

802.2(d)

802.4

L.L.P.

ATTORNEYS AND COUNSELORS

September 29, 1999

Via Federal Express

Federal Trade Commission
Room 303
6th St. & Pa. Avenue, N.W.
Washington, D.C. 20580
Attention: Dick Smith

Dear Mr. Smith:

This letter is in response to our telephone conversation of August 17, 1999, in which you gave verbal guidance regarding the existence of an exemption under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") and the regulations promulgated thereunder ("HSR Regulations") for the acquisition of the capital stock of a residential development business described below (the "Transaction"), and indicated your willingness to confirm the existence of an exemption based upon a detailed written request.

To summarize our conversation, I expressed to you my belief that the Transaction would qualify for an exemption under Sections 802.2(d) and 802.4 of the HSR Regulations, on the basis that the assets of the acquired company consisted principally of residential properties held for sale, lots under development, and lots and real property held for development. However, I was uncertain as to the treatment of the cash, receivables, goodwill, model home furniture, office equipment and transportation equipment of the acquired company, which, depending on its treatment and valuation, could require a separate application under the HSR Act. You informed me that if such items bore a reasonable "nexus" to the exempt real estate assets, such assets would also be exempt. Accordingly, the purpose of this letter is to set forth for you the factual basis upon which I believe the Transaction qualifies for exemption under the HSR Regulations, and to receive your verbal concurrence.

The acquired company ("Target") is, through its operating subsidiaries, a premier residential homebuilder operating principally in the southern United States. Approximately 80% of the Target's voting securities are owned by a corporation ("Parent") that has consolidated assets in excess of \$100 million. The remaining 20% of the voting securities of the Target are publicly held. The acquiring person ("Acquirer") is a foreign entity that has consolidated assets in excess of \$10 million. The Acquirer will purchase 70 to 80% of the voting securities of Target from Parent for cash in excess of \$15 million.

A description and dollar amount of the consolidated assets of the Target are set forth on Appendix A to this letter. Fair market values for assets that may be "incidental" to exempt assets

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are also set forth on Appendix A. The fair market values reflected on Appendix A are good faith estimates by officers of the Target. I have not included fair market values for assets that are exempt under Section 802.2(d). For purposes of this letter, it should be assumed that the Acquiror will in good faith make fair market valuations of the Target's assets consistent with those set forth in this letter.

Based upon the information in Appendix A, and in light of our conversation as described above, the assets listed under the caption "Current Assets" on Appendix A, are exempt under Section 802.2(d), as they consist either of residential properties held for sale, residential lots held for development and sale, unimproved real estate held for residential development and sale, proceeds from the sale of residential properties, or prepaid expenses associated with the business of developing residential property.

Similarly, the asset reflected on the balance sheet under the caption "Goodwill" is exempt under Section 802.2(d), as such asset was created from the excess cost over fair value of residential development assets and businesses acquired by the Target.

The "Model Home Furniture", "Mortgage Receivable", "Deposits" and "Deferred Tax Asset" listed under the caption "Fixed Assets" on Appendix A are also exempt under Section 802.2(d), as all of such assets are directly related to the purchase and sale of residential properties.

The remaining assets are an office building, its furniture, fixtures and equipment, automobiles for key employees and minority investments in affiliated title and mortgage companies. The acquisition of the office building is exempt under Section 802.2(d), and the furniture, fixtures and equipment in the office building should either be "incidental" to, or have sufficient "nexus" to, the exempt assets as to be exempt as well.

The approximate fair market value of the assets not accounted for above (i.e., the "other assets" and "investment") is, in the aggregate, \$614,455. Assuming that such assets fail the "nexus" test to either the residential or office properties, they fall below the \$15 million threshold of Section 802.2(d). Accordingly, it appears that the Transaction qualifies for the exemptions under Sections 802.2 and 802.4 of the HSR Regulations.

If you agree, disagree, or need more information to reach a conclusion regarding whether or not the Transaction is exempt from the notification requirements of the HSR Act, please call the undersigned at your earliest convenience.

Thank you for your assistance in this matter. I look forward to hearing from you.

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APPENDIX A

Consolidated Assets of Target at June 30, 1999
(After elimination of intercompany accounts; amounts in dollars)

Type of Asset	Amount (\$)	Fair Market Value (\$)	Description of Asset
<i>Current Assets</i>			
Cash	7,780,797	same	Cash generated by new residential home sales
Accts Rec. Title Co.	3,812,310	same	Funds held in escrow pending closing of new residential home sales
Earnest Money & Notes Receivable	385,000	same	Earnest money/notes paid in connection with new residential home sales
Accounts Rec. Other	2,993,829	same	Various receivables associated with new residential real estate business, such as land sales, worker's compensation insurance dividend, etc.
Commission Advance	757,339	same	Commission advances to real estate agents
Prepaid Expenses	1,372,277	same	Prepaid expenses associated with new residential development
Inventory - Lots	49,646,310	n/a	Developed residential lots at cost
Inventory - WIP	166,481,196	n/a	New residences under construction, at cost
Real Estate Inventories	7,051,665	n/a	Developed residential lots and land held for new residential development, at cost
<i>Fixed Assets</i>			
Land and Building	1,378,609*	n/a	Office building used in residential home building business
Furniture, Fixtures & Equipment	2,763,300*	1,234,600	Office building furniture, fixtures and equipment
Model Home Furniture	4,289,600*	2,908,100	Furniture in model homes used to sell new residences
Transportation Equipment	471,900*	243,900	Automobiles for Key Employees
<i>Other Assets</i>			
Mortgages Receivable	10,837	same	Note secured by real estate

* Cost, prior to depreciation