in interest with respect to the Plan; (2) a subsequent leaseback (the Lease) of the Building by the Plan to the Club; and (3) the potential future exercise of (a) a repurchase option (the Repurchase Option) between the Club and the Plan; and (b) a make whole obligation (the Make Whole Obligation) whereby the Club will pay the Plan the difference between the original acquisition price paid by the Plan for the Building, and the price received by the Plan upon the sale of a Building to a purchaser other than the Club; provided that the following conditions are satisfied:

(1) all terms and conditions of the Purchase, the Lease, the Repurchase Option, and the Make Whole Obligation are and will be at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) the Lease will have an initial term of fifteen years with three five-year renewal options, and will be a triple net lease under which the Club as the tenant is obligated for all operating expenses, including real estate taxes, insurance, repairs, maintenance, electricity and other utilities;

(3) the fair market value of the Building has been determined by an independent qualified appraiser, and will be updated as of the date of purchase by the Plan;

(4) with respect to the Lease, the fair market rental amount has been and will be determined by an independent qualified appraiser, which amount will never be below the initial fair market annual rental amount of $470,000;

(5) with respect to the Lease, appraisals of the Building will be performed at three-year intervals during the initial fifteen-year term of the Lease, and at five-year intervals with respect to the three renewal periods for purposes of updating the fair market rental amount to be received by the Plan;

(6) the fair market value of the Building will not exceed 25% of the Plan's total assets. Notwithstanding this condition, if the 25% limitation is ever exceeded the Club will have 60 days to comply with the 25% limit. In the event the 25% limit cannot be met within the 60 days, the Plan will undertake an orderly disposition of the Building in such manner as to cure the violation within nine (9) months of the date when the 25% limit was initially exceeded. If at any time during the 9-month disposition period, the Building exceeds 30% of the Plan's total assets, the exemption, if granted, will no longer be available;

(7) an independent fiduciary will be appointed to review, approve and monitor the transactions described herein, and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Club or related parties, will not exceed 1% of its annual income for each fiscal year that it continues to serve in the independent fiduciary capacity with respect to these transactions;

(8) U.S. Trust, as the independent fiduciary, will evaluate the transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) U.S. Trust, as the independent fiduciary, will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the three renewal periods, and will take whatever action is necessary to protect the Plan's rights;

(10) U.S. Trust, as the independent fiduciary, will monitor the net subleasing amount received by the Club during any annual period under the Lease. If such subleasing amount results in a profit to the Club, the Club will contribute this profit to the Plan; and

(11) the Plan will bear no costs or expenses with respect to the transactions described herein.

Summary of Facts and Representations

1. The Plan is a defined benefit plan established in 1965. As of December 31, 1993, the Plan had approximately 703 participants. As of May 31, 1995, the market value of the Plan's total assets was $24,185,650. The Plan administrator is the retirement committee which is appointed by the Board of Directors of the Club. United States Trust Company of New York (U.S. Trust) is the Plan trustee and the independent fiduciary with respect to the transactions described herein. The Club, established in 1934, is a not for profit subchapter ''C'' corporation organized under New York State Law. The Club is affiliated with the American Automobile Association, and is in the business of providing certain travel services to its members. The named fiduciary under the Plan is the Club.

2. The applicant proposes to enter into the following transactions. First, the Plan will purchase the Building from the Club at fair market value and hold the title to the Building through a tax exempt 501(c)(2) corporation. U.S. Trust represents that this will insulate the Plan's other assets from liabilities associated with owning the Building. Subsequently, the Club will lease the Building from the Plan at fair market rental, and sublease certain portions of the Building to parties unrelated to the Plan.

3. The Building was initially appraised (Initial Appraisal) as of October 19, 1993, by Martin B. Levine, MAI (Mr. Levine) and Paul Leprohon (Mr. Leprohon, collectively, the Appraisers). Messrs. Levine and Leprohon are qualified independent Appraisers with Koeppel Tener Rigaldi, Inc. (KTR), a national real estate appraisal and consulting firm. Mr. Levine is a director of the New York appraisal division of KTR. In the Initial Appraisal, the Appraisers determined the fair market value of the leased fee interest of the Building to be $4,700,000. In this regard, it is represented that $32,500 is payable directly to the Club by the operator of the adjacent Harkness property as a result of a certain air rights lease, and that this income was a factor in determining the value of the Building.[5] Because the Building is a multi-tenanted income producing facility, the Appraisers primarily relied on the income capitalization approach supported by the sales comparison approach. The Building is the property located at 1881 Broadway, New York, New York, and it is situated at the northwest corner of Broadway and West 62nd Street. The Building is a 4 story plus basement, class ''B'' office building, with retail space on the grade floor. The Building contains approximately 24,005 square feet of gross leasable area, of which 8,405 square feet is retail space comprised of 3,405 square feet at grade level and 5,000 square feet of finished, non-selling, below grade space.

4. In the Initial Appraisal, the Appraisers also established a fair market rental for the Building. The Appraisers analyzed recent lease transactions within the Building itself in conjunction with leases recently signed within competing buildings which are located on the West Side of Midtown Manhattan. As such, the Appraisers concluded that the market rent for the Building's office component is $20.00 per square foot. For the retail component, the market rent is estimated to be $85.00 for grade floor space and $12.75 per square foot for below grade space.

5. On January 10, 1995, the Appraisers prepared a limited scope appraisal of the Building (Updated Appraisal) as an update to the Initial Appraisal. In the Updated Appraisal, the Appraisers also relied on the income

[5] The air rights income, in the amount of $32,500 per year, is the rent due under the air rights lease, which permitted air rights over 1881 Broadway (i.e., the Building) to be used to erect a larger building than would otherwise be possible on 1887 Broadway site. The air rights lease expires in 86 years.