



# State of Utah

## DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

*Protecting Investors; Promoting Commerce*

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September 25, 1998

Victoria C. Phelps  
Latham & Watkins  
633 West Fifth St., Suite 4000  
Los Angeles, CA 90071-2007

Re: Excel Realty Trust, Inc.

File # B00086255

Dear Ms. Phelps:

This letter is in response to your letter, received September 23, 1998, regarding Excel Realty Trust, Inc. ("Excel"). You have requested a No-Action Letter regarding the proposed issuance of additional shares of Excel to existing shareholders pursuant to Excel's Distribution Reinvestment and Share Purchase Plan (the "Plan"). Specifically, you request that "the Division of Securities take no enforcement action if shares of the Company's Common Stock are issued pursuant to the Plan without registration of the Company's officers as agents under the Securities Act." Your letter states that any officers issuing stock "would be acting only in the normal course of their duties with the Company and would not receive any commissions or other remuneration relating to the issuance of the Common Stock under the Plan."

Based on the facts presented in your letter, the Staff of the Utah Division of Securities ("Division") will not recommend any enforcement or administrative action should the transaction proceed as outlined in your letter. To avoid unnecessary restatement or summarization of the facts set forth in your letter, the Division's response is attached to a photocopy of your letter.

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division Staff on enforcement or other administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter relates only to the transaction described above and will have no value for

future similar transactions and does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Respectfully,



David H.T. Wayment  
Senior Staff Attorney

# LATHAM & WATKINS

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September 22, 1998

## VIA FEDERAL EXPRESS

Department of Commerce  
Division of Securities  
160 East 300 South, 2nd Floor  
Salt Lake City, Utah 84114

Re: Excel Realty Trust, Inc.  
(To be renamed New Plan Excel Realty Trust, Inc.)  
Request for No-Action

Ladies and Gentlemen:

As counsel to Excel Realty Trust, Inc., a Maryland corporation (the "Company"), we are submitting this letter in connection with the proposed issuance by the Company of additional shares of its common stock (the "Common Stock") to existing stockholders of the Company pursuant to the Company's new Distribution Reinvestment and Share Purchase Plan (the "Plan").

The Company is a self-administered, self-managed real estate investment trust which acquires, owns and manages neighborhood and community shopping centers and other retail and commercial properties. The Company recently entered into an Agreement and Plan of Merger with New Plan Realty Trust, a Massachusetts business trust ("New Plan"), pursuant to which a wholly-owned subsidiary of the Company will be merged with and into New Plan with New Plan surviving as a wholly-owned subsidiary of the Company (the "Merger"). Upon effectiveness of the Merger (which is anticipated to occur on or about September 28, 1998), the Company will change its name to New Plan Excel Realty Trust, Inc. and will adopt the Plan.

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The Plan is available only to existing stockholders of the Company and provides that such stockholders may purchase additional shares of Common Stock of the Company by (i) automatically reinvesting all or a part of the cash dividends on their shares of Company Common Stock, (ii) making optional cash payments, or (iii) a combination of dividend reinvestment and optional cash payments. The Plan is more thoroughly described in the enclosed draft of the Company's Registration Statement on Form S-3 which includes the prospectus to be distributed to the Company's stockholders. It is currently anticipated that the Registration Statement will be filed with the Securities and Exchange Commission immediately following effectiveness of the Merger.

The Company's Common Stock is listed on the New York Stock Exchange and is, therefore, exempt from registration under the Utah Uniform Securities Act (the "Securities Act"). The shares of Common Stock to be issued to existing stockholders of the Company pursuant to the Plan will be issued directly by the Company. The Company, as issuer of the Common Stock, is excluded from the definition of "dealer" under Section 61-1-13(3)(b) of the Securities Act. However, it appears that the officers of the Company, who may effect issuances of the Common Stock on behalf of the Company, fall within the definition of "agent" as set forth in Section 61-1-13(2) of the Securities Act. Such officers acting on behalf of the Company would be acting only in the normal course of their duties with the Company and would not receive any commissions or other remuneration relating to the issuance of Common Stock under the Plan. Therefore, the Company does not believe that it is necessary for the protection of investors in Utah that the Company's officers be registered as agents in Utah. On behalf of the Company, we hereby respectfully request that the Division of Securities take no enforcement action if shares of the Company's Common Stock are issued pursuant to the Plan without registration of the Company's officers as agents under the Securities Act.

Enclosed is a check in the amount of \$120 in payment of the required fee.

Should you require additional information, please do not hesitate to contact Keven Lippert at (619) 238-3087 or the undersigned at (213) 891-8397.

Very truly yours,



Victoria C. Phelps  
Senior Legal Assistant