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Raleigh Pathology Laboratory Associates, P.A. Profit Sharing Plan (the Profit Sharing Plan), Located in Raleigh, NC

[Application No. D-11171]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) 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), 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,¹⁴ shall not apply to the proposed exchange of an unimproved waterfront lot (the Pine Knoll Shores Lot) owned by the Plan and allocated to the individually-directed account (the Account) in the Plan of James R. Edwards, M.D., for one unimproved tract of land (Parcel One) owned personally by Dr. Edwards and his spouse, Mrs. Delores Edwards.

This proposed exemption is subject to the following conditions:

(a) The exchange of the Pine Knoll Shores Lot between the Account and Dr. and Mrs. Edwards for Parcel One is a one-time transaction.

(b) The fair market value of the Pine Knoll Shores Lot and Parcel One is determined by qualified, independent appraisers, who will update their appraisal reports at the time the exchange is consummated.

(c) For purposes of the exchange, Parcel One has a fair market value that is no less than the fair market value of the Pine Knoll Shores Lot at the time the transaction is consummated.

(d) The terms and conditions of the exchange are at least as favorable to the Account as those obtainable in an arm's length transactions with an unrelated party.

(e) The exchange does not involve more than 25 percent of the Account's assets.

(f) The exchange allows the Account to divest itself of property that is susceptible to hurricane damage and high maintenance costs, and it permits

the Account to acquire virtually maintenance-proof property having increased liquidity.

(g) Dr. Edwards is the only participant in the Plan whose Account is affected by the transaction and he desires that such transaction be consummated.

Summary of Facts and Representations

1. Raleigh Pathology Laboratory Associates, P.A. (the Employer) of Raleigh, North Carolina, is a professional corporation. Through duly licensed physicians and other employees, the Employer provides professional pathology services to patients of Wake Medical Center, patients of health maintenance organizations and others.

2. The Plan is a defined contribution plan which was established by the Employer, effective January 1, 2002, as a result of the merger of the Raleigh Pathology Laboratory Associates, P.A. Money Purchase Pension Plan (the Pension Plan), also sponsored by the Employer, into the Plan. As of December 31, 2001, which is the most recent date that financial information is available, the Plan had 20 participants and assets with an approximate aggregate fair market value of \$13,885,737.83.

3. The Plan is administered by 8 trustees (the Trustees). The Plan's current Trustees are James R. Edwards, M.D., Gordon B. LeGrand, M.D., Dana D. Copeland, M.D., D. Emerson Scarborough, M.D., Dennis E. Ose, M.D., Cheryl A. Szpak, M.D., George H. Clarke, M.D., and Shrinivas Rajagopalan.

Pursuant to provisions of the Plan, each participant has the right to direct investments under such Plan for his or her own account. In such instances, the investments are earmarked for the account of the participants directing such investments.

4. Dr. Edwards, a stockholder, director and an employee of the Employer, as well as a Trustee, has an individually-directed account in the Plan. As of May 5, 2002, the assets in Dr. Edwards's Account were valued at \$2,143,643.53.

5. Among the assets in Dr. Edwards's Account is the Pine Knoll Shores Lot. This unimproved parcel of waterfront property is located at 122 Arborvitae Court, Pine Knoll Shores, Carteret County, North Carolina. The Pine Knoll Shores Lot is also legally described as "Lot 11, Block TT, Section 5, Pine Knoll Shores Extension" and it consists of approximately 9/10 of an acre of land. The property is not located in close proximity to any other property that is owned by Dr. Edwards.

The Account acquired the Pine Knoll Shores Lot as a real estate investment

for \$65,000 from Romaine and Kathryn Howard, who were unrelated parties, on September 30, 1981. Because the Account paid the Howards cash consideration for the Pine Knoll Shores Lot, the property was not encumbered by a mortgage. Currently, there is no mortgage or other encumbrances existing on the property and it represents approximately 19 percent of the assets of Dr. Edwards's Account.

The Pine Knoll Shores Lot is located at the point where the Hoffman Inlet meets Bogue Sound. The lot has open water frontage on two full sides (approximately 202 feet on one side and 135 feet on the other). Although sea walls have been constructed on both sides of the property, they have required frequent maintenance since the North Carolina coastline is prone to hurricane damage.

Since the Pine Knoll Shores Lot has been allocated to the Account, it has not been used by or leased to anyone, including parties in interest. However, the Account has incurred \$36,307 in maintaining the sea wall, \$14,853 in real estate taxes,¹⁵ and \$7,571 for general maintenance for total expenses of approximately \$58,731. Thus, together with the \$65,000 acquisition price, the Account has expended \$123,731 in connection with its interest in the Pine Knoll Shores Lot.

6. The Pine Knoll Shores Lot has been most recently appraised by Edward Michael Lupton, a North Carolina Certified Real Estate Appraiser, who is affiliated with the appraisal firm of Putnam Real Estate of Morehead, North Carolina. In an appraisal report dated December 17, 2002, Mr. Lupton, a qualified, independent real estate appraiser, placed the fair market value of a fee simple interest in the Pine Knoll Shores Lot at \$408,000 as of the same date as his report. In valuing the Pine Knoll Shores Lot, Mr. Lupton utilized the sales comparison approach because he believed this method would provide the most reliable indication of market value since other valuation methods were not applicable to vacant lots in the subject neighborhood.

7. Because of ongoing expenses and the risk of further significant hurricane damage has left the Pine Knoll Shores Lot exposed to possible significant future losses, it is proposed that the Account divest itself of this property. Therefore, an administrative exemption is requested from the Department to

¹⁵ Although the Plan acquired the Pine Knoll Shores Lot in 1981 and Dr. Edwards's Account began paying real estate taxes from that date, the applicant represents that Dr. Edwards has only been able to locate records relating to amounts paid for real estate taxes since 1992.

¹⁴ For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.