

Massachusetts. Ms. Partridge represents that she is independent of, and unrelated to, the Union, the Plans and the Rogans. Ms. Partridge has fifteen years of experience in appraising, selling and marketing commercial and industrial real estate. Ms. Partridge placed the fair market value of Property #1 and Property #2 at \$325,000 and \$110,000, respectively, for a total fair market value of \$435,000 as of April 13, 1994. After negotiation between the parties, a purchase and sale agreement was entered into for both parcels at an agreed upon purchase price of \$394,600.<sup>1</sup> After such purchase, the part of Property #1 which constitutes the residential building and all of Property #2 remains leased to the existing tenants who are unrelated parties to the Deferred Income Plan.

4. The applicant represents that the Deferred Income Plan will utilize less than fifty percent of the Building for its own activities and intends to lease the remaining space in the Building to the Pension Plan, the Welfare Plan, the Apprenticeship Plan, the Union and other unrelated entities. With respect to the shared office space, the Deferred Income Plan, as lessor, proposes to enter into a written lease with the Pension Plan, the Welfare Plan and the Apprenticeship Plan for a five-year term and with the Union for a ten-year term. The lease will not contain an automatic renewal provision, and the rental will be exclusive of utilities. The lease will allow the Deferred Income Plan, as lessor, and the lessee Plans the right to terminate the lease upon ninety days advance notice. The lease will also be subject to annual fair market value adjustments to the rent as described herein in Representation 7. The Trustees request an administrative exemption from the Department to permit the leasing of the Building to the Union, the Pension Plan, the Welfare Plan and the Apprenticeship Plan under the terms and conditions described herein.

5. The Deferred Income Plan proposes to lease four separate areas of space within the Building (Space #1 - #4, inclusively) to the Pension Plan, the Welfare Plan, the Apprenticeship Plan and the Union. Descriptions of the four spaces are set out below:

a. Space #1 consists of 1,426 square feet of finished office space which will be used by the Plans and the Union. The Plans and the Union intend to share such space in different proportions and will divide the rental costs for such

space based upon these proportions. The Pension Plan, the Welfare Plan and the Deferred Income Plan will be using the same space because they share a common administrator/executive director who utilizes the same office and desk space. The allocation of the rent for these three Plans is based upon the parties' usage of this space. The percentage of the rent for Space #1 will be divided as follows:

Lessee	Percentage
Pension Plan .....	12
Welfare Plan .....	12
Apprenticeship Plan .....	25
Union .....	45
Deferred Income Plan .....	6
Total .....	100

b. Space #2 consists of 1,910 square feet of unfinished garage-type space which will be leased jointly to the Union and the Apprenticeship Plan. The Union will use such space for meetings, training, seminars and negotiations on a regular basis during the week, and the Apprenticeship Plan will use the space on the weekends and occasionally during the week. The rental will be shared, on the basis of usage, on a seventy-five to twenty-five percent basis by the Union and the Apprenticeship Plan, respectively.

c. Space #3 consists of 560 square feet of unfinished garage space that will be leased exclusively by the Apprenticeship Plan for storage of construction equipment and supplies necessary to and used in the training program.

d. Space #4 consists of 285 square feet of unfinished garage space that will be leased exclusively to the Union for file cabinets and other office related storage.

6. The applicants represent that the rent to be paid by each lessee will be based upon an independent appraisal. In this regard, on April 25, 1994, Ms. Partridge placed the annual fair market rental values of the various spaces as follows:

Space	Fair market rental value
Space #1 .....	\$6.00 per square foot.
Space #2 .....	4.00 per square foot.
Space #3 .....	4.00 per square foot.
Space #4 .....	4.00 per square foot.

7. The applicants represent that Ms. Partridge, who will also serve on behalf of the Deferred Income Plan as the independent, qualified fiduciary with respect to the lease transactions, will have the Building reappraised annually by an independent, qualified appraiser.

The purposes of the annual appraisals are to ensure that: (1) The space occupied by the Plans and the Union reflects the fair market rental value; and (2) the allocation of rent for the shared office space is appropriate for the Plans and is fair based on the Plans' usage. Based upon these annual appraisals and an annual review of the Plans' usage of the shared office space, Ms. Partridge will adjust the rental amounts for such space, if necessary, based upon any changes in the fair market rental values or the reallocation of space used by any of the Plans or the Union. If, as the result of an annual appraisal, the fair market rental value of the office space declines in value from the prior rental year, the Union will be required to pay the Deferred Income Plan the same rental that it paid the Deferred Income Plan during the previous year. The lessee Plans, however, will not be affected by this "floor" requirement.

8. In her capacity as the independent, qualified fiduciary, Ms. Partridge states that she understands and acknowledges her duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Deferred Income Plan based upon consultation with counsel experienced with the fiduciary responsibility provisions of the Act. Ms. Partridge derives less than one percent of her annual income from the Union and the Plans.

Ms. Partridge represents that she has reviewed the terms of the leasing arrangements between the Deferred Income Plan and the Pension Plan, the Welfare Plan, the Apprenticeship Plan and the Union and has concluded that these leasing arrangements are fair to the Deferred Income Plan. In addition, Ms. Partridge states that the terms and conditions of these leases are acceptable and compare favorable to other leases in the Boston area. To support her opinion, Ms. Partridge represents that she has considered the current economic climate, comparable rents in the area, vacancy rates and property amenities. Ms. Partridge also believes that the leasing arrangements are in the best interests of the Deferred Income Plan and its participants and beneficiaries. She states that the Deferred Income Plan will continue receiving market rate rents on a regular and a timely basis and that it would not be able to obtain more income from other independent tenants.

Ms. Partridge also represents that she has examined the current financial statements and portfolio of the Deferred Income Plan. Based upon such review, she states that the lease transactions are consistent with the Deferred Income Plan's diversification, liquidity and investment strategy.

<sup>1</sup> The Department expresses no opinion in this proposed exemption on whether the acquisition of the Building by the Deferred Income Plan violates any of the provisions of part 4 of Title I of the Act.