

7A (c)(1)

[REDACTED]

January 10, 1996

FEDERAL TRADE COMMISSION  
PREMERGER NOTIFICATION OFFICE  
JAN 11 7 57 AM '96

**VIA FAX**

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Washington, D.C. 20580

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information Act.

**CONFIDENTIAL**

Notice of Intention Not to File Hart-Scott-Rodino  
Premerger Notification Re Purchase of Fee Simple  
Interest in the Land Underlying the [REDACTED]

Dear Ms. Epps:

This letter will confirm my telephone conversation with you on January 4, 1996.

Transaction Summary.

This firm represents the majority limited partners ("Majority Partners") of [REDACTED] limited Partnership (the "Lessee"), which is the owner of a leasehold [REDACTED] known as the [REDACTED] located in [REDACTED]. The Lessee is acquiring the leased fee interest (i.e., the fee title subject to and together with the ground lessor's interest in the [REDACTED] from [REDACTED] corporation (the "Ground Lessor"). The Lessee is purchasing the leased fee interest in the [REDACTED] pursuant to the [REDACTED]

[REDACTED]

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Melea R. Epps, Esq.  
January 10, 1996  
Page 2

Lessee's exercise of its option to purchase the fee granted under the terms of the ground lease.<sup>1</sup> The purchase price of the leased fee interest is \$21,000,000. The closing of this transaction is scheduled for [REDACTED]. The purpose of this letter is to advise you that the parties do not intend to submit a premerger notification filing pursuant to the Hart-Scott-Rodino Act, 15 U.S.C. § 18a (the "Act"). You can assume that the parties are of sufficient size so that, if the exemption described below did not apply, the requirements of the Act would otherwise be triggered.

Buyer.

The Lessee was created for the purpose of owning and operating the [REDACTED] and does not own any assets other than the [REDACTED]. In this case, the Lessee is itself the "ultimate parent entity" for purposes of the Act, as neither the general partner, nor any of the limited partners, is entitled to 50% or more of the Lessee's profits or 50% or more of the Lessee's assets upon dissolution. The Lessee acquired its interest in the ground lease in [REDACTED] and has owned the [REDACTED] since that time.

Seller.

According to [REDACTED] counsel for the Ground Lessor, the Ground Lessor's business may be characterized as the development, management and sale of commercial real estate, including the sale of leased fee interests in such real estate. For your reference, we have attached hereto as Exhibit A a letter dated January 9, 1996 to the undersigned from [REDACTED] which explains in detail the business history of the Ground Lessor.

Exemption.

We understand that [REDACTED] has previously contacted you concerning the potential exemption of this transaction from the Act pursuant to 15 U.S.C. 18a(c)(1), because the sale of the Ground Lessor's leased fee interest to the Lessee is appropriately characterized as a transfer of realty in the ordinary course of the Ground Lessor's business. During my phone conversation with you on January 4, you indicated that, based on the representations which [REDACTED] had made to you concerning the Ground Lessor's business activities, the Federal Trade Commission ("FTC") had

No! The staff

<sup>1</sup>Under the terms of the [REDACTED] Agreement of Limited Partnership, the Majority Partners are entitled to instruct the general partner to take certain actions, and, in this case, they instructed the general partner of the Lessee to exercise the option to purchase the Ground Lessor's leased fee interest.

Melea R. Epps, Esq.  
January 10, 1996  
Page 3

concluded that this transaction clearly falls within the exemption for the acquisition of realty transferred in the ordinary course of business.<sup>2</sup>

Based on the foregoing, the parties understand and are proceeding on the basis that this transaction falls within the exemption set forth in 15 U.S.C. § 18a(c)(1), and therefore, the parties do not intend to complete and submit a notification and report form (*i.e.*, FTC Form C 4, 16 C.F.R. Part 803-Appendix). If our understandings are incorrect, please so advise the undersigned within 3 business days of your receipt of this letter (*i.e.*, by the end of the business day on Tuesday, January 16, 1996). Pursuant to our telephone conversation on January 4th, we are sending this letter to you by facsimile to avoid delay.

If you have any questions or require any additional information, please feel free to telephone the undersigned collect [REDACTED]. Thank you for your consideration.

Yours very truly

[REDACTED SIGNATURE]

[REDACTED]

Enclosure

[REDACTED]

<sup>2</sup>In addition, we also note that this transaction would be exempt from the Act under Section 802.2(d) of the FTC's Proposed Rules published in the *Federal Register*, Vol. 60, No. 145, on July 28, 1995 (exempting the acquisition of certain [REDACTED] from the Act), if the Proposed Rules are formally adopted on or before January 31, 1996 (*i.e.*, the scheduled closing date for this transaction).

*I spoke with the author of the fax today, [REDACTED] // 11. I told him that so long as the realty underlying the [REDACTED] was the only asset being transferred, the transaction is nonreportable.*