



State of Utah
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
Protecting Investors; Promoting Commerce

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July 21, 2000

Mr. Robert Phillips
LATHAM & WATKINS
505 Montgomery Street, Suite 1900
San Francisco, CA 94111-2562

RE: VelocityHSI, Inc. Request for No-Action

Dear Mr. Phillips:

This letter is in response to your request for a no-action/interpretive opinion from the Utah Division of Securities ("Division"). You asked the Division to opine whether the dividend distribution of the shares of VelocityHSI, Inc. to shareholders of BRE Properties would constitute a "sale" under § 61-1-13(22) of the Utah Uniform Securities Act ("Act") or if the Division would take no enforcement action if the dividend distribution of Velocity stock to the shareholders of BRE Properties is effected without registration of the Velocity common stock.

For the reasons stated below, it is the opinion of the Division that the dividend distribution would constitute a "sale." Furthermore, the Division declines to take a no-action position on the above described transaction and will require a registration by coordination under § 61-1-9 of the Act.

The Division's position on why this type of transaction constitutes a sale under § 61-1-13(22) of the Act is articulated in Division's Interpretive Opinion Letter to Latham & Watkins dated July 16, 1998 regarding LTC Healthcare, Inc., ("LTC Healthcare"). A copy of this interpretive opinion can be accessed on the internet at <http://www.commerce.state.ut.us/securit/op071698.htm>.

In the case of LTC Healthcare, the Division granted a discretionary exemption from registration under § 61-1-14(2)(s). The Division granted this exemption because LTC Healthcare was filing a Form 10 with the SEC and registering under the Securities and Exchange Act of 1934 ("34 Act"). The Division found this exemption appropriate since coordination filing is not available for applicants registering under the '34 Act. However, in the case of BRE, Velocity is filing a Form S-1 and registering its securities under the Securities Act of 1933 ("33 Act"). Velocity can, therefore, file a registration

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by coordination in Utah. Pursuant to § 61-1-9 of the Act, and § R 164-9 of the Utah Administrative Code ("UAC") a registration by coordination requires submission of NASAA Forms U-1, Application to Register Securities; U-2 Uniform Consent to Service of Process; a copy of the Registration statement filed with the SEC; and a \$300 fee.

The Division will, under the circumstances, apply the \$120.00 submitted for an interpretive opinion to the registration fee.

Sincerely,

A handwritten signature in cursive script that reads "Paula W. Faerber".

Paula W. Faerber
Staff Attorney

LATHAM & WATKINS

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FILE NO. 025951-0004

July 18, 2000

VIA FEDERAL EXPRESS

Department of Commerce
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Re: VelocityHSI, Inc. Request for No-Action

Ladies and Gentlemen:

As counsel to BRE Properties, Inc., a Maryland corporation ("BRE"), and VelocityHSI, Inc., a Delaware corporation and wholly-owned subsidiary of BRE ("VelocityHSI"), we are submitting this letter in connection with a proposed distribution (the "Distribution") to common stockholders of BRE of approximately 90% of the outstanding shares of common stock of VelocityHSI, par value \$.01 per share (the "VelocityHSI Common Stock") held by BRE. On behalf of BRE, we respectfully request that the Division of Securities (the "Division") confirm that either (a) it concurs with BRE's belief that the Distribution would not constitute a "sale" of the VelocityHSI Common Stock to the holders of BRE common stock, par value \$.01 per share (the "BRE Common Stock") under Section 61-1-13(22) of the Utah Uniform Securities Act (the "Act"), or (b) it will not take enforcement action if the Distribution is effected without registration of the VelocityHSI Common Stock under the Act.

BRE is a self-administered, self-managed real estate investment trust, or REIT, that owns and manages multifamily apartment communities in the western United States. BRE has developed a package of Internet services designed to meet the needs of property owners and managers as well as the residents of its properties. The e-mail, Internet access, and Web-hosting services, known as "Project Velocity," are designed to enhance the experience of apartment

community residents and facilitate the leasing and operation of the communities. The BRE board of directors believes that separating the Project Velocity business from the BRE business will, among other things, (1) enable VelocityHSI to operate outside the constraints imposed by rules and regulations applicable to REITs such as BRE; (2) enable VelocityHSI to offer services to residents of properties not owned by BRE; and (3) enhance the attractiveness of VelocityHSI and BRE to investors who have investment criteria aligned with only one of their businesses. Thus, the BRE board of directors determined that it is in the best interests of BRE and its stockholders to organize VelocityHSI to pursue these opportunities, to transfer to VelocityHSI certain assets currently held by BRE and to spin-off VelocityHSI to the stockholders of BRE by distributing shares of VelocityHSI Common Stock to BRE stockholders. The Distribution will enable investors who own both BRE Common Stock and VelocityHSI Common Stock to participate in the benefits of the REIT operations of BRE and the non-REIT operations of VelocityHSI. For BRE's accounting purposes, the Distribution will be treated as coming out of retained earnings and surplus.

The general terms and conditions relating to the Distribution are set forth in a Contribution and Distribution Agreement between BRE and VelocityHSI that will be executed prior to the distribution date. The Distribution will be made on the basis of one share of VelocityHSI Common Stock for each five shares of BRE Common Stock held as of the close of business on the distribution record date. As of July 17, 2000, there were outstanding 44,931,381 shares of BRE Common Stock. Based on such number, approximately 8,986,276 shares of VelocityHSI Common Stock will be distributed to BRE stockholders in the Distribution, subject to adjustment to avoid issuance of fractional shares. The shares of VelocityHSI Common Stock are validly issued, fully paid and nonassessable, and the holders of these shares will not be entitled to preemptive rights.

Upon consummation of the Distribution, VelocityHSI will become an independent publicly-held corporation. On May 3, 2000, VelocityHSI filed a Registration Statement on Form S-1 under the Securities Act of 1933. On June 20, 2000, VelocityHSI filed Amendment No. 1 to the registration statement on Form S-1 to respond to comments received from the Securities and Exchange Commission. On July 17, 2000, VelocityHSI filed Amendment No. 2 to the Registration Statement on Form S-1 to respond to additional comments received from the Securities and Exchange Commission. The Distribution will not occur until the Registration Statement on Form S-1 has been declared effective by the SEC and the prospectus contained therein has been delivered to the stockholders of BRE.

BRE believes that the Distribution will not involve an "offer to sell" or a "sale" of a security under Section 61-1-13(22) of the Act because there will be no disposition by BRE of securities for value and no new investment decision by the stockholders of BRE receiving VelocityHSI Common Stock in the Distribution. Furthermore, the stockholders of BRE will not provide any consideration to BRE for the VelocityHSI Common Stock they will receive as a

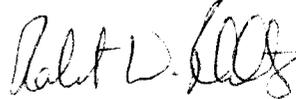
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dividend in the Distribution. Thus, BRE believes that registration of the Distribution is not required under the Act. We urge the Division to concur in this view. Alternatively, we hereby request that the Division take no enforcement action if the Distribution is effected without registration under the Act.

Enclosed for your review is VelocityHSI's Amendment No. 2 to the Registration Statement on Form S-1. Also enclosed is a check in the amount of \$120 in payment of the required filing fee.

Should you require additional information, please do not hesitate to contact the undersigned at (415) 395-8245.

Very truly yours,



Robert Phillips
of LATHAM & WATKINS

Enclosure

cc: Jeffrey Pero
Bradley Fenner