

finance the second floor improvements by agreeing to pay the Welfare Fund \$426,207, thereby buying down the Training Fund's rent to \$6 per square foot.¹⁷

11. The Training Fund Lease is a written, triple net lease, having an initial term of five years and two five year renewal options. The Training Fund will pay 41.25 percent of the operating costs of the Building. Among others, these operating expenses include real estate taxes and insurance. At the time the Lease options are to be exercised, rent is to be set by the Welfare Fund's independent fiduciary, who has experience in real estate valuations.

Section 2.2 of the Training Fund Lease provides that the rent may be increased by the independent fiduciary, at the time of renewal, but in no event can the rent drop below the preceding term's rent. In this respect, the Welfare Fund is assured that the base rent amount remains at \$6 per square foot. However, the Training Fund will have the right to terminate its exercise of a renewal option if the Training Fund does not accept the independent fiduciary's determination of rent payable during the renewal term.

12. The first floor lease of the 5735 Elizabeth Avenue Building to the Service Center, which the Applicants believe will be covered under PTEs 76-01 and 77-10, is for 11,836 square feet of finished office space. The Service Center's rent is set at \$14.50 per square foot. The Service Center Lease is a written, triple net lease having a 10 year term, with one five year renewal option. The Service Center Lease provides for yearly termination during the initial term as of the last day of each lease year, provided that the Service Center gives at least 6 months prior written notice of such termination and pays a termination fee equal to the amount of unamortized improvement costs and a penalty of three months' rent. At the time the lease option is to be exercised, rent is to be set by the Welfare Fund's independent fiduciary.

Section 2.2 of the Service Center Lease provides that the rent may be increased by the independent fiduciary, at the time of renewal, but in no event can the rent drop below the preceding term's rent. In this respect, the Welfare Fund is assured that the base rent will remain at \$14.50 per square foot. The Service Center will also pay 58.75

percent of the operating costs associated with the 5735 Elizabeth Avenue Building.

13. The Welfare Fund anticipates a rate of return on the 5735 Elizabeth Building of between 8.5 percent to 9.5 percent. With the assistance of the independent fiduciary, TPC, the Welfare Fund has established a contingency reserve of 10 percent of the projected construction costs (\$150,000). If the entire contingency reserve is used, the Welfare Fund's projected return is 8.55 percent.

14. As noted briefly in Representation 10, on November 25, 2002, the Welfare Fund Trustees obtained an independent appraisal report (the Appraisal Report) of the 5735 Elizabeth Avenue Building. In the Appraisal Report, the Appraisers also valued the proposed improvements and the contemplated Leases.

Initially, the Appraisers determined that the fair market value of a fee simple interest in the 5735 Elizabeth Avenue Building was \$1,070,000 as of November 20, 2002, in an "as is" condition. The Appraisers then valued the 5735 Elizabeth Avenue Building as of September 1, 2003, on an "as proposed basis" using both a "direct capitalization" valuation (\$2,690,000) and a sales comparison approach (\$2,620,000).

The Appraisal Report also included a survey of area rents. Under the survey, the Appraisers concluded that the market rent for the first floor Service Center Lease was \$14.50 per square foot, and \$10.50 per square foot for the second floor Training Fund Lease.

15. As noted above, the proposed rental under the Training Fund Lease was adjusted to \$6 per square foot based upon the Training Fund agreeing to fund its allocated share of the construction costs. These costs include, among others, new mechanical, electrical and plumbing systems for the 5735 Elizabeth Avenue Building. The Appraisers, in a letter dated December 16, 2002, considered \$6 per square foot "market rent," given the assumption that the Training Fund was financing its own improvements. The Appraisers also adjusted the direct capitalization valuation of the 5735 Elizabeth Avenue Building downward to \$2,290,000 in order to take into account the reduction in the Training Fund's rent to \$6 per square foot. However, the Appraisers' sales comparison valuation remained unchanged at \$2,690,000.

16. In addition to its short term obligations, the Welfare Fund is funding retiree medical benefits which is a long term funding goal similar to a pension benefit. The Welfare Fund's projected investment in the 5735 Elizabeth

Avenue Building of approximately \$2,290,000, with a projected return ranging from 8.5 percent to 9.5 percent, represents approximately 2.6 percent of the Welfare Fund's assets. The Welfare Fund's investment consultant, Mr. Randall Kirkland, has reviewed the contemplated purchase and has concluded that it does not represent an over-concentration in real estate and will fit the long term investment goals of the Welfare Fund which is funding for retiree medical. Furthermore, the Welfare Fund Trustees, and for that matter, the Training Fund Trustees, have determined that the Lease is an appropriate transaction for the Funds and is in the best interests of the participants and beneficiaries of such Funds.

17. The Welfare Fund Trustees have retained TPC to serve as independent fiduciary with respect to the Training Fund Lease and the Service Center Lease. Mr. Philip Hulse, the President of TPC, will undertake the specific duties of the independent fiduciary. Mr. Hulse is a real estate broker and a member of several real estate organizations, including the Society of Industrial and Office Realtors, National Association of Realtors, St. Louis Association of Realtors, Missouri Association of Realtors, and the Missouri State Bank Board of Directors. In addition, Mr. Hulse has partial ownership interests in several real estate partnerships of over two million square feet of office, industrial, and commercial space throughout the St. Louis metropolitan market. Since 1985, Mr. Hulse's firm, TPC, has been involved in the St. Louis, Missouri commercial and industrial real estate community where it has assisted clients in a variety of capacities, including tenant and buyer representation, site selection, asset disposition, investment, and development.

On December 17, 2002, the Welfare Fund Trustees and Mr. Hulse on behalf of TPC, entered into and executed an independent fiduciary engagement agreement. Pursuant to this agreement, TPC has agreed to (a) evaluate and make recommendations relating to the provisions on the fair market rental value of the 5735 Elizabeth Avenue Building (and any proposed amendments thereto); (b) evaluate and make recommendations on the provisions of the sales contract for the 5735 Elizabeth Avenue Building (and any proposed amendments thereto); (c) evaluate and make recommendations on the provisions of the Training Fund and Service Center Leases (and any proposed amendments thereto), and make a determination and

¹⁷ Or \$4,155 monthly and \$49,854 annually. With the payment of renovation costs and first year rent, the Training Fund's total investment in the 5735 Elizabeth Avenue Building (\$476,061) would represent approximately 10 percent of the Training Fund's assets.