

801.10

[REDACTED]

WRITER'S DIRECT DIAL NUMBER

FAX
INTERNET

April 1, 1999

Handwritten: He [unclear] [unclear]

VIA FEDERAL EXPRESS

Mr. Patrick Sharp
Compliance Specialist
Premerger Notification Office
Federal Trade Commission
Sixth and Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580

Stamp: This material may be subject to the confidentiality provisions of section 1014 of The Clayton Act which restricts release under The Freedom of Information Act

1999 APR 1 10 55 AM
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Re: Lease and Transfer Agreement
between [REDACTED]

Dear Mr. Sharp:

In connection with the LEASE AND TRANSFER AGREEMENT between [REDACTED] as Lessor, and [REDACTED] as joint tenants (together "Lessee"), and in accordance with our telephone conversation of today, this is to inform you that this Lease includes the fully furnished [REDACTED] and, therefore, the equipment in the [REDACTED] is being leased and not being acquired or transfer between the Lessor and the Lessee.

Handwritten: ok

The joint tenant under the LEASE AND TRANSFER AGREEMENT have an obligation to maintain and replace equipment in the [REDACTED] *ok*

The equipment in the [REDACTED] is defined in paragraph 1.20 of the LEASE AND TRANSFER AGREEMENT (as p. 4) and ARTICLE V - COVENANTS OF LESSOR AND LESSEE under paragraph 5.1 require the maintenance of the assets and equipment acquired. Section 5.1(d) is as follows:

(b) Maintenance of Facilities. Lessee shall at all times during the Term of this Agreement keep and maintain

the Facilities, both inside and outside, structural and nonstructural, in a good state of repair and preservation, ordinary wear and tear and acts of God excepted, and Lessee shall make all repairs and replacements that may be necessary to maintain the Facilities (including, without limitation, all electrical, plumbing, HVAC systems and equipment and such equipment as shall be reasonably required to meet JCAHO, AOA or comparable accreditation standards and to comply in all material respects with all applicable codes) in such state of repair. The obligations of the Lessee to maintain and repair the Facilities shall be deemed to have been met if the Lessee maintains the Property in substantially the same condition it was in on the Commencement Date. Lessee covenants that it will not permit, commit or suffer any waste of the whole or any part of the Facilities and shall not use or permit the use of the Facilities, or any part thereof, for any unlawful purpose or permit any nuisance to exist thereon. Lessee covenants and agrees that it shall provide current and modern equipment as generally used in accredited, comparable community [REDACTED] and shall provide all equipment, machinery, furnishings, supplies and other personal property required or necessary for the proper operation, repair and maintenance of the [REDACTED], consistent with standards of [REDACTED] organization and administration generally acceptable for fully accredited [REDACTED] comparable to the [REDACTED]. All equipment, machinery, furnishings and other personal property required or necessary for the proper operation, repair and maintenance of the [REDACTED] and purchased by Lessee shall be deemed part of the Facilities immediately upon acquisition and shall not be deemed Capital Additions. All costs incurred by Lessee in meeting its obligations under this subsection (b) may be paid from operating revenues of the Facilities, and Lessee shall not grant any lien, security interest or other encumbrance in connection therewith other than a Permitted Encumbrance (at pages 20-21).

In further regarding the obligation to maintain and repair, ^{OK} paragraph 6.3 of the LEASE AND TRANSFER AGREEMENT is also relevant, and is as follows:

6.3 Demolition or Alterations. Lessee shall not, without Lessor's written consent, demolish or structurally alter the Facilities in any material respect unless such demolition or alteration is in connection with a project by

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Lessee to repair, remodel or make additions to the Facilities. Any alterations, renovations or additions to the Facilities shall be subject to the prior written approval of Lessor, which shall not be unreasonably withheld or delayed.

In addition to the above obligations, I am informed that the Lessee (the joint tenants, that is, [redacted] and [redacted] are not assuming the debt of the Lessor, [redacted]

Therefore, as the transaction between these parties is strictly a bona fide lease of the [redacted] and the equipment therein, I have advised [redacted] Vice President for Legal Services of [redacted] the sole corporate member of [redacted], that there is no requirement to file a Foreigner Notification and Report Form under Section 18a of the Clayton Act. OK

I very much appreciate you discussing this matter with me.

Very truly yours,
[redacted]
[redacted]
[redacted]

cc: [redacted] (Federal Express)

called [redacted] 4/2/99
This is OK since it is
a bona fide lease
and not a purchase
of assets.

(PS)