[redacted]

[redacted]

April 4, 1994

VIA FACSIMILE (202) 326-2050

Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Attention: Richard B. Smith, Esq.
Staff Attorney

Re: Request for Confirmation in
Connection with Proposed Transaction

Dear Mr. Smith:

We are counsel for [redacted] and in that capacity are writing to seek your confirmation of our telephone discussion of Monday, April 4, 1994, in which you expressed the opinion that a Pre-Merger Notice would not be necessary in connection with the completion of the real estate acquisitions described below, pursuant to the exemptions provided in Section 7A(c)(1) of the Clayton Act, 15 U.S.C. § 18a for "acquisitions of goods or realty transferred in the ordinary course of business."

Description Of The Acquisition: On or about April 30, 1994, [redacted] will acquire from an unrelated real estate investment trust (a "REIT") rights to purchase [redacted] located in various parts of [redacted] pursuant to five separate agreements from five different owners for a total of approximately $60 million. The selling REIT will receive approximately $5 million for its sale of these rights to purchase. The owners are various limited and general partnerships and corporations. None of the properties exceeds $15 million in value individually and one of the properties is owned by parties apparently unrelated to the owners of

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[redacted]

the other four. Some or all of the other four properties may be owned by related parties (or by the same ultimate parent entity). The properties are currently producing an income stream.

[redacted] is an existing REIT operating in conformity with IRS rules and owns a portfolio of mostly [redacted] in [redacted]

Description Of Advice: In our conversation, you advised me that it is the position of the Pre-Merger Notification Office of the Bureau of Competition of the Federal Trade Commission that a REIT which operates in compliance with the requirements to qualify as a REIT under the Internal Revenue Code need not file a pre-merger notification under 15 U.S.C. Section 18a with respect to income-producing real estate because such an acquisition is regarded as an "acquisition of goods or realty in the ordinary course of business" of the REIT that is exempt under Subsection 18(a)(c)(1).

Specifically, with regard to this transaction you advised that the sale of contractual rights by one REIT to another for a $5 million premium was not reportable and that, assuming [redacted] operates in conformance with the REIT requirements of the Internal Revenue Code, the purchase of the [redacted] pursuant to exercise of those contractual rights was not reportable regardless of the aggregation or affiliation rules as applied to the sellers of the properties.

Please advise me promptly if I have not accurately summarized the position of the Pre-Merger Notification Office. We expect to rely upon this position in advising our client [redacted] both as to this and possible future transactions unless we become aware that the position of your office has changed or of a change in the law or published regulations.

Very truly yours,

[redacted]

[redacted]

4/5/94 - advised writer that letter correctly reflects position of PNO Office concerning purchases by REITs and purchases of "options" or rights to purchase.
RBSmith

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