June 8, 1994

VIA FACSIMILE (202) 326-2050

Federal Trade Commission
Premerger Notification Office
Bureau of Competition - Room 303
Sixth & Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attn: Mr. Richard Smith

Re: Filing of Premerger Notification Form in connection with a Real Estate Transaction

Dear Mr. Smith:

This letter is to confirm our telephone conversation on the morning of June 6, 1994 as clarified on the morning of June 8, 1994, to determine whether our client, referred to herein as Company A, and our client's joint venture partner, herein referred to as Company B, are required to make Premerger Notification Filings with respect to a particular real estate acquisition. The seller of the subject real estate, referred to herein as Company C, would also be required to file if the purchasers are required to file.

FACTS:

On April 26, 1994, Company A and Company B, as purchasers, entered into a purchase and sale agreement with Company C, as seller, to acquire approximately [redacted] of real property. At closing, each of Company A and Company B intends to assign its rights to acquire this real property a joint venture owned 50-50 by them.[1] The parcels are separated by

[1] With respect to the formation of the joint venture, we have concluded that, based upon Rule 801.40 and the available interpretations thereof, no filing is required because the joint venture is a general partnership.

existing roadways and have separate legal descriptions. Of the [redacted] parcels, [redacted] are unimproved parcels (lots A, E, F, I, J, M, N and O on the attached map) and [redacted] parcels (lots B, C, G and K) are improved with [redacted] some vacant and some leased. Lots D, H and L are not the subject of this transaction. The aggregate purchase price for the lots is $37.5 million (no liabilities of the acquired party will be assumed by the acquiring parties) and the parties have assets sufficient to meet the "size of the parties" test.[2] We are aware of the Premerger Notification Office's (the "Office") position that income-producing real property such as [redacted][3] does not fit within the "goods or realty" exemption.

QUESTIONS PRESENTED:

1. In the Office's view, is the real estate divisible into "improved" and "unimproved" parcels?

2. Assuming it is commercially reasonable, if the improved parcels were valued at $15 million or less and the unimproved at more than $15 million (i.e., at least $22.5 million), can the $37.5 million purchase price be allocated such that the acquisition of the improved property would not meet the "size of the transaction" test and a filing with respect to the transaction would not be required?

DISCUSSION:

1. Pursuant to our discussion, it is the Office's view that the lots to be acquired are divisible into "improved" and "unimproved" because of the existing roadways dividing the lots and our representation to you that the lots have separate legal descriptions.

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[2]For purposes of simplicity we have eliminated discussion of asset calculations and ultimate parent entities ("UPEs") of the parties to the transaction. If an exemption is not available, we have concluded that the UPE of each of Company A and Company B would be required to file as acquiring persons (and each would pay a filing fee) and the UPE of Company C would file as an acquired person.

[3]An exception to this characterization of which we are aware is that the acquisition of income-producing [redacted] which have been abandoned and non-income-producing to the seller for more than two years does fit within the "goods or realty" exemption.

2. Based upon the foregoing conclusion, the acquiring and acquired parties are permitted, using commercially reasonable standards, to allocate the value of the assets to be acquired[4] between the improved and unimproved lots to determine whether the "size of the transaction" test is met. In the event the parties can agree, using commercially reasonable standards, that the improved parcels are valued at $15 million or less and the unimproved parcels are valued at more than $15 million, then the transaction would not be reportable. The transaction is not reportable since the value of and payment for the unimproved parcels can be excluded from the total value of and consideration to be paid for all the property when applying the "size of the transaction" test (See Rule 801.15); assuming the unimproved property is valued at at least $22.5 million, the improved property would be valued at $15 million or less and thus not sufficient to meet the "size of the transaction" test. As we discussed, the parties believe the unimproved property to be substantially more valuable (at least $22.5 million) because of the proximity of the unimproved property to a major waterway which is vital to the business in which the Company A-Company B joint venture intends to engage.

3. Although in the Office's view the parties are not required to document the allocation of the purchase price between the improved and unimproved parcels, the parties intend to document this determination.

We appreciate your assistance in this matter.

Very truly yours,

Enclosure

cc:

6/9/94- called letter writer and advised that I was in agreement with the analysis and conclusions in this letter.

[4]The value is the greater of the purchase price (plus any liabilities assumed by the buyer) or the fair market value of the property. Rule 801.10. Since this is an arm's length transaction, the parties believe the purchase price is not less that the fair market value of the property; since no liabilities will be assumed by the acquiring persons, the value to be allocated is $37.5 million.

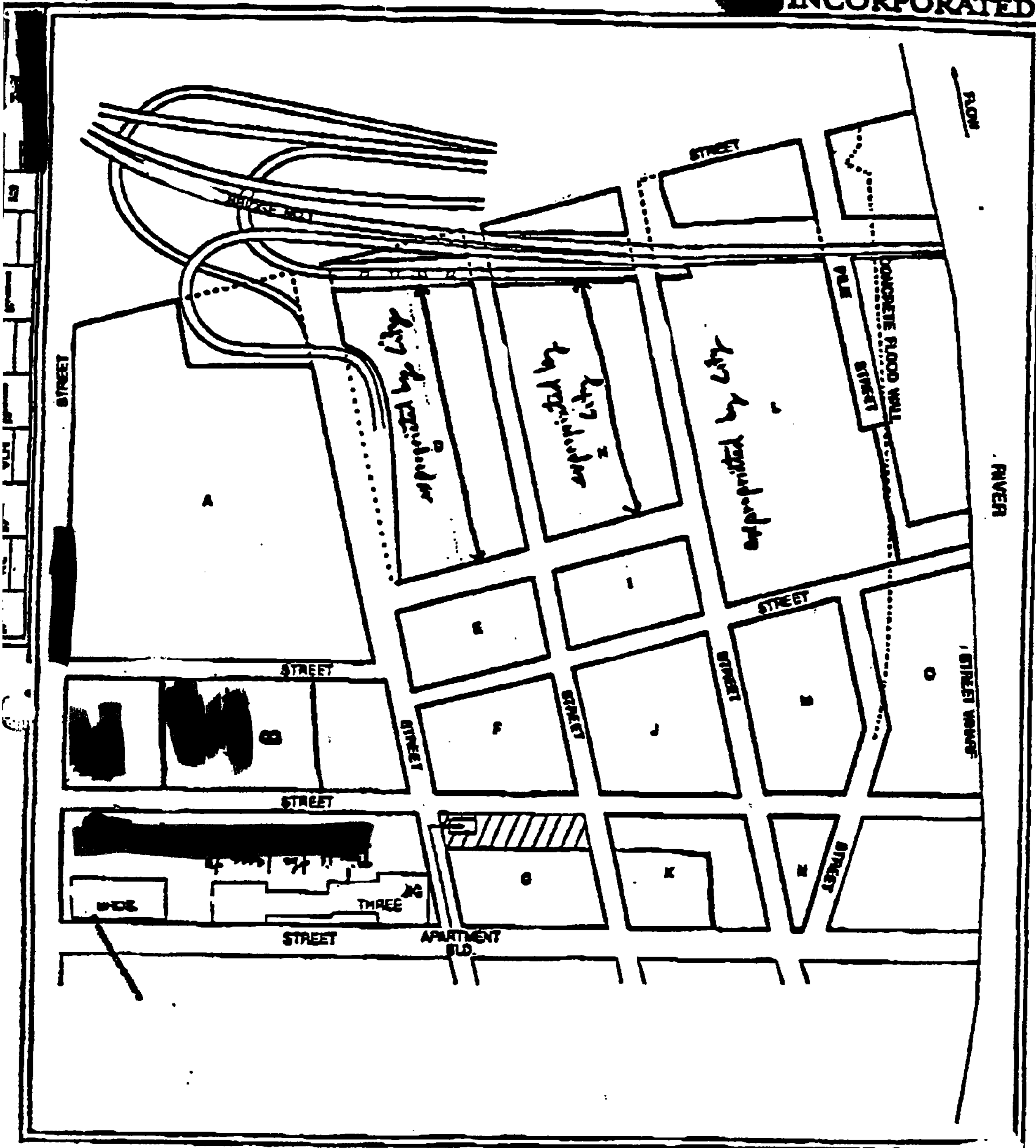

FIGURE 2
SITE SKETCH

• NOT TO SCALE

QUADRANGLE LOCATION