

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the partnership agreement, the restrictions of sections 406(a), 406(b)(1) and 406(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 shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna or UBS Realty on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the partnership to a co-partner even though the independent fiduciary for one or more of such ERISA-Covered Account[s] has not approved such sale where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to the buy-sell option, provided that such disapproving Account is first afforded the opportunity to purchase the entire interest of the co-partner.

#### Section III—Exemption for Transactions Involving a Partnership or Persons Related to a Partnership

The restrictions of section 406(a) 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 (D) of the Code, shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a partnership, or any transaction with the co-partner which arises in connection with the operation of the partnership, by an ERISA-Covered Account that is participating in an interest in the partnership, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

#### Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally

unrelated to Aetna, UBS Realty and their respective affiliates. This condition shall not apply to plans covering employees of Aetna, UBS Realty or any of their respective affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either:

(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 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 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