7A(c)(1); 802.1(b)

[redacted]

May 26, 1994

Richard B. Smith, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Sixth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20850

re: Section 7A(c)(1)
Exemption for Acquisitions of Realty

Dear Mr. Smith:

I am writing to confirm the advice you provided in our telephone conversation of this morning that the proposed transaction which is described below is exempt from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The proposed transaction is as follows: The acquiring person (the "Buyer") is a publicly traded corporation whose business is the [redacted] and whose total assets are in excess of $100 million. The acquired person (the "Seller") is a natural person with total assets in excess of $10 million. The proposed acquisition is an acquisition of substantially all the assets of a corporation which is also a [redacted] and the stock of which is wholly owned by the above-referenced natural person. The acquisition price will consist of a cash payment of $14 million, a note in the principal amount of $2 million payable October, 1995 and the assumption of approximately $9 million of

[redacted]

liabilities. The assets to be sold consist of [redacted] with a value of approximately $7.3 million; completed but not yet delivered [redacted] with a value of approximately $3.2 million; [redacted] with a value of approximately $2.2 million; land with a value of approximately $4.7 million; escrows and other receivables with a value of approximately $0.3 million; miscellaneous assets including office furniture and equipment with a value of approximately $0.5 million; and approximately $0.2 million of cash. The Buyer has not acquired any assets or voting securities from the Seller within the last six months.

You advised me that under these circumstances it is the position of the Premerger Notification Office that because the transaction is structured as an acquisition of assets, in determining the size of the transaction, the value of the realty which within the categories that the Premerger Notification Office views as always exempt from the requirements of the Act (i.e., in this case, the [redacted] and [redacted] may be excluded. As a result, because the value of the remaining assets is less than $15 million, the transaction would be exempt from the requirements of the Act.

Please advise me promptly if I have not accurately summarized the position of the Premerger Notification Office. I will be pleased to answer any questions you might have regarding this transaction or to discuss the matter further.

Very truly yours,

[redacted]

[redacted]

BY FACSIMILE

5/26/94 - advised writer that his conclusion was correct. [redacted] are "realty", and payments for such can be subtracted from acquisition price under 801.15 (reference to 7A(c)(1)). Remaining assets of $10MM (even with liability assumption of $7MM) makes transaction non-reportable. Realty + non-realty assets can be divided up even where seller is selling business as long as an asset transaction, as here. RBSmith