

thereof, then the full unpaid balance of the Note and all interest accrued thereon shall become immediately due and payable. The Plan, as the payee under the Note, shall have and may exercise any one or more of the rights and remedies provided by law, pursuant to the mortgage and other documents relating thereto. Among other things, the Note reserves the Plan the right to require the Company to pledge additional property as collateral for the Loan in the event such property is needed to maintain full collateralization at amounts which exceed at least 150% of the outstanding principal balance of the Loan.

The applicant represents that the Loan will represent no more than 25% of the Plan's total assets at any time.

4. The Loan will be secured at all times by a mortgage (the Mortgage) on a medical office building (the Building) owned by the Company that is currently leased to the Employer. The Building is located at 926 North Michigan Avenue, Saginaw, Michigan. The Mortgage will be duly recorded under the laws of the State of Michigan.

The Building was appraised (the Appraisal) on October 11, 2002 by Roland M. Adams, SRA, a certified independent real estate appraiser (Mr. Adams) with Adams Appraisal Services, located in Freeland, Michigan. In the Appraisal, Mr. Adams relied primarily on the cost and income approaches to value the Building.

Mr. Adams states that the cost approach is based on the idea that an informed purchaser would pay no more than the cost of producing a substitute property with the same utility as the subject property. Under the cost approach, the fair market value of the Building was determined to be approximately \$926,000.

Mr. Adams also considered the income approach, where such analysis converts anticipated benefits (dollar income or amenities) to be derived from the ownership of property into a value estimate. The income approach is widely applied in appraising income-producing properties. Anticipated future income and/or reversions are discounted to a present-worth figure through the capitalization process. Mr. Adams stated that under the income approach, the fair market value of the Building was approximately \$922,000.

Mr. Adams states that due to the Building's overall good condition, he gave equal consideration to the cost and income approaches. In conclusion, Mr. Adams determined that the fair market value of the Building was \$925,000, as of October 11, 2002.

5. Citizens Bank in Saginaw, Michigan (the Bank) has examined the terms of the Loan. By letter dated April 21, 2003, Kimberly E. Johnson, a vice president of the Bank, represents that the Bank would provide a similar loan under the same terms for the same amount, payable in equal monthly installments of principal and interest over a ten (10) year period at an interest rate of 9% per annum.

6. The Loan will be monitored by Ronald Krawczyk, CPA (Mr. K), who will serve as the independent fiduciary (the I/F) on behalf of the Plan for purposes of the Loan. Mr. K has submitted a statement dated April 17, 2003, in which he discusses his role as the I/F. Mr. K believes that the Loan would be in the best interest of the Plan's participants and beneficiaries. Mr. K has reviewed the terms and conditions of the Loan in consideration of the Plan's overall investment portfolio, and found the Loan to be consistent with the Plan's overall investment objectives and liquidity needs. In this regard, Mr. K represents that the terms and conditions of the Loan are comparable with, and as favorable to, the Plan as the terms and conditions of a similar loan between unrelated parties. Mr. K believes that the Loan will be a stable investment opportunity that will provide consistent returns for the Plan at a steady rate of interest commensurate with market rates. The Loan will be adequately collateralized by property (*i.e.*, the Building or other property) that will be valued in excess of at least 150% of the outstanding principal amount of the Loan. Mr. K further states that the proposed rate of return for the Loan will exceed similar rates of return that could be obtained through other fixed-income investment vehicles. Mr. K believes that the Loan will insure a favorable rate of return to the Plan on a continuing basis, throughout its duration.

As the I/F, Mr. K will have an affirmative duty to monitor the Loan to ensure that monthly payments are timely made by the Company. Mr. K will consult with counsel for the Plan on a regular basis to determine that no default occurred under the terms of the Loan. In the event of default, Mr. K will act for the Plan and promptly transmit notice of default to the Company and the Trustees. Mr. K will then monitor, on behalf of the Plan, the progress for any cure of such default. Mr. K will have the authority and ability to act unilaterally to protect the interests of the Plan with respect to all options for recovery on the Note, under applicable Michigan law, including foreclosure on the Building with the right to sell the

Building, or other property that is securing the Loan to third parties. Such action may be taken by Mr. K without the prior approval of the Trustees, if necessary. Mr. K will also periodically review the condition of the Building.<sup>16</sup> Mr. K represents that he will take such actions as are necessary to ensure, and verify, that the fair market value of the Building is equal to or greater than, an amount that is at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest). If necessary, Mr. K will require the Company to pledge additional property as security for the Loan.

With respect to Mr. K's qualifications to act as the I/F for the Plan for purposes of the Loan, Mr. K represents that he is a licensed CPA and has been in practice for 33 years. Mr. K maintains that he has had extensive auditing experience, having served as a trained auditor and audit manager. Mr. K states that he has performed audits and other financial services for various industries, including banks, hospitals, manufacturing firms and other businesses. Mr. K states that he is a member of the American Institute of CPA's (*i.e.*, the AICPA) and the Michigan Association of CPA's.

Mr. K represents that he is, and will remain, independent of the Employer and the Company, for purposes of his proposed duties and responsibilities as the I/F for the Plan.

7. With respect to the possibility of the need to appoint an individual or entity to succeed Mr. K as the I/F for the Plan, the applicant states that it will notify the Department at least sixty (60) days in advance of such appointment. The person or entity so appointed will have the same responsibilities as Mr. K, and will have experience that is similar or comparable to that of Mr. K. Finally, the individual or entity that may be selected as the new I/F will be independent of the Employer and the Company.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

- a. The Loan will not exceed 25% of the total assets of the Plan at any time;
- b. The terms of the Loan are at least as favorable to the Plan as those terms

<sup>16</sup> Among other things, Mr. K notes that the insurance provisions relating to the Building are adequate to protect the Plan's interests. Pursuant to the terms of the Note, the Company is required to maintain both fire and casualty and general liability insurance policies on the Building at all times in commercially reasonable amounts satisfactory to the Plan. The amount of such policies shall be no less than the unpaid principal balance and accrued interest under the Note.