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ARKANSAS SECURITIES DEPARTMENT

February 8, 2006

Brooks A. Gill, Esq.
Gill Law Firm, PLC
135 W. Waterman Street
P.O. Box 70
Dumas, Arkansas 71639

Re: No Action Letter No. 06-90000344-NA002 for Top Paradise Club, LLC

Dear Mr. Gill:

This Department is in receipt of your letter dated January 9, 2006, requesting the staff's position regarding the necessity of registration under the Arkansas Securities Act, Ark. Code Ann. §23-42-101, et seq. (the "Act"), for the offer and sale of equity memberships in Top Paradise Hunting Club, LLC (the "Company"), an Arkansas limited liability company which will own and operate a private hunting club located in Desha County, Arkansas. The facts, as more fully set out in your letter and the accompanying offering documentation and operating agreement, are as follows:

Your client, SEARK Land Company, LLC recently formed a hunting club under the name, Top Paradise Hunting Club, LLC, which will be managed by its members. Up to twelve (12) units of interest will be sold by your client, the organizer of the hunting club.

The information accompanying your letter indicates that:

1. "The Offeree must either (i) have such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the proposed investment or (ii) be able to bear the economic risk of the investment (i.e., at the time of the investment, the Offeree could afford a complete loss of his investment and could afford to hold the Interests for an indefinite period of time)."

2. "With the exception of SEARK RIVER PROPERTIES LLC, any purchaser of an Interest or Interests in the Company must represent to the Company that he is purchasing the Interests for investment purposes only, and not with a view to resale or distribution thereof."

3. "4. Each purchaser of an Interest of Interests in the Company will be required to represent to the Company that such purchaser has relied upon the advice of his own

counsel and accountants with regard to the tax and other consideration involved in making the investment in the Company."

4. "5. Each purchaser of an Interest or Interests in the Company must represent to the Company that such purchaser is neither expecting, nor relying upon the receipt of any income from the Company for purposes of discharging his obligation for additional capital contributions to the Company has sufficient net worth and available liquid assets to satisfy such."

Further information gleaned from your Summary of Offering document indicates that up to twelve (12) units of membership interest will be offered at a minimum of $60,000 per unit.

Also, there are significant restrictions on the transfer of members' interests, except for transfers to certain family members and members of the Company.

Your Operating Agreement provides in Article III that the purpose for the Company is to acquire land for, among other possible things, the operation of a hunting club. There is no mention of anticipated profits from either the operation of the hunting club or the anticipated appreciation of the land, although your documents do make the needed caveat that an increase in value is a possibility.

In short, your letter and accompanying documents state that this is to be operated as a hunting club, with appropriate caveats should the members see an increase in the value of their investment, although that is not your intention, nor is it to be anticipated by the Offerees. The Company will be member managed, all Company decisions being made by majority vote, spelled out in the documents, and will make an election with the IRS to be treated as a partnership rather than an incorporated association for tax purposes. The accompanying documents indicate that the Company is not structured as a profit-making venture, the members will not be participating in the Company with the expectation of profits from it's operations. It is noted that the Operating Agreement for the Company does not in any way limit the potential for profit which might be received by a member upon sale of his interest, nor does it strictly limit the number of members to twelve (12) or fewer, although the number of units to be issued, according to your letter and also the Summary of Offering and Non-Public Offering Memorandum, all limit this offering to twelve (12) units.

It seems that the units to be issued would likely be considered securities under the definition contained in the 2002 Uniform Securities Act. However, the 2002 Uniform Securities Act has not been enacted in this state.

The Arkansas courts have generally followed a modified test proposed by Professor Joseph Long and fist adopted in *Smith v. State*, 266 Ark. 861, 587 S.W.2d 50, rather than that enumerated in *SEC v. W.J. Howey, Co.*, 328 U.S. 293 (1946). In *Smith*, the Arkansas courts looked to five factors, rather than the four stated in the *Howey* case. They are:

1) The investment of money or money's worth;
2) Investment in a venture;
3) The expectation of some benefit to the investor as a result of the investment;

4) Contribution towards the risk capital of the venture; and
5) The absence of direct control over the investment or policy decisions concerning the venture.

The facts as represented in your letter and accompanying documentation support the conclusion that the form of ownership of this hunting club, i.e., through a limited liability company, and the units to be issued are not intended to be as much for investment profit or benefit as for the limitation of liability to members and the use of the facility. Although there exists a potential for profit deriving from the possibility of appreciation of the real property occurring after a member buys his unit, that potential does not appear to be the primary motivation for purchase of a unit, and the attractiveness of the units to the potential members appears to involve use of the facility, as opposed to the enticement for profit as a result of appreciation.

In addition, it appears that the potential members have some direct control over the policy decisions of the venture, although this aspect is somewhat blurred by the fact that the promoters of the venture, SEARK River Properties, LLC, will control the limited liability Company. The staff is of the opinion that in most instances involving whether interests in a small, member-managed limited liability company in which the members have real control over the policy and business decisions of the issuer constitute securities, the interests will usually be deemed to fall outside of the definition of securities under the Act due to the fact that the "control" factor in both the *Howey* and the *Smith* test is not met. As is often the case in this type of analysis, the specific control is actual or merely a pretext designed to thwart the registration provisions of the Act. Inasmuch as the Company's proposed Operating Agreement places the primary policy and business decisions in the Company's members, the control factor of the tests does not appear to be met in this instance.

Based upon your representations as set forth above, and more particularly in your letter and the accompanying documents, the staff of the Department will not recommend enforcement action to the Commissioner if interests in the Company are offered and sold as represented without a registration or exemption filing being made with the Department.

Please note that the position of the Department is based upon the representations that you have made in your letter referenced above and it's accompanying documentation. Different facts and circumstances might well result in a different position being taken. Additionally, the position expressed deals only with anticipated or possible enforcement action, and does not purport to be a legal opinion or to affect any civil liability that may exist.

Should you have any questions, please contact me.

Sincerely,

John T. Root, Jr.
Staff Attorney