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January 5, 1983. This material may be subject to the provisions of Section 17 of the Clayton Act and Section 8 of the Federal Trade Commission Act.

Federal Trade Commission  
Room 301  
7 Pennsylvania Avenue, N. W.  
Washington, D. C. 20580

Attention: Mr. Wayne Kaplan

Re: Advice Concerning Hart-Scott-Rodino  
Antitrust Improvements Act of 1976

Dear Mr. Kaplan:

This letter is to confirm the advice which you gave me during our telephone conversation yesterday regarding the Federal Trade Commission's position with respect to partnerships and the "size of the persons" test under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

As I explained to you, a client of this firm is a partner in an unincorporated joint venture with a subsidiary of our client and an unrelated party. Our client and the unrelated party are each a "person" within the meaning of Rule 800.1(a)(1) under the Act with total assets and annual net sales in excess of \$100 million.

The joint venture's principal asset is a subleasehold interest in a hotel property which it is now proposing to sell

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to an unrelated third party. The question I raised with you was whether the Federal Trade Commission is continuing to take the position that a partnership entity is its own ultimate parent entity for purposes of determining whether the "size of the persons" threshold under the Act is satisfied.

You advised me that the Federal Trade Commission continues to take the position that a partnership entity is its own ultimate parent entity for purposes of determining the relevant "person" under the Act. You further advised me that for purposes of determining whether the "size of the persons" threshold is satisfied reference need only be made to the total assets or annual net sales of the partnership (as stated in its most recently prepared financial statements) and not to those of its partners or entities controlling its partners.

I also explained to you that the purchaser of the subleasehold interest has been granted an exclusive franchise by an unrelated third party to operate hotel and restaurant businesses in the state in which the subject hotel property is located. I asked you whether under those circumstances the unrelated franchisor's total assets and annual net sales would be aggregated with those of the purchaser for purposes of determining whether the purchaser satisfies the "size of the persons" test under the Act. You advised me that the total assets and annual net sales of the franchisor would not be

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aggregated with the total assets and annual net sales of the purchaser for purposes of determining the size of the purchaser.

I also understand that the advice of the Justice Department's Antitrust Division need not be sought regarding the matters described above since it follows the Federal Trade Commission's advice on such matters.

The parties would like to consummate the above-mentioned transaction in the near future. Accordingly, if you are unable to concur with any part of the foregoing summary of our telephone conversation, or if you have any questions or further comments, I would appreciate it if you would contact me not later than January 16, 1984. Thank you for your assistance.

Very truly yours,

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