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Sale of Land

March 22, 1989

Via Federal Express

Victor Cohen, Esq.
PreMerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Applicability of the Hart-Scott-Rodino Antitrust Improvements Act ("Act") to the sale of approximately 2,400 acres of land ("Land") in the State of [REDACTED]

Dear Victor:

In connection with the captioned transaction and as we discussed last week, our firm represents the owners of the Land which will be sold to a third party purchaser pursuant to the terms and provisions of an Acquisition Agreement dated March 15, 1989, (the "Agreement") executed by the parties. Given the facts and circumstances of the sale transaction that I relayed to you, it was concluded that the sale will not be reportable under the Act because it is essentially a sale of unimproved land, and the Federal Trade Commission has typically exempted unimproved land sales from the Act's reporting requirements. The purpose of this letter is to set forth the structure of the transaction which I verbally described to you and to request that you contact me at your earliest convenience if you have reason to believe that notification of the below-described real estate acquisition should be formally filed with the FTC. The structure of the transaction is as follows:

Description of Real Property

The real property portion of the properties to be sold consists of approximately 2,400 acres of land. Approximately

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667 acres are unimproved [REDACTED] and the remaining acreage is used and operated as a cattle ranch. Except as described below, the remaining acreage is unimproved with structures or other permanent improvements. No personal property is being sold and the Agreement expressly provides that the seller's ranching operations, live stock and personal property used in connection with the ranching operations are expressly excluded from the "properties" to be acquired by the purchaser. The exclusion for personal property includes animals, equipment and records relating to the operation of the Land as a ranch. The ranch as an ongoing business operation is not being acquired by the purchaser.

Improvements

The improvements situated on the Land consist of ranch buildings and dwellings, water supply systems, water tanks and related amenities and improvements used in connection with the seller's ranching operations. With the exception of certain wells, water systems, fences and similar minor improvements, all structures and buildings are located on approximately 176 acres of land designated in the agreement as the "Homesite Parcel". To the extent relevant, the improvements have a value of less than \$15,000,000.

The Homesite Parcel, together with an additional five-acre portion of the land designated in the Agreement as the "Reserved Parcel", will be included in the properties conveyed to the purchaser. However, both the Reserved Parcel and the Homesite Parcel, together with all the improvements thereon, will be reconveyed to the seller by the purchaser without payment of any kind as soon as the Homesite Parcel and the Reserved Parcel have been subdivided from the remainder of the Land in accordance with the law of [REDACTED]. The sellers do not intend to sell the Reserved Parcel, the Homesite Parcel or any improvements thereon; the Reserved Parcel and the Homesite Parcel are being conveyed by the seller to the purchaser only because it is not feasible prior to the consummation of the sale transaction to subdivide those parcels from the remaining Land. Any attempt to reserve or "carve out" the Homesite Parcel and the Reserved Parcel from the conveyance to purchaser prior to validly segregating them from the remainder of the Land would violate the subdivision and conveyancing laws of the State of [REDACTED]. Accordingly, the parties have agreed that the parcels will be conveyed to purchaser at closing and will be reconveyed to the sellers upon receipt of subdivision approval from the agencies having jurisdiction. The Agreement provides

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[REDACTED]

that the sellers have the right to retain the exclusive use and possession of both the Reserved Parcel and the Homesite Parcel and all improvements thereon prior to their reconveyance by purchasers.

Use of Land after Acquisition

Subsequent to the consummation of the purchase and sale transaction, the sellers may continue to graze cattle on the ranch portion of the Land in order to prevent the Land from being overgrown by vegetation prior to the time the purchasers commence development of the Land as a resort hotel facility. The sellers will not lease the Land from purchasers and the purchasers will receive no payment for the use of the Land for grazing purposes. Accordingly, the Land will not be income producing land in the hands of the purchasers and the use of the Land by sellers will be as an accommodation only.

As a result of all of the foregoing, it was concluded that a filing is not required under the Act since the purchase and sale transaction is in fact a transfer of unimproved, non-income producing land. Based on that conclusion, the purchaser and the sellers propose to consummate the contemplated transaction in the near future. Accordingly, please contact me as soon as possible if any aspect of the described transaction warrants a reassessment of the conclusion that the transaction is not reportable under the Act.

Thank you again for all your able assistance and advice in the last few weeks and please call me as soon as possible if you have questions or comments with respect to the foregoing or any related matter.

Very truly yours,

[REDACTED]