802.2(d)

[redacted]

[redacted] April 30, 1999 [redacted]

CONFIDENTIAL

VIA FACSIMILE (202) 326-2624

Nancy Ovuka, Esq.
FEDERAL TRADE COMMISSION
Bureau of Competition
Premerger Notification Office
Room 303
Washington, D.C. 20580

Re: Exemption from Filing Requirements Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 pursuant to Rule 802.2(d)

Dear Ms. Ovuka:

Thank you for speaking with [redacted] and me on April 26, 1999 about the real estate exemption for residential rental properties set forth in Rule 802.2(d). Specifically, we were inquiring with respect to two acquisitions by a subsidiary of [redacted]") from two different ultimate parent entities of a number of rental facilities used for both assisted living and independent living for senior citizens.

Each transaction includes complexes with housing for seniors, with and without assisted living services. In the complexes which have both assisted living services and senior living units for which such services are not provided, the residents are charged rent plus an additional monthly sum for assisted living services.

Section 802.2 of the Federal Trade Commission's ("FTC") rules and regulations on the Hart-Scott-Rodino Act exempts from reporting certain real estate acquisitions, including the purchase of residential property. (16 C.F.R. § 802.2(d)(2)) A related rule states that if the residential property includes the purchase of a business conducted on the property, the transfer of the business can be subject to the Act. (16 C.F.R. § 802.2(d)(3)) You told us that the assisted living services are a "business" and that the parties in good faith need to value that business.

[redacted]

[redacted]

One method of valuation that the FTC has accepted is to determine the revenues from assisted living services, calculate the percentage those revenues constitute of the total revenues and apply that percentage to the purchase price. In our situation, with one exception, the additional fee for assisted living is readily available for all complexes because, as noted above, the residents pay an additional fee for the assisted living services. The one exception is a complex in which all of the residents receive assisted living services. There the charge for assisted living services has not been separated from the rent in the ordinary course of business. To determine the portion attributable to assisted living services in that complex, we estimated the portion of the monthly payment for assisted living by calculating the percentage the fees for services were of the total monthly payment in a similar complex that charged an additional monthly fee for assisted living; we then applied that percent to the monthly payment in the complex which has only assisted living units.

the method — proxy for fair market value of non-exempt assets

Applying the percentage of revenues received for assisted living services to the purchase price on the above basis, the portion of the purchase price paid for the assisted living "business" in the case of each of the two transactions does not exceed $15 million. Thus, the size-of-transaction test is not met and the transactions are not reportable.

Please call [redacted] confirm that this letter accurately reflects our conversation and that our methodology for determining the exemption from filing for the two acquisitions by Capital is acceptable.

Thank you for your assistance.

Very truly yours,

[redacted]

[redacted]

cc: M[redacted]

[redacted]