

transaction exemption, PTE 85–37, effective, as of July 1, 1984. The Old Lease provided for an initial ten (10) year rental term with two (2) additions renewal period of ten (10) years each, exercisable at the discretion of the Employer. In July 1993, the Employer opted to renew the Old Lease. On July 31, 2003, rather than extend the Old Lease for an addition term of ten (10) years, the Employer elected to terminate the Old Lease. On August 1, 2003, the Employer and the Plan entered into the New Lease.

4. The New Lease provides for an initial term of three (3) years with up to (4) four additional one (1) year extension options exercisable by the Employer, subject to the approval of the I/F. Notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice. Such date shall be at least six (6) months after the date such written notice is given to the Employer, but in no event extending the New Lease beyond the then current lease term.

The initial rental amount under the provisions of the New Lease will be \$16,448.42 a month (\$197,381 annually). In this regard, for the purpose of portfolio management and lease negotiation, Mr. Howard J. Layton (Mr. Layton), MAI, CCIM, CRE, (dba The Appraisal Source, L.L.C.) prepared an appraisal report estimating the "as is" market value of the Property, as of November 26, 2002, the date the Property was inspected. In the opinion of Mr. Layton, as of November 26, 2002, the fee simple "as is" market value of the Property was \$1,700,000. Based on the terms of the Old Lease, Mr. Layton further concluded that, as of November 26, 2002, the annual rental rate for the Property would be \$197,381 (\$3.75/SF × 52,635 SF in the Property) rounded to approximately \$16,448 a month. After examining a copy of the New Lease, Mr. Layton, represented in a letter dated July 28, 2003, that there is no value impact to the subject Property, as a result of the terms of the New Lease.

Mr. Layton is qualified to serve as an appraiser of real property in that he is a designated MAI member of the Appraisal Institute, a CCIM member of the Commercial Investment Real Estate Institute, a CRE member of the Counselors of Real Estate, and a certified general appraiser for the state of Utah. In addition, Mr. Layton has been engaged as a real estate appraiser since 1983.

Mr. Layton represents that he is independent in that he is not related to the Employer, the Owners of the Employer, or their principals. Further, Mr. Layton has no present or prospective interest in the Property and has no personal interest or bias with respect to the parties involved. Mr. Layton's compensation was not contingent on reporting a predetermined value or a requested minimum valuation.

The New Lease also provides for a periodic adjustment annually to the rental amount, so that the rent will be no less than the fair market rental value of the Property at the time of each adjustment. Such adjustments will be made by retaining a qualified, independent appraiser, selected by Wells Fargo. The cost of each such appraisal will be paid for by the Plan. It is represented that in no event shall the rental amount paid by the Employer be reduced below \$16,448 a month during the term of the New Lease.

The New Lease is a triple-net lease, such that the Employer is obligated to pay all taxes levied against the Property, all utility charges, the cost of installing any fixtures and equipment, all maintenance and repair costs, and premiums for both liability and casualty insurance for the benefit of the Plan as an additional named insured. All trade fixtures and equipment installed by the Employer remain the property of the Employer and may be removed by the Employer, who must repair any damage caused by such removal. In addition, the Employer has agreed to indemnify the Plan from all liabilities for personal injury or property damage occurring on the Property and not caused by the negligence of the Plan.

5. The Employer and sponsor of the Plan is engaged in the business of producing two (2) daily newspapers seven (7) days a week. It is represented that the Employer uses the Property to receive (via the railroad spur on the Property and by truck) newsprint and other supply items for printing newspapers and related functions and to store such supplies. It is represented that the Employer has consistently complied with the terms of both the Original Lease and the Old Lease in a timely manner.

6. The Owners of the Employer are each engaged in the newspaper publishing business. MediaNews owns 100 percent (100%) of Kearns-Tribune, LLC (Kearns-Tribune), which owns 50 percent (50%) of the stock of the Employer. MediaNews purchased its ownership in Kearns-Tribune MediaNews from AT&T Corporation. The remaining 50 percent (50%) of the

stock of the Employer is owned by Deseret. The Owners of the Employer have guaranteed performance of all conditions of the New Lease, including the payment of rent, by the Employer and have agreed to perform such conditions themselves, if the Employer is unable to do so. Wells Fargo has reviewed various information and financial data on MediaNews and Deseret and believes that each is creditworthy.

7. The Employer is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. The Owners of the Employer are parties in interest with respect to the Plan, pursuant to section 3(14)(E) of the Act. The Plan and the Employer entered into the New Lease, effective August 1, 2003, on the condition that the proposed exemption is granted. In addition the Owners of the Employer have guaranteed the obligations of the Employer under such New Lease. Accordingly, the applicant has requested relief from section 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and 4975 of the Code by reason of 4975(c)(A)(A) through (E) for both transactions, the leasing of the Property by the Employer and the guarantee by the Owners of the Employer.

8. It is represented that the proposed transactions are administratively feasible in that the Property has been previously leased by the Employer from the Plan for an extended period of time, pursuant to PTE 85–37. Further, no modification of the Property would be required to accommodate the Employer who is the current tenant. In addition, the appraisal of the Property, the drafting of the New Lease, and the other administrative requirements necessary to continue the leasing of the Property to the Employer by the Plan have already been accomplished.

9. It is represented that there are sufficient safeguards in the proposed exemption for the protection of the Plan and its participants and beneficiaries. Wells Fargo has reviewed the terms of the New Lease and compared such terms with similar leases between unrelated parties. Further, Wells Fargo has agreed to monitor the New Lease and the conditions of the exemption on behalf of the Plan throughout the term of the New Lease and has authority to take all appropriate actions to safeguard the interests of the Plan.

It is represented that Wells Fargo has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements in light of the proposed leasing, and has determined that the proposed leasing complies with the Plan's investment