[redacted]

[redacted]

December 6, 1999

Via Facsimile Transmission

Thomas F. Hancock, Esq.,
Federal Trade Commission,
Premerger Notification Office,
Bureau of Competition,
Pennsylvania Avenue & 6th Street, N.W.,
Room H-313,
Washington D.C. 20580.

Re: Acquisition of 100% of the Voting Securities of [redacted] a Wholly-Owned Subsidiary of the [redacted] Board

Dear Mr. Hancock:

I write to confirm our analysis that the proposed acquisition (the "Acquisition") by a wholly-owned subsidiary of the [redacted] (The "Board") of 100% of the outstanding voting securities of [redacted] (the "Company") is not subject to the notification and waiting period requirements (the "Requirements") of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). In connection with the Acquisition, each of the current shareholders of the Company will receive Can. $34.00 per share in cash for each share of the Company's common stock held by that shareholder. The aggregate equity consideration for the Acquisition is approximately Can. $2.9 billion. The Acquisition will be effected pursuant to a plan of arrangement to be submitted for the approval of the Superior Court of Justice (Ontario) pursuant to Section 182 of the Business Corporations Act (Ontario).

The Board is a corporation organized under the laws of Ontario, Canada, and is headquartered in Ontario. No entity currently holds 50% or more of the outstanding voting securities of, or membership interests in, the Board or has the right to designate 50% or more of the members of the Company's Board of Directors. Accordingly, the Board is its own ultimate parent entity within the meaning of Rule 801.1(a)(3) of the rules promulgated by the Federal Trade Commission under the Act (the "Rules").

The Company is a corporation organized under the laws of Ontario, and headquartered in, Ontario. No entity currently holds 50% or more of the outstanding voting securities of the Company or has the right to designate 50% or more of the members of the Company's Board of Directors. Accordingly, the Company is its own ultimate parent entity within the meaning of Rule 801.1(a)(3).

The Company is engaged in the ownership, development and management of real property in Canada and the United States, consisting principally of office property and investment rental property, such as shopping malls. Although a majority of the Company's assets are located in Canada, the Company, through entities controlled by the Company, holds assets in the United States. Those holdings consist of interests in (a) ten regional shopping malls, one community shopping center and one small retail center that the Company holds indirectly through limited partnerships or wholly-owned subsidiaries and that are managed and leased by entities that are unaffiliated with the Company; (b) approximately 1,000 acres of currently undeveloped land located in the vicinity of Atlanta, Georgia; (c) surplus undeveloped land adjacent to various of the shopping malls; and (d) a leasehold interest in a property management office in Atlanta, Georgia with associated furnishings and equipment.

We believe that the Acquisition is exempt from the Requirements under Rule 802.51(b) because it involves the acquisition by a foreign person of the voting securities of a foreign issuer and will not confer control of (i) an issuer that holds non-exempt assets in the United States having an aggregate book value of $15 million or more or (ii) a U.S. issuer with annual net sales or total assets of $25 million or more (after exclusion of the exempt assets and income associated with those assets). Our conclusion is based on the following analysis:

1. The Acquisition involves an acquisition by a foreign person of all of the voting securities of a foreign issuer and, thus, is subject to Rule 802.51(b)

2. Under Rule 802.51(b), the Acquisition is exempt if the assets of the Company (or any entity controlled by the Company) "located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2))" have an "aggregate book value" of less than $15 million (Rule 802.51(b)(1)); and the Company does not control a "U.S. issuer with annual net sales or total assets of $25 million or more" (Rule 801.51(b)(2)).

3. The following assets are excluded in calculating the $15 million limit of Rule 802.51(b)(1): all assets located outside the United States and all assets located within the United States whose acquisition would be exempt from the Requirements under any other provision of the Rules or under any exemption provided by the Act.

4. The aggregate assets of the Company and each of the entities controlled by the Company located in the United States consist of less than $15 million (in aggregate book value) of assets whose direct acquisition would not be subject to an exemption provided by the Rules. Specifically, the assets of the Company or any entity controlled by the Company that are located in the United States consist of the following:

a. *Shopping Malls and Centers*: The Company owns ten regional shopping malls, one community shopping center and one small retail center, but does not manage any of them except the small retail center. Instead it has entered into management contracts with management companies with which the Company is not affiliated. (Property-level employees for most of the shopping malls are indirect employees of the Company through a United States subsidiary.) The acquisition of the shopping malls, shopping center and small retail center would be exempt under Rule 802.2(h), which covers acquisitions of retail rental space, and under Rule 802.5(a), which covers acquisitions of investment rental property assets. The Company generates receivables in the United States arising out of its rental of space in the shopping malls, shopping center and small retail center. The acquisition of such receivables and similar current asset items such as cash and prepaid expenses is exempt as the acquisition of "assets incidental to the ownership of" the shopping malls, shopping center and small retail center within the meaning of Rule 802.2(h) and Rule 802.5(b)(4). (The cash also would be excluded from the Rule 802.51(b)(1) calculation because it is an "investment asset" within the meaning of Rule 801.1(i)(2).)

b. *Undeveloped Land*: The Company also owns approximately 1,000 acres of currently undeveloped land in the vicinity of Atlanta, Georgia. The Company has entered into a joint venture with a major United States-based development company to develop a portion of that land. The joint venture is comprised of two limited liability companies, one to develop a super-regional shopping center on 100 acres of the land and the other to develop and sell 85 acres of peripheral land surrounding the shopping center site. The Company holds a 33% carried interest in the shopping center development limited liability company and holds a 50% interest in the peripheral lands limited liability company. The limited liability companies are parties to conditional agreements to acquire the 100 acres and 85 acres, respectively, from affiliates of the Company. The remaining 815 acres consist of raw, undeveloped land that the Company will retain for future sale for commercial and residential development. (The Company intends to begin selling this land shortly after the commencement of construction of the shopping center.) There are no facilities or equipment on any of this real estate; and this real estate will not have generated total revenues in excess of $5 million during the thirty-six months preceding the Acquisition. The acquisition of this real estate would be exempt under Rule 802.2(c), which covers acquisitions of unproductive real property.

c. *Surplus Land.* The Company holds certain parcels of undeveloped land that are adjacent to various of the Company's shopping centers. It is possible that some or all of that land will be converted to commercial use in connection with the operation of the abutting shopping centers. There are no facilities or equipment on any of this real estate; and this real estate will not have generated total revenues in excess of $5 million during the thirty-six months preceding the Acquisition. The acquisition of such land would be exempt under Rule 802.2(c) and is not subject to the exclusion of Rule 802.2(c)(2)(iii) because (although that land is adjacent to real property that is not unproductive real property) the adjacent land consists of shopping centers whose acquisition would be exempt under Rule 802.2(h) and Rule 802.5(a). (*Cf.* 61 F.R. 13666, 13675 (1996).)

d. *The Management Office Leasehold.* The Company maintains an office in Atlanta, Georgia for the purpose of overseeing the management efforts of the unaffiliated companies that manage the Company's shopping malls and centers in the United States. That office, which is located in office space leased by the Company, is staffed by five employees of the Company and contains standard office equipment and furnishings. The assets associated with the Company's Atlanta office are "assets incidental to the ownership of" the shopping malls and center within the meaning of Rule 802.2(h) and Rule 802.5(b)(4) and, thus, their acquisition would be exempt under Rules 802.2(h) and 802.5(a).

5. The elements of subsection (2) of Rule 802.51(b) are satisfied because the aggregate assets of all of the U.S. issuers controlled by the Company (*i.e.*, those U.S. corporations as to which the Company holds 50% or more of the voting securities or has the right to designate 50% or more of the directors and those non-incorporated U.S. entities as to which the Company has the right to 50% or more of the profits or, in the

Control of the U.S. issuer must be through holding of V/S the Company. See .51(a) event of dissolution of the entity, to 50% or more of the entity's assets) consist solely of the exempt assets described in items 4(a) through (d), above and, with the exception of management fees generated from two co-owned centers (which fees totaled $195,000 for fiscal year 1999), the only "annual net sales" of those issuers consist of income from the rental or operation of those exempt assets. (Those management fees were generated from the Atlanta office described in Item 4(d), above.) Excluding all of these assets and the income generated from them, the Company does not control a "U.S. issuer with annual net sales and or total assets of $25 million or more" within the meaning of Rule 802.51(b)(2). Thus, the Acquisition will not confer control over such an issuer. (Even if the $195,000 of management fees were included in the Rule 802.51(b)(2) calculation, the Company's annual net sales in the United States for the most recent fiscal year would not equal or exceed $25 million.)

We intend to telephone you to discuss the contents of this letter and the basis for our conclusion that the Requirements do not apply to the Acquisition. If you have any questions about the Acquisition, this letter or our conclusions, please telephone me at [redacted] or my partner, [redacted] at [redacted]

Thank you for your attention to this matter.

Sincerely,

[redacted]

cc: [redacted]

[illegible]

[illegible] cannot exclude assets from exclusion [illegible] 802.51(b)(2) [illegible]

[illegible]