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802.1(b)

April 10, 1991

FEDERAL EXPRESS

Ms. Nancy M. Ovuka
Compliance Specialist
Federal Trade Commission
Pre-Merger Notification Office
Room 301
Sixth Street and Pennsylvania Avenue N.W.
Washington, D. C. 20580

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act.

Re: from
Hart-Scott-Rodino Anti-Trust Improvements Act of 1976
Pre-Merger Notification and Waiting Period Requirements

Dear Ms. Ovuka:

On December 14, 1990, we forwarded to you a letter requesting your concurrence with our opinion that the sale by , of the golf course, clubhouse and related facilities, and memberships, to corporation , would be exempt from the Pre-Merger Notification Requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976. On December 18, 1990, we spoke by telephone and you confirmed that the transactions described in our letter dated December 14, 1990, were exempt from the Pre-Merger Notifications Requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, by virtue of 15 U.S.C. §18a(c)(1) and 16 CFR 802.1(b).

Subsequent to the date of our telephone conversation, advised that it was terminating the purchase agreement because it was not able to obtain the necessary financing to complete the acquisition. Since the date of termination of the transaction by has been actively seeking a new purchaser for the property. On April 3, 1991, received a letter of intent from corporation , a copy of which is enclosed herewith.

The purpose of this letter is to request that the Pre-Merger Notification Office of the Federal Trade Commission concur in our determination that the sale by to of the golf course, clubhouse and related facilities and 50 corporate memberships in are exempt from

the Pre-Merger Notification Requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976 by virtue of the exemption contained in 15 USC §18a(c)(1) and 16 CFR 802.1(b), exempting transactions which are acquisitions of goods or realty transferred in the ordinary course of business.

1. <u>Description of the Project</u>. The [redacted] project is an approximately 874 acre master-planned residential golf course community with secured access, located in the unincorporated area of [redacted] The Master Plan for [redacted] provides for the development of approximately 1,312 single family homes, a championship 18-hole Jack Nicklaus Signature golf course designed by Jack Nicklaus ("Golf Course"), and an approximately 47,000 square foot golf clubhouse ("Clubhouse") (the Golf Course and the Clubhouse shall sometimes collectively be referred to herein as the [redacted]

The primary feature of the [redacted] project is the Jack Nicklaus Signature Golf Course and the 47,000 square foot Clubhouse. As the master developer of [redacted] will construct and develop the Golf Course, the Clubhouse and all other common facilities located within the project, and will also construct approximately [redacted] homesites within [redacted] The Golf Course was substantially completed and open for play on [redacted] The Clubhouse is currently under construction and the projected date for completion is [redacted] As of the date of this letter, [redacted] homesites have been sold and approximately [redacted] are currently held by [redacted] and will be sold by [redacted] in the future.

2. <u>Membership Program</u>. The original intention of [redacted] was to form a nonprofit mutual benefit corporation and to offer and sell equity memberships in [redacted] ([redacted] . Under the [redacted] upon the sale of a specified number of memberships, [redacted] would transfer the Golf Course and the Clubhouse to the nonprofit corporation in exchange for the receipt of all membership fees derived in connection with the sale of memberships.

During the latter part of 1989, [redacted] elected to convert the [redacted] to a nonequity membership program [redacted]. Pursuant to the new Nonequity Membership Program, [redacted] is offering both golf and social memberships in [redacted] Under the Nonequity Membership Program, the members do not have any ownership interest in [redacted] or the [redacted]

Rather, they are merely purchasing a lifetime membership which entitles each member and his family the right to utilize and enjoy all of the [redacted] Following the conversion by [redacted] from the Equity Membership Program to the Nonequity Membership Program, [redacted] immediately began its search to locate a suitable purchaser for the [redacted]

On or about [redacted] began offering and selling memberships in [redacted] pursuant to the Nonequity Membership Program. Under the terms of the Nonequity Membership Program, approximately 500 golf memberships will be offered and sold to qualified purchasers who are approved for membership in [redacted] also has the right to create other categories of membership. The current offering price for golf memberships is [redacted] Accepted applicants are required to pay to [redacted] an initial deposit of [redacted] and the balance of the membership fee is due and payable on the date in which the Clubhouse is completed and available for use by the members. The initial deposit payable by accepted applicants is refundable under certain circumstances including, the failure of [redacted] to complete the construction and development of the [redacted] on or before [redacted] or upon the death, business relocation, financial reversal, marital dissolution or physical illness or disability of an accepted applicant prior to the date of completion of the [redacted] In addition to the membership fee, members are required to pay monthly dues in the sum of [redacted] per month and a monthly food and beverage minimum of [redacted] per month. However, prior to the date upon which the Clubhouse is completed and available for use by the members, no monthly food and beverage payments are required and those persons desiring to utilize the Golf Course may pay a reduced amount of monthly dues equal to [redacted] per month. As of [redacted] (the date the Golf Course opened), there were [redacted] members of [redacted] who had elected to commence paying monthly dues of [redacted] per month in order to utilize the Golf Course. As of the date of this letter, there are [redacted] members of [redacted] Country Club who have elected to commence paying monthly dues of [redacted] per month in order to utilize the Golf Course.

3. Summary of the Transaction. Since the inception of the [redacted] project, it has been the intention of [redacted] to utilize the Golf Course and the Clubhouse as the primary marketing focus for the [redacted] project and to ultimately sell the Golf Course and the Clubhouse. [redacted] entered into negotiations with prospective purchasers regarding the sale of the Club Facilities. During the first eight months of [redacted] actively marketed the [redacted] and received

numerous proposals and letters of intent from prospective purchasers. On (approximately one and one-half months after the Golf Course was substantially completed and open for use by the members), received from an offer to purchase the and all of the memberships in the Nonequity Membership Program. As described above, that transaction was not consummated by reason of the failure of to secure adequate financing.

In , and began discussions and negotiations regarding the proposed purchase by of the On April 3, 1991, received from an offer to purchase the and Corporate Memberships in the Nonequity Membership Program (the Club Facilities and the Corporate Memberships in the Nonequity Membership Program shall collectively be referred to herein as the "Assets"). A summary of the terms and conditions of the transaction are described below.

proposes to purchase the Assets for an aggregate purchase price of approximately The purchase price will be payable by to in cash on the closing date. In addition to the foregoing purchase price, with the exception of the Corporate Memberships to be issued to will also be entitled to retain all proceeds derived from the sale of the remaining unsold memberships authorized pursuant to the Nonequity Membership Program. The scheduled Closing Date for this transaction is

Following the acquisition of the Assets by from will manage the on behalf of for a period of three years. will also be responsible for marketing and selling all of the remaining unsold memberships pursuant to the Nonequity Membership Program. will not have any proprietary, voting or other interest in the and will have complete control with regard to the operation, management and control of the

is a corporation in good standing under the laws of the State of The majority shareholder of is a corporation. and its affiliates own two other golf course properties in the United States:

is a general partnership in good standing. was originally formed in and the partners in are , an individual, a corporation, and a limited partnership. is the sole shareholder of The shareholders of The general partner of The sole shareholder of The limited partners of are

4. Exemption Claimed. We have concluded that the sale of the Assets as described above will be exempt from the Pre-Merger Notification Requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act by virtue of 15 U.S.C. §18a(c)(1), which exempts transactions that are acquisitions of goods or realty transferred in the ordinary course of business.

Our conclusion rests upon our interpretation of 16 CFR 802.1(b), which provides as follows:

> (b) Certain Acquisition of Assets. No acquisition of the goods or realty of an entity (except for entities described in Paragraph (a) of this Section) shall be made "in the ordinary course of business" within the meaning of Section 7A(c)(1), if, as a result thereof, the acquiring person will hold all or substantially all the assets of that entity or an operating division thereof.

As described above, the purchase of the Assets by from does not constitute the purchase by of all or substantially all the assets of . Following the consummation of the transaction described above, will continue to own approximately homesites in which will market and sell in the future. The fair market value of these remaining lots today is equal to the sum of approximately . Additionally, will also be entitled to receive all of the proceeds derived in connection with the sale of the remaining unsold memberships authorized pursuant to the Nonequity Membership Program (other than the Corporate Memberships which are being purchased by . Based on the foregoing, we have

concluded that [redacted] will not be purchasing and acquiring all or substantially all of the assets of [redacted]

Since [redacted] has been engaged in negotiations with various prospective purchasers of the Assets. Approximately one and one-half months after the Golf Course was substantially completed and open for use by the Members, [redacted] received a letter of intent from [redacted] However, as described above, that transaction was not consummated due to [redacted] inability to obtain the requisite financing. Since the date of termination of the [redacted] transaction, [redacted] has been actively involved in negotiations regarding the sale of the Assets. Although [redacted] has received some monthly dues and other revenues derived from the limited operation of the Golf Course during this time period, we do not believe that the relatively insignificant amount of revenues derived by [redacted] mitigates [redacted] consistent and ongoing intention to market and sell the Assets as soon as reasonably possible. Based on the foregoing, we have concluded that the sale of the Assets by [redacted] to [redacted] is a sale within the ordinary course of business of [redacted], as described in 16 CFR 802.1(b), and is therefore exempt from the Pre-Merger Notification Requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act, by virtue of 15 U.S.C. §18(c)(1).

We would appreciate receiving a confirming letter from the Pre-Merger Notification Office of the Federal Trade Commission concurring in our determinations as expressed herein. In this regard, we are enclosing five copies of this letter to facilitate your review process.

Thank you for your prompt attention to this very important matter. Should you require any further information or documentation, please do not hesitate to contact me.

Very truly yours,

[redacted]

[redacted]