

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Aetna, UBS Realty or any of their respective affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and any cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna, UBS Realty, any of their respective affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. However, such income limitation shall not include any income for services rendered to a Single Customer ERISA-Covered Account by an independent fiduciary selected by the Plan Sponsor to the extent determined by the Department in any subsequent prohibited transaction proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Aetna, UBS Realty, any of their respective affiliates, or any Account managed by Aetna, UBS Realty or any of their respective affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or

individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Aetna, UBS Realty or any of their respective affiliates for each of the transactions in this proposed exemption. Aetna, UBS Realty and any of their respective affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Neither UBS Realty nor any of its affiliates is a co-investor in the shared investment or partnership to which an exemption provided by Sections I, II or III above is being applied; provided, however, that this condition shall not preclude an employee benefit plan maintained by Aetna, UBS Realty or any of their affiliates from participating in an ERISA-Covered Account that is such a co-investor.

(h) Aetna or UBS Realty maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Aetna, UBS Realty or any of their respective affiliates, the records are lost or destroyed prior to the end of the six-year period.

(i) Except as provided in paragraph (2) of this subsection (i) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (h) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or

dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (i) shall be authorized to examine trade secrets of Aetna, UBS Realty or any of their respective affiliates, or commercial or financial information which is privileged or confidential.

#### Section V—Definitions

For the purposes of this proposed exemption:

(a) An “affiliate” of Aetna or UBS Realty, respectively, includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna or UBS Realty, respectively,

(2) Any officer, director or employee of Aetna, UBS Realty or any person described in section V(a)(1), and

(3) Any partnership in which Aetna or UBS Realty is a partner.

(b) An “Account” means any account maintained by Aetna and, except in the case of the General Account, managed by UBS Realty. The term “Account” includes the General Account, ERISA-Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The “General Account” means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An “ERISA-Covered Account” means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) “Disproportionate” means not in proportion to an Account’s existing equity ownership interest in an investment, partnership or partnership interest in a debt.

(f) The “Transition Effective Date” is the effective date of the delegation by Aetna to UBS Realty of the management