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COMMISSIONER



ARIZONA CORPORATION COMMISSION

JACK ROSE  
EXECUTIVE SECRETARY

MICHAEL G. BURTON, SR.  
DIRECTOR

SECURITIES DIVISION  
1300 West Washington, Third Floor  
Phoenix, AZ 85007-2996  
TELEPHONE: (602) 542-4242  
FAX: (602) 594-7470

October 17, 1997

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

RE: ResidenSea Limited/The World of ResidenSea  
Club Memberships  
A.R.S. § 44-1801(23)

Dear Ms. Powell:

On the basis of the facts set forth in your letters of April 16, 1997, May 6, 1997, August 27, 1997, October 9, 1997 and October 14, 1997 and in reliance upon your opinion as counsel, the Securities Division (the "Division") will not recommend enforcement action for violation of the Securities Act of Arizona (the "Act"), with respect to the offers and sales of club memberships ("Club Memberships"), as described in those letters, by ResidenSea Limited, and/or The World of ResidenSea Limited.

In reaching its conclusion, the Division considered the facts and legal analysis set forth in your July 29, 1997 letter to the SEC ("SEC Letter"), which is incorporated by reference in your October 9, 1997 letter. The Division is issuing this letter in reliance on your representations that no changes have been made in the structure or terms of the offering which would affect the analysis of whether the Club Memberships are securities under Arizona law. In considering the SEC Letter, the Division was persuaded that under Arizona law, the Club Memberships did not meet all of the prongs of the investment contract analysis, nor did the Club Memberships appear to qualify as stock or notes.

As this position is premised upon the facts set forth in your letters, it should not be relied on for any other set of facts or by any other person.

As the Club Memberships do not constitute "securities" for purposes of the registration requirements of the Act, the anti-fraud provisions of the Act would not be applicable. To the extent that the transactions do not take place as described in your letters, or a material change in

Polly F. Powell, Esq.

October 17, 1997

Page 2

circumstances causes the Club Memberships to be deemed to be "securities" for purposes of the Act, then the anti-fraud provisions would be applicable ab initio.

We have attached a photocopy of your letters for your reference.

Very truly yours,

A handwritten signature in cursive script that reads "Michael G. Burton, Sr." with a large, stylized initial "M" and "B".

Michael G. Burton, Sr.

Director of Securities

MGB:lb

Attachments

**BAKER & BOTTS**  
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POLLY F. POWELL  
(512) 322-2510

TELEPHONE: (512) 322-2500  
FACSIMILE: (512) 322-2501

E-MAIL ADDRESS:  
POLLY.POWELL@BAKERBOTTSCOM

October 14, 1997

VIA FACSIMILE

Ms. Leslie R. Block  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, AZ 85007

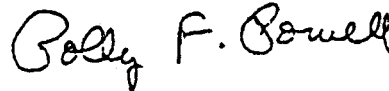
Re: "The World of ResidenSea"

Dear Ms. Block:

On behalf of the World of ResidenSea, I have been authorized to represent to you that, although the names of the non-equity Club Memberships, "Platinum" and "Gold," have been dropped due to the possibility of confusion, no other changes in the structure or terms of the Non-Resident Club Memberships have been made which would affect the analysis of whether or not the offer and sale of such Memberships involve the offer and sale of securities.

Please call me collect at (512) 322-2510 if you have any questions.

Very truly yours,



Polly F. Powell

PFP:ks

**BAKER & BOTTS**

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October 9, 1997

VIA FACSIMILE

Ms. Leslie R. Block  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, AZ 85007

Re: "The World of ResidenSea"

Dear Ms. Block:

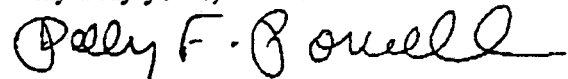
In connection with our telephone conversation yesterday regarding the World of ResidenSea, this supplements our no-action request of April 16, 1997 regarding Residences aboard a luxury passenger vessel and Memberships in a non-equity club which would be sold separately from the Residences.

By this letter, we hereby respectfully request you to consider issuing a no-action letter regarding the separately sold Memberships, as described in my letter of August 27, 1997.

Please find attached copies of the SEC letters for you to please incorporate by reference to this letter.

Please call me collect at (512) 322-2510 if you have any questions.

Very truly yours,



Polly F. Powell

PFP:ks  
Attachments



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

July 29, 1997

Michael A. Gold, Esq.  
Baker & Botts LLP  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400

Re: ResidenSea Club

Dear Mr. Gold:

In regard to your letter of July 29, 1997 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

Catherine T. Dixon  
Chief Counsel

AUSTIN  
DALLAS  
HOUSTON  
MOSCOW  
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BAKER & BOTTS  
LLP  
THE WARNER  
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Section 2(a)(1) of the Securities Act of 1933

July 29, 1997

RECEIVED  
OFFICE OF CHIEF COUNSEL  
97 JUL 29 AM 11:52

Catherine T. Dixon  
Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: "The ResidenSea Club" Marketing of Non-Equity Club Membership on  
Luxury Passenger Cruise Vessel

Dear Ms. Dixon:

On behalf of ResidenSea Limited ("ResidenSea"), a corporation formed and existing under the laws of the Bahamas, and The World of ResidenSea Limited, a wholly owned subsidiary of ResidenSea ("Ship Owner"), to be formed as a corporation under the laws of the Bahamas, we request that the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") provide advice that it will not recommend enforcement action if Ship Owner develops a non-equity on-board club, known as the ResidenSea Club (the "Club"), aboard a luxury passenger cruise vessel (the "Ship") to be constructed, owned and operated by Ship Owner and managed by ResidenSea, and markets, sells and otherwise dispenses memberships in the Club, in the manner described below, without registering the memberships as securities under Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to our advice that such memberships are not securities as such term is defined in Section 2(a)(1) of the Securities Act.

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Catherine T. Dixon

Page 2

July 29, 1997

I. BackgroundA. The Club1. The Ship, Ship Owner and ResidenSea.<sup>1</sup>

Ship Owner will own the Ship, which will contain the Club facilities. The Ship will be configured with spacious, luxurious, and fully-serviced apartments ("Residences"), and smaller, less numerous suites ("Guest Suites"). Approximately 250 Residences and approximately 180 Guest Suites will represent the non-crew living accommodations on board the Ship. The right to occupy a Residence for a term of 50 years and certain other related rights (the "Residency Rights") will be sold to persons and entities (the "Residents") having a net worth of at least \$5 million. The Residency Rights will be evidenced by a contractual arrangement between the Resident and Ship Owner (set forth in the "Residence Agreement(s)").

All of the Club facilities will be based on board the Ship; however, certain services will be offered on shore, including reciprocal rights to use other clubs around the world. Ship Owner will be responsible for all of the costs of constructing the Ship, including the Club facilities. ResidenSea and the Ship Owner will enter into a management agreement pursuant to which, for a management fee plus reimbursement of expenses, ResidenSea will assume responsibility for the management of the Ship, including the Guest Suites, the Residences and the Club. Members of the Club will not be subject to any assessments for the costs of constructing or operating the Club facilities, except with respect to Residents, as otherwise provided in their Residence Agreements. Nor will members directly bear the costs of capital improvements to the Club.<sup>2</sup> Ship Owner will retain all operating revenues resulting from operation of the Club facilities.

2. Membership

The Club will be a non-equity club. Potential members will be informed that membership is not an investment in the Ship Owner, ResidenSea, the Club or the Club facilities and does not give a member a vested or prescriptive right or interest in the nature

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<sup>1</sup> For further information regarding the Ship, Ship Owner and ResidenSea, please see Letter from James R. Dory, et al. to Martin P. Dunn regarding "The World of ResidenSea" Luxury Passenger Vessel and Marketing of Residence Apartments" (March 27, 1997).

<sup>2</sup> Members who are Residents will bear certain costs related to Club operation and maintenance in connection with the Club's presence on the Ship. Such costs will be part of the Ship's cash requirements and will be charged to the Residents on a quarterly basis.

BAKER & BOTTS  
L.L.P.

Catherine T. Dixon

Page 3

July 29, 1997

of an easement to use the Club facilities. Moreover, members of the Club will not receive any equity or ownership interest or any other property interest in the Club or its facilities and will not be entitled to receive any income, dividends or distributions from the operation of the Club or any appreciation in the value of their memberships. Members will not be entitled to directly participate in the management of the Club. A member will merely acquire a revocable license to use the Club facilities. The Ship Owner will have the right to sell, lease or otherwise dispose of the Ship, including the Club facilities, subject to the Residence Agreements. Moreover, subject to the Residence Agreements, the Ship Owner will have the right in its discretion (i) to close or discontinue the Club and operate the on-board facilities on any basis consistent with the Residence Agreements, (ii) to issue or modify any type or category of membership, (iii) to recall all Non-Resident Memberships and (iv) to increase or decrease the number of memberships. In the event that Ship Owner recalls a membership for any of the foregoing reasons, the affected Non-Resident Members will receive a refund of their membership deposits.

Residents will be automatically members of the Club under their Residence Agreements with Ship Owner for the right to occupy a Residence. Residents' memberships will be known as "Resident Memberships." Since the Ship contains 250 Residences, the Ship Owner expects to issue 250 Resident Memberships.

The Club will also offer up to 1500 "Non-Resident Memberships" to non-Residents, which will afford access to the Guest Suites, as well as the right to use the Club's facilities, participate in its activities and receive its services. Non-Resident Members will pay a fully refundable membership deposit and annual dues, in addition to food and beverage fees. The Club expects to set the membership deposits at a commercially reasonable rate to be determined later, but anticipates that the membership deposits will be between \$30,000 and \$50,000. The membership deposits will be held in escrow by a financial institution pursuant to an Escrow Agreement for Membership Deposits until the Club facilities have been completed and are available for use by the members. The funds will only be released from escrow to the Club upon completion of the Club facilities or if the Club provides security ensuring completion of the Club facilities such as obtaining an irrevocable letter of credit or posting a performance bond. Thus, the membership deposits will not be subject to construction expenditures or other risks of the enterprise during the construction period. Thereafter, each membership deposit will be an unsecured debt of the Ship Owner to the corresponding Non-Resident Member.

For tax purposes, the membership deposit will be structured as a 30-year non-interest-bearing loan by the member. The 30-year loan period was set by the Ship Owner based on advice as to the normal length of such arrangements in other U.S. non-equity clubs. The membership deposit is refundable by the Club 30 years after acceptance for membership



BAKER & BOTTS  
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Catherine T. Dixon  
Page 4  
July 29, 1997

in the Club<sup>3</sup> or sooner, upon resignation and reissuance of the membership, upon death of the member or in the event the Club facilities are not completed or the memberships are terminated by the Club for any other reason. Non-Resident Memberships will be by invitation only. Invitations will be tendered to individuals or entities based on information that indicates that a prospective invitee might have the income and the interest to use a Guest Suite for hotel or cruise accommodations.

Non-Resident Memberships will be available to corporations, partnerships, trusts and other forms of multiple ownership on the same general terms and at the same cost as made available to individuals. Each Non-Resident Membership issued to a business entity will permit the corporate member to designate up to three individuals for membership privileges. Each designee must be an officer, director, partner or employee of the business and be approved for membership. Only actual active operating businesses are eligible to acquire Non-Resident Memberships.

Those corporations, partnerships, trusts and other business entities that acquire Residency Rights will be Resident Members of the Club so long as the Residency Rights continue under the Residence Agreement. The number and qualification of designees which will have access to the Club facilities will be set forth in the Residence Agreement and/or Ship Rules.

### 3. Club Facilities

It is contemplated that the Club facilities will operate on three decks of the Ship, encompassing approximately 175,000 square feet. Use of the Club facilities will be governed by the Membership Plan and Club Rules to be provided to all members. The facilities expected to be offered by the Club presently include the following: 7 restaurants, lounges, bars, casino, nightclub, two swimming pools, tennis court, whirlpools, spa and health and fitness center, jogging track, golf facilities, paddle tennis, theater/cinema, activity rooms, and shops. In addition, the Club expects to offer the services of a concierge staff to obtain information and arrange for a broad array of personal services and activities both on board and off the vessel for members. Club members are entitled to have guests use the Club's facilities subject to reasonable rules and regulations adopted from time to time by the Ship Owner and payment of applicable guest fees.

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<sup>3</sup> At the end of the 30-year period, a Non-Resident Member can continue his or her membership privileges subject to paying applicable dues, fees and charges, and the membership of such member will not count against the cap on Non-Resident Memberships.

BAKER & BOTTS  
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Catherine T. Dixon  
Page 5  
July 29, 1997

Club members will have access to and discounts on the Guest Suites. Club members will be required to pay a daily room charge when using the Guest Suites. The Ship Owner will rent Guest Suites on the Ship for specific cruise itineraries, or as resort or hotel space for particular time periods. The Ship Owner will retain the right to rent the Guest Suites to non Club members, but Club members will receive discounted rates with respect to the Guest Suites.

4. Dues, Fees and Charges

Non-Resident Members will be obligated to pay annual advance dues for use of the Club's facilities, as determined by the Club from time to time. Resident Members will not pay dues. The maintenance payment required under the Residence Agreement entitles Resident Members to enjoy membership privileges in the Club. All members of the Club, including Residents, will be required to pay charges applicable to their specific uses of the Club's facilities. Non-Resident Members will not be responsible for assessments of any type. Resident Members will be subject to assessments only to the extent provided in the Residence Agreement, which will be allocated among the Resident Members pro-rata based on the square footage of a Resident Member's Residence.

5. Transferability of Club Memberships

Non-Resident Memberships may only be transferred through the Club. Those Non-Resident Members desiring to resign their membership must give notice of such intent to the Club and the Club will make the membership available for reissuance to a new member. Until all of the Non-Resident Memberships in the Club have initially been issued, one resigned membership will be reissued for every three new memberships issued in the Club, on a first-resigned, first-reissued basis. The membership deposit of a Non-Resident Member who has resigned will be refunded without interest within 30 days after the reissuance of a resigned membership by the Club to a new member. Resigning Non-Resident Members must pay dues until their membership has been reissued or until the end of the membership year in which the resignation occurs, whichever is sooner.

Upon the death of a Non-Resident Member, the Non-Resident Membership will be transferred to a surviving spouse or, failing the transfer of a surviving spouse to an adult child of the deceased Non-Resident Member.<sup>4</sup>

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<sup>4</sup> If the deceased Non-Resident Member has more than one adult child, the membership will only be transferred to an adult child pursuant to an assigned agreement from all the adult children as to who should be the successor. In the event no eligible successor to the Non-Resident Membership is named within a reasonable time, the membership will revert to the

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Catherine T. Dixon  
Page 6  
July 29, 1997

Residents' memberships will be reissued to a permitted assignee upon the closing of the sale of the Residency Rights to such assignee. The membership of a Resident Member cannot be resigned or transferred except in connection with the assignment of the Resident Member's interest under the Residence Agreement. The sublicensee of a Resident Member who sublicenses his or her Residence will be the beneficial user of the membership. During the period when a sublicensee is the designated user of the membership, the sublicensor member will continue to have membership privileges. The member will be responsible for the department of the sublicensee and for all charges incurred by the sublicensee.

A member may not pledge or hypothecate the membership except to secure purchase money obligations or obligations to the Club.

#### 6. Access to Other Clubs and Resorts

ResidenSea anticipates that members of the Club will have access to other clubs and resorts through agreements between the Ship Owner and other club and resort owners. Members of the Club will be required to pay applicable fees and charges when using these clubs and resorts. The clubs and resorts to which members will have access may change from time to time. The agreements may provide for reciprocal access to the Club's facilities by members of these other clubs and resorts.

#### 7. Membership Documents

Memberships in the Club will be offered pursuant to the Residence Agreement for Resident Members and to a Membership Purchase Agreement for Non-Resident Members. The members will be subject to and governed by the Ship Rules, the Club Rules and a Membership Plan, which may be amended from time to time. Ship Owner will reserve the right to modify or change the existing categories of membership, add additional membership categories and modify the Membership Plan and Club Rules, without the input of the members.<sup>5</sup>

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Club and the membership deposit will be refunded to the estate of the deceased Non-Member.

<sup>5</sup> Ship Owner will consult with the Staff before undertaking any such changes that might cause the memberships to be deemed securities. No such changes are presently contemplated.

BAKER & BOTTS  
LLP

Catherine T. Dixon  
Page 7  
July 29, 1997

The rights granted to the Residents through the Residence Agreements are paramount to the other Club documentation and to the extent that a conflict exists between such other documentation and the Residence Agreements, the Residence Agreement controls.

Legends will appear prominently in the initial pages of the Membership Plan, substantially in the following form:

**RELY ONLY ON INFORMATION IN THIS MEMBERSHIP PLAN**

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED IN THIS MEMBERSHIP PLAN AND THE REFERENCED DOCUMENTS AND, IF GIVEN OR MADE, SUCH INFORMATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE SHIP OWNER. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF MEMBERSHIP CONTAINED IN THE RESIDENCE AGREEMENT, THE MEMBERSHIP PLAN, CLUB RULES AND MEMBERSHIP PURCHASE AGREEMENT WITH OTHER PRINTED MATERIALS, THE RESIDENCE AGREEMENT, THE MEMBERSHIP PLAN, CLUB RULES AND MEMBERSHIP PURCHASE AGREEMENT SHALL GOVERN. THE TERMS OF THE RESIDENCE AGREEMENT SHALL GOVERN IN THE EVENT OF A CONFLICT BETWEEN THE RESIDENCE AGREEMENT AND ANY OTHER DOCUMENTATION.

**MEMBERSHIPS AT THE CLUB ARE OFFERED ONLY FOR RECREATIONAL PURPOSES**

MEMBERSHIPS AT THE CLUB ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING MEMBERS THE RECREATIONAL USE OF THE CLUB FACILITIES. MEMBERSHIPS SHOULD NOT BE VIEWED AS AN INVESTMENT AND NO ONE SHOULD PURCHASE A MEMBERSHIP BASED ON ANY EXPECTATION OF ECONOMIC BENEFIT FROM SUCH MEMBERSHIP.

NO FEDERAL, STATE OR OTHER GOVERNMENTAL AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THIS MEMBERSHIP PLAN.

8. Club Committee

The Club intends to establish a Club Committee, comprised of Club members. A majority of the Club Committee will be Resident Members. The purpose of the Club Committee is to foster good relations between the members and the management of the Club, to provide the members with input in a solely advisory capacity on programs, plans and activities of the Club, and, to allow members to advise on Club policies, rules and

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Catherine T. Dixon  
Page 8  
July 29, 1997

regulations. The Club Committee will serve only in an advisory capacity and the management of the Club will have the final authority on all matters concerning the Club facilities and the members of the Club.

## II. Status Under the Federal Securities Laws

ResidenSea and Ship Owner view the memberships being offered as lacking the essential attributes of an investment contract, stock, note or any other type of security. Rather, the memberships are merely revocable rights to use the recreational facilities and services of the on-board Club and the clubs offering reciprocal arrangements. Not only do no indicia of any form of security exist, no ownership interest whatsoever is present.

It would appear to be well-established that the Commission has not regarded membership in such non-equity clubs as a security.<sup>6</sup> As was the situation with respect to the subject clubs of a long line of no-action letters, here:

- a. Club members will not be entitled to receive any ownership interest in the Club or its facilities (or in ResidenSea, the Ship or the Ship Owner);
- b. Club members will not be entitled to any dividends or other distributions or income from the Club;
- c. Club members will not be entitled to share in any of the appreciation in the value of their memberships;
- d. potential Club members will be informed that membership in the Club should not be viewed as an investment and should be acquired only with a view towards use of the Club facilities.

Thus, in contrast to "stock"<sup>7</sup>, the memberships have no right to receive dividends or any other apportionment of profits. The memberships are only transferable through the Club or in connection with the transfer of a Residence and they lack the ability

<sup>6</sup> See, e.g., The Mar-a-Lago Club, Inc. SEC No-Action Letter (November 23, 1993); The Dominion Club, Inc., SEC No-Action Letter (August 20, 1990).

<sup>7</sup> See Tcherepnin v. Knight, 389 U.S. 332, 339 (1967) (dividends as an apportionment of profits principal characteristic of "stock"); Landreth Timber Co. v. Landreth, 471 U.S. 681 (1985) (characteristics of stock: (i) negotiability, (ii) ability to be pledged or hypothecated, (iii) voting rights in proportion to shares owned, and (iv) the ability to appreciate in value).

BAKER & BOTTS  
LLP

Catherine T. Dixon  
Page 9  
July 29, 1997

to appreciate in value, members will be informed of the restrictions on their ability to transfer their memberships. Moreover, memberships are available for pledge or hypothecation only to the extent a lien or security interest is incurred as a result of obtaining the membership privileges. Furthermore, the members will have no voting rights and members' decision making rights exist only in a limited advisory capacity through the Club Committee.

Nor do the memberships have any resemblance to the types of "notes" deemed to be securities.<sup>8</sup> The membership deposit will not bear interest and will arise only in connection with a consumer transaction (the purchase of the right to use Club facilities, receive and pay for Club services). No promissory note will be issued to members. No "common trading" in the membership deposits will occur. Members will be informed that memberships should not be viewed as an investment and rather only to allow members to use Club facilities and services.

The memberships do not create any expectation of profit, and, accordingly cannot be viewed as investment contracts<sup>9</sup>: (i) no dividends or distributions will be paid to members and resigning Non-Resident Members will only be entitled to the refund of their membership deposit without interest and (ii) no capital appreciation is obtainable. In addition, the memberships should not be deemed to be securities under a risk capital analysis. The membership proceeds will not be subject to the construction risks of the enterprise. Rather, the membership deposits will be placed in an escrow account and will not be used to fund the construction of the Ship or the Club facilities. The Ship Owner expects to have sufficient funds to construct the Club facilities on the Ship.

Thus, in the instant situation, the Membership Plan conforms closely to those arrangements in which it has long been settled that memberships in non-equity clubs do not create a security.<sup>10</sup> The only significant difference between the clubs for which no-action advice was granted and the Club is that the Club will be situated on a luxury resort and cruise vessel. This circumstance does not in any manner bring the Club memberships closer to

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<sup>8</sup> See Reves v. Ernst & Young, 110 S. Ct. 945 (1990) (notes having term of more than nine months must have "family resemblance" with excluded categories to not be deemed a security).

<sup>9</sup> SEC v. W.J. Howey Co., 328 U.S. 293 (1946) (investment contract exists only in the event that there exists an "expectation of profits to come solely through the efforts of others").

<sup>10</sup> See, e.g., Grand Wailea Resort Hotel & Spa, SEC No-Action Letter (November 28, 1995); Pelican Isle Yacht Club, SEC No-Action Letter (March 2, 1994); Ivy Hills Country Club, Inc., SEC No-Action Letter (November 13, 1990).

BAKER & BOTTS  
LLPCatherine T. Dixon  
Page 10  
July 29, 1997

resembling securities. Indeed, all potential members will be informed that membership merely conveys a revocable right to use Club facilities; membership is not an investment vehicle through which profits are to be expected.

### III. Conclusion

For the foregoing reasons, we respectfully request that the Staff indicate its concurrence with our opinion that the Club memberships described herein are not securities, as such term is defined in the Securities Act, and that accordingly, the Division of Corporation Finance will not recommend enforcement action if the memberships in the Club are offered and sold in the manner described herein absent registration.

We respectfully request expedited review of this request. Please call the undersigned at (202) 639-7724 or James R. Doty at (202) 639-7792, if you have any questions in connection with this no-action request.

Respectfully submitted,

*Michael A. Gold*

---

Michael A. Gold  
Baker & Botts, L.L.P.  
The Warner  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2400

cc: Catherine McGuire  
Associate Director/Chief Counsel,  
Division of Market Regulation  
Anne Krauskopf  
Special Counsel,  
Division of Corporation Finance

July 29, 1997

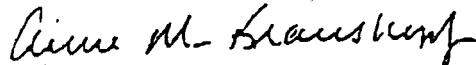
RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

Re: The Residensea Club (the "Club")  
Incoming letter dated July 29, 1997

Based on the facts presented, the Division will not recommend enforcement action to the Commission if the Club, in reliance upon your opinion as counsel that registration is not required, offers and sells the described memberships without registration under the Securities Act of 1933.

Because this position is based on the representations made to the Division in your letter, it should be noted that any different facts or conditions might require a different conclusion. Moreover, this response expresses the Division's position only on enforcement action and does not purport to express any legal conclusion on the question presented.

Sincerely,



Anne M. Krauskopf  
Special Counsel



BAKER & BOTTS

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AUSTIN, TEXAS 78701-4039

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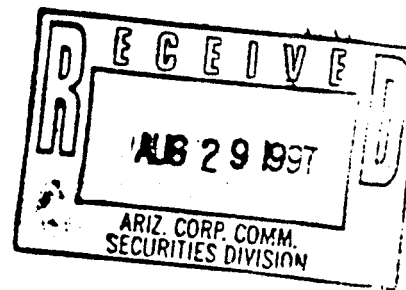
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POLLY POWELL  
(512) 322-2510

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POLLY\_POWELL@BAKERBOTTS.COM

*August 27, 1997*  
*April 16, 1997*

Mr. Victor Rodarte  
Acting Director of Securities  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, AZ 85007



Dear Mr. Rodarte:

On behalf of ResidenSea Ltd., enclosed please find a copy of the Club Membership no-action request submitted to the Securities and Exchange Commission and a copy of its letter granting the no-action request. Please refer to your letter of May 15, 1997.

Please call me collect at (512) 322-2510 if you have any questions. Please return the enclosed copy of this letter in the enclosed self-addressed, stamped envelope to indicate your receipt.

Very truly yours,

*Polly F. Powell*

Polly F. Powell

PF:ks

Encs.

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May 6, 1997

VIA OVERNIGHT DELIVERY

Ms. Leslie Block  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, AZ 85007

Re: "The World of ResidenSea"

Dear Ms. Block:

In connection with our telephone conversation of May 6, 1997, enclosed please find the latest draft of the Ship Rules which you requested which are applicable for sub-lessees of the Residences. The offering memorandum also discusses general limitations on the full assignment of Residences by the Residents.

You requested information as to why the ownership of the Residences were not the same as condominium ownerships and the reason is that, under maritime law, individuals cannot own a piece of a ship as they can own a piece of a building in a condominium. Under maritime law, it is my understanding that someone must own the whole ship.

You requested information on the non-Resident club memberships. It is my understanding that ResidenSea and its affiliates believe that Guest Suites will eventually be available only to club members, assuming all the club memberships and Residences are sold. However, whether the club memberships will be able to be sold separately from the Residences is a business/marketing issue for ResidenSea and its affiliates. Also, on page 7 of my letter, the words "Gold Academy" are a typographical error and should read "Golf Academy."

You asked me if there was a referral fee for unsolicited requests for rental referrals. I have confirmed that ResidenSea and its affiliates will not receive any referral fees for unsolicited referrals.

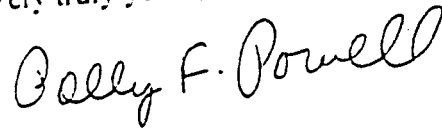
Ms. Leslie Block  
May 6, 1997  
Page 2

You questioned whether, on page 10 of my letter, the Ship Owner would have a disincentive for selling the Ship because the termination payments would be paid out-of-pocket. I was told that the disincentive for the Ship Owner was that he expects to receive substantial revenues from the operation of the Ship and it is those revenues that would give him a disincentive for selling the Ship, not that the Ship Owner would be paying out-of-pocket expenses.

I will transmit to you the no-action letter from the SEC regarding the club memberships as soon as we receive it.

If you have any questions, please call me collect at (512) 322-2510.

Very truly yours,



Polly F. Powell

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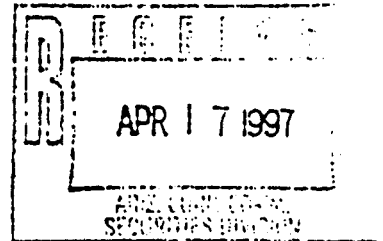
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DALLAS  
HOUSTON  
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April 16, 1997

VIA OVERNIGHT DELIVERY

Ms. Leslie Black  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, AZ 85007



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

Dear Ms. Black:

On behalf of ResidenSea Limited ("ResidenSea"), a corporation formed and existing under the laws of the Bahamas, we request that the staff (the "Staff") of the Arizona Corporation Commission provide interpretive advice confirming our opinion that The World of ResidenSea Limited, a wholly owned subsidiary of ResidenSea ("Ship Owner"), may enter into contractual arrangements ("Residence Agreements") with each prospective purchaser (a "Resident") 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, in the manner described below, without such Residence Agreements being deemed to involve the offer or the sale of a security, as such term is defined in the Arizona Blue Sky Law or provide a no-action letter that the Staff will not recommend enforcement action in connection with the above sales of Residence Agreements for the Residences.

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.

The staff of the Division of Corporation Finance of the Securities and Exchange Commission ("SEC") has issued a no-action letter with respect to offers and sales of the Residence Agreements. The SEC letter regarding the Residence Agreements is attached hereto, along with a copy of our no-action request. At the request of the SEC, we did not include a discussion of the ResidenSea Club in our no-action request discussed below, but are making a similar request with

Ms. Leslie Black  
April 16, 1997  
Page 2

respect to the Club Memberships at this time. As noted by the SEC in their discussions with us, there is a well-established line of SEC no-action authority to the effect that non-equity club memberships will not be deemed securities for purposes of the federal securities laws, and we understand that the Club Memberships will follow these precedents. Accordingly, we expect to receive a favorable response from the SEC with respect to the Club Memberships which we will transmit to you as soon as we receive it.

Part I of this letter, the Background, contains a detailed presentation of facts surrounding the offers and sales of the Residences and draws upon our SEC no-action request. Part II sets forth a summary of the federal securities law analysis. Part III sets forth the Arizona securities law analysis.

Also please find enclosed copies of (i) the main brochure and related sales materials and (ii) the Confidential Information Memorandum, in draft form, which will be utilized in connection with offers and sales of the Residences. The Confidential Information Memorandum describes the manner of the offering of the Residences. These materials contain the most recent information to be distributed, but please be aware that these items may undergo changes in response to marketing indications and to insure conformance with the requirements of the SEC letter. We expect any changes generally to be more favorable to the prospective Residents and we undertake to furnish to you any updated materials as soon as they are available.

Because ResidenSea determined it would be more helpful to you to be able to include the SEC no-action letter in its initial filing, awaiting the SEC letter has made timeliness of great importance. We would greatly appreciate an initial review from you within the next two weeks. We expect ResidenSea to maintain strict marketing controls in your state until your opinion is given, but they hope to commence mailing brochures into the United States around the second week of May, if possible. Marketing has already commenced in Europe. Your assistance in helping us keep their schedule will be greatly appreciated.

Please especially note that prospective Residents will be required to have a minimum financial net worth of \$5,000,000.

Ms. Leslie Black  
April 16, 1997  
Page 3

I. Background.

A. The Ship, Ship Owner and ResidenSea.

The Ship will be configured with spacious, luxurious, and fully-serviced apartments, and smaller, less numerous suites ("Guest Suites"). The Residences will represent about 87-88%, and the Guest Suites about 12-13%, of the non-crew living accommodations on board the Ship. The Ship will also offer various facilities, including amenities typically found at five-star resorts, on cruise ships and at country clubs.

Ship Owner will be incorporated in 1997, under the laws of the Bahamas, for the purpose of constructing, owning and operating a luxury passenger ship.<sup>1</sup> The officers, directors, organizers and promoters of ResidenSea and Ship Owner are presently citizens and residents of Norway. We are advised that they may be considered experienced and well-known members of the Norwegian shipping and business community.

ResidenSea and the Ship Owner will enter into a management agreement ("Management Agreement") pursuant to which, for a management fee plus reimbursement of expenses, ResidenSea will assume responsibility for the management of the Ship, including the Guest Suites and Residences.

B. Organization and Capitalization of Ship Owner.

The Ship Owner expects to contract for construction of the Ship as a luxury passenger ship.<sup>2</sup> ResidenSea will own one hundred percent (100%) of the common stock of the Ship Owner, and will operate it as a separate subsidiary. The developers intend that the authorized share capital of Ship Owner will be US\$50 million. ResidenSea will contribute initial capital of US\$100,000 upon incorporation of the Ship Owner and increase its capital contribution to US\$10 million when the contract for construction of the Ship is confirmed. All economic benefits from the day-to-day operations of the Ship, including revenues from leasing of the Guest Suites, and revenues on the retail and other on-board recreational facilities, will inure to the benefit of ResidenSea through

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<sup>1</sup> ResidenSea was incorporated in December, 1995, for the purpose of organizing, promoting and developing Ship Owner and other similar ship-owning entities.

<sup>2</sup> If more than one ship is built, each ship will be constructed, financed and owned by a separate company.

Ms. Leslie Black  
April 16, 1997  
Page 4

leasing of such facilities to ResidenSea or by the payment of dividends or other distributions by the Ship Owner. All earnings will be passed through to ResidenSea, rather than retained by Ship Owner.

C. Residence Agreements: Terms.

Ship Owner will enter into the Residence Agreements granting the Resident a contractual right to exclusive occupation and use, for permitted, residential or similar recreational purposes, of a particular Residence, and certain rights to use the public areas aboard the Ship, for a term of 50 years (subject to possible renewal and extension options). It is contemplated that approximately US\$450 million will be raised from the sale of Residences (net of all costs associated with such sale) with sales prices ranging from approximately US\$1.2 million to US\$4.5 million per Residence. The consideration paid by each Resident, for the rights granted by the Residence Agreements, will vary according to the location, size, amenities and appointments of any Residence, but will be payable in three installments.

In addition, Residents will incur a quarterly maintenance obligation to fund Ship Owner's current operations, calculated as that proportional amount of the Ship Owner's cash requirements which the square footage of the particular Residence bears to the total square footage of all Residences and Guest Suites on the Ship.<sup>3</sup> The Ship Owner's cash requirements to be reimbursed by such maintenance payments will consist of the estimated amount of funds necessary for proper operation, maintenance, alteration and improvement of the Ship, the creation of reserves for contingencies, and payment of obligations and liabilities related to the operation of the Ship.<sup>4</sup> Each Resident will also pay a security deposit on the Residence in an amount equal to one quarterly installment of the estimated annual obligation for the particular Residence.

During the period prior to the delivery of the Ship, ResidenSea will take precautions to protect the payments made by Residents from the risks associated with construction and other contingencies: payments<sup>5</sup> will be placed in an escrow account in a reputable U.S. bank

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<sup>3</sup> The first payment will include an additional sum to cover costs related to the commissioning and start-up operations of the Ship.

<sup>4</sup> A portion of the Ship's cash requirements will be partially borne by ResidenSea as lessee of onboard facilities herein described.

<sup>5</sup> Although some prospective Residents will pay a fully refundable deposit of US\$5,000 to reserve a particular Residence, these payments will be maintained by ResidenSea in a special  
(continued...)

Ms. Leslie Black  
April 16, 1997  
Page 5

(contemplated to be Chase Manhattan in New York), and in the event the Ship is not delivered, payments will be required to be returned to the payors with interest. The escrow arrangement is intended to address potential risk capital considerations in the proposed transaction.

Notwithstanding that the Residence Agreements do not involve securities, in view of the substantial cost of acquiring and maintaining a Residence, prospective Residents will be required to meet standards of suitability, including, a minimum financial net worth of US\$5 million. In addition, the Ship Owner will assess the creditworthiness of each prospective Resident.

Ship Owner will not confirm the contract for the construction of the Ship unless (i) a minimum of 75 Residence Agreements are entered into<sup>6</sup> and (ii) Ship Owner has secured financing that will provide for the construction and delivery of the Ship. The contract for the construction of the Ship is not anticipated by ResidenSea to be executed prior to commencement of the sale of the Residence Agreements.

The principals of ResidenSea expect that the construction contract will be entered into and become effective no later than December 31, 1997. The contractual arrangement between Ship Owner and the Residents for the use of the Residences will be a contractual right and, as described below, the status of the Resident will be that of a creditor as to a portion of certain proceeds of insurance or sale in the event of termination of such contractual right by Ship Owner or ResidenSea.

D. The ResidenSea Concept.

The ResidenSea concept will involve the marketing of distinct products, as described below.

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<sup>5</sup>(...continued)

purpose bank account until they are either (i) returned to the payor (if no construction contract is entered into) or (ii) placed towards a Resident's down payment upon such Resident's execution of the Residence Agreements, at which time such funds will be transferred into the escrow account. They will not be applied to costs of construction of the Ship.

<sup>6</sup> A total of 250 Residence Agreements are expected to be offered.



Ms. Leslie Black  
April 16, 1997  
Page 6

Guest Suites: The Ship Owner will use and lease to third parties certain common areas and the Guest Suites on board the Ship.<sup>7</sup> The Ship Owner will offer the opportunity to rent Guest Suites on the Ship for specific cruise itineraries, or as resort or hotel space for particular time periods. As is the case with cruise, hotel or resort operators, charges will be made to the customer, dependent upon the accommodation, length of stay, and amenities and services provided. Residents will have no right to receive dividends, if any, or participate in the profits, if any, resulting from the operation of the Guest Suites.

Residences: Ship Owner will offer and sell the contractual right to exclusive occupancy and use of the individual Residences. Each Residence will be marketed as an alternative to a traditional home, yacht or villa. The Residences will offer Residents the benefits of having their own home, with the unique feature of mobility. The ResidenSea concept, including the opportunity to acquire the exclusive right to use a Residence, would be marketed to very wealthy individuals and corporations through the use of sales tools such as brochures, illustrations of the deck plans and unit plans, reprints of publicity, videos and displays. ResidenSea also plans to conduct a public relations campaign for the Ship. In addition, ResidenSea intends to engage prestigious real estate brokerage houses to act as ResidenSea's marketing representatives in conducting promotional activities for the Residences. Promotional efforts will be focused upon the United States, Germany, France, the Scandinavian countries, Switzerland, Hong Kong, Singapore and the U.K.

The end-users of the Residences will be Residents (who may be year-round occupants of their Residences), their families and friends, business associates, guests<sup>8</sup> and approved assignees. ResidenSea contemplates promoting the Residences to prospective Residents who are attracted by the unique lifestyle which access to the Residences will afford. The Ship's home port and flag is anticipated to be the Bahamas.

Residences will range in size from 100 to 280 square meters, approximately 1,100 to 3,000 square feet. Residences are being offered to Residents fully furnished. If, however, a Resident wishes to decorate its Residence or cause it to be decorated after construction of the Ship is completed, a Resident is free to do so.<sup>9</sup>

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<sup>7</sup> The Ship Owner will also have the right to convert Guest Suites to Residences.

<sup>8</sup> It may be necessary for the Ship Owner to restrict the number of guests on board the Ship at any particular time for reasons of limits imposed by passenger certification requirements.

<sup>9</sup> The prices for unfurnished Residences is expected to be approximately 10-15% less  
(continued...)

Ms. Leslie Black

April 16, 1997

Page 7

Club: The Club will be a non-equity club owned and operated by either Ship Owner or ResidenSea. The Club is contemplated to operate on three decks of the Ship and is expected to offer facilities including 7 restaurants, lounges, bars, casino, nightclub, 2 swimming pools, tennis courts, whirlpools, roman spa and health and fitness center, jogging, track, gold academy, driving ranges, putting greens, theater/cinema, activity rooms, game rooms and shops. Club Members are also expected to have access to other clubs and resorts through agreements between the Club and other club and resort owners.

Residents will be granted Memberships (considered Platinum 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 Club will also offer up to 1500 "Gold Memberships" to non-Residents, which will have first priority access to the Guest Suites, as well as the Club's facilities, activities and services. Non-Resident members will pay a fully refundable membership deposit and annual dues, in addition to food and beverage fees. For tax purposes, the membership deposit will be structured as a 30-year loan. Any and all membership deposits or annual dues that are collected by the Club prior to the delivery of the Ship will be placed in an escrow account in a reputable U.S. bank (contemplated to be Chase Manhattan in New York), and in the event the Ship is not delivered, payments will be required to be returned to the prospective Members with interest. Both Resident and Non-Resident Members of the Club will be required to pay all fees and charges applicable to certain specific uses of the Club.

The Memberships may only be transferred through the Club. Members desiring to resign their Membership must give notice of such intent to the Club and the Club will make the membership available for reissuance to a new member. The membership deposit of a Non-Resident Member who has resigned will be refunded within 30 days after the reissuance of such resigned membership by the Club to a new Member. Resident Members will only be able to assign or transfer their Memberships in connection with the assignment of their rights to a Residence under the Residence Agreements. Therefore, "Gold Members" can not sell their Memberships to a third-party and "Platinum Members" can only sell their Memberships in connection with disposition of their rights under the Residence Agreements.

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(...continued)

than the prices for the same Residences furnished.

Ms. Leslie Black  
April 16, 1997  
Page 8

Memberships will be documented through a Membership Plan to be executed by every Member. The Membership Plan will contain a bold-faced legend stating: "Memberships at the Club are being offered exclusively for the purpose of permitting members the recreational use of the Club facilities. Membership should not be viewed as an investment and no member should expect to derive any economic profits from membership at the Club."

E. Consents, Approvals.

The Ship's itinerary will be determined by ResidenSea during the first two years after the Ship's delivery and by Ship Owner in consultation with the Residents thereafter.

The rights of Residents in substantive decision making with regard to the Ship will be limited generally to the following areas:<sup>10</sup> (i) the right to cause a sale of the Ship, subject to Ship Owner's consent during the first 20 years, (ii) the right to elect whether to cause Ship Owner to repair, restore or rebuild the Ship in the event of uninsured damage in excess of \$25 million, and (iii) changes to the terms and conditions of the Residence Agreements that might reasonably be expected to affect Residents generally. It is also contemplated that Residents will have certain limited rights to be consulted on such general matters as taste, enjoyment and satisfaction with facilities and services, and the standard of other amenities.<sup>11</sup> The Residents will have no rights to manage the Ship, and no right to nominate, vote for or elect any directors of Ship Owner.

F. Assignments and Subleases; No Rental Pool, Exclusive Rental Arrangements or Rental Agency Services.

Residents will have the right, subject to restrictions consistent with the residential nature of the Ship, to assign their exclusive right to occupy and use a Residence for all or part of the term of the Residence Agreements, pursuant to the rules set forth in the Residence Agreements and the Ship Rules (the latter document being similar to the house rules of a condominium or cooperative apartment).

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<sup>10</sup> In addition, Residents will have the right to approve the budget for operating expenses for which Residents will be assessed in the form of quarterly maintenance payments.

<sup>11</sup> A Residents' Committee, to be initially appointed by ResidenSea, and later elected by Residents, will liaise with Ship Owner and ResidenSea on matters relating to the services and amenities available on the Ship and other matters pertaining to the lifestyle of the Residents.

Ms. Leslie Black  
April 16, 1997  
Page 9

Neither ResidenSea nor its affiliates will offer the opportunity for Residents to participate in rental pool arrangements, whereby ResidenSea or a third party would undertake to rent the unit on behalf of the Resident during that period of time when the Residence is not in use by the Resident, nor will any such arrangements be authorized by ResidenSea. Nor will the Residence Agreements require use of an exclusive rental agent, designated by ResidenSea, or place limitations on the time the Resident may occupy and use the Residence. Moreover, the Residences will not be marketed through advertising that emphasizes economic benefit to the Residents from the efforts of ResidenSea or its affiliates in renting the Residences. Finally, Residents will not receive rental brokerage services from ResidenSea or its affiliates or be offered referrals to other rental agents from ResidenSea or its affiliates on an unsolicited basis.<sup>12</sup>

G. Absence of Expectation of Profit to Resident.

Residences will not be marketed as investment opportunities--indeed, as the Ship ages, its value is expected to fluctuate and eventually to decline significantly. By virtue of being the only shareholder in the Ship Owner, ResidenSea will be the sole entity having the right to receive dividends. Nor will the Residents have any expectation of sharing in the Ship's revenues derived from its continuing, day-to-day operations including the operations of the commercial areas or maintenance fees.

Termination Payment in Certain Events: Residents will have purchased the right to occupy and use their Residence for the term of their Residence Agreements with the Ship Owner. That right will be secured by a security trust for all the Residents: that is, in the event of termination of the rights of Residents for certain events, the Residence Agreements will provide for a payment (the "Termination Payment") to the Residents<sup>13</sup>, consisting of the gross proceeds of insurance or disposition, (i) less taxes and expenses incurred in connection with the gross proceeds, (ii) plus or minus, as the case may be, the net value of assets and liabilities directly attributable to the ordinary

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<sup>12</sup> ResidenSea will offer referrals to third-party rental agents only in the event that a Resident specifically requests such a referral. In no event shall ResidenSea receive any fee or commission for providing such referrals. Neither ResidenSea nor its affiliates will make unsolicited referrals of third-party rental agents to Residents.

<sup>13</sup> The Residents will receive the portion of the Termination Payment equal to the proportion of square footage that all of the Residences bear to the total square footage of all the Residences and Guest Suites aboard the Ship. The Ship Owner will retain the portion of the Termination Payment equal to the ratio that the square footage of the Guest Suites bears to the aggregate square footage of all of the Residences and Guest Suites on the Ship.

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Ms. Leslie Black

April 16, 1997

Page 10

operation of the Ship, (iii) less a discharge of a working capital mortgage contemplated to be established by Ship Owner to cover the Ship's day-to-day operations, and, in the case of disposition or sale of the Ship after the first 20 years, (iv) less compensation to the Ship Owner expected to amount to two times the average net profit (before depreciation and taxes) of the previous two years.<sup>14</sup>

The Residence Agreements will provide that a Resident shall be entitled to a Termination Payment only in the event of certain, specified events: that is, (i) in the event of a sale of the Ship, (ii) in the event the Ship shall become a total loss, constructive total loss or negotiated total loss, (iii) in the event of any requisition or condemnation of the Ship, or (iv) in the event of uninsured damages in excess of US\$25 million and a decision is made not to repair and the Ship is sold. The Termination Payment payable in such circumstances will be computed as such Resident's pro rata share of such available net proceeds as the percentage which the original purchase price of such Resident's Residence bears to the aggregate original purchase prices of all the Residences. Except as such available net proceeds may exist for such purpose, Residents will have no right to expect ResidenSea or Ship Owner to furnish, out of their corporate funds, a Termination Payment; and the Residence Agreements will provide that neither ResidenSea, Ship Owner, or their principals will have any personal or recourse obligations to furnish funds for such purpose.

The provisions for a Termination Payment do not hold out the expectation of profit on sale of the Ship. Rather, they offer some security to the Residents that either they will enjoy substantially the period of enjoyment and use provided by the 50-year term of the Residence Agreements or they have an expectation of the return of the substantial amounts expended initially by them to purchase their use rights. Although realization of residual values over such amounts is possible on sale of the Ship, the Ship Owner has a right of consent, in the nature of a veto, during the first twenty (20) years of the Ship's life. Moreover, if the ResidenSea concept is successful, and ResidenSea succeeds in realizing substantial revenues from operation of the Ship, the rights of Residents to a Termination Payment operates as a substantial disincentive for Ship Owner consenting to a sale. Furthermore, as is the custom in maritime operations, ResidenSea will likely cause the Ship to be covered by hull and machinery insurance of at least 125% of the initial contract

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<sup>14</sup> Ship Owner and the Residents in the Residence Agreements will agree that Ship Owner's obligations to the Residents with respect to the Termination Payments will be secured in accordance with and subject to the terms of a Bahamian statutory mortgage through an assignment of insurances and a security trust deed. The security trust deed will provide that the sale proceeds of the Ship as well as the insurance proceeds will be paid to a trustee for the benefit of the Residents with respect to their right to the Termination Payment. The net proceeds available for the Termination Payment are expected to be calculated as set forth above.

Ms. Leslie Black  
April 16, 1997  
Page 11

value. However, there could be no assurance to prospective Residents of the occurrence or timing of events requiring proceeds of insurance to be paid to the Residents.

Termination Payments may not be sufficient to return to Residents any accrued and owing amounts in excess of prepaid operating expenses, security payments and their original purchase price; and, indeed, ResidenSea represents that no assurances of a return on investment will be made in the marketing of the Residence Agreements. To the contrary, the Residences will be marketed only to individuals and institutions who have a use for and can afford a seagoing luxury residence.

It is respectfully submitted, therefore, that the possibility of a return to a Resident of capital appreciation or residual value, in the form of a Termination Payment in excess of the Resident's out-of-pocket cost, is sufficiently remote so as not to render the Residence Agreements an investment contract.

As a general matter, U.S. tax law does not provide any unique, special tax incentives which could be viewed as driving a decision to acquire Residences; and the purchase of the right to use a Residence will not be marketed with an emphasis on tax benefits. Depending on the circumstances of the Resident, the tax consequences of a Residence Agreements could vary; for example, use of a Residence in a trade or business could result in some of the costs associated with acquiring and maintaining the Residence being tax-deductible. If used by the Resident for residential purposes, mortgage interest expense may be deductible, if the Resident is treated as an owner for tax purposes.<sup>15</sup>

## II. Status Under the Federal Securities Laws.

ResidenSea has received a no-action letter from SEC regarding offers and sales of the Residence Agreements and expects to receive a similar letter regarding the Memberships shortly. The SEC Residence Agreements letter is attached, the Membership letter will be submitted as soon as it is received.

As discussed in the SEC request letter, the business plan of ResidenSea, and the sale of the rights to occupy and use the Residences under the Residence Agreements, fit comfortably within the limits of prior SEC provisions on condominiums and similar residential properties and lodgings, where no security was deemed to exist:

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<sup>15</sup> Prospective Residents will be cautioned to consult with their own tax advisor before entering into the Residence Agreements.

Ms. Leslie Black  
April 16, 1997  
Page 12

1. The Residences are not being offered and sold with emphasis on economic benefits to the purchaser to be derived from the managerial efforts of ResidenSea, the Ship Owner or others in renting the Residences;
2. No rental pool or time-sharing is required of Residents or authorized or offered to them by ResidenSea or its affiliates;
3. The Resident is not required to hold or make available the Residence to Ship Owner for any part of a year;
4. No rental agency services or unsolicited referrals will be offered by ResidenSea or its affiliates to Residents; and
5. Although the Resident may independently enter into a non-pooled rental arrangement with an agent, for purposes of assigning or subletting a Residence, any such agent will not be designated or required to be used as a condition to the acquisition of the Residence.

These restrictions more than satisfy the conditions under which the SEC has permitted sales of condominium units to proceed without causing a sale of a security to be involved in the sale of the unit. Guidelines as to the Applicability of the Federal Securities Laws to Offers and Sales of Condominiums or Units in a Real Estate Development. Securities Act Release No. 5347 (January 4, 1973).

In this case, the Residence Agreements conforms generally to those arrangements in which it has long been settled that condominium ownership rights did not create a security. No plan to avoid the registration requirements of the securities laws is involved, as demonstrated by the high suitability standards imposed on prospective registrants. The coincidental circumstances that make condominium ownership impossible or impracticable for ocean-going residential vessels should not result in an anomalous application of the securities laws to a business plan which was not designed to be marketed on expectation of profits to purchasers of Residences.

### III. Status Under Arizona Securities Laws.

Section 44-1801-22 of the Arizona Revised Statutes, as amended, defines "security" to include an "investment contract."

Ms. Leslie Black

April 16, 1997

Page 13

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. The execution of the 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.

Indeed, in accordance with the developers' concept, they structured the interests in the Residences in a manner in which attributes of ownership or control and concomitant expectation of profits would be avoided. The developers consider the contractual right to occupy a Residence to be dissimilar to ownership of a security for many reasons, including the following: (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 hold 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. 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.

In this regard, 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. Moreover, the offering material provided to every prospective Resident will specifically state that no person is authorized to represent on behalf of the 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.

Arizona appears to look to federal law regarding whether or not a contract is a security. See *Rose v. Dobras*, 624 P.2d 1887, in that case, the Court of Appeals of Arizona, in holding the lease of an apple orchard to be a security, discussed the investment contract test described in *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293 ("Howey"), and later federal cases which modified that



Ms. Leslie Black

April 16, 1997

Page 14

test. The Howey test is "an investment of money in a common enterprise *with the expectation of profit* solely from the efforts of others." (Emphasis is added). The "expectation of profit" element has not been modified and there is no expectation of profit in our circumstances. As discussed under Part I.G. of this letter, 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 is 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--the value of the Residences is expected to fluctuate and eventually to decline significantly. The general thrust of the ResidenSea idea is for the Residents to have purchased a home, not a vacation time-share, not a yacht, but a home.

Similarly, 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 the value of their memberships. Furthermore, potential 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. Indeed, Club Membership merely conveys a revocable right 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.

We believe the Staff has issued no action letters in analogous situations. In 1991, the Staff issued a no action letter in connection with leaseholds in a recreational vehicle park. See RE: Rainbow Retreats, Inc., 1991 Ariz. Sec. LEXIS 179. As is in our circumstances, there was no rental pool and the leases in the park were marketed as the "home base" for the members. See also WW Storage Association, 1994 Ariz. Sec. LEXIS 16 regarding membership interest in a recreational vehicle storage facility and Atlantic Shores, 1993 Ariz. Sec. LEXIS 51. These letters appear to follow the modified Howey analysis.

Accordingly, neither the Residence Agreement nor the Memberships resemble any interest known as a security. Moreover, the background of the developers is in the luxury cruise ship industry, not in the sale of securities or investments.

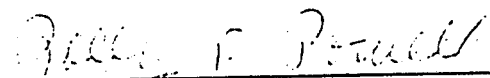
Ms. Leslie Black  
April 16, 1997  
Page 15

IV. Conclusion

For the foregoing reasons, we respectfully request that you indicate your concurrence with our opinion that the business plan of ResidenSea described herein with respect to the Residence Agreements and Memberships does not involve the offer and sale of a security, as such term is defined in the Arizona securities laws or issue a no-action letter to the effect that no enforcement action will be recommended with respect to the offer and sale of Residence Agreements and Memberships in Arizona.

If you have any questions or comments, please call me collect at (512) 322-2510.

Respectfully submitted,



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