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August 23, 1994

VIA FEDERAL EXPRESS

Richard B. Smith, Esq.
Federal Trade Commission
Bureau of Competition--Premerger Notification Office
Sixth Street and Pennsylvania Avenue, N.W., Room 303
Washington, D.C. 20580

Re: Real Estate Acquisition by [redacted] REIT

Dear Mr. Smith:

This letter confirms the conclusion reached during our telephone conversation on August 9, 1994 that no filing of a Premerger Notification and Report Form (a "Filing") will be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") as a result of the various steps of the proposed acquisition (the "Proposed Acquisition") constituting the formation o[redacted] a [redacted] corporation (the "WREIT"), that will be qualified as a real estate investment trust ("REIT"). A brief summary of the Proposed Acquisition is presented below, followed by a step-by-step discussion of the legal analysis which supports our conclusion that no Filing will be required.

SUMMARY OF PROPOSED ACQUISITION

The WREIT was formed for the purpose of conducting a public offering of its Common Stock (the "Offering"), and then using the proceeds of the Offering to acquire (i) certain California apartment buildings (the "Properties") owned by certain partnerships and pursuant to other joint ownership arrangements (together, the "Partnerships") and (ii) the assets of two property management companies and one property maintenance company (together, the "Management Companies"). The WREIT intends to qualify as a REIT and to abide at all times by the rigid operational restrictions imposed on REITs by federal law (the "REIT Regulations"). The WREIT will amend and restate its Articles of Incorporation (the "Amended and Restated Articles") to restrict the activities of its stockholders, directors and management to those

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consistent with the REIT Regulations. Further, the Operating Partnership will amend and restate its agreement of limited partnership to prohibit its engagement in activities which would cause the WREIT to lose its status as a REIT under the REIT Regulations.

The WREIT has issued and sold a single share of its Common Stock (the "Initial Share") to a single stockholder (the "Initial Stockholder") for a consideration of $1.00 (the "Initial Share Purchase Price") (the "Initial Share Sale"). The Properties will be acquired by a Delaware limited partnership (the "Operating Partnership"), which is controlled by the WREIT. It is currently anticipated that the Proposed Acquisition will be comprised of six events which are to occur in the following order: (1) the Initial Share Sale (this has occurred); (2) the WREIT will close the Offering; (3) the WREIT will repurchase the Initial Share from the Initial Stockholder (the "Initial Share Repurchase"); (4) the WREIT will transfer the net proceeds of the Offering to the Operating Partnership in exchange for limited partner interests and a 1% general partner interest in the Operating Partnership ("Units") (the "Capitalization"); (5) the Operating Partnership will acquire (a) the Properties from the Partnerships (the "Property Acquisition") and (b) the assets of the Management Companies (the "Management Companies Acquisition"); and (6) the Operating Partnership will issue additional Units to the partners and other owners of the Partnerships (the "Partners") and to the Management Companies in consideration for transfer of the Properties and the assets of the Management Companies (the "Unit Issuance").

The Units will not carry any voting interest in the WREIT, but will be exchangeable, subject to certain restrictions, for shares of the WREIT's Common Stock (the "Exchange Right"). Exercise of the Exchange Right, however, may require a Filing if the Size-of-the-Persons Test[1/] and the Size-of-the-Transaction Test[2/] are met and no applicable exemption is available.

DISCUSSION

For the reasons we discussed, which are presented below, we believe neither the Proposed Acquisition as a whole nor any of its six component steps delineated above requires a Filing under the Act.

[1/] 15 U.S.C. §18a(a)(2).

[2/] 15 U.S.C. §18a(a)(3); 16 C.F.R. §802.20.

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1. The Initial Share Sale

The Initial Share Sale was exempt from Filing since (i) the acquired person did not meet the Size-of-the-Persons Test[3/] and (ii) the transaction does not constitute the formation of a joint venture or other corporation under Section 801.40 of the Rules, since there is only one party to the formation transaction.

2. The Offering

Generally, acquisitions of the WREIT Common Stock in the Offering will be exempt from the Filing requirements of the Act because anyone acquiring less than ten percent (10%) of the WREIT's Common Stock in the Offering will qualify for exemption as an acquisition solely for the purpose of investment under Section 802.9 of the Rules (the "Investment Intent Exemption").[4/] Additionally, certain Institutional Investors (as that term is defined in Section 802.64(a) of the Rules) may also qualify for exemption under Section 802.64(b) of the Rules (the "Institutional Investor Exemption") for acquisitions of fifteen percent (15%) or less (or up to $25 million worth) of the WREIT's Common Stock.[5/] If a non-institutional investor acquires ten percent (10%) or more of the WREIT's Common Stock and satisfies the Size-of-the-Transaction Test,

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[3/] A Filing is required in the acquisition of the voting securities of a non-manufacturing issuer (like the WREIT) only if the acquired person "has total assets of $10,000,000 or more" and the acquiring party "has total assets or annual net sales of $100,000,000 or more." 15 U.S.C. §18a(a)(2)(B).

[4/] "The acquisition of voting securities shall be exempt from the requirements of the pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held." 16 C.F.R. §802.9.

[5/] Acquisitions by an Institutional Investor (as that term is defined in Section 802.64(a) of the Rules) of not more than 15% of the WREIT's Common Stock may be exempt if such acquisition is made directly by that Institutional Investor in the ordinary course of business, solely for the purpose of investment, and the Institutional Investor would not, as a result of the acquisition, control the WREIT or hold $25 million of the WREIT's Common Stock. The Institutional Investor Exemption would not be available if any entity included within the Institutional Investor which is not itself an Institutional Investor would hold any securities of the WREIT. 16 C.F.R. §802.64.

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(2) or if an Institutional Investor acquires more than fifteen percent (15%) (or more than $25 million worth) of the WREIT's Common Stock, then that investor will be required to submit a Filing (if the Size-of-the-Persons Test is satisfied). Of course, neither of these exemptions would be available if the acquisition was not made solely for the purpose of investment.

It is highly unlikely that any investor would reach either ownership percentage threshold, however, since the Amended and Restated Articles of the WREIT will limit the amount of equity stock which may be held by any single investor to 9.8% (in shares or value), in order to comply with a prohibition in the REIT Regulations that no group of five (5) or fewer shareholders may hold more than 50% of the of the outstanding shares of capital stock of a REIT. By the terms of the Amended and Restated Articles, if any stockholder purports to transfer shares to a person in violation of this restriction, the purported transfer would be void ab initio. Notwithstanding that provision, the Amended and Restated Articles provide that, if ownership somehow exceeds the 9.8% limitation, such shares over the 9.8% limitation may, in certain circumstances, be automatically converted into a separate class of capital stock called "excess shares." Such shares have no voting rights.

3. The Initial Share Repurchase

(3) The Initial Share Repurchase is not subject to a Filing under the Act since it will not meet the Size-of-the-Transaction Test. The single Initial Share will not represent over 15% of the WREIT's voting securities after the Offering, and the repurchase price will be less than $15 million.

4. The Capitalization

The Capitalization will be exempt from the Filing requirements of the Act, because at the time the Units are issued, the Operating Partnership will have no assets, and the Size-of-the-Parties Test will not be satisfied.

5. The Property Acquisition and the Management Companies Acquisition.

a. The Property Acquisition

(4) The WREIT intends to elect to be taxed as a REIT at the time of the filing of its first tax return. The Articles of Incorporation will require the WREIT to operate as a REIT unless the board of directors and holders of two-thirds of the shares of WREIT Common Stock determine otherwise. The Company's disclosure documents

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under the Security Act of 1933, as amended, disclose these intentions. There are powerful incentives for the WREIT to qualify as a REIT and adhere to the stringent operational restrictions imposed on REITs by the REIT Regulations, for its failure to do so would be inconsistent with its charter and will result in adverse federal tax consequences for its investors so significant that many of the reasons for their investment would be eliminated. As a result, investors who acquired WREIT Common Stock or Units in the Operating Partnership could have a claim under the federal securities laws.

The Property Acquisition will be exempt from the Filing requirements of the Act pursuant to an interpretation by the Federal Trade Commission staff (the "Staff") in response to a letter to the Staff dated December 20, 1990, concluding that an acquisition of real estate by an acquiring party whose ultimate parent entity is a REIT is an "acquisition of goods or realty in the ordinary course of business" which is exempt under Section 802.1 of the Rules. The acquiring party in the Proposed Acquisition will be the Operating Partnership. At the time of the Property Acquisition, the Operating Partnership will be controlled by the WREIT, which will not be controlled by any other entity. The ultimate parent entity of the Operating Partnership at the time of the Property Acquisition, therefore, will be the WREIT. Thus, the Property Acquisition will be an acquisition of realty in the ordinary course of business which is exempt under Section 802.1. The Operating Partnership will be advised that if, at a later time, the Operating Partnership is no longer controlled by the WREIT, or if the WREIT controls the Operating Partnership but is no longer classified as a REIT, a Filing may be required with respect to acquisitions by the Operating Partnership if the Size-of-the-Persons Test and the Size-of-the-Transaction Test are met and no other exemption is available.

(5)

b. The Management Companies Acquisition.

The acquisition of the Management Companies will be exempt from Filing because the Size-of-the-Persons Test will not be satisfied. None of the Management Companies are controlled by any other entity, and thus each of the Management Companies is its own ultimate parent entity. The last regularly prepared balance sheet of each of the Management Companies indicates that the value of each of their total assets is well below the $10 million threshold of the Size-of-the-Persons Test.

6. The Unit Issuance

The Unit Issuance is an acquisition of partnership interests and will be exempt from the Filing requirements of the Act because the Staff has determined that the acquisition of less than all of the interests in a partnership is not an acquisition of

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voting securities or assets within the meaning of the Rules, and since the Act only applies to acquisitions of voting securities and assets,[6] no Filing will be required.[7]

Additionally, the Unit Issuance cannot be deemed to be the formation of a joint venture or other corporation requiring a Filing under Section 801.40 of the Rules, since the Operating Partnership will be a limited partnership and Section 801.40 only applies to the formation of corporations.[8]

CONCLUSION

The foregoing summary of the Proposed Acquisition and the legal analysis supporting its exemption from the Filing requirements of the Act is intended to confirm the substance of our discussion on August 9, 1994. If you disagree with the contents of this letter, I would appreciate it if you could please contact me by August 31, 1994.

Thank you for your assistance in this matter.

Very truly yours,

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[6] 15 U.S.C. §18a(a).

[7] Prager, Premerger Notification Practice Manual (1991), Interpretation number 93.

[8] Statement of Basis and Purpose of Rules Implementing Title II of the Act, 43 Fed.Reg. 147 (July 31, 1978), p. 33485.

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