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802.9

[redacted]

October 23, 2006

Mr. B. Michael Verne
Premerger Notification Office
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Confirmation of Informal Interpretation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act")

Dear Mr. Verne:

This letter is to confirm our telephone conversations on October 18, 2006 and October 19, 2006 in which we discussed the analysis under the Act of certain aspects of a transaction in which this firm's client ("Buyer") plans to acquire all of the outstanding equity interests (the "Interests") in several limited liability companies (the "Acquired Entities") from another company.

The Acquired Entities collectively own and operate a resort consisting of, among other things, several hotels and golf courses (the "Resort"). Buyer will pay in excess of $226.8 million for the Interests, subject to the adjustment and timing mechanics set forth in the purchase agreement.

The assets of the Resort consist primarily of real estate and tangible personal property, comprising or associated with the Resort. Additionally, the assets include intangible personal property consisting of:

(1) **Workforce in Place** – existing employees that have been trained with respect to the Systems and operations of the Resort;

(2) **Trade Name** – the name recognition associated with the Resort (the "Trade Name");

(3) **Systems** – internal accounting, information technology and other systems, procedures and processes that facilitate the operation of the Resort;

(4) **Favorable Contracts** – rights to reciprocal benefits among other country clubs and resorts and existing supply and service contracts related to operation of the

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Resort, pursuant to which the Resort can purchase goods or services associated with the Resort at prices not available to the general public; and

(5) **Customer Base/Membership List** – lists of Resort members, who hold contract rights entitling them to certain access to the assets and real property of the Resort (e.g., golf club memberships), and lists of customers (including repeat customers) that visit the Resort but do not possess any contractual rights with respect to the Resort.

A third-party valuation that Buyer is having performed allocates more than $56.7 million in the aggregate to the above described intangible personal property, but less than $56.7 million is allocated to the value of the Trade Name.

During our conversation, you agreed that the assets included in intangible personal property, other than the Trade Name, would be treated as associated assets incidental to the ownership and operation of the Resort and, as a result, all such assets (other than the Trade Name) would be exempt assets in determining whether the Act's reporting requirements are triggered. Based on that conclusion, it is our analysis that:

1. The proposed transaction will constitute an acquisition of non-corporate interests in limited liability companies, as defined by 16 CFR § 801.1(f)(1)(ii). Under 16 CFR § 801.2(f)(1)(i), because Buyer is acquiring non-corporate interests, which will result in control of the Acquired Entities, Buyer is deemed to hold all of the underlying assets of the Acquired Entities as a result of the acquisition. Since the value of the Interests is greater than the $226.8 million threshold referred to in 15 USC 18a(a)(2)(A), the "size of the person" test need not be performed because of the size of the transaction.

2. The acquisition of the Interests by Buyer will fall under the exemptions set forth in 16 CFR § 802.2(e) and (f) for acquisitions of certain real property assets ("Rule 802.2(e)" and "Rule 802.2(f)"). Rule 802.2(e) exempts acquisitions of hotels and motels, their improvements, including golf, swimming, tennis, restaurant, health club and parking facilities, and assets incidental to the ownership and operation of the hotel or motel. Rule 802.2(f) exempts acquisitions of recreational land, which includes real property used primarily as a golf course and assets incidental to ownership of such property. Under these rules, the real property and tangible personal property of the Acquired Entities comprising or associated with the Resort will be exempt under Rule 802.2(e) or Rule 802.2(f) as hotels, golf courses and their improvements, and other associated assets "incidental to ownership of such property." Moreover, based on our conversations, the intangible personal property will also be exempt as associated assets, except for the Trade Name.[1]

3. Finally, despite the fact that the proposed transaction is structured as an acquisition of non-corporate interests, 16 CFR § 802.4 allows an acquisition of this type to be

[1] We note that the commentary contained in the adopting release for Rule 802.2(e) explicitly states that "the [Rule 802.2(e)] exemption does not include the acquisition of hotel management businesses or the purchase of a hotel trademark." 61 Fed. Reg. 13666, 13677 (Mar. 28, 1996).

exempt from the reporting requirements of the Act if the acquisition of the assets held by the unincorporated entities would be exempt.

As such, the proposed transaction need not be reported under the Act because the underlying assets are either exempt or do not meet the applicable threshold.

We appreciate your help in connection with this matter, and ask that you confirm your receipt and approval of this letter by reply email or fax to the undersigned. If I have made any erroneous statements in this letter, I would appreciate it if you would call me immediately at the above direct dial number.

Very truly yours,

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AGREE

10/23/06