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SECURITIES AND EXCHANGE COMMISSION
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 OFFICE OF APPLICATION
 AND REPORT SERVICES

Writer's Direct Dial Number

In Reply Respond To:

November 16, 1984

Securities and Exchange Commission
 Investment Company Management Division
 450 Fifth Street, N.W.
 Washington, D.C. 20549

Act ICA-40
 Section 3(c)(5)(C)
 Division
 Public
 Availability 2/6/85

Re: Request for Interpretive Advice Pursuant to
 Section 3(c)(5)(C) of The Investment Company
 Act of 1940 (the "Act")

Dear Sirs:

This firm represents Health Facility Credit Corporation ("HFCC"), a recently formed Texas corporation which proposes to sell at par its collateral mortgage bonds with a face amount anticipated to be \$3,300,000 in \$1,000 denominations (the "Bonds") pursuant to a registered public offering (the "Offering"). We respectfully request a determination that the Division of Investment Management would not recommend that the Commission take any action against HFCC under the Act if HFCC does not register as an investment company under the Act in reliance upon the exemption in Section 3(c)(5)(C) of the Act. HFCC is in the process of preparing, and intends to file with the Commission in December 1984, a Form S-18 Registration Statement registering the Bonds for sale to the public. Consequently, we would appreciate your expedited review of HFCC's "no-action" request. Concerning HFCC and the proposed offering, we are advised as follows:

1. HFCC has a present net worth of approximately \$1,250,000 composed entirely of a lessee's interest in thirty (30) nursing homes and, when an anticipated amendment to its Articles of Incorporation has been filed, will be substantially limited thereby to activities relating to the purchase, ownership and sale of interests in and mortgages and liens on real property;

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2. Interest on all Bonds to be issued will be scheduled for payment on a semi-annual basis commencing on a date six (6) months following the date of issuance, payable at a rate mutually agreed upon by HFCC and the underwriter on the date the issue is cleared for sale by the Missouri Securities Commission. All of the Bonds will mature on a date five (5) years after issue and will be payable (i) from principal payments received by HFCC on the Borrower's Notes and (ii) to the extent of any difference between principal received as payments on the Borrower's Notes and principal due and payable to the Bondholders, from the general funds of HFCC;

3. The Bonds to be issued will be the general obligation of HFCC and will be secured by HFCC's assignment to the trustee of certain collateral more fully described in paragraph 8 herein;

4. The Bonds will be issued pursuant to a Trust Indenture (the "Trust Indenture") with the Centerre Trust Company, St. Louis, Missouri as the Trustee (the "Trustee"), which will require, among other things, that HFCC fund a debt service reserve account at the date of issue equal to six (6) months debt service on the issue amount or in lieu thereof obtain a letter of credit from a lending institution approved by the Trustee and the Underwriter in the same amount, drawn in favor of the Trustee for the benefit of the Bondholders;

5. The Offering will be underwritten by Heitner Corporation, a Missouri corporation (the "Underwriter"), which has submitted a Letter of Intent to HFCC evidencing a firm commitment to purchase all of the Bonds. At the issue date, HFCC will deliver the Bonds for authentication by the Trustee under the Trust Indenture against payment of ninety-five percent (95%) of the face amount of the Bonds. The Underwriter will receive a fee equal to five percent (5%) of the face amount of the Bonds;

6. HFCC intends to loan approximately \$3,100,000 of the offering proceeds (being substantially all of the anticipated net proceeds after taking into account the expenses of the Offering) to Southwest Health Villas of Texas, Ltd., a Texas limited partnership (the "Limited Partnership")

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which engages in the health care business and buys, sells, leases and deals in services as well as real and personal property related and necessary to the health care industry;

7. The loan to the Limited Partnership will be evidenced by three (3) non-recourse promissory notes anticipated to be in the amounts of \$1,200,000, \$1,000,000 and \$900,000, respectively (the "Borrower's Notes"), bearing interest at a rate not less than the interest rate determined for the Bonds and calling for semi-annual payments of interest only corresponding with the schedule of interest payments on the Bonds. The principal and any accrued interest on the Borrower's Notes shall be due and payable five (5) years from the closing contemplated by the Offering. The loan to the Limited Partnership will occur simultaneously with the closing contemplated by the Offering, at which time the Borrower's Notes and related security will be assigned to the Trustee as security for repayment of the Bonds;

8. The \$1,200,000 Note will be secured solely by real property described as a first lien deed of trust granted by the Partnership on its 108-bed nursing home located in Granbury, Texas (the "Granbury Nursing Home") and an assignment by the Partnership of its interest as lessor in and to the Granbury Nursing Home which is under lease to Southwest Health Villas, Inc., a Texas corporation (which is owned, although in different percentages, by the same three individuals who own the various partnership interests in the Limited Partnership). The \$1,000,000 Note will be secured solely by real property described as a first lien deed of trust granted by the Partnership on its 78-bed nursing home located in Grapevine, Texas (the "Grapevine Nursing Home") and an assignment by the Partnership of its interest as lessor in and to the Grapevine Nursing Home which is under lease to Southwest Health Villas, Inc. The \$900,000 Note will be secured solely by real property described as a first lien deed of trust granted by the Partnership on its 60-bed nursing home located in Austin, Texas (the "Austin Nursing Home") and an assignment by the Partnership of its interest as lessor in and to the Austin Nursing Home which is under lease to Southwest Health Villas, Inc.

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9. HFCC will be entitled to prepay all or a portion of the Bonds outstanding from borrowed or unborrowed funds, on any date commencing two (2) years after the Issue Date. This prepayment will be subject only to HFCC's providing thirty (30) days written notice to the Trustee and Underwriter. The redemption price will be at par plus accrued interest;

10. The Limited Partnership will be entitled to prepay all or a portion of its Borrower's Notes on any date commencing two (2) years after the date on which they are executed. To the extent prepayments are made whether pursuant to foreclosures under the mortgages or otherwise, prepayment shall also be made to the Bondholders who shall all be paid in full upon a prepayment of the entire amounts outstanding under the Borrower's Notes. In the event that the Borrower's Notes are only partially prepaid, then a certain number of the Bonds shall be selected by the Trustee at random by lot for prepayment;

11. The actual amount of the Bonds and of each of the Borrower's Notes may vary from the anticipated amounts described above as determined in the discretion of the Underwriter; provided, however, in no event will the amount of any Borrower's Note exceed the value of the collateral securing same (as determined to the satisfaction of the Underwriter at Closing).

It is this firm's view that HFCC will not, by virtue of the transactions described above, be an investment company subject to the Act by virtue of Section 3(c)(5)(C), which excludes from the definition of an investment company:

(5) Any person who is not engaged in the business of issuing redeemable securities, face amount securities of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: . . . (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

HFCC is not engaged in the issuance of face amount certificates of the installment type or periodic payment plan

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certificates since the obligations incurred involve no provisions for installment or periodic payment by the holder. Neither is HFCC involved in the issuance of redeemable securities defined as "any security, other than short-term paper under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets with a cash equivalent thereof." The Bonds may not be redeemed by the Bondholders under any circumstances and the Bondholders will not be entitled to their proportionate share of HFCC's current net assets, but will only be entitled to the return of the amount loaned to HFCC, plus interest, on the terms and conditions set forth in the Bonds and the Trust Indenture.

HFCC intends to lend the anticipated net proceeds from the Offering to the Limited Partnership and will receive the Borrower's Notes, which will be non-recourse promissory notes secured solely by first lien mortgages on real property. The characteristics and relationship of the Borrower's Notes and the Bonds for which they serve as collateral are similar in many respects to the characteristics and relationship of other instruments which the Division has recognized in prior "no action" letters as "interests in real estate." Examples include the mortgage-backed bond offerings reviewed by the Division (e.g., U. S. Home Finance Corporation, April 30, 1980, publicly available May 30, 1980 ["U.S. Home Finance"]) and the mortgage pass-through offerings reviewed by the Division which have been created by a number of mortgage lending institutions. See Home Savings and Loan Association, September 16, 1980, publicly available October 16, 1980; American Home Finance Corporation, April 9, 1981, publicly available May 11, 1981 ("American Home"); and Merrill Lynch, Pierce, Fenner & Smith, Inc., October 5, 1981, publicly available November 4, 1981. Furthermore, the staff found under the facts presented in Premier Mortgage Corporation, publicly available March 14, 1983, that Premier Mortgage Corporation ("Premier"), although investing in notes which were themselves secured by pools of notes secured by mortgages on real property (a relationship one step removed from the relationship of the Bonds and the Borrower's Notes which are the subject of this request), would have essentially the same investment experience that it would have were it directly investing in the mortgage loans, and stated that on the facts presented it would not recommend that the Commission take any enforcement action under the Act against Premier.

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We believe that the Borrower's Notes purchased by HFCC evidence an interest in real property for purposes of the Act similar to the outright purchase of mortgage loans described in U. S. Home Finance, and no less of an interest in real estate than the GNMA certificates described in American Home. A conclusion that the Borrower's Notes do not evidence an interest in real estate would elevate substance over form with respect to the Division's prior no-action letters and would appear to take the position that only certain types of mortgages and interests in real property are eligible for the 3(c)(5)(C) exception. This is certainly not in keeping with the provisions of the exception as written nor with the legislative history.

Concerning the proposition hereby advanced that the collateralization of the Borrower's Notes with the Limited Partnership's interest as lessor in the Nursing Homes represents a lien on real estate for purposes of the Act, we believe such conclusion to be warranted by positions taken by the staff of the Division in prior no-action letters. The staff has previously recognized that "real estate" referred to in Section 3(c)(5)(C) includes more than the fee interest in real estate. That leases qualify for treatment as "real estate" is illustrated by Arthur D. Little, Inc., (1971-72 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶78,635 (November 12, 1971), in which the staff expressed its willingness to permit a company broadly empowered "to purchase, lease or otherwise acquire [real estate] properties and interests. . . " to use the clause (C) exception. Similarly, in Apache Petroleum Mortgage Company, publicly available December 31, 1981, the staff granted a no-action request of Apache Petroleum Mortgage Company ("Apache") premised in part upon the opinion of Apache's counsel that the notes evidencing Apache loans would be secured solely by mortgages on real estate, as defined under state law. Counsel for Apache stated that the oil and gas leasehold interests of the kind that would sometimes serve as security for the Apache loans (i.e., working interests, and, in some states, overriding royalties) constituted "real estate" under State law. In construing Texas law as it relates to real property leasehold interests, the Texas Supreme Court has determined that a leasehold for more than one year is an "estate" or "interest" in land as those terms are used in various state statutes. See, Stroble v. Tearl, 221 S.W.2d 556 (Tex. 1949); Robertson v. Scott, 172 S.W.2d 478 (Tex. 1943); Dority v. Dority, 96 Tex. 215, 71 S.W. 950 (1903). Based upon the foregoing, we are of the opinion that the interest of the Limited Partnership as lessor of the

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Nursing Homes will qualify as "real estate" for purposes of Section 3(c)(5)(C) of the Act.

In view of the foregoing, the following considerations require the conclusion that HFCC is primarily engaged in the business of purchasing liens and mortgages on and other interests in real estate:

(a) HFCC will be substantially limited by its Articles of Incorporation to activities relating to the purchase, ownership and sale of interests in and mortgages and liens on real property;

(b) Repayment of the anticipated \$3,100,000 that HFCC proposes to loan to the Limited Partnership will be evidenced by the three (3) non-recourse Borrower's Notes. The \$1,200,000 Note will be secured by a first lien deed of trust on the Granbury Nursing Home and an assignment by the Partnership of its interest as lessor in and to the Granbury Nursing Home; the \$1,000,000 Note will be secured solely by a first lien deed of trust on the Grapevine Nursing Home and an assignment by the Partnership of its interest as lessor in and to the Grapevine Nursing Home; and the \$900,000 Note will be secured solely by a first lien deed of trust on the Austin Nursing Home and an assignment by the Partnership of its interest as lessor in and to the Austin Nursing Home. The collateral will have a value (as determined to the satisfaction of the Underwriter) at the closing of the Offering at least equal to the principal amount of the Borrower's Notes.

(c) HFCC will be obligated to prepay on the Bonds any prepayments made on the Borrower's Notes.

(d) Aggregate scheduled interest payments on the Borrower's Notes will equal or exceed the corresponding scheduled interest payments to the Bondholders on the Bonds;

(e) The principal and any accrued interest on the Borrower's Notes shall be due and payable five (5) years from the closing of the Offering at which time the Bonds shall also mature and be payable (i) from the payments received on the Borrower's Notes and (ii) to the extent of any difference between the payments on the Borrower's Notes and

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amounts due and payable to the Bondholders, from the general funds of HFCC.

(f) HFCC will, by virtue of its loans to the Limited Partnership, directly acquire mortgages on real property.

(g) After the proposed acquisition of the Borrower's Notes, interests in real estate and obligations secured by liens on real estate are expected to comprise virtually all of HFCC's assets, except for short-term investments on a temporary basis of the proceeds from the sale or refinancing of HFCC's real estate interests or from payments on notes held by HFCC, which investments are to be made pending payment of HFCC's operating expenses and debt, reinvestment in interests in real estate, further loans or purchases of loans secured by mortgages on real estate or payment of dividends to the shareholders of HFCC.

(h) Immediately after the proposed acquisition of the Borrower's Notes, virtually all of HFCC's gross revenues are anticipated to be attributable to interest income from the Borrower's Notes and revenues from its interest as a sublessee and sublessor in thirty (30) nursing homes.

(i) It is anticipated and expected that in the future HFCC will continue to invest in liens and mortgages secured by real estate through secured loans or purchases of loans in the secondary market as well as in additional leasehold interests and improved fee property.

(j) The purchase of liens referred to in Section 3(c)(5)(C) of the Act must include an obligation secured by the lien because a lien that does not secure an obligation does not have legal significance.

(k) No distinction should be drawn for purposes of Section 3(c)(5)(C) between a direct mortgage on real property securing an obligation and a lien on a leasehold interest securing an obligation.

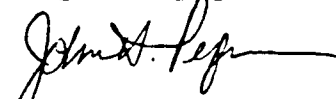
In our opinion, on the basis of the foregoing, HFCC is not now and, after the completion of the transactions described

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above, will not be an "investment company" within the meaning of the Act because the exemption from the definition of "investment company" provided by Section 3(c)(5)(C) of the Act is applicable to HFCC. We respectfully request your concurrence in this opinion. If, for any reason, you do not concur with the conclusions expressed herein, we respectfully request the opportunity to arrange a conference with the staff either in person or by telephone prior to its issuance of any written response.

If you should have any questions relating to this request, please do not hesitate to contact the undersigned or Kathleen Cleaveland collect at (214) 720-9600.

Very truly yours,



John H. Peper

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 84-399-CC
Health Facility Credit Corp.
File No. 132-3

On the basis of the facts presented in your letter of November 16, 1984, we would not recommend that the Commission take any enforcement action under the Investment Company Act of 1940 ("Act") if Health Facility Credit Corporation does not register under the Act in reliance upon your opinion as counsel that it is excepted under section 3(c)(5)(C) of the Act from the definition of an investment company.

Elizabeth T. Tsai
Elizabeth T. Tsai
Special Counsel