(c)(1) of HSR Act

[redacted]

October 9, 1990

FEDERAL EXPRESS

Freedom of Information Act

Attn: Richard B. Smith, Esquire
Senior Staff Attorney

Re: Exemption from premerger notification requirements under Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub.L. 94-435, 15 U.S.C. Sec. 18A (the "Act") and the regulations promulgated pursuant to 15 U.S.C. 18A(d) of the Act (the "Regulations")

Dear Mr. Smith:

As we discussed over the telephone, this firm represents a company which proposes to purchase a tract of property and

The purpose of this letter is to

event pursuant to 15 U.S.C. 18A(a)(3)(B), 15 U.S.C. 18A(c)(1) and Regulation §801.15.

The purchaser will be an entity formed specifically for the purpose of purchasing the Property. It is expected that the "person" (as defined by the Regulations) within which the purchaser exists (hereinafter referred to as the "Purchasing

[redacted]

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Person") will be a "foreign person" (as defined by the Regulations). The Purchasing Person has a vast array of businesses and activities around the world, including, without limitation, numerous investments in both developed and undeveloped real estate. The proposed transaction would be similar to many transactions which have already been consummated and which are expected to be consummated in the future by the Purchasing Person.

The seller is a corporation which holds the Property as its primary asset. The "person" (as defined by the Regulations) [illegible] "Selling Person") is a "foreign person" (as defined in the Regulations). Like the Purchasing Person, the Selling Person has a vast array of businesses and activities. The Selling Person has represented that its core business is property development and investment and that the Property is only one of numerous real estate investments and developments in its real estate [redacted]

The Property is a Planned Unit Development currently consisting of approximately six thousand seven hundred acres of land, approximately seven hundred of which have been improved. Such improvements include a golf course, a clubhouse, an eighteen-unit lodge, four (4) single family and four (4) multi-family homes which were constructed by the seller on a "speculative" basis (two of the speculative homes have not been sold by the seller but are not part of this transaction), [redacted] transaction, the seller will most likely continue to dispose of [redacted] cetera), in accordance with its original plan.

[redacted]

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With respect to the golf course, clubhouse, related amenities and that portion of the roads which service the foregoing improvements (collectively, the "Club Facilities"), the [redacted]

Less than $15 million of the purchase price for the Property will be allocated to the Club Facilities and the eighteen-unit lodge. Such allocation is based on: (i) the value of the two [redacted] (ii) the cost to build the guest lodge of $2,160,000.00. Please note that the Purchasing Person and Selling Person believe that the figures set forth above are equal to or greater than the actual fair market value (as defined in the Regulations) of the assets described.

As you know, 15 U.S.C. 18A(a) requires each of the persons involved in the acquisition of assets to file a notice and observe a waiting period if three conditions are met. Both the Purchasing Person and the Selling Person affect commerce (as defined by the Regulations) and have assets (as defined in the Regulations) of well over $100 million. Therefore, the first two [redacted] Regulation §801.15, the third condition of 15 U.S.C. 18A(a) is not met by the proposed transaction and, therefore, the proposed transaction is not subject to the notice requirements of 15 U.S.C. 18A(a).

[redacted]

As you know, the third condition found in 15 U.S.C. 18A(a) [redacted] 18A(c)(1) are not included. 15 U.S.C. 18A(c)(1) provides an [redacted] accordance with Section 553 of Title 5, has the authority to define the terms used in the Act. You stated that the Federal Trade Commission defines "realty" as "non-income producing [redacted] "realty" for the same reason. The remaining property (i.e., the [redacted]

With regard to whether the transfer is being made in the ordinary course of business, it is our contention that the Selling Person, which has numerous real estate investments, developments and holdings throughout the world, is selling the [redacted] developing or holding real estate by virtue of the proposed transaction and is only selling a portion of its "inventory" of real estate. Further, the Purchasing Person is also an investor, developer and holder of numerous investments in real estate and, therefore, the purchase of the Property by the Purchasing Person will be another addition to its "inventory" of real estate.

[redacted]

In conclusion, based on the foregoing, we contend that the

foregoing or require any additional information relevant to the proposed transaction, please let me know.

Very truly yours,

[redacted]

[redacted]

cc: [redacted]

10/12/90 called [redacted] [redacted] and said the Premerger Office agreed with his conclusions. page 4 paragraph 2 second sentence, advised that this office

in them. RBSmith

[redacted]