801.40

[redacted]

[redacted]

WRITER'S DIRECT DIAL NUMBER: [redacted]

August 9, 1990

**FEDERAL EXPRESS**

[illegible]

Washington, D.C. 20580

Att.: Patrick Sharpe, Esq.

Dear Pat:

[illegible]

transaction.

[illegible]

these entities that accomplishes the shift in control of the [illegible]

would be no change in the potential competitive impact of the transaction, but in your view, the reporting requirements would be different. As I also noted, such an interpretation has the potential to permit without compliance all similar joint ventures so long as (i) no participant will own 50% of the holding company and (ii) there is some sort of merger. This could not be the intention of §801.40.

I hope the Department will reconsider its position. Please be so kind as to call on Monday to discuss this matter.

Yours truly,

[redacted]

The formation of the companies [illegible] subsequent merger. Since it is a merger, 801.40 cannot apply. If there were no merger, then it will be subject to 801.40! (PS)

[redacted]

August 13, 1990

Via Telecopy and Federal Express

[redacted]

Dear [redacted]

The purpose of this letter is to confirm the terms of our [illegible]

the attached Exhibit I h [illegible]

Attached hereto and incorporated into this letter by [illegible]

after the date hereof, [redacted] will submit a draft of the definitive purchase agreement and proposed form of lease for your review and shall in good faith negotiate additional [illegible] specified on Exhibit I. The definitive agreements will contain representations and warranties, affirmative covenants and conditions precedent as are customary in transactions of this type and such other provisions as shall be mutually agreeable.

Each party agrees to use its best efforts and to take such corporate and other action as shall be necessary and appropriate to cause the acquisition of the Facilities by [redacted] and the subsequent leaseback by you or your affiliates to be duly consummated as soon as practical with one group of facilities totaling approximately $76 million expected to close by September 30, 1990 ("Group 1") and the remaining group [illegible]

other in connection with the transactions contemplated hereby.

EXHIBIT A

[redacted]
August 13, 1990

The form of a satisfactory Standby Irrevocable Letter of Credit is attached as Exhibit III.

governmental authorities and others required for [redacted]

conforming use.

3. Receipt of evidence of proper licensing and compliance

to all permits, licenses, conditional use permits, certificates of need, and proof that each Facility is in

and all insurance requirements, and has all necessary current provider agreements.

4. Disclosures in writing, for [redacted] review, of all pending or threatened litigation or governmental proceedings seeking to enjoin, challenge or collect material damages in connection with [redacted] the Facilities or the acquisition.

5. Receipt of title commitments satisfactory to [redacted] in current ALTA extended coverage owner's form for each of

streets adjoining the property; the ability to conduct the requirements of applicable zoning and other land use [illegible]

[illegible] reasonable cost); insuring over and against parties in possession of the Facilities; and such other title issues as required by [redacted]. Each policy shall be in an amount at least equal to the acquisition price for the Facility. [redacted] shall also have received chain of title reports [illegible]

6. Receipt of a final "as-built" ALTA survey for each of the properties. [illegible] easements), building lines, roads and such other items as may be required by [redacted] or the title company. The surveys shall indicate that there are no encroachments onto any adjacent property or onto any building line or easement affecting any of the properties.

7. Verification that no material adverse change in the [illegible] or [redacted] has occurred.

8. Satisfactory completion of environmental due diligence. [illegible] satisfactory to [redacted] from a qualified geotechnical or engineering firm acceptable to [redacted] concerning the presence of hazardous substances on, in, or under the properties.

9. Receipt of legal opinions from counsel to [redacted] and its [illegible] authorization; enforceability; violation of law or codes; cause of an event of default; zoning; receipt of all approvals, consents, permits, licenses, and certificates of need; litigation; eminent domain; and environmental matters.

10. For the Group 1 facilities there has been no material adverse change in operating performance of the Existing Facilities.

11. [redacted] closing of the Group 2 facilities shall be contingent upon 1) the closing taking place no earlier

third parties, with a minimum aggregate purchase price of $45 million, 3) [redacted] achieving net revenue less operating expenses ("Operating Income") of no less than

$71 million for the three months ended February 28, 1991 (whichever month end immediately precedes the closing) 4)

performance of the Facilities at or above fiscal year 1991 budgeted levels as presented to the IPO bank group for the

12. Approval of the transactions contemplated hereby by [redacted] bank group and approval of new covenants by [redacted] bank group which will allow [redacted] to operate at the forecasted levels without default.

13. [redacted] obligation to close the Facilities included in the transaction but not yet inspected by [redacted] (see Exhibit II) is subject to satisfactory inspection by management of

[redacted]

The obligation of [redacted] to consummate the Group 1 transaction will be subject to:

1. Receipt of evidence of proper licensing and compliance with other legal requirements, including but not limited to, all permits, licenses and certificates of need required to permit the transfer.

2. Approval of the Group 1 transactions contemplated hereby

The obligation of [redacted] to consummate the Group 2

1. Receipt of evidence of proper licensing and compliance with other legal requirements, including but not limited to, all permits, licenses and certificates of need required to permit the transfer.

[redacted]
August 13, 1990
Page Five

2. Approval of the Group 2 transactions contemplated hereby by [redacted] bank group.

We are pleased to submit this letter to you. If you are in agreement with the foregoing, please indicate by signing and [illegible]

[redacted]. by August 15, 1990. Also, [illegible]

Very truly yours,

[redacted]

Agreed to and confirmed this _____ day of August, 1990.

[redacted]

By: ______________________________

Title: ______________________________

[redacted]

Exhibit I

[redacted]

Sale/Leaseback

Lease Term Sheet

[redacted] will acquire and concurrently lease back to [redacted] the Facilities shown on the attached Schedule I for $112,300,000. The Group 1

facilities, subject to certain conditions specified elsewhere herein.

Base Rent:

The Base Rent will be the Base Lease Rate times the acquisition price paid in equal monthly installments, in advance. The Base Lease Rate, currently estimated at 12.7%, will be 395 basis points above the 10 Year Treasury Rate at the close of business, 5 business days prior to the date of closing.

The Base Rent will be adjusted at the end of year 10 by 50% of any increase (but not decrease) in the 5 year Treasury Note rate since the lease commencement date.

acquisition price of the facility. The rent increases set forth in this paragraph will only apply if any of the Group 2 facilities does not

million for the three months ended January 31, 1991.

Additional Rent:

Additional Rent will equal the greater of CPI Rent or Percentage Rent

continuing in each year thereafter, 80% of the highest annual Additional Rent for the prior years of the lease shall become Minimum Additional Rent.



[redacted]

**Exhibit I**

[redacted]

**Sale/Leaseback**
**Lease Term Sheet**

Additional Rent (Continued):

Percentage Rent will equal 5% of annual revenues less contractual allowances and bad debts ("Gross Revenues") in excess of Base Revenues up to the Transition Point. Base Revenues, for percentage rent purposes, will equal first lease year Gross Revenues for the Existing

When aggregate rent for all of the Facilities (annual Base Rent plus Additional Rent, regardless of whether Percentage or CPI Rent is paid) equals 135% of the first year Base Rent for all of the Facilities (the "Transition Point"), Percentage Rent will be 5% of annual Gross Revenues in excess of Base Revenues up to the Transition Point plus 3% of annual Gross Revenues after the Transition Point. Gross Revenues and Base

[redacted]

Term:

The Facilities will be leased on a completely net basis for a primary

Supplemental Rent:

For each Facility lease, one-half of one percent of the purchase price will be paid as supplemental rent at the end of year 10

For any facility, the lessee shall have a right of first refusal to purchase such facility during the entire lease term and during any renewal as long as there is not an existing default under the lease. If

shall not be in excess of the greater of i) fair market value or ii) [redacted] original cost, including the cost of any capital additions funded by [redacted] Fair market value shall be defined as the fee simple real

encumbered by the lease, as determined by appraisal.

## Exhibit I

[redacted]

**Sale/Leaseback**
**Lease Term Sheet**

**Letter of Credit (New Facilities):**

An annually renewed letter of credit ("L/C") from a commercial bank satisfactory to [redacted], equal to 12 months' Base Rent, will be required [redacted]

coverage, after a 6% management fee, of 2.0 to 1 for 12 consecutive months and when [redacted] receives credit ratings on its senior unsecured debt of at least "BB" from Moodys rating agency and at least "Ba" from Standard and Poors rating agency. The L/C requirement shall be reinstated if either of such ratings is downgraded below "BB" or "Ba", respectively, or if any one of the New Facilities fails to meet the [redacted]

losses on default.

**Letter of Credit/Security Deposit (Existing Facilities):**

A security deposit in an amount equal to three months' Base Rent or a [redacted]

credit to cover any losses on default. [redacted] will use its best efforts to obtain a letter of credit rather than providing the security deposit.

[redacted]

commitment fee, in the amount of $100,000. Upon acceptance of the commitment, [redacted] will pay to [redacted] an additional $400,000 of the [redacted]

commitment fee previously submitted to it and the commitment shall be terminated. [redacted] will pay to [redacted] the balance of the commitment fee [redacted]

to the estimated Group 2 closing, .75% of the Group 2 acquisition price.



[redacted]

## Exhibit I

[redacted]

**Sale/Leaseback**
**Lease Term Sheet**

**Expenses:**

Subsequent to the execution of the commitment [redacted] shall pay its own

execution of the commitment and paid for by [redacted] for [redacted] and [redacted] consultants. [redacted] will pay all other costs and expenses associated with the

expenses.

[redacted] will deliver a copy of the completed appraisals to [redacted] whether or not the transaction closes.

**Sublease:**

A lessee must obtain the prior written consent of [redacted] for any sublease or assignment of a Facility. Such consent is at the sole and absolute

or (ii) 50% of the gross revenues received from the assignment. [redacted]

**Personal Property:**

The personal property shall belong to the lessees. At the end of the lease term or any renewal option, if the lessee does not renew the lease or purchase the property, then [redacted] shall have the option to purchase

**Brokers Fees:**

person to any commission or finder's fee in connection with the transactions contemplated hereby.



[redacted]

## Exhibit I

[redacted]

**Sale/Leaseback**
**Lease Term Sheet**

**Cross-Default and Cross-Collateralization:**

A default under any of the New Facility leases shall be considered a default under all of the leases between [redacted] and [redacted] or affiliates thereof. A default under any Existing Facility lease shall be considered a default under all other Existing Facility leases between [redacted] and [redacted] or affiliates thereof, but not a default under the New Facility leases. The letter of credit for the New Facilities shall be

cross-collateralized among all Existing Facility leases. Also, a

**Additional Security:**

For the New Facilities only, [redacted] shall take a first, secured interest

**Insurance:**

must be notified of any material change. The following policies will be required:

General Liability insurance will be required with a limit of not less than $1,000,000 per occurrence, $9,000,000 excess, with a deductible of

of not less than $1,000,000 per occurrence and excess of at least $9,000,000.

limit of $2,000,000 per occurrence and excess of $75,000,000 after the next $500,000.

Excess limits of a minimum of $75,000,000, will be required for General, [redacted] and Auto coverage.

All Risk, 100% replacement cost, property coverage insurance will be required with a 90% coinsurance clause with a permissible deductible of $10,000. [redacted] to be named loss payee as owner. Loss of Rent coverage

**Exhibit I**

[redacted]

**Sale/Leaseback**
**Lease Term Sheet**

**Insurance (Continued):**

for 12 months will be required payable to [redacted].

[redacted] will maintain or cause to be maintained with financially sound

and business as stated above.

**[redacted]s Right of First Refusal:**

[redacted] will have the right of first refusal to provide on equal or better terms the next $50 million of sale and leaseback funding to [redacted] after the [redacted] transactions contemplated herein and approximately $45 million third-party sale/leaseback transactions contemplated herein. This right of first refusal shall expire on the third anniversary of the Group 1 lease commencement date.

**Capital Additions:**

If an event of default shall have occurred, [redacted] shall have the right

of [redacted] If the cost of the Capital Additions to a facility exceeds in

to provide funds to pay for any Capital Addition. If [redacted] declines to provide such funding on terms reasonably acceptable to [redacted]r, then [redacted] may provide or arrange such funds. If the funds are provided or arranged by [redacted]and the amount of the Capital Addition exceeds $100,000, then the calculation of Additional Rent for the facility shall be modified as follows:

[illegible] Additional Rent charged for the facility during the

first 12 months after completion of the Capital Addition. In lieu of

12 months after completion of the Capital Addition, payment of Additional Rent shall resume, with Gross Revenues attributable to the

of such exclusion, the Gross Revenues attributable to such Capital Addition shall be deemed to be an amount which bears the same proportion

Exhibit I

[redacted]

**Sale/Leaseback**
**Lease Term Sheet**

__Capital Additions (Continued):__

the entire facility, including all capital additions, immediately after

3.5% in any year after completion of a Capital Addition at that facility which exceeds $100,000 and is financed by [redacted]

Upon expiration of the lease [redacted] will compensate [redacted] for the net book value of the Capital Additions financed by [redacted] by, at [redacted]

__Use of Proceeds:__

[redacted] shall use the proceeds from the sale of the Facilities for one or more of the following purposes: (i) payment of non-affiliated

of the time of closing, (iii) payment of existing indebtedness of the Subsidiary to [redacted], Inc. and [redacted], (iv) payment of other intercompany indebtedness owed by each Subsidiary at the time of closing. [redacted] also shall use the proceeds from the sale of the Facilities in a manner consistent with covenants in documentation for its senior bank debt and public debt issues dealing with "Sale of Assets." [redacted] shall provide a letter from the agent of its senior bank debt acknowledging receipt of any proceeds in payment of existing senior bank debt. [redacted] shall further provide documentation of all of the wire transfers evidencing said payment of senior bank debt.

__Purchase Option (New Facilities):__

The Lessees shall have an option to purchase the New Facilities at the end of the primary lease term and at the end of any renewal term at the

the capital additions provisions or ii) [redacted] original cost, including

## Exhibit I

[redacted]

## Lease Term Sheet

The following terms will be effective only as long as [redacted] or any of [redacted]

**Leasehold Mortgage:**

[redacted] will consent to [redacted] or any [redacted] subsidiary Lessee granting leasehold mortgages on the Facilities to the LBO bank group. Leasehold [redacted]

[redacted] LBO bank group shall have the right to cure any monetary default or any non-monetary default curable by the bank group. [redacted] subsidiary Lessee.

**Operations on Default:**

[redacted] shall not be unreasonably withheld.

**Assignment of Right of First Refusal and Purchase Option:**

[redacted] will permit [redacted] or any [redacted] subsidiary Lessee to assign its [redacted] right of first refusal or purchase option.

**Right to Substitute Facilities:**

[redacted] Internal Revenue code; and (ii) it will satisfy the requirements to be provided by [redacted] related to [redacted] taxation as a real estate investment trust.

**Exhibit I**

[redacted]

**Lease Term Sheet**

**Right to Substitute Facilities (Continued):**

[illegible] and other factors for such substitute facility shall provide [illegible]

to or greater than [redacted] return and yield from the substituted facility at the time of such substitution (or in the case of damage or destruction, the yield immediately prior to such damage or destruction) and as reasonably projected over the remaining term of the lease, taking into account any cash paid or received and any other relevant factors. The substitute facility must also be otherwise reasonably acceptable to [redacted] [redacted] hereby agrees to assume all costs incurred by [redacted] in connection with the substitution of facilities.

**Financial Covenants:**

The leases shall not contain any financial covenants, other than the financial covenants described in this commitment. The leases shall not [illegible]

Exhibit II

[redacted]

| | | |
|---|---|---|
| [redacted] | $10,000,000 * | 2 |
| | $5,500,000 * | 2 |
| [redacted] | [illegible] | 1 |
| | $7,600,000 | 1 |
| | $6,900,000 | 1 |
| | $6,500,000 | 1 |
| | $6,300,000 * | 1 |
| | $6,800,000 | 2 |
| | $8,800,000 * | 2 |
| | $18,500,000 | 1 |
| | [illegible] | [illegible] |
| [redacted] | $6,100,000 | 1 |
| | $6,100,000 | 1 |
| | $5,000,000 | 2 |
| | [illegible] | [illegible] |

This Letter of Credit shall expire at 2:00 p.m. at the offices of

Any draft drawn hereunder must bear the legend "Drawn under __[bank]__ Letter of Credit Number __[L/C #]__ dated __[L/C Date]__." Except so far as otherwise expressly stated, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Brochure No. 400." We hereby agree with you and all persons negotiating such drafts that all drafts drawn and negotiated in compliance with the terms of this Letter of Credit will be duly honored upon

certified or registered mail, or in person, to __[bank]__, located at __[bank address]__ if negotiated on or before the expiration date shown above.

Very truly yours,

By: ______________________________

Title: ___________________________

[redacted]

EXHIBIT III

IRREVOCABLE STANDBY LETTER OF CREDIT

[redacted]

Date: ____________________ Letter of Credit #: ________

Expiration Date: ___________

GENTLEMEN:

We hereby establish our Irrevocable Letter of Credit in your favor for account of ______________________________ available by your draft(s) on us payable at sight not to exceed a total of

[illegible]

this Letter of Credit and the following documents:

1. A certificate purported to be executed by a representative of [redacted] stating that [lessee]...

[illegible]

[redacted], as lessor, and [lessee] or an affiliate of [lessee], as lessee, and stating the amount for which a draw under this Letter of Credit is made; (or) a certificate purported to be executed by a representative of [redacted] stating that [lessee], as lessee, has not supplied a replacement Letter of Credit for this instrument prior to thirty (30) days in advance of the expiration of this instrument for the account of [redacted] Inc.

2. The original Letter of Credit must accompany all drafts unless [illegible], in which case the original must accompany the final draft.

Partial drawings are permitted, with the Letter of Credit being reduced without amendment by the [illegible]