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December 12, 1989

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania Avenue
Washington, D. C. 20580

VIA FACSIMILE

Dear Mr. Sharpe:

Pursuant to our telephone conversation today, I am writing to describe a transaction which we previously discussed for the purpose of confirming that no pre-merger filing is required under the Hart-Scott-Rodino Act.

On September 15, 1989, I sent you a letter, a copy of which is enclosed, seeking a response as to whether the transactions described in that letter would be reportable under the provisions of the Hart-Scott-Rodino Act. In a telephone conversation between us on that day, you told me that you had reviewed my letter with your colleagues and that the only aspect of the transactions described which could be reportable relates to the acquisitions of the adjoining properties for expansion and development. You told me that each of those acquisitions will stand on its own and if any single acquisition exceeds \$15 million and the other Hart-Scott-Rodino tests are satisfied, then that portion of the transaction will be reportable. You completed your response by advising me that no other segment of the transaction is reportable under current Department policy.

most
aggregate
properties
owned by
one
person

The transaction is expected to close this week and, as finally structured, has undergone enough changes that it would be better to rephrase the text of my September 15 letter so that it reflects the transaction as presently structured.

Rephrased September 15, 1989 Letter

A shopping center in the State of Missouri (the "Existing Center") is owned by a [REDACTED]. Adjoining the Existing Center are numerous residential and commercial properties (collectively the "Expansion Parcel") some of which are currently owned by the [REDACTED] and others of which are anticipated to be acquired and razed in order to enable the construction of an expansion of the Existing Center. The Expansion Parcel includes residual property which the acquiring entity may joint venture with (or convey to) a third party for future office, related retail and/or hotel development.

I cannot
call [REDACTED]

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The Existing Center is currently encumbered by a first mortgage (the "First Mortgage") which is held by an institutional lender (the "First Mortgagee") as well as an institutional second mortgage (the "Second Mortgage"). When the properties comprising the Expansion Parcel have been acquired, the construction of the shopping center expansion will be financed with a third party construction loan (the "Construction Loan"). The First Mortgagee is among the potential candidates to make the Construction Loan. The initial disbursement of the Construction Loan will occur at such time as the properties comprising the Expansion Parcel have all been acquired (the "Construction Loan Opening Date") and will be used, among other things, to repay in full and discharge the Second Mortgage.

On a date which is anticipated to be prior to December 18, 1989 (the "Initial Closing Date"), a new Delaware limited partnership will be formed (the "New Partnership") of which the [REDACTED] will be the sole general partner. A group trust whose beneficiaries will consist of one or more pension funds, government retirement systems or pooled funds or a grantor trust established for the benefit of such funds (the "Institutional Investor") will be the sole limited partner.

The [REDACTED] will contribute to the capital of the New Partnership all property, real and personal, owned by it (including, without limitation, its entire interest in the Existing Center and the Expansion Parcel). The Institutional Investor will contribute to the capital of the New Partnership the approximate sum of \$1,250,000.

The initial interests of the partners in the New Partnership will be held as follows:

[REDACTED]	80%
[REDACTED]	20%

In addition to the foregoing, the Institutional Investor will make a fixed interest only loan to the New Partnership in the principal sum of \$14,000,000 (the "Senior Institutional Investor Loan") which will be secured by a mortgage on the Existing Center and on those portions of the Expansion Parcel which are owned by the [REDACTED]. As additional portions of the Expansion Parcel are acquired, the lien of the [REDACTED] Loan will be extended to cover such properties.

The [REDACTED] will also commit on the Initial Closing Date to make a second \$1,250,000 loan to the New Partnership. The second loan will be disbursed on the Construction Loan Opening Date and will be secured by a lien covering the Existing Center as well as the Expansion Parcel.

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In order for the construction of the shopping center expansion to occur without creating a default under the terms of the First Mortgage, the lien of that mortgage will be extended on the Construction Loan Opening Date to cover the Expansion Parcel.

As a consequence of the foregoing, at the moment in time when the Construction Loan is initially disbursed, both the Existing Center and the Expansion Parcel will be encumbered by four liens (the First Mortgage, [REDACTED], the Junior Institutional Investor Loan and the Construction Loan).

The permanent financing for the shopping center expansion (the "Permanent Loan") will be provided by the Institutional Investor or its affiliate pursuant to a commitment to be entered into on the Initial Closing Date. The Permanent Loan will be in a principal sum not to exceed \$95,000,000, will encumber all property owned by New Partnership, will be for a term of 30 years and will be payable interest only. As a consequence, on the funding of the Permanent Loan (the "Final Closing Date"), all of the property in question will be encumbered by the First Mortgage (as a first lien), by the [REDACTED] (as a second lien), by the Junior Institutional Investor Loan (as a third lien) and by the Permanent Loan (as a fourth lien).

The partnership interests in the New Partnership will be readjusted on the Final Closing Date and are anticipated to be:

[REDACTED]
35-50%
50-65%

For the purposes of this analysis, we can assume that the parties to this transaction meet the "size of the parties" test under the Hart-Scott-Rodino Act and we can further assume that the acquisition price of each of the properties comprising the Expansion Parcel will be \$15,000,000 or less.

I would appreciate your telephoning me after your receipt of this letter to let me know how the Department would view the foregoing from the perspective of reportability.

Thank you very much.

Very truly yours,
[REDACTED]