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March 18, 1986

Mr. Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Sixth Street and Pennsylvania
Avenue
Washington, D.C. 20580

This material may be subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, which requires a review of this information under the Freedom of Information Act. 98. M. 98

Dear Mr. Sharpe:

I am writing to confirm my understanding, based on our telephone conversation of March 12, 1986, that the acquisition described below would be deemed an acquisition of "realty transferred in the ordinary course of business" and therefore exempted from the filing and waiting requirements of the Hart-Scott-Rodino Act, pursuant to 15 U.S.C. § 18a(c)(1) and 16 CFR § 802.1.

The acquiring company is a large multinational corporation whose operations in the United States include, inter alia, development and construction of residential housing and commercial property. Its total assets exceed 100 million dollars. It is negotiating to acquire 100% of the voting securities of a holding company which, in turn, controls a company which is principally engaged in the development and sale of residential housing and the acquisition and sale of real property (referred to herein as the "acquired company"). Its assets exceed 10 million dollars.

The acquired company and its subsidiaries design, construct and market residential housing units of varying types in planned residential developments. The acquired company's general practice is to obtain options on land, seek regulatory approvals to construct planned residential developments, exercise the options, if such approvals are

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obtained, and either construct the development through contracts with builders or sell the land.

At the present time, the acquired company does not own any property which is being used for commercial or industrial purposes. The acquired company is constructing a residential housing development which will include boat slips to be sold to purchasers of the housing units. In the event that all the boat slips are not sold, the acquired company will make them available for rent. The company also owns property which is presently zoned for commercial use and has applied for regulatory approval to use this property for commercial purposes. In addition, the acquired company has options to buy property and has filed requests for regulatory approval, which, if granted, would enable the acquired company to develop the property for commercial or light industrial purposes. The company has an option to buy property on which it plans to construct 20,000 square feet of office space for its own use and it has an option to purchase property on which there is presently a marina and restaurant. The company is seeking approval to construct a residential housing development on this property.

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The acquired company through its subsidiaries also engages in the following activities which are incidental to the construction and sale of its residential housing units. It manages the recreational and other common areas in certain of its townhouse developments until management of these facilities and common areas may be turned over to the development's homeowners' association. These recreational facilities were constructed for the benefit of the purchasers of the housing units and are not open to the general public.

In addition, in order to facilitate customer financing of its housing units, the acquired company has made arrangements to provide mortgages, through third parties, to purchasers of the company's housing units. At the present time, the acquired company does not itself make or service these mortgages. The acquired company has applied for permission from the appropriate New Jersey regulatory bodies to make loans directly available to its customers. However, if such approval is granted, the company does not intend to service the loans, which will be transferred to a third party. The company does not now and does not intend in the future to provide or arrange for mortgage loans to persons who are not purchasers of its housing units. The acquired company also participates in mortgage backed bond programs as a means of financing its operations.

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The acquired company participates in several joint ventures to develop property in Florida and Virginia. However, the company's interests in these joint ventures are not going to be acquired by the acquiring company. These interests are to be transferred to a principal of the acquired company at the time of closing, and are described here solely for purposes of completeness. One joint venture has obtained approval to develop 483 acres on land in Florida including the construction of an office-industrial development on 54 acres of land, a commercial development on 19 acres of land, and a residential housing development on the rest. Another joint venture is engaged in the construction of a multi-family rental housing project.

It is my understanding that based on the above described facts, this acquisition would be considered to be an acquisition of "realty transferred in the ordinary course of business," and therefore exempt under 15 U.S.C. § 18a(c)(1) and 16 CFR § 802.1. I would greatly appreciate your confirming that this understanding is correct and that accordingly, the parties to the above described acquisition are not required to file a pre-merger notification or subject the acquisition to a waiting period under the Hart-Scott-Rodino Act.

We appreciate your help on this matter and await your response.

Sincerely,



Per staff meeting 3-20-86, the staff has concluded that the above transaction is not exempt under § 802.1. This is a reportable transaction.

Patrick Sharpe
3-20-86

called  3-20-86 and conveyed our position that this is reportable