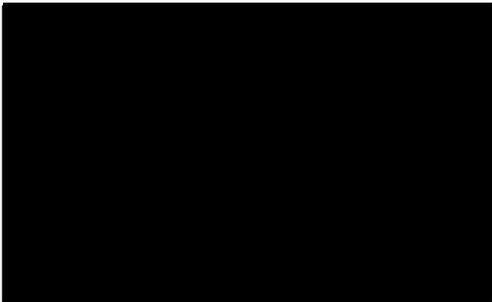
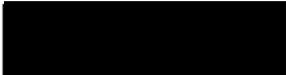


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May 22, 2008

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**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

Mr. B. Michael Verne  
Federal Trade Commission  
Premerger Notification Office  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Proposed Transaction to Acquire 33 Properties

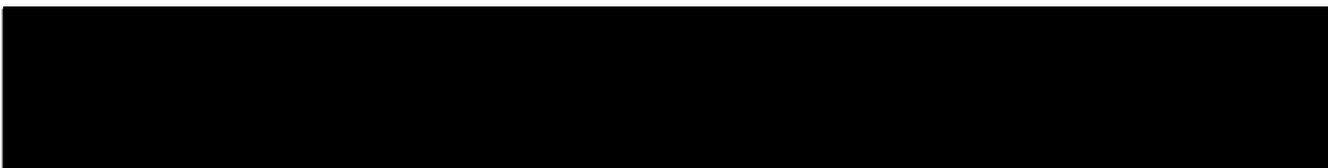
Dear Mr. Verne:

We represent a company and its affiliates (collectively, the "Operator") engaged in the business of operating a number of health care and residential facilities, including skilled nursing facilities, an assisted living facility and a senior housing facility. The Operator is a closely-held entity that is beneficially owned by two (2) individuals. The real property and certain of the equipment (collectively, the "Real Property Interests") used by the Operator at thirty-three (33) of these facilities (consisting of thirty-one (31) skilled nursing facilities, one (1) assisted living facility and one (1) senior housing facility (collectively, the "Facilities")) is currently being leased to the Operator by a publicly-traded real estate investment trust or its affiliates (collectively, the "REIT") under two (2) Master Lease Agreements.

It is proposed that the REIT will sell the Real Property Interests to the Operator (and/or affiliates of the Operator to be formed) for a purchase price of \$167,000,000.00. Based upon our preliminary analysis, we believe that the REIT and the Operator meet the "size of person" tests. However, we believe that this transaction should be exempt from the premerger notification and reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The purpose of this letter is to set forth the facts regarding the current ownership structure and the proposed sale transaction in order to obtain your advice as to whether the transaction is exempt from the pre-merger notification and report under the HSR Act.

**CURRENT OWNERSHIP OF THE REAL PROPERTY INTERESTS**

The Operator acquired use of the Facilities by means of three (3) separate transactions. Specifically, in 2003 the Operator acquired use of twenty (20) of the Facilities (consisting of



eighteen (18) skilled nursing facilities, one (1) assisted living facility and one (1) senior housing facility); in 2004 the Operator acquired use of six (6) of the Facilities (all of which are skilled nursing facilities); and in 2005 the Operator acquired use of seven (7) of the Facilities (all of which are skilled nursing facilities).

In connection with the 2003 transaction, it was the Operator (and not the REIT) that entered into the asset purchase agreement with the seller of such Facilities. Of the twenty (20) Facilities involved, the seller owned the real property at sixteen (16) of the Facilities, and leased (from unrelated, arms-length owners) the real property at four (4) of the Facilities. At the closing, the Operator assigned to the REIT the Operator's right to take title to such real property/leasehold interests and the equipment located at the Facilities. The REIT paid for and acquired the real property/leasehold interests and, in turn, leased such property to the Operator. Since 2003, affiliates of the Operator have purchased the real property at three (3) of the four (4) Facilities which were owned by the unrelated, arms-length owners. Such affiliates currently lease such real property to the REIT which, in turn, sub-leases such real property to the Operator.

With respect to the six (6) Facilities acquired by the Operator in the 2004 transaction, the REIT acquired title to the real property and equipment at such six (6) Facilities in 1998, 1999 and 2002 through three (3) separate transactions with an operator which is totally unrelated to the Operator (the "Previous Operator"). The REIT leased the real property and equipment to the Previous Operator. In 2004, the REIT terminated its lease with the Previous Operator, the Operator entered into an operations transfer agreement with the Previous Operator to transfer the operations at such six Facilities to the Operator, and at the closing the REIT entered into a new lease agreement with the Operator for the real property and equipment at such six (6) Facilities.

In connection with the 2005 transaction, the Operator (and not the REIT) entered into the asset purchase agreement with the seller of such Facilities. The seller owned all of the real property and equipment at such Facilities. At the closing, the Operator assigned to the REIT the Operator's right to take title to such real property and the equipment located at the Facilities. The REIT paid for and acquired the real property and equipment and, in turn, leased such property to the Operator.

#### OPERATION OF THE FACILITIES

The Operator has continuously operated all of the Facilities since the Operator acquired an interest in such Facilities and obtained a license to operate such Facilities. The lease agreements between the REIT and the Operator are "triple net" leases such that the Operator possesses all of the financial risks with respect to the operation of the Facilities. In addition to paying all expenses in connection with the operation of the Facilities, the Operator pays rent to the REIT under the leases based on the REIT's investment and an agreed upon rate of return. In addition, the leases contain options to purchase at certain specified purchase prices. The Operator initially applied for and obtained, and currently is the holder of, any and all state regulatory licenses for the operation of the Facilities. All employees working at the Facilities are employees of the Operator. The REIT's only involvement with respect to the Facilities is its ownership/leasehold interest of the Real Property Interests and the leasing thereof to the Operator.

STRUCTURE OF PROPOSED SALE TRANSACTION

It is anticipated that the REIT and the Operator will in the near future enter into a purchase agreement pursuant to which the Operator will purchase the Real Property Interests from the REIT. As previously noted, the aggregate purchase price for the Real Property Interests is \$167,000,000.00. It is anticipated that, at the closing of the purchase/sale of the Real Property Interests, the ownership/leasehold interests for the real property portion of the Real Property Interests will be transferred to entities to be formed (which entities will have the same owners as the Operator and which will, in turn, lease such real property to the Operator), and title to the equipment portion of the Real Property Interests will be transferred to the Operator. The Operator will finance such purchase price payable to the REIT through traditional mortgage financing with one (1) or more lenders.

ANALYSIS OF TRANSACTION

We believe that the proposed transaction should be exempt from the premerger notification and reporting requirements of the HSR Act for reasons similar to those set forth in previous Informal Staff Opinions applying §802.2(b) of the HSR Rules, 16 C.F.R. §802.2(b), particularly Informal Staff Opinion No. 0511016. Although, as in that situation and others, the proposed transaction here does not fall squarely within this exemption as drafted, we believe that the proposed transaction similarly is within the spirit of the exemption. Further, we do not believe that the proposed transaction, any more than the real estate transfer involved in Informal Staff Opinion No. 0511016, presents any competitive issues.

Please let us know whether you concur with this analysis. Should you require any additional information or clarification, we, along with counsel for the REIT, would be happy to schedule a call with you in the near future to discuss the proposed transaction. Thank you in advance for your attention to this matter.

Agree  
BM  
5/22/08

