a recruiter plainly indicated to prospective sales agents
6 that the only Universal Lease option of interest for sales agents was the investment option, Option 3.

7 29. Unlike the illusory selections of Options 1 and 2, Option 3 is repeatedly touted, highlighted
8 and glorified in RESPONDENTS' Universal Lease literature. According to YUCATAN SA and
9 RHI's promotional brochures, investors who "select" Option 3 would be eligible to receive a 9 per
10 cent per annum return on their timeshare investments every year for a period of 25 years, after which
11 time the lease would be renewable for another 20 years.

12 30. For an investor to reap the 9 percent per annum return under this Universal Lease option,
13 the investor was required, as part of his investment, to hire a "third party" management company to
14 lease the investor's timeshare unit. The Universal Lease materials identify WORLD PHANTASY as
15 the designated management company for this servicing function. Although the Universal Lease
16 application does not mandate the selection of WORLD PHANTASY as the investors' servicing
17 agent, such a selection is the only listed means under which investors can earn the promised 9 per
18 cent rate of return on their Universal Lease investments.

19 31. To select WORLD PHANTASY as the servicing agent, investors are instructed to
20 complete a formal "Management Agreement" with the company. This WORLD PHANTASY
21 Management Agreement is bundled with the Universal Lease promotional and application materials,
22 and is the single management company identified for servicing AVALON's various resorts.

23 32. RESPONDENTS fail to disclose any financial relationship with WORLD PHANTASY or
24 indicate whether either company is entitled to receive a percentage of this servicing agent's
25 management fees.

26 ...

1 33. The "Universal Lease Management Agreement" states: "The Servicer shall have full
2 power and authority to do those things in connection with such servicing, administration, and
3 collection activities which it may deem necessary in order to maximize the rental.... Client shall
4 furnish the Servicer with powers of attorney and other documents necessary or appropriate as
5 required by the Servicer to enable the Servicer to carry out its servicing and administrative duties
6 hereunder."

7 34. Once investors have made their investments in RESPONDENTS' Universal Lease
8 Program and have signed the Management Agreement with WORLD PHANTASY, the investors are
9 allegedly eligible to receive a 9 percent per annum return on their investments for the life of the
10 Universal Lease Program, presently set at 25 years. The investors have no functions or
11 responsibilities following their investments, and YUCATAN, YUCATAN SA, RHI, RHI-SA,
12 AVALON and WORLD PHANTASY purportedly develop new and/or manage existing rental units
13 to generate the profits that support the investors' investment returns.

14 35. According to RESPONDENTS' marketing literature, Option 3 of the Universal Lease
15 provides a multitude of advantages to more traditional investments. The most prominent of these, as
16 demonstrated during a promotional power point presentation delivered by KELLY, is that the
17 Universal Lease Program provides a far superior rate of return than most other investments. A
18 second claim is that the Universal Lease is supported by "debt-free" resort properties, and that as a
19 result the Universal Lease Program is fully safe and secure.

20 36. According to RESPONDENTS' promotional literature, Option 3 is also the only Universal
21 Lease option that also allows investors to recoup up to 5 percent of any loss or liquidation penalty
22 incurred during the process of rolling other investments into RESPONDENTS' Universal Lease
23 Program. This feature is an added incentive for investors to exchange their existing investment
24 portfolios into Option 3 of the Universal Lease Program.

25 ...

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1 37. Several Arizona sales agents have since become prolific sellers of the Universal Lease
2 Program's investment option. One such agent recently boasted that he had sold over 300
3 investments in RESPONDENTS' program over the past three plus years.

4 38. Of the identified individuals investing in the Universal Lease Program through this
5 particular sales agent, all had chosen the 'investment selection,' *i.e.* Option 3, and all had chosen
6 WORLD PHANTASY as their third party servicing agent. Moreover, a substantial number of these
7 investors were elderly individuals who had made their Universal Lease investments by rolling part or
8 all of their retirement portfolios into the program. To date, this sales agent has raised several million
9 dollars in Universal Lease investments.

10 39. Another of RESPONDENTS' Universal Lease sales agents recently encouraged a 75-year-
11 old Phoenix resident to roll over his entire investment portfolio, approximately \$61,000, into Option
12 3 of the Universal Lease Program. The elderly gentleman followed the recommendation, moving
13 his entire annuities portfolio into RESPONDENTS' Universal Lease Program.

14 40. Still another Arizona Universal Lease sales agent, a former paralegal, conceded that she
15 had sold several additional Universal Lease investments to investors in the greater Phoenix area.

16 41. A fourth Universal Lease sales agent succeeded in selling to One Vision Children's
17 Foundation, Inc. ("One Vision"), a non-profit organization incorporated in Arizona, a \$1.03 million
18 investment in the Universal Lease Program. Prior to this investment, the sales agent had
19 recommended that One Vision choose the third investment option and discouraged any consideration
20 over the other two options.

21 42. Marketing materials provided to investors by the above-referenced Universal Lease sales
22 agents indicated that "the Yucatan properties were fully insured against loss. All properties are in
23 compliance [with] the governing laws. Being in compliance with the regulations to sell leases, all
24 properties are 100% free of debt. As a result, the Leaseholders have a first lien on the Yucatan
25 Resort properties."
26

1 43. Arizona-based sales agents repeatedly echoed this claim that RESPONDENTS' Universal
2 Lease investments were safe and secure, and that these investments were protected by debt-free
3 properties. No risk disclosures were made to investors, either during the agents' sales presentations
4 or through the dissemination of Universal Lease marketing literature.

5 44. Universal Lease sales agents receive commissions constituting at least 10% of the
6 investors' funds placed into the Universal Lease Program under Option 3. These commission
7 amounts would increase in cases where affiliated sales agents qualified for sale overrides. The
8 existence of these commissions has been routinely withheld from investors.

9 45. Yucatan Investment Corp. ("Yucatan Investments") was the subject of an administrative
10 order by the New Mexico Securities Division on May 18, 1999, for the sale of unregistered, non-
11 exempt securities - in the form of 9 month promissory notes - through unlicensed sales agents.
12 KELLY was the sole incorporator, statutory agent, president and secretary of Yucatan Investments,
13 and Yucatan Investments was based out of the same business address as YUCATAN, YUCATAN
14 SA, RHI, and RHI-SA. Upon information and belief, Yucatan Investments' operation was the
15 immediate predecessor to RESPONDENTS' current Universal Lease Program.

16 46. Yucatan Investments was also the subject of an administrative order by the South Carolina
17 Securities Division on July 26, 1999, for the sale of unregistered, non-exempt securities - in the form
18 of 9 month promissory notes - through unregistered sales agents.

19 47. Yucatan Investments was also the subject of a Cease and Desist order by the Minnesota
20 Department of Commerce on October 4, 1999, for the sale of unregistered, non-exempt securities.
21 KELLY, endorsing as the company's president, consented to this Order on September 15, 1999.

22 48. Yucatan Investments was also the subject of an administrative order by the Connecticut
23 Department of Banking, on November 7, 2000, for the sale of unregistered, non-exempt securities -
24 in the form of promissory notes - through unlicensed sales agents.

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1 49. YUCATAN SA and KELLY were the subject of an administrative order by the Wisconsin
2 Securities Division on March 28, 2001, for the sale of unregistered securities by an unlicensed sales
3 agent and for securities fraud in violation of Wisconsin law.

4 50. YUCATAN was the subject of an administrative order by the Oklahoma Department of
5 Securities in August 2001, arising out of possible violations of the Oklahoma Securities Act.

6 51. On October 28, 2002, YUCATAN SA was the subject of an administrative cease and desist
7 order from the Pennsylvania Securities Commission arising out of multiple registration and fraud
8 violations as proscribed under the Pennsylvania Securities Act.

9 52. Arizona investors were never informed, either by Universal Lease sales agents or through
10 RESPONDENTS' promotional literature, that each of Yucatan Investments, YUCATAN,
11 YUCATAN SA, and KELLY had been the subject of previous sanctions based on multiple
12 violations of state securities laws.

13 IV.

14 VIOLATION OF A.R.S. § 44-1841

15 (Offer or Sale of Unregistered Securities)

16 53. Since at least early 1999, RESPONDENTS have offered or sold securities in the form of
17 investment contracts, within or from Arizona.

18 54. The securities referred to above were not registered pursuant to the provisions of Articles 6
19 or 7 of the Securities Act.

20 55. This conduct violates A.R.S. § 44-1841.

21 V.

22 VIOLATION OF A.R.S. § 44-1842

23 (Transactions by Unregistered Dealers or Salesmen)

24 56. RESPONDENTS have offered or sold securities within or from Arizona while not
25 registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

26 57. This conduct violates A.R.S. § 44-1842.

1 VI.

2 VIOLATION OF A.R.S. § 44-1991

3 (Fraud in Connection with the Offer or Sale of Securities)

4 58. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS
5 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue
6 statements of material fact or omitted to state material facts which were necessary in order to make
7 the statements made not misleading in light of the circumstances under which they were made;
8 and/or (iii) engaged in transactions, practices or courses of business which operated or would operate
9 as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not
10 limited to, the following:

11 a) RESPONDENTS misrepresented to investors that investments in the Universal Lease
12 Program are fully safe, secure, and guaranteed, when in fact investments in RESPONDENTS'
13 foreign timeshare scheme are inherently risky on several levels, including (without limitation):

- 14 1) The fact that the viability of the Universal Lease Program depends on the
15 future solvency of each of the various entities associated with this venture;
- 16 2) That annual investment returns from this Program are necessarily dependent
17 upon the profitability of WORLD PHANTASY in successfully renting a
18 sufficient number of AVALON Resort units throughout the 25 year lease
19 period;
- 20 3) That, in the event of a hurricane or other natural disaster, the undisclosed
21 value of RESPONDENTS' company assets could fall well short of the
22 amount of funds invested into the Universal Lease Program; and
- 23 4) The fact that the Universal Lease Program is relying almost exclusively on the
24 efforts and purported expertise of a single individual, KELLY.

25 b) RESPONDENTS failed to disclose to investors any salient financial and/or
26 background information about the issuer, its affiliates, or its principals;

1 c) RESPONDENTS failed to disclose to investors that a sales commission of at least 10
2 percent was routinely paid to Universal Lease sales agents consummating timeshare investments, and
3 that sales agents were eligible for additional monetary overrides;

4 d) RESPONDENTS failed to disclose to investors how, and for what purpose, monies
5 invested into the Universal Lease Program were being managed, allocated and utilized; and

6 e) RESPONDENTS failed to disclose to investors that administrative orders reflecting
7 prior securities violations have been issued against RESPONDENTS and their predecessor in several
8 different jurisdictions.

9 59. This conduct violates A.R.S. § 44-1991.

10 **VII.**

11 **TEMPORARY ORDER**

12 THEREFORE, based on the above allegations, and because the Division has determined
13 that the public welfare requires immediate action,

14 IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-307, that the
15 RESPONDENTS, their agents, servants, employees, successors, assigns, and those persons in active
16 concert or participation with them, CEASE AND DESIST from any violations of the Securities Act.

17 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain
18 in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

19 IT IS FURTHER ORDERED that this Order shall be effective immediately.

20 **VIII.**

21 **REQUESTED RELIEF**

22 The Division requests that the Commission grant the following relief against
23 RESPONDENTS and/or the marital community of KELLY and Lory Kelly:

24 1. Order RESPONDENTS to permanently cease and desist from violating the Act,
25 pursuant to A.R.S. § 44- 2032;

1 fact and conclusions of law. A permanent Order may include an order of restitution, administrative
2 penalties, and/or other affirmative action.

3 If a request for a hearing is not timely made, the Division will request that the Commission
4 make permanent this Temporary Order, with written findings of fact and conclusions of law. These
5 conclusions of law may include an order for restitution, administrative penalties and/or other relief.

6 Persons with a disability may request a reasonable accommodation such as a sign language
7 interpreter, as well as request this document in an alternative format, by contacting Shelly M.
8 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
9 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
10 accommodation.

11 **X.**

12 **ANSWER REQUIREMENT**

13 Pursuant to A.A.C. R14-4-305, if any Respondent or the Respondent Spouse requests a
14 hearing, the Respondent or Respondent Spouse must deliver or mail an Answer to this Notice of
15 Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 West
16 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
17 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
18 accompany the Answer. A cover sheet form and instructions may be obtained from
19 Docket Control by calling (602) 542-3477 or by accessing the Commission's Internet web site at
20 www.cc.state.az.us/utility/forms/index.htm.

21 Additionally, any Respondent or the Respondent Spouse must serve the Answer upon the
22 Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by
23 hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor,
24 Phoenix, Arizona, 85007, addressed to Jamie B. Palfai, Esq.

25 The Answer shall contain an admission or denial of each allegation in this Notice and the
26 original signature of each Respondent/Respondent Spouse or their respective attorneys. A

1 statement of a lack of sufficient knowledge or information shall be considered a denial of an
2 allegation. An allegation not denied shall be considered admitted.

3 When any of the Respondents or the Respondent Spouse intends in good faith to deny only
4 a part or a qualification of an allegation, such Respondent or Respondent Spouse shall specify that
5 part or qualification of the allegation and shall admit the remainder. Respondents and/or the
6 Respondent Spouse waive any affirmative defense not raised in the answer.

7 The administrative law judge presiding over the hearing may grant relief from the
8 requirement to file an Answer for good cause shown.

9 Dated this _____ day of September, 2003.

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11 _____
12 Matthew J. Neubert
13 Acting Director of Securities
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