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FEDERAL TRADE
COMMISSION
PREEMPTION
OFFICE

Mr. Patrick Sharp
Compliance Specialist
Federal Trade Commission
Room 303
Washington, D.C. 20580

Re: HSR Requirements for Specific Realty Acquisitions

Dear Mr. Sharp:

The enclosed attachments were written for the purpose of summarizing your responses to my telephone inquiries of Friday, March 31, 1989, regarding the applicability of the Hart-Scott-Rodino Act to specific types of assets transfers contemplated by [REDACTED]

Please advise me of any comments you may have regarding this summary. Thank you for your kind attention to my questions.

Very truly yours,

[REDACTED]

[REDACTED]

APR 24 2 44 PM '89
FEDERAL TRADE
COMMISSION
PREMERGER
NOTIFICATION
OFFICE

Re: Summary of Inquiry with Respect to HSR Requirements
Specific Asset Acquisitions

(In Summary of our conversation of March 31, 1989)
Provided that the Acts commerce, size of the person, and size of the transaction tests are satisfied, a Hart-Scott-Rodino (HSR) filing is required with respect to the transfer of certain classes of assets. The size of the transaction test is satisfied if:

- 1) The purchase price (if determined) or fair market value of the assets (whichever is greater) exceeds \$15 million dollars; or
- 2) The transfer constitutes more than 15% of the assets of the acquired person, except that rule 802.20 of the Act exempts asset acquisitions of more than 15% if the value of the assets is \$15 million dollars or less.

(The acquired person with respect to asset acquisitions is the ultimate parent entity of the person filing notification, for our purposes, [REDACTED])

Assuming the threshold tests are satisfied, the general rule with respect to the transfer of the classes of assets listed below are:

- A. Foreclosure Property - A creditors' acquisition of collateral or receivables, upon foreclosure or default, or in connection with the establishment of a lease financing, or a debt work-out, if made in a bonafide credit transaction entered into in the ordinary course of the creditors business is exempt from the reporting requirements (Rule 802.63 of the Act), This section exempts only the acquisition by the creditor. The subsequent disposition of the foreclosed collateral to a third party may be subject to the Reporting requirements.
- B. Agri-Businesses (i.e. [REDACTED]) - The rule with respect to the transfer of any business is, a filing is required if the purchase price or fair market value of the business exceeds \$15 million.
- C. Agricultural Lands - The transfer of agricultural, or any land which in the past served as a business from which revenues were derived is a potentially reportable

transaction. The purchase or fair market price must meet the threshold size of the transaction test.

- D. Mineral Rights - the transfer of land upon which lies minerals or timber is reportable if the land has ever been harvested or excavated. The premise upon which the FTC determines reportability is that with respect to such excavated transfers, the mineral properties have a value independent of the land itself based on the estimated income potential of the minerals.

The transfer of the right to the income from such properties is exempt provided that the underlying beneficial ownership remains the same.

The transfer of Vacant Lots, which have no independent revenue producing characteristics, are exempt from the reporting requirements.

- E. Accounts Receivable - the transfer of accounts receivable are reportable transactions if the receivables represent all of the accounts of a business or a division within a business being transferred. If the receivables are de minimis or incidental with respect to the transfer as a whole, the value of the receivables as assets does not require a filing. The FTC has labeled the transfer of receivables a gray area requiring consultation with the FTC before determining the applicability of the Act.

- F. Mixed-Use Office Buildings - The transfer of buildings which function strictly as office space is exempt. The fair market value of the space utilized by hotels, restaurants, retail, and other establishments, which derive revenues from business operations within office building structures must be determined to ascertain whether the transfer of such (mixed-use) space is exempt from the reporting requirements. If the value of the mixed-use space exceeds \$15 million dollars, the transfer of the office building is reportable. The tests that are used to determine the applicability of the Act to mixed-use space operate as follows.

- 1) Square Footage Evaluation - The person filing determines the total square footage of the office building including the mixed-use property, and the fair market value or purchase price of each square foot. If the dollar value of the mixed-use square footage exceeds \$15 million dollars, a filing is necessary.
- 2) Income Stream - This test requires an examination of revenues rather than the fair market value or purchase price of the assets being transferred. The revenues derived by the mixed-use business are determined for

the most recent year. The most recently prepared balance sheet should be used to determine the revenues. If more than \$15 million dollars, in the most recent year, were derived by the mixed-use businesses operating within the building being transferred, a filing is required.

The flexibility of the size of the transaction test with regard to the transfer of mixed-use properties may conceivably result in manipulation of the true values of the properties to avoid filing, which is a violation of Section 801.90 of the Act. Due to this fact, the FTC recommends that the parties to a mixed-use office building transfer verify their filing status by calling or writing the FTC for an informal opinion.

- G. Apartment Buildings and Condominium Complexes - The transfer of residential property is exempt, except that, the transfer of condominiums, in rare instances, may require a filing.