[redacted] [redacted] [redacted]

August 23, 1994

VIA FEDERAL EXPRESS

Richard B. Smith, Esq.
Federal Trade Commission
Bureau of Competition--Premerger Notification Office
Sixth Street and Pennsylvania Avenue, N.W., Room 303
Washington, D.C. 20580

Re: Real Estate Acquisition by [redacted] REIT

Dear Mr. Smith:

This letter confirms the conclusion reached during our telephone conversation of August 9, 1994 that no filing of a Premerger Notification and Report Form (a "Filing") will be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") as a result of the various steps of the proposed acquisition (the "Proposed Acquisition") constituting the formation of [redacted] corporation (the "WREIT"), that will be qualified as a real estate investment [redacted]

SUMMARY OF PROPOSED ACQUISITION

The WREIT was formed for the purpose of conducting a public offering of its Common Stock (the "Offering"), and then using the proceeds of the Offering to acquire (i) certain California apartment buildings (the "Properties") owned by certain partnerships and pursuant to other joint ownership arrangements (together, the "Partnerships") and (ii) the assets of two property management companies and one property maintenance company (together, the "Management Companies"). The WREIT intends to qualify as a REIT and to abide at all times by the rigid operational restrictions imposed on REITs by federal law (the "REIT Regulations"). The WREIT will amend and restate its Articles of Incorporation (the "Amended and Restated Articles") to restrict the activities of its stockholders, directors and management to those

[redacted]

consistent with the REIT Regulations. Further, the Operating Partnership will amend and restate its agreement of limited partnership to prohibit its engagement in activities which would cause the WREIT to lose its status as a REIT under the REIT Regulations.

The WREIT has issued and sold a single share of its Common Stock (the "Initial Share") to a single stockholder (the "Initial Stockholder") for a consideration of $1.00 (the "Initial Share Purchase Price") (the "Initial Share Sale"). The Properties will be acquired by a Delaware limited partnership (the "Operating Partnership"), which is [redacted] It is [redacted] that the Proposed Acquisition will be comprised of six events which are to occur in the following order: (1) the Initial Share Sale (this has occurred); (2) the WREIT will close the Offering; (3) the WREIT will repurchase the Initial Share from the Initial Stockholder (the "Initial Share Repurchase"); (4) the WREIT will transfer the net proceeds of the Offering to the Operating Partnership in exchange for limited partnership interests and a 1% general partnership interest in the Operating Partnership (the "Offering Proceeds Acquisition"); and (5) the assets of the Management Companies (the "Management Companies Acquisition"); and (6) the Operating Partnership will issue additional Units to the partners and other owners of the Partnerships (the "Partners") and to the Management Companies (the "Unit Issuance").

The Units will not carry any voting interest in the WREIT, but will be exchangeable, subject to certain restrictions, for shares of the WREIT's Common Stock [redacted]

DISCUSSION

For the reasons we discussed, which are presented below, we believe neither the Proposed Acquisition as a whole nor any of its six component steps [redacted] require a Filing under the Act.

1/ 15 U.S.C. §18a(a)(2).

2/ 15 U.S.C. §18a(a)(3); 16 C.F.R. §802.20.

[redacted]

1. The Initial Share Sale

The Initial Share Sale was exempt from Filing since (i) the acquired person did not meet the Size-of-the-Persons Test[3/] and (ii) the transaction does not constitute the formation of a joint venture or other corporation under Section 801.40 of the Rules, since there is only one party to the formation transaction.

2. The Offering

Generally, acquisitions of the WREIT Common Stock in the Offering will be exempt from the Filing requirements of the Act because anyone acquiring less than [redacted] [4/] Additionally, certain Institutional

[redacted]

$10,000,000 or more" and the acquiring party "has total assets or annual net sales of $100,000,000 or more." 15 U.S.C. §18a(a)(2)(B).

[4/] "The acquisition of voting securities shall be exempt from the requirements of the pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held." 16 C.F.R. §802.9.

[5/] Acquisitions by an Institutional Investor (as that term is defined in Section [redacted] exempt if such acquisition is made directly by that Institutional Investor in the ordinary course of business, solely for the purpose of investment, and the Institutional Investor [redacted] WREIT's Common Stock. The Institutional Investor Exemption would not be available if any entity included within the Institutional Investor which is not itself an Institutional Investor would hold any securities of the WREIT. 16 C.F.R. §802.64.

[redacted]

submit a Filing (if the Size-of-the-Persons Test is satisfied). Of course, neither of these exemptions would be available if the acquisition was not made solely for the purpose of investment.

It is highly unlikely that any investor would reach either ownership

(in shares or value), in order to comply with a prohibition in the REIT Regulations that no group of five (5) or fewer shareholders may hold more than 50% of the of the [redacted] By the terms of the Amended and [redacted] of this restriction, the purported transfer would be void ab initio. Notwithstanding that provision, the Amended and Restated Articles provide that, if ownership somehow exceeds the 9.8% limitation, such shares over the 9.8% limitation may, in certain [redacted]

The Initial Share Repurchase is not subject to a Filing under the Act since it will not meet the Size-of-the-Transaction Test. The single Initial Share will not [redacted]

The Capitalization will be exempt from the Filing requirements of the Act, because at the time the Units are issued the Operating Partnership will have no assets and the Size-of-the-Parties Test will not be satisfied.

5. The Property Acquisition and the Management Companies Acquisition

a. The Property Acquisition

The WREIT intends to elect to be taxed as a REIT at the time of the [redacted]

[redacted]

would be eliminated. As a result, investors who acquired WREIT Common Stock or Units in the Operating Partnership could have a claim under the federal securities laws.

The Property Acquisition will be exempt from the Filing requirements of the Act pursuant to an interpretation by the Federal Trade Commission staff (the "Staff") in response to a letter to the Staff dated December 20, 1990, concluding that an acquisition of real estate by an acquiring party whose ultimate parent entity is a REIT is

[redacted]

Section 802.1. The Operating Partnership will be advised that it, at a later time, the Operating Partnership is no longer controlled by the WREIT, or if the WREIT controls the Operating Partnership but is no longer classified as a REIT, a Filing may be required with respect to acquisitions by the Operating Partnership if the Size-of-the-Persons Test and the Size-of-the-Transaction Test are met and no other exemption is available.

b. The Management Companies Acquisition.

The acquisition of the Management Companies will be exempt from Filing because the Size-of-the-Persons Test will not be satisfied. None of the Management Companies are controlled by any other entity and thus each of the Management

[redacted]

6. The Unit Issuance

The Unit Issuance is an acquisition of partnership interests and will be exempt from the Filing requirements of the Act because the Staff has determined that the acquisition of less than all of the interests in a partnership is not an acquisition of

[redacted]

voting securities or assets within the meaning of the Rules, and since the Act only applies to acquisitions of voting securities and assets,[6] no Filing will be required.[7]

Additionally, the Unit Issuance cannot be deemed to be the formation of a [redacted] applies to the formation of corporations.[8]

CONCLUSION

[redacted] the substance of our discussion on August 9, 1994. If you disagree with the contents of this letter, I would appreciate it if you could please contact me by August 31, 1994.

Thank you for your assistance in this matter.

Very truly yours,

[redacted]

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[6] 15 U.S.C. §18a(a).

[7] Prager, Premerger Notification Practice Manual (1991) Interpretation number 93 [redacted]

[8] Statement of Basis and Purpose of Rules Implementing Title II of the Act, 43 Fed.Reg. 147 (July 31, 1978), p. 33485.

[redacted]