Property is located on the northwest side of Spur 482 (Storey Lane) and approximately 1,500 feet northeast of State Highway 114 in the City of Irving, Dallas County, Texas. The Property adjoins the Employer's Dallas freight terminal.

The Plan acquired the Property for investment purposes from unrelated parties. On July 12, 1976, the Plan purchased 36.464 acres of land (Tract A) from the University of Dallas. The Plan paid a purchase price of \$1,284,009 for Tract A and closing costs of \$697. Thus, the total acquisition price paid by the Plan for Tract A was \$1,284,706.

On August 1, 1980, the Plan purchased 1.928 acres of adjoining land (Tract B) from Jack H. Beachum. The Plan paid a purchase price for Tract B of \$210,624 plus closing costs of \$22. Thus, the total acquisition price paid by the Plan for Tract B was \$210,646.6

4. On December 30, 1983, the Plan sold the Property to FrittsSesler Investments, Inc. (FrittsSesler), a real estate investment company and an unrelated party, for \$4,226,418. The terms of the sale provided for a cash downpayment of \$845,284 with the balance to be paid over 10 years. The unpaid portion of the purchase price was evidenced by a promissory note in the amount of \$3,381,134. The note carried interest at 11 percent interest per annum and provided for interest only payments for the first 5 years and payments of principal and interest for the last 5 years of the loan. The note was secured by a deed of trust on the Property.

From the date of closing until January 1987, the Plan received \$845,284 in principal and \$1,115,774 in interest on the note. In 1987, FrittsSesler defaulted on the note. The note was then accelerated and the Property was posted for foreclosure. In January 1988, the Property was deeded back to the Plan by a Deed in Lieu of Foreclosure. At the time of the foreclosure, an appraisal completed of the Property on January 13, 1988 by Messrs. Scott D. Evans, Associate Appraiser, and Mr. Ronald W. Potts, MAI, SRPA, independent appraisers affiliated with Cushman & Wakefield of Texas, Inc., located in

Dallas, Texas, placed the fair market value of the Property at \$4,280,000.

5. It is represented that the Property has never been used by or leased to parties in interest since its initial acquisition and reacquisition by the Plan. It is also represented that the Plan has incurred certain costs totaling \$512,598 in connection with its reacquisition of the Property. These costs represent expenses of \$58,942 that are associated with the Plan's acceptance of the Deed in Lieu of Foreclosure; \$90 for closing costs; and \$453,566 for real estate taxes.

6. Since repossessing the Property, the Plan has continually advertised it for sale. However, due to the depressed real estate market in the State of Texas and because of changes in growth patterns of the Dallas-Fort Worth area, no interest has been expressed in purchasing the Property. In addition, the Property has generated no income to the Plan and has declined in value. Therefore, the Employer requests an administrative exemption from the Department in order that it may purchase the Property from Plan. The proposed sales price for the Property will represent not less than the greater of the (a) fair market value of the Property as determined by a qualified, independent appraiser or (b) \$46,892 representing the net acquisition cost of the Property.7

7. The Employer has obtained an independent appraisal of the Property from Bill C. Dotson, MAI and Richard S. Neely, Associate Appraiser, independent appraisers affiliated with the Alliance Appraisal Group, Inc. of Dallas, Texas. In an appraisal report dated January 16, 1995, Messrs. Dotson and Neely have placed the fair market value of the Property at \$1,270,000 as of January 3, 1995.

In an addendum to the appraisal report dated July 13, 1995, Mr. Dotson states that he has re-analyzed the initial valuation of the Property to determine whether there is any assemblage value due to the proximity of the Property to other real property owned by the Employer. In making this determination, Mr. Dotson represents that he has considered (a) the Employer's existing facility which he believes is in no need for further expansion, (b) larger tracts of commercial land in the vicinity of the Property for which he can ascertain no significant assemblage value and (c) the

valuation adage that "Property is worth more to the adjacent owner than to a third party." He notes that for the adage to be true, there has to be a proven demand for the property for there to be assemblage value. In his opinion, the Employer has not shown a demand factor over and above common market forces.

Mr. Dotson asserts that the subject Property is a stand alone tract which can be utilized for a number of purposes. In his view, the Property is not co-dependent on any other tracts of land for frontage, access or visibility. Thus, Mr. Dotson concludes that the Property has no assemblage or premium value by reason of its proximity to other existing real property that is owned by the Employer.

8. Because the fair market value of the Property is greater than its net acquisition cost, the Plan will sell the Property to the Employer for \$1,270,000. The Employer will pay the consideration to the Plan in cash. In addition, the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any real estate commissions or fees in connection with the proposed sale; and (d) the Plan will receive a sales price for the Property which is not less than the greater of (i) the fair market value of the Property as determined by a qualified, independent appraiser, or (ii) the net acquisition cost of the Property.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 5 days of the date of publication of the notice of pendency in the **Federal Register**. Notice will be posted at the Employer's work sites. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment. Comments with respect to the notice of proposed exemption are due within 35 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department,

⁶The Department notes, that the dimensions of Tract A and Tract B, if aggregated, equal 38.392 acres instead of 38.810 acres. In attempting to explain this discrepancy, the applicant has advised that the subject Property does consist of 38.810 acres of land based on a survey of the Tracts. The applicant attributes the size references and legal descriptions of Tract A and Tract B to "old field notes." When the Property was subsequently surveyed, the applicant states that either the dimensions of the Tracts, individually, or when taken together, were larger than originally thought.

⁷The \$46,892 net acquisition cost of the Property is determined as follows: \$2,007,950 [representing the total acquisition price plus certain costs incurred by the Plan since its reacquisition of the Property (i.e., \$1,495,352+\$512,598)] minus \$1,961,058 [representing the total revenues received by the Plan for the Property (i.e., \$845,284+\$1,115,774)].