

by a licensed Missouri land surveyor; (d) obtaining verification that the present zoning and deed restrictions of the 5735 Elizabeth Avenue Building will permit the Welfare Fund's intended commercial use and development; (e) reviewing and approving all documents and contracts pertaining to the 5735 Elizabeth Avenue Building; (f) receiving evidence satisfactory to the Welfare Fund in all respects as to the economic feasibility of acquiring, developing, and improving the 5735 Elizabeth Building; and (g) obtaining, from the Department, an individual exemption from the Act's prohibited transactions rules in order to engage in the subject Lease of a portion of the 5735 Elizabeth Avenue Building by the Welfare Fund to the Training Fund.

The relevant terms of the proposed sale contemplate that the 5735 Elizabeth Avenue Building will be sold to the Welfare Fund for \$1,070,000 on an "as is" basis. The sale will take place approximately 30 days from the date the Department publishes the notice granting the requested exemption in the **Federal Register**.

6. Under section 3.03(a)(3) of the Training Fund Trust Agreement, the Training Fund Trustees are authorized to enter into a lease of buildings related to the training program. In this regard, the Applicants represent that the Training Fund requires overflow classroom and lab space at a location which is conveniently located to the Training Fund's 2300 Hampton Avenue Building. The Applicants state that the lease of the second floor of the 5735 Elizabeth Avenue Building would present an attractive opportunity for the Training Fund to acquire overflow classroom and lab space at a location that is one block away from the Training Fund's existing facility in the 2300 Hampton Avenue Building, and close to the Local 1 office.

The Training Fund Trustees represent that the Training Fund cannot meet current and anticipated demand for training programs at the 2300 Hampton Avenue Building. This is because the 2300 Hampton Avenue Building is located on a landlocked parcel. The Training Fund Trustees also state that constructing on the existing land parcel would be disruptive and costly for the Training Fund. Furthermore, the Training Fund Trustees maintain that leaving the existing facility at 2300 Hampton Avenue would not be an option for the Training Fund because it owns the property and, as of 1999, renovations costing \$1,600,000 were made to the building.

7. The Applicants state that the Welfare Fund and its administrator, the

Service Center, also require additional space for claims administration offices. The Applicants assert that the first floor of the 5735 Elizabeth Avenue Building will present an opportunity to expand and consolidate the Service Center's administrative offices on a single floor at a location that is convenient to many participants because of its proximity to the Training Fund and Local 1, one block apart in distance. The Applicants represent that the proposed lease of office space between the Welfare Fund and the Service Center, a participating employer, will be subject to the exemptive relief provided under PTEs 76-1 and 77-10. The Applicants further explain that it is the parties' intention that the Service Center Lease will comply with the terms and conditions of these class exemptions.¹³ Therefore, the Applicants do not request additional administrative exemptive relief from the Department regarding such Lease.

8. Accordingly, with respect to the second floor of the 5735 Elizabeth Avenue Building, the Applicants request an administrative exemption from the Department that will permit, if granted, the Welfare Fund to lease classroom space and supplemental facilities to the Training Fund. The exemption transaction and related transactions will be structured as follows:

(a) The Welfare Fund will purchase the 5735 Elizabeth Avenue Building for a purchase price of \$1,070,000, contingent upon, among other things, the Department granting this exemption;

(b) The Welfare Fund and the Training Fund will enter into the subject Lease for classroom space and supplemental facilities on the second floor of the 5735 Elizabeth Avenue Building; and

(c) The Welfare Fund and the Service Center will enter into the Service Center Lease on the first floor of the 5735 Elizabeth Avenue Building in a manner that is designed to comply with PTEs 76-1 and 77-10.

9. The construction costs in renovating the 5735 Elizabeth Avenue Building are estimated at \$1,503,934, with an estimated additional \$115,000 in professional costs related to architectural, legal, and appraisal services.¹⁴ The Training Fund will

¹³ The Welfare Fund Trustees represent that the Service Center Lease will satisfy the terms and conditions of PTEs 76-1 and 77-10. However, the Department expresses no opinion herein on whether such lease will satisfy the terms and conditions of these class exemptions.

¹⁴ It is contemplated that Kadean Construction Company (Kadean), a general contractor, will perform the renovation work to be performed for the Training Fund. Kadean is not a party in interest

contribute \$426,207 to fund its allocated share of the second floor construction costs. This will result in a total net cost to the Welfare Fund of \$2,262,727 for the purchase price and renovation costs of the 5735 Elizabeth Avenue Building. However, such costs will not exceed 5 percent of the assets of the Welfare Fund.

10. The second floor Lease of the 5735 Elizabeth Avenue Building to the Training Fund is for 8,309 square feet in "white box" condition, with renovations completed to bring the second floor into compliance with applicable building codes.¹⁵ Initially, the Training Fund's base rent was set at \$10.50 per square foot¹⁶ based upon an independent appraisal (the Appraisal) of the property that was performed on November 20, 2002 by Messrs. Edward W. Dinan, MAI, CRE and Mark B. Baffa, Appraiser/Analyst, who are qualified, independent appraisers (the Appraisers), employed by Dinan Real Estate Advisors of St. Louis, Missouri. (See Representation 14 for further details about the Appraisal.) The Appraisers concluded that the market rent for the first floor Service Center Lease was \$14.50 per square foot, and for the second floor Training Fund Lease, \$10.50 per square foot. The \$10.50 per square foot rental amount was based on the assumption that the Welfare Fund would fund the full \$426,207 of construction costs for the renovation and any rehabilitation of the second floor of the 5735 Elizabeth Avenue Building. However, the Training Fund Trustees decided to

to the Welfare Fund or the Training Fund because it is not a contributing employer. However, Kadean will subcontract the electrical work on the project to signatory employers who are parties in interest to the Training and Welfare Funds as contributing employers.

The Department is providing no opinion in this proposed exemption on whether the contemplated expenditures to be made by the Training Fund for the construction of the second floor of the 5735 Elizabeth Avenue Building are (or will be) consistent with the fiduciary responsibilities contained in part 4 of title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan and its participants and beneficiaries when providing benefits to such participants and beneficiaries and defraying reasonable expenses of administering the plan.

¹⁵ The Applicants represent that the Welfare Fund and the independent fiduciary are required to approve any alterations, additions, modifications, or improvements of a permanent nature to the second floor. During the term of the Lease, the alterations are the property of the Training Fund, and the Training Fund is required to reimburse the Welfare Fund for any additional taxes, inspections, and fees that are attributable in any way to such alterations. At the expiration of the Lease, or sooner termination, the alterations automatically become the property of the Welfare Fund.

¹⁶ Or \$7,270 monthly and \$87,245 annually.