

[REDACTED]

April 18, 1991

[REDACTED]

VIA FACSIMILE AND
FEDERAL EXPRESS

Mr. Dick Smith
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D.C. 20580

Re: Availability of \$801.40 Exemption
Relating to Transaction

Dear Mr. Smith:

Pursuant to the telephone conversation that [REDACTED] of our firm and I had with you this afternoon, we would like to confirm that the proposed real estate transaction we discussed, and which is outlined below (the "Transaction"), is exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The Transaction is comprised of the following events, which will be consummated at one sitting and will constitute one continuous closing:

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1. Entity A and Entity B shall form a Joint Venture (the "Venture") to acquire, own and operate an existing shopping mall, which is currently owned by Entity A.

2. Entity A will then contribute a 50% undivided interest in the shopping center assets to the capital of the Venture.

3. Entity B will contribute approximately \$36,750,000 (the "Acquisition Price") to the capital of the Venture.

4. The Venture will acquire from Entity A the remaining 50% undivided interest in the shopping mall assets in consideration for payment of the Acquisition Price by the Venture to Entity A.

[REDACTED]

[REDACTED]

Mr. Dick Smith
April 18, 1991
Page 2

5. Entity A will assign its 50% interest in the Venture to Entity A-1, a wholly-owned subsidiary of Entity A.

The net result of the Transaction is that Entity A-1 and Entity B will each own a 50% interest in the Venture and the Venture will own a 100% interest in the shopping center assets. The Venture will be a bona fide unincorporated joint venture and it is expected that the Venture will proceed with an expansion of the shopping center. The joint venture agreement between Entity A-1 and Entity B will contain restrictions on the transfer of the interests in the Venture that will effectively keep Entities A-1 and B in the Venture for a significant duration after the closing.

Based on our telephone conversation, it is our understanding that the Premerger Notification Office interprets the Transaction as a formation of an unincorporated joint venture, which is exempt from the requirements of the Act pursuant to §801.40 thereof. Accordingly, it was your conclusion that no filing under the Act would be required by any party to the Transaction. In reliance on your conclusion, we intend to consummate the Transaction next week.

We respectfully request that you review this letter upon receipt and kindly telephone any of the undersigned

[redacted] at your earliest convenience to confirm that our interpretation of the analysis of the Transaction is correct. Your prompt attention to this matter is especially important in light of the fact that closing of the Transaction is scheduled to commence next Wednesday, April 24.

Very truly yours,

[redacted signature block]

5TH/224.90

4/19/91 - discussed with J/S and talked to [redacted]. Our view is that all these steps constitute the formation of a partnership which, on this fact scenario, is exempt from the coverage of 801.40. [redacted] states that the deal has been structured this way to reduce real estate transfer taxes and for other tax saving reasons. [redacted]