engaged in the business of furnishing coin-operated laundry machines to apartment complexes. James L. Sharp is the sole shareholder of the Employer. The Plan is a profit sharing plan having 49 participants and assets valued at $658,839 as of October 31, 1994. The Plan's trustee is Mr. Sharp. As of October 31, 1994, the Account's balance equaled $251,243, but Mr. Sharp represents that he will roll over from his individual retirement account into the Account an amount so that the fair market value of the Property will not exceed 25% of the value of the Account's assets.

2. On July 1, 1991, the Account purchased the Property from an unrelated third party for $131,221. The Property consists of a warehouse building situated on .71 acres. The Property is contiguous to property which Mr. Sharp personally owns and presently leases to the Employer.[3] The Account proposes to lease the Property to the Employer. The proposed lease will be for one year with annual renewals. The Employer will pay monthly rent in the amount of $1310, and the Account shall have the right to terminate the Lease at any time on thirty days notice.

3. The Property was appraised by Gene Meazell, a certified general appraiser, of Appraisers Unlimited on October 2, 1993. Mr. Meazell determined that the fair market value of the Property was $140,000, and the fair market rental value of the Property is $1,070 per month. Mr. Meazell updated his appraisal on August 14, 1994 and determined that fair market value and fair market rental value remained unchanged. Naifef, Weikel and Rouse, independent certified public accountants calculated that the value of the Property to the Employer is enhanced by 20 to 25% because it is adjacent to the Employer's warehouse. Using this assumption, the fair market monthly rental rate for the Employer would be between $1,284 and $1,337. Thus, the proposed rental rate of $1,310 would be at fair market value.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) the terms of the Lease are and will remain at least as favorable as the Plan could obtain in an arm's length transaction with an unrelated party; (2) the fair market rental value has been and will continue to be determined on an annual basis by a qualified, independent appraiser; and (3) the fair market value of the Property, as determined by a qualified, independent appraiser, will represent no more than 25% of value of the assets in the Account.

Notice to Interested Persons: Because Mr. Sharp is the only participant in the Plan whose individual account will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, written comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Allison Padams, of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Adel E. Zaki Money Purchase Pension Plan (the Plan) Located in Los Angeles, California

[Exemption Application No. D–09883]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 section 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[4] shall not apply to the proposed cash sale of a parcel of improved real property (the Property) by the Plan to Adel E. Zaki, M.D. (Dr. Zaki), a party in interest with respect to the Plan; provided that (1) the sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan receives in cash the *greater of* $710,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (3) the Plan pays no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a tax-qualified defined contribution profit sharing plan sponsored by Adel E. Zaki M.D., A Professional Corporation (the Employer). As of October 24, 1994, there were four (4) participants and beneficiaries in the Plan, including Dr. Zaki. As of the same date, the assets of the Plan totaled approximately $1,745,500. It is represented that Dr. Zaki's account in the Plan consists of approximately 99 percent (99%) of the assets of the Plan with the remaining one percent (1%) allocated among the other three participants. The Plan's assets are invested in the Property and cash or cash equivalents, such as bank certificates of deposit. It is represented that, as of October 24, 1994, the Property constituted approximately 41 percent (41%) of the assets of the Plan. Dennis Mehringer serves as contract administrator for the Plan. Dr. Zaki serves as trustee and fiduciary for the Plan with discretion over the assets of the Plan affected by the proposed transaction and is an officer and the sole shareholder of the Employer. The Employer engages in the private medical practice in general surgery from an office located at 1233 North Vermont Avenue in Los Angeles, California.

2. On June 26, 1985, Dr. Zaki, acting as trustee, purchased the Property as an investment for the Plan from A.M.S. Partnership, an unrelated third party, at a purchase price of $1,200,000, plus escrow closing costs of $2,183. It is represented that most of the assets of the Plan, plus some or all of the rollover assets from a Keogh plan and a terminated defined benefit plan, were used to acquire the Property. Further, in 1995 through 1996, the Plan made additional improvements to the Property at a cost of $28,228. Since the acquisition of the Property by the Plan, Dr. Zaki has managed the Property and leased it to unrelated third party tenants. It is represented that the capital investment in the Property has been returned to the Plan. It is further represented that the value of the Property, as reported yearly on forms 5500–C/R, steadily increased to a high of $1,496,676 in 1991. However, in April of 1992, the riots in Los Angeles caused property damage in the neighborhood around the Property. While the Property did not suffer extensive damage, it is represented that the riots caused many merchants to leave the area, the rental rates to decrease, and the property values to decline. Consequently, the value of the Property dropped to $1,250,000 in 1992. In 1993, Los Angeles County Tax Assessor estimated the value of the Property to be $932,410. As of the end of 1993, the Plan had total assets of $1,937,410 of which the value of the

[3] The Department is expressing no opinion as to whether or not the acquisition of the Property violated section 404 of the Act.

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