7A(c)(9); 802.9

[redacted]

November 17, 1992

[redacted]

Mr. Richard Smith
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Avenue
Washington, D.C. 20580

VIA FACSIMILE NO.: (202) 326-2050

Re: Section 18a(c)(1) Exemption for Acquisitions of Income-Producing Real Estate

[redacted]

Dear Mr. Smith:

which we represent is negotiating to purchase from [redacted] certain income-producing [redacted] for a price that could exceed

, 1992, letter to you that the acquisition would be exempt under § 18A(c)(1) as an

acquisition of stock by the purchaser could potentially require compliance with the reporting

The following paragraphs provide an overview of the transaction and our reasoning for the exemption under § 18a(c)(1).

properties, located mainly in the [redacted], other parts of [redacted] and in the neighboring states of [redacted]

[redacted] The other 50% interest in the [redacted] is presently owned by the Company. Further, as part of the purchase transaction, the

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Company intends to acquire the fee interest in the adjoining land (also a portion of the [redacted] and owned by [redacted] which the Company presently ground-leases on a long-term ground lease and on which the Company has previously developed a 65,000 square foot building. Under the applicable agreement, the Company can pay the purchase price for ...

... Under the terms of the contract, [redacted] has the right to require the Company to repurchase any of the Payment Shares owned by [redacted] on the one-year anniversary of the Closing Date of the transaction, at a stipulated price. The Company will then be obligated to repurchase such Payment Shares at a per share price ...

... be an amount which, when added to the net proceeds of any shares sold by [redacted] prior to the one-year anniversary of the Closing Date, plus the value of any Payment Shares which [redacted] elects to retain (based on the average per share closing price on the New York Stock Exchange during the ten days immediately preceding the repurchase demand), would produce a total payment of $15.2 million. It should further be noted that the Company and one of its affiliates presently manage the [redacted] and that there will be no change in the management or control of the [redacted] as a result of the above-described transaction.

[redacted] has no shopping centers in [redacted] (other than its interests in the [redacted] and does not own any [redacted] in the [redacted] It presently has eleven [redacted] other than its interests in the [redacted] in various other parts of [redacted] (i.e., outside the [redacted] area). Of th...

... lower middle class clientele. The [redacted] by contrast, is located immediately adjacent ...

Of [redacted] other [redacted]

(a) Two [redacted] centers are located in [redacted]

...

[redacted] The Company has a 15% joint venture interest in a shopping center in [redacted] a suburb of [redacted] which is approximately 20 to 30 miles from [redacted]

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(c) Two [redacted] shopping centers are located in [redacted] The Company has n[redacted]n either of these cities.

(d) One [redacted] is in [redacted] (approximately 35 miles from [redacted] nd consists of a [redacted] The Company has no [redacted] in [redacted]

(e) Finally, one [redacted] center is in [redacted] (approximately 40 miles

Company's [redacted] will be [redacted] The major tenant of the [redacted], and its space will comprise approximately 75% of that [redacted] space.

With regard to potential competition between [redacted] and the Company, it should be noted that the Company is in the business of developing and managing [redacted] and [redacted] is not. In instances in which the Company acquires [redacted]

tenant-mix and other value-adding, hands-on redevelopment -- which is part of the Company's expertise. [redacted] may invest in existing developed [redacted] or acquire [redacted] through foreclosures in

[redacted] [redacted] refurbishing and redeveloping

elects to retain all 400,000 shares of stock [redacted]

employees).

[redacted] does not presently own any shares of the Company's stock. The Company's Restated Declaration of Trust (the "Declaration") also limits a person's ownership in the Company to no more than 9.2% of the outstanding shares of the Company. The Declaration further provides that any attempted transfer of shares which would cause a person to exceed the limit shall be null and void. The Declaration also has numerous provisions that may have the effect of deterring a take-over. [redacted] has represented in the contract tha[redacted] has no arrangement, agreement, or understanding with any person or legal entity to encourage or participate in any manner in a distribution or placement of the shares which it will receive and that it is acquiring the shares in the ordinary course of its business

position that is the equivalent of a director

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Managers or otherwise direct the management of the Company. Further, at the present [illegible]

securities within the exception of Rule §802.20. For example if the Company were to pay [illegible]

We believe that the transaction described above is exempt from the Hart-Scott-Rodino Act reporting requirements, as an acquisition of voting securities for investment [illegible]

(1) This transaction takes place in circumstances and for reasons different from those underlying corporate mergers, acquisitions, tender offers and similar transactions in numerous respects. The Company routinely enters into acquisitions [illegible] [redacted] [illegible]

[illegible] [redacted] [illegible] [redacted] [illegible] a significantly disparate clientele, supporting the fact that the transaction will not have any impact on the competitiveness of [redacted] other [redacted] in the geographical area of the [redacted] Of the other [redacted] owned by [redacted] in the [redacted] the Company either owns no [redacted] in that area, has [illegible]

[illegible] in this letter.

(3) The transaction further, will have no competitive significance since management or control of the [redacted] will remain with the Company -- where it currently resides.

(4) Due to the restrictions contained in the Company's Declaration, [redacted] will not have a sufficient ownership interest in the Company to affect the [illegible]

(5) Due to the Declaration's restrictions on the percentage ownership of shares by any one person, [redacted] would not be able to significantly affect the [illegible]

(6) [redacted] has represented that it is acquiring the Payment Shares for investment purposes and in the ordinary course of its business [illegible]

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(7) The value of the Payment Shares will be less than $15 million on the Closing Date and if the price does not increase, [redacted] has every reason to exercise the repurchase option in the contract and to sell the shares back to the Company [illegible]

[redacted]

[illegible] interests in the Center and to allow [redacted] to diversify its risk in one center by [illegible]

[illegible]

transaction would be exempt under §18(a)(c)(1) as an acquisition of goods or realty in the ordinary course of business, and the fact that the Company is issuing its shares in lieu of cash should not, in light of the aforementioned facts, raise anti- [illegible]

If you have any questions regarding this request, please contact me. We would [illegible] impact of this transaction. Further, if you are disposed not to concur with our views, or if you need additional information, we would appreciate the opportunity to have a conference with you before any written response to this request is transmitted.

Yours very truly,

[redacted]

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11/18/92 - spoke to [redacted]. Advised that, assuming [redacted] would be taking more than $15MM in the Company's stock, it appears that evidence has been presented to support the conclusion that [redacted] and the [redacted] [illegible]

stated that [illegible] "passive investor" in the Company [illegible] would be purely a "passive investor" in the Company and could—and would—do no more than vote it. I advised that, since less than 10% of the Company's stock would be held by [redacted], the 802.9 exemption appeared applicable.

RBSmith