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[REDACTED]

November 19, 1990

BY FEDERAL EXPRESS

Ms. Nancy M. Ovuka
Compliance Specialist
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
Washington, DC 20580

Re: [REDACTED]

Dear Ms. Ovuka:

I am writing to confirm your oral advice on November 16, 1990 that premerger notification is not required in connection with the financing transactions related to the acquisition by [REDACTED] of all of the outstanding capital stock of [REDACTED] from [REDACTED] in respect of which I understand notification has been filed with your office [REDACTED]

As [REDACTED] explained to you in his letter dated November 13, 1990, a portion of the financing for the acquisition will be furnished by [REDACTED]. [REDACTED] will provide the financing by entering into a transaction with [REDACTED] involving [REDACTED] of the [REDACTED] facilities which will be owned directly or indirectly by [REDACTED] at the conclusion of the transactions. Of these [REDACTED] facilities, [REDACTED] will purchase [REDACTED] of the facilities in exchange for [REDACTED] payable in cash plus [REDACTED] of [REDACTED] common shares of beneficial interest. Such facilities will be immediately leased back to [REDACTED]. [REDACTED] will mortgage finance the remaining [REDACTED] facilities for [REDACTED] for [REDACTED]. The leases and mortgages will provide for certain minimum rent or interest and for additional rent or interest based upon increases in patient revenues of the financed facilities. Upon the conclusion of these transactions, [REDACTED] will own and/or operate [REDACTED] facilities including the [REDACTED] which are the subject of the financing transactions. [REDACTED] and other [REDACTED]

subsidiaries and affiliates will grant [redacted] mortgage liens on the [redacted] which are not included in the financing transactions, as additional security for the obligations of [redacted] under the leases and mortgage loans.

As an integral and essential part of the overall transaction, [redacted] will immediately offer to the public [redacted] of the shares so acquired in a "firm commitment" underwritten public offering. The remaining [redacted] shares will be contributed by [redacted] to [redacted]. The successful consummation of the entire series of transactions is dependent upon such public offering being consummated immediately following the financing transactions. Upon conclusion of the public offering, [redacted] will own directly, and [redacted] will own indirectly, [redacted] common shares of beneficial interest, representing [redacted] of the then outstanding common shares of beneficial interest. For the purposes for the above described financing transactions, the common shares of beneficial interest have been valued at [redacted] per share. However, recent market prices have been more in the range of [redacted] per share. Accordingly, the shares which will be beneficially owned by [redacted] at the conclusion of these transactions will have a value for the purposes of the financing transactions of [redacted] but the market value of the shares may be less.

*Continuum theory
Not reported
If [redacted] shares are not sold they should file for this*

You have advised me that:

1. No notification is required in connection with the acquisition of common shares of beneficial interest by [redacted] because the public offering is an integral portion of the overall transaction and that, consequently, the shares which will be held by [redacted] as a result of the transaction are only the [redacted] to be retained by [redacted] following the public offering, which acquisition does not satisfy the statutory size of transaction threshold.
2. The purchase by [redacted] of the [redacted] facilities from [redacted] and the lease of these facilities by [redacted] to [redacted] Properties do not require notification provided that the purchase lease transaction satisfies the following six criteria:
 - a. The transaction is "purely financial" in character.
 - b. The transaction is primarily entered into for purposes of providing a stream of payments to the lessor and providing the lessee with use and control of the properties.
 - c. Even though title to the properties passes to the lessor, day-to-day management and control of the properties is retained by the lessee.

Continuum theory applies

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lease
Financial*

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- d. The properties will be subject to a long-term lease or a lease which extends for substantially the entire useful life of the properties.
- e. The lessor is not a competitor of the lessee.
- f. The lessee of the properties is not selling all or substantially all of its assets or an entire business division.

As we discussed, [REDACTED] if it wishes to maintain its qualification as a real estate investment trust, may not operate [REDACTED] except in limited circumstances following the default under a mortgage or lease, and then only for limited periods of time. You have advised that, as a real estate investment trust, which does not, except on a temporary basis, operate nursing facilities, [REDACTED] should not be considered to be a competitor of [REDACTED]

The properties will be subject to long-term leases (in this case, an initial term of ten years and renewal options, exercisable at the option of the lessee, for renewal terms aggregating an additional 30 years). The properties will also be subject to rights of first refusal and purchase options in [REDACTED]. Upon the termination of the leases for any reason, unless [REDACTED] exercise a purchase option, the residual value in the facilities at the termination of the leases will belong to [REDACTED]

On the basis of these facts as well as those set forth above, you have advised that these six criteria appear to be met and that, accordingly, the purchase lease transaction does not require notification.

Thank you for your assistance. If I have not accurately reflected our discussion, please do not hesitate to call me at [REDACTED]

Yours very truly,
[REDACTED]

[REDACTED]
cc: [REDACTED]