

Sec. 1(a)*

[REDACTED]

[REDACTED]

[REDACTED]

December 14, 1990

This material may be subject to the confidentiality provisions of Section 7A (h) of the Glass-Steagall Act which restricts release under the Freedom of Information Act.

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

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

Dear Mr. Ovuka:

Pursuant to our telephone conversation on December 5, 1990, this letter constitutes our request that the Pre-Merger Notification Office of the Federal Trade Commission concur in our determination that the sale by [REDACTED] general partnership to [REDACTED] a corporation of the [REDACTED]

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

1. Description of the Project. 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 "Club Facilities").

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

* Conclusion correct, but not for reasons cited. Exempt as result of ordinary course. Income stream incidental to sale of other assets.

Ms. Nancy M. Ovuka
Page 2
December 14, 1990

construct and develop the Golf Course, the Clubhouse and all other common facilities located within the project, and will also construct approximately 1,312 homesites within [REDACTED]. The Golf Course was substantially completed and open for play on August 8, 1990. The Clubhouse is currently under construction and the projected date for completion is February 15, 1991. As of the date of this letter, 1,060 homesites have been sold and approximately 252 are currently held by [REDACTED] and will be sold by [REDACTED] in the future.

2. Membership Program. The original intention of [REDACTED] was to form a nonprofit mutual benefit corporation and to offer and sell equity memberships in [REDACTED] ("Equity Membership Program"). Under the Equity Membership Program, 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 Equity Membership Program to a nonequity membership program ("Nonequity Membership Program"). Pursuant to the new Nonequity Membership Program, [REDACTED] is offering both golf and social memberships in [REDACTED]. The members do not have any ownership interest in [REDACTED] or the Club Facilities under the Nonequity Membership Program. Rather, they are merely purchasing a lifetime membership which entitles each member and his family the right to utilize and enjoy all of the Club Facilities. 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 Club Facilities.

On or about July, 1990, [REDACTED] began offering and selling memberships in [REDACTED] pursuant to the Nonequity Membership Program. Under the terms of the Nonequity Membership Program, 500 golf memberships will be offered and sold to qualified purchasers who are approved for membership in [REDACTED].

The current offering price for golf memberships is \$42,500. Accepted applicants are required to pay to [REDACTED] an initial deposit of \$5,000 and the balance of the membership fee is due and payable upon the date on which both the Golf Course and the Clubhouse are 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 Club Facilities on or before December 31, 1992, the death,

business relocation, financial reversal, marital dissolution or physical illness or disability of an accepted applicant for membership in the Club. In addition to the membership fee, members are required to pay monthly dues in the sum of \$375 per month and a monthly food and beverage minimum of \$50 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 \$250 per month. As of August 8, 1990 (the date the Golf Course opened), there were 65 members of [REDACTED] who had elected to commence paying monthly dues of \$250 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. In November, 1989, [REDACTED] entered into negotiations with prospective purchasers regarding the sale of the Club Facilities. On September 28, 1990 (approximately one and one-half months after the Golf Course was substantially completed and open for use by the members), [REDACTED] received from [REDACTED] a letter of intent and an offer to purchase the Club Facilities and all of the memberships in the Nonequity Membership Program (the Club Facilities and the memberships in the Nonequity Membership Program shall collectively be referred to herein as the "Assets"). Since that date, [REDACTED] and [REDACTED] have been actively involved in negotiations regarding the terms and conditions of the purchase of the Assets by [REDACTED]. All of the material terms and conditions of the proposed transaction have now been agreed upon by the parties and the scheduled closing date for this transaction is December 31, 1990. A summary of the terms and conditions of the transaction are described below.

[REDACTED] proposes to purchase the Assets for an aggregate purchase price of approximately \$38,000,000. The purchase price will be payable by [REDACTED] to [REDACTED] in cash on the Closing Date. The scheduled Closing Date for this transaction is December 31, 1990.

[REDACTED] is a [REDACTED] corporation, in good standing under the laws of [REDACTED]. The majority shareholder of [REDACTED] is [REDACTED], a [REDACTED] corporation.

[REDACTED] is a [REDACTED] general partnership in good standing. [REDACTED] was originally formed in May, 1987, and the partners in [REDACTED] are [REDACTED] an individual, [REDACTED]

Ms. Nancy M. Ovuka
Page 4
December 14, 1990

[REDACTED] a [REDACTED] corporation, [REDACTED]
a [REDACTED] corporation, and [REDACTED], a [REDACTED]
limited partnership. [REDACTED] is the sole shareholder
of [REDACTED]. The shareholders of [REDACTED]
[REDACTED] are [REDACTED].
The general partner of [REDACTED] is [REDACTED]
[REDACTED] a [REDACTED] corporation. The
sole shareholder of [REDACTED] is [REDACTED].
The limited partners of [REDACTED] are [REDACTED].

Following the acquisition of the Assets by [REDACTED] from [REDACTED]
[REDACTED] will manage the Club Facilities on behalf of [REDACTED]
for a period of three years. [REDACTED] will not have any
proprietary, voting or other interest in the Club Facilities and
[REDACTED] will have complete control with regard to the operation,
management and control of the Club Facilities.

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 that:

(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 [REDACTED]
from [REDACTED] does not constitute the purchase by [REDACTED] of all or
substantially all the assets of [REDACTED]. Following the consummation
of the transaction described above, [REDACTED] will continue to hold
approximately 252 homesites in [REDACTED] which will be marketed
and sold by [REDACTED] in the future. The fair market value of these
remaining lots today is equal to the sum of approximately
\$65,000,000. Based on the foregoing, we have concluded that [REDACTED]

Ms. Nancy M. Ovuka
Page 5
December 14, 1990

will not be purchasing and acquiring all or substantially all of the assets of [REDACTED]

Since November, 1989, [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 and an offer to purchase the Assets from [REDACTED]. Since that date, [REDACTED] and [REDACTED] have been actively involved in negotiations regarding the acquisition of the Assets by [REDACTED]. 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 the consistent and ongoing intention of [REDACTED] 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]