

September 5, 1991

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FEDERAL TRADE COMMISSION  
RECEIVED

VIA FACSIMILE  
(202) 326-2050 AND  
DHL WORLDWIDE EXPRESS

Mr. Hy David Rubenstein  
Pre-Merger Notification Office  
H 303  
Federal Trade Commission  
Washington, D.C. 20580

RE: Internal Transfer of  
Partnership Interest

[REDACTED]

Dear Mr. Rubenstein:

The purpose of this letter is to present you with sufficient information regarding the transaction referenced above in order that the Federal Trade Commission ("FTC") can make a determination on whether the parties involved in such transaction must file a Pre-Merger Notification under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended, and the regulations promulgated thereunder (the "Act").

BACKGROUND

On June 28, 1990, the ownership of [REDACTED] a regional shopping center located in [REDACTED] was transferred from [REDACTED] to [REDACTED]. The two Partners of [REDACTED] were [REDACTED] and [REDACTED] each owning a 50% interest in [REDACTED] is a limited partnership composed of [REDACTED] owning a 74% limited partnership interest, [REDACTED] a wholly owned subsidiary corporation of [REDACTED] and the [REDACTED] owning a 1%

interest and [REDACTED] a [REDACTED] owning the remaining 25% interest.

The aforementioned transaction was structured in the following manner. Initially, [REDACTED] distributed 25% of the assets of [REDACTED] to [REDACTED] in exchange for [REDACTED] 50% partnership interest in [REDACTED]. The Partnership Agreement of [REDACTED] was then amended to increase [REDACTED] partnership interest in [REDACTED] from 50% to 66.6% with [REDACTED] interest decreasing to 33.4% (the "Distribution Transaction"). Immediately following the distribution to [REDACTED] conveyed its remaining 75% interest in the [REDACTED] to [REDACTED] for a cash payment in excess of \$100,000,000.00 (the "Principal Transaction"). These funds represented [REDACTED] capital contribution to [REDACTED] as its contribution to [REDACTED] then contributed its undivided 25% interest in the [REDACTED] to [REDACTED].

In anticipation of the June 1990 conveyances, the parties contacted the FTC and were instructed that the Distribution Transaction and the Principal Transaction would in fact trigger the requirement that the parties file Pre-Merger Notifications pursuant to the Act. It was determined that [REDACTED] was the ultimate parent entity for [REDACTED] for [REDACTED] and [REDACTED] for [REDACTED].

In connection with the Distribution Transaction, [REDACTED] filed Pre-Merger Notification reports as an acquiring person and with [REDACTED] as acquired persons. In connection with the Principal Transaction, [REDACTED] filed Pre-Merger Notifications as an acquired entity and [REDACTED] as an acquiring entity. [REDACTED] and [REDACTED] received early termination of the waiting period for the Principal Transaction under transaction identification numbers [REDACTED] and [REDACTED] and [REDACTED] received an early termination of the waiting period in the Distribution Transaction under transaction identification number [REDACTED]. Therefore, the FTC reviewed and approved the transfer of 75% of the [REDACTED] to [REDACTED] which was and remains under the control of [REDACTED] by virtue of [REDACTED] control over 75% interest in [REDACTED].

#### ACQUISITION OF REMAINING 25% INTEREST

Currently, [REDACTED] has offered to sell and [REDACTED] has agreed to purchase [REDACTED] remaining 25% interest in [REDACTED] (the "Acquisition Transaction"). [REDACTED] remains the ultimate parent entity for [REDACTED] and [REDACTED] for [REDACTED].

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We understand that in transactions involving the transfer or acquisition of an interest or interests in an existing partnership, the Pre-Merger Office takes the position that acquisition of partnership interests is not the acquisition of securities or of assets and is not reportable, except that an acquisition that results in the acquiring person holding one hundred percent of the partnership interests is deemed to be an acquisition of the assets of the partnership.

We think that the Acquisition Transaction should not require reporting. We assume that the rationale for the interpretation that acquisition of one hundred percent of the partnership interests is an asset acquisition is that otherwise no report would occur. However, in this case the FTC has been fully apprised of the facts and should not extend its interpretation to require a second report. To require [REDACTED] and [REDACTED] file Pre-Merger Notifications reports would accomplish nothing in furthering the purposes of the Act or the policies of the FTC. The FTC through its May and June 1990 review and approval of the Distribution and Principal Transaction has previously acquiesced to [REDACTED] acquisition of a controlling 75% interest in [REDACTED] by virtue of a transfer of the [REDACTED] ownership to [REDACTED] and [REDACTED] control over 75% of [REDACTED]

In the Acquisition Transaction, [REDACTED] is merely acquiring the remaining 25% interest in [REDACTED] a partnership in which it is already the ultimate parent entity. The Acquisition Transaction does not represent a transaction where the FTC previously did not have an opportunity to review and approve the transactions which initially gave the acquiring entity [REDACTED] an interest in the existing partnership. In fact, by review of the Distribution and Principal Transaction the FTC had the opportunity to review and approve the transaction which conveyed a controlling interest in the partnership and in turn the partnership's sole asset, [REDACTED] [REDACTED] Therefore, the undersigned respectfully request that the FTC

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confirm that the Acquisition Transaction is exempt from the Pre-Merger Notification requirements of the Act.

Respectfully yours,

[REDACTED]

[REDACTED]

[REDACTED]

9-12-91 (called)

If the assets previously filed for are the same and the only assets of the partnership then no new filing needed.  
If partnership has other assets not previously filed for then a new filing is needed.

[REDACTED]