Leavitt Group Profit Sharing and Retirement Savings Plan (the Plan)
Located in Cedar City, Utah
[Application No. D–09979]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to the Cedar Development Corporation (CDC), a party in interest with respect to the Plan, provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expense from the proposed transaction; and (3) the Plan receives as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan within the meaning of section 3(34) of the Act and a qualified profit sharing plan under section 401(a) of the Code and includes a cash or deferred arrangement under section 401(k) of the Code. Its related trust is exempt from taxation under section 501(a) of the Code. Effective October 1, 1994, the Plan adopted an investment policy allowing all participants of the Plan to direct investments of their Plan accounts into funds selected by the administrator of the Plan.

As of October 1, 1994, the Plan had 163 participants and total assets of $5,317,000, of which approximately 5.8 percent is invested in the Property.

The Plan was established effective January 1, 1975, by Security Enterprises Limited (SEL) and has since been adopted by some 40 entities affiliated with SEL, including CDC.

The fiduciary of the Plan is Dane O. Leavitt, who is the sole shareholder of Dane O. Leavitt, Inc. that owns one-seventh of SEL. Mr. Leavitt also holds a one-seventh interest, as a shareholder, in CDC, and is the Secretary of CDC. Mr. Leavitt is also the President of Dixie Insurance Agency which is the corporate general partner of SEL.

2. SEL is a Nevada limited partnership established December 27, 1972. It is owned equally by 7 corporations of which each corporation is wholly-owned by either one shareholder or by two, who are husband and wife. The individual shareholders are all related family members. SEL is engaged primarily in owning and providing services for affiliated insurance agencies.

CDC, a Nevada corporation that is wholly-owned by the same family members who control SEL, was established on February 14, 1966, and is engaged primarily in the ownership and development of real estate. CDC is also one of the sponsoring employers of the Plan.

3. The Property consists of 517.2 acres of mountain property, with attendant water rights, that is located on an area of Southwest Utah, known as Kamarra Mountain, in Iron County. The primary use of the area is for agricultural rangeland and recreation. Over the years the Plan leased the Property to unrelated persons for grazing purposes and has not undertaken any development of the Property. The Property has not produced any significant income for the Plan. Currently it is generating approximately $1,800 per year in grazing fees from local cattlemen and wool growers. Annual property taxes paid by the Plan have averaged under $100.

The Plan acquired the Property on January 16, 1981, by warranty deed executed by Barbara S. Williams.[9] Barbara Williams was not a party in interest with respect to the Plan nor related in anyway to any of the sponsors of the Plan or their shareholders. Barbara Williams conveyed the Property to the Plan as repayment of a $194,889.39 loan on January 16, 1981, made by the Plan, which enabled Barbara Williams to redeem the Property from a foreclosure sale instituted by the State Bank of Southern Utah. The Plan used this loan of $194,889.39 as the initial value for the Property. Since 1981 the Plan expended an additional $69,200 for physical improvements to the Property, legal fees, and payment of liens to obtain clear title to the Property. Based on appraisals, the Property increased in value during the period from 1981 to 1984, and then, during the period from 1984 to 1991 decreased in value. The announcement of anticipated MX Missile sites in the area that the Property is located caused a wave of land speculation throughout southern Utah. When there was a later announcement that the MX Missile system would not be built, land values plummeted in the area of the Property. The Plan has attempted to sell the Property by contacting realtors in the area and entered into several single party listing agreements. None of the agreements resulted in any offers to purchase the Property. In the spring of 1986 and again in 1987, the Plan advertised the Property for sale in newspapers of major cities in Utah, Nevada, Arizona, and California. Several bids were received by the Plan and one was accepted; however, the proposed purchaser defaulted and the sale was not consummated. The applicant represents that it is doubtful that the Plan could sell the Property for its current appraised value of $310,000 because of the property values in the areas of the Property. Two realtors from Cedar City, Utah in letters concur with applicant's conclusion as to the improbability of selling the Property at its current appraised value.

Mr. Bradford C. Schmutz, a Certified General Appraiser, State of Utah, located in Cedar City, Utah, determined the fair market value of the Property was $310,000, as of November 30, 1994. Mr. Schmutz represented that the Property has been personally inspected by him on various dates, although not on the date of the appraisal determination, because of snow conditions. He describes the Property as having 517.2 acres, agricultural mountain grazing land with a small, old cabin and some ponds on the Property. The Property is located at an elevation from approximately 7,000 feet to 8,600 feet. The winter months with the snow pack make the area impassible except by snowmobile.

4. CDC proposes to purchase the Property from the Plan for cash for the greater of either $310,000 or the fair market value as determined by appraisal at the time of the Sale. The applicant represents that the Plan will not incur any costs associated with the proposed Sale and will suffer no loss.

The applicant represents that the proposed transaction will be in the best interests of the Plan and its participants and beneficiaries because the Plan will recover all the funds spent in acquiring and holding the Property to the date of the Sale. In addition, the applicant represents that the Plan will not continue to hold an illiquid investment which has proven difficult to sell, and the funds received from the Sale can be

[9] The Department notes that the decisions to acquire and hold the Property are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Property.