NOTICE TO INTERESTED PERSONS
REGARDING THE PROPOSED TRANSACTION
INVOLVING THE LOCAL 8A-28A WELFARE FUND AND
DISTRICT COUNCIL 9, NEW YORK IUPAT

1. You are hereby notified that the United States Department of Labor (the "Department" or the "DOL") is considering granting exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974. The Local 8A-28A Welfare Fund (the "Plan" or "the Applicant") filed a written submission with the DOL seeking final authorization ("Final Authorization") pursuant to Prohibited Transaction Exemption 96-62 (PTE 96-62) 61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002, for the proposed sale (the "Proposed Transaction"), as described in paragraphs 2 and 3 below. As a person who may be affected by this exemption, you have the right to comment on the proposed exemption by May 11, 2020.

TENTATIVE AUTHORIZATION

1. The submission has met the requirements for Tentative Authorization under PTE 96-62. The Department is now considering whether to provide Final Authorization. Following the completion of the distribution of this notice to all interested persons, and a 25 day comment period, the DOL may give Final Authorization to the Proposed Transaction.
2. The Proposed Transaction involves the sale of property located at 36-18 33rd Street, Long Island City, New York 11106 (the "Property") from the Plan to District Council 9, New York IUPAT (the "Union"). Following the sale, the Union will lease office space to the Plan and to the Local 8A-28A 401(k) Retirement Fund and Drywall Tapers Insurance Fund (the Related Plans) in accordance with statutory exemptive relief that is provided under section 408(b)(2) and section 408(b)(17) of ERISA. [1]

3. If Final Authorization is granted by the DOL pursuant to PTE 96-62, the restrictions of Section 406(a)(1)(A) and 406(a)(1)(D) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") shall not apply to the Proposed Transaction. The Proposed

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[1] Section 408(b)(2) of ERISA provides a statutory exemption from the prohibitions of section 406(a) of ERISA for the payment, by a plan to a party in interest, including a fiduciary, for office space or any service (or a combination of services) if: (1) the office space or service is necessary for the establishment or operation of the plan; (2) the office space or service is furnished under a contract or arrangement which is reasonable; and (3) no more than reasonable compensation is paid for such office space or service.

Section 408(b)(17) of ERISA, which also provides a statutory exemption from section 406(a) of ERISA permits a plan and a party in interest, which provides services to the plan, to engage in certain specified transactions that may involve a sale with the plan, as long as the plan pays no more (or receives no less) than adequate consideration.

Transaction, as herein described, constitutes a prohibited transaction under: (1) section 406(a)(1)(A) of ERISA, which prohibits the sale or exchange of any property between a plan and a party in interest; and (2) section 406(a)(1)(D) of ERISA, which prohibits the transfer to, or use by or for the benefit of a party in interest, of any assets of the plan.

4. Identifying Information:
   (a) Name of Applicant: Local 8A-28A Welfare Fund
   (b) Address of Applicant: 36-18 33rd Street, Long Island City, New York 11106
   (c) Employer Identification Number: 13-5624028
5. If the Proposed Transaction is approved, the Final Authorization will be subject to the following conditions:

   (a) The sale is a one-time transaction for cash;

   (b) The price paid by the Union to the Plan is equal to the fair market value of the Property, as determined by a Qualified Independent Appraiser as of the date of the sale;[2]

   (c) The Plan pays no commissions, costs, or fees with respect to the sale;

   (d) The Plan trustees appointed by the Union (the "Union Trustees") recuse themselves from: (1) discussions and voting with respect to the Plan's decision to enter into the sale; and (2) all aspects of the selection and engagement of the Qualified Independent Fiduciary to determine whether the Plan should engage in the Proposed Transaction, and the Qualified Independent Fiduciary's selection and engagement of the Qualified Independent Appraiser for the purposes of determining the current fair market value of the Property on the date of the sale;

   (e) The Plan trustees appointed by the employer associations (the "Employer Trustees"), who have no interest in the sale, appointed the Qualified Independent Fiduciary to review and approve the terms of the Proposed Transaction.

   (f) The sale has been reviewed and approved by the Qualified Independent Fiduciary appointed by the Employer Trustees, who has: (1) determined, among other things, it is in the interest of the Plan to proceed with the sale; (2) reviewed and approved the valuation determined by the Qualified Independent Appraiser in the current appraisal report (the "Appraisal Report") that is being relied upon; and (3) ensured that such valuation is applied by the Independent Appraiser in determining the fair market value

[2] In an Appraisal Report, dated December 4, 2019, the Qualified Independent Appraiser placed the fair market value of the Property at $5.7 million. To the extent that the fair market value of the Property, as of the date of the sale, is less than $5.7, the Union will contribute the difference to the Plan.

of the Property on the date of the sale; and (4) reviewed and approved the terms of the lease of the Property to the Fund, and determined that the provisions are statutorily exempt under sections 408(b)(2) and 408(b)(17) of ERISA.[3]

(g) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party; and

(h) The sale is not part of an agreement, arrangement, or understanding designed to benefit the Union.

BACKGROUND

6. The Plan is a Taft-Hartley employee welfare benefit plan as defined by Section 3(1) of ERISA (29 U.S.C. §1002(1)) that provides medical, surgical, and hospital care and benefits to participants and beneficiaries. The Plan is jointly administered by a Board of Trustees consisting of three Employer Trustees and two Union Trustees[4] appointed by the Union and Contributing Employers. The Plan has approximately 475 participants and 39 Contributing Employers. Plan participants are generally engaged in the metal polishing trades, including stripping and refinishing a variety of metals.
7. District Council No. 9, IUPAT is an employee organization as defined under section 3(4) of ERISA (29 U.S.C. §1002(4)), some of whose members are covered by the Plan. The Union is a "party in interest" as defined in Section 3(14) of ERISA (29 U.S.C. §1002(14)) with respect to the Plan.
8. The Plan currently owns property located at 36-18 33rd Street, Long Island City, NY 11106, in which it occupies office space used to administer the Plan.
9. The Union has proposed to purchase the Property and lease office space to the Plan and the Related Plans following the completion of the sale, subject to the review and approval of the proposed sale and lease terms by the Qualified Independent Fiduciary. Due to increased medical, hospital, and prescription drug costs, the Plan is projected to operate at a deficit for the next few years and, absent significant financial changes, will become unable to pay benefits to participants and beneficiaries. Accordingly, the Plan is in need of current assets and cash flow to pay benefits.
10. The Plan has incurred significant maintenance expenses as a result of owning the Property over the course of the last few years due to the partial collapse/sinking of the building, which resulted in over $1,000,000 in expenses in 2015 alone. The Plan expended additional resources in 2018 to clean and reseal the roof, repair the foundation issues that flooded the basement, and repair the elevator due to flooding. In addition, the Plan will have to incur

[3] The Department expresses no opinion herein on whether the lease will satisfy the statutory exemptive relief provided under sections 408(b)(2) and 408(b)(17) of ERISA.

[4] According to the Applicant, there are currently two Union Trustees instead of three Union Trustees because one of the Union Trustees has resigned and has not been replaced.

additional expenses related to installing door lock monitoring on elevators to comply with the New York City Building Code.

11. The Proposed Transaction will alleviate the Plan from continuing to expend resources to maintain the building, exchanging those significant expenses with a fixed monthly rental payment that has been approved by the Qualified Independent Fiduciary. The assets saved from leasing versus owning the Property will be used to continue paying benefits to the participants and beneficiaries of the Plan.
12. The Union Trustees also serve as representatives of the Union and thus have a conflict of interest. As a result, the Union Trustees, who were designated as Trustees of the Plan by the Union pursuant to the Plan's Agreement and Declaration of Trust, recused themselves from any decision-making regarding the sale of the Property.
13. In order to avoid a conflict of interest, the Employer Trustees appointed a Qualified Independent Fiduciary to review and approve the terms of the Proposed Transaction. After conducting a Request for Proposal process, the Employer Trustees appointed Gallagher Fiduciary Advisors, LLC as the Qualified Independent Fiduciary. Gallagher Fiduciary Advisors, LLC appointed Wilson Appraisal Services, Inc. to serve as the Qualified Independent Appraiser and to conduct a current appraisal of the Property.

MERITS OF THE TRANSACTION

14. The determination by the Qualified Independent Fiduciary that the sale of the Property would be in the best interest of the Plan considered the following factors:

    (a) The Property is currently subject to significant maintenance costs, which cost the Plan over $1 million in 2015. The continued costs of holding the Property has become unmanageable, especially given the Plan's perilous financial condition. The sale of the Property would reduce the Plan's costs related to the upkeep of the Property.

    (b) The sale to the Union allows the Plan to sell the Property at the fair market value without incurring any marketing or selling costs. The Union proposed to purchase the Property for the appraised value of $5.7 million, which represents approximately 12 months' worth of benefit payments.

    (c) The Union agreed to a $1 million down payment on the Property upon execution of the Sales Contract pending the decision of the Office of Exemption Determinations. The down payment is designed to allow the Plan to continue operating and administering benefits during the pendency of the DOL's review.

    (d) The sale is a one-time sale of real property owned by the Plan for the fair market value established by the Qualified Independent Appraiser that will not require continuous or future monitoring by the DOL.

    (e) The Plan and the Union are the only two parties involved in the Proposed Transaction. The Proposed Transaction is not part of a larger integrated transaction.

(f) The leasing of office space to the Plan in the same building will eliminate any disruption in the continued administration of the Plan and avoids the risk and uncertainty associated with procuring alternative office space.

(g) The Proposed Transaction poses little, if any, risk of abuse or loss to the Plan or to any of its participants or beneficiaries because the Proposed Transaction will enable the Plan to sell the Property at the fair market value as determined by the Qualified Independent Appraiser.

APPRAISAL

15. The Property was appraised on December 4, 2019 by the Qualified Independent Appraiser, Wilson Appraisal Services, Inc., located in Great Neck, New York. Specifically, Glen L. Wilson, CPA, New York State-Certified General Real Estate Appraiser, undertook the duties and responsibilities of the Qualified Independent Appraiser. Pursuant to the current appraisal report, dated December 4, 2019, the Qualified Independent Appraiser determined the fair market value of the Property to be $5.7 million based on the three traditional techniques: the Cost Approach, the Sales Comparison Approach, and the Income Approach.[5]

COMPARISON TO SUBSTANTIALLY SIMILAR CASES

Authorization by the Department of Labor has been requested pursuant to PTE 96-62, which requires that the Proposed Transaction be "substantially" similar to: (1) two individual exemptions that were granted by the DOL within the past 60 months (ending on the date of filing of the exemption application); or (2) (a) one individual exemption granted within the past 120 months, and (b) one transaction (i.e., submission) which received final authorization by the Department under PTE 96-62, within the past 60 months.

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[5] For purposes of the lease, the Applicant represents that Rent Survey was completed on October 5, 2018 by Equity Valuation Associates, located in Staten Island, New York. Specifically, Josephine LaMattina, CREA and Henry Arlin Salmon, CREA (both New York State-Certified General Real Estate Appraisers) undertook the duties and responsibilities of performing the rent survey. The rent survey used the Rental Comparison Approach, which is directly related to the activity of the marketplace. The fair market rental value of the Property as determined in the rent survey is supported by the appraisal issued by the Qualified Independent Appraiser, dated December 4, 2019.

In addition, the Rent Allocation Study was prepared on February 5, 2020 by Calibre CPA Group, located in New York, New York. Specifically, Joseph Morello, CPA undertook the duties and responsibilities of determining the rent allocation among the entities leasing space in the Property. Mr. Morello arrived at the rent allocation based on conversations with the Plan's accountant, reviewing the current floor plan, visiting the premises, measuring the square footage of the office space, questioning employees, and assigning employees to office space to determine the overall allocation.

The Applicant has identified the following individual Prohibited Transaction Exemptions, as well as one submission that received final authorization under PTE 96-62:

A. The United Association of Journeymen and Apprentices of The Plumbers and Pipefitters Local Union No. 189 Pension Plan, as Amended Located in Columbus, Ohio, [Prohibited Transaction Exemption 2015-01, 80 FR 19687, 4/13/2015]

In PTE 2015-01, the DOL issued an individual exemption to allow a transaction that involved the sale of real property by a pension plan to a union. A comparison of the material terms of PTE 2015-01 to the Proposed Transaction follows:

PTE 2015-01 was a sale of real property by an employee benefit plan to its sponsoring union. The Proposed Transaction is the sale of real property by a welfare plan to its sponsoring union.

PTE 2015-01 was a one-time transaction for cash. The Proposed Transaction is a one-time transaction for cash.

PTE 2015-01 required the plan receive $3,100,000 or the fair market value of the property as determined by a qualified, independent appraiser in a written appraisal of the property, which was updated on the date of sale. The terms of sale for the Proposed Transaction similarly require that the Plan receive the greater of: (1) $5,700,000, the current appraised value, or (2) the fair market value of the Property, as determined by the Qualified Independent Appraiser as of the date of the sale.

Neither PTE 2015-01 nor the Proposed Transaction require the respective plans to pay commissions, costs, or fees with respect to the sale of subject real property.

PTE 2015-01 required the terms and conditions of the sale be at least as favorable to the plan as those obtainable in an arm's length transaction with an unrelated third party. The Proposed Transaction similarly requires the sale be at least as favorable to the Plan as an arm's length transaction with an unrelated third party, as reviewed and approved by the Qualified Independent Fiduciary.

In PTE 2015-01, the sale was reviewed and approved by a qualified, independent fiduciary, who, among other things reviewed and approved the methodology used by the appraiser and ensured that the appraisal methodology was properly applied in determining the fair market value of the property and determined that it was prudent to go forward with the sale. The Proposed Transaction similarly included the use of a Qualified Independent Fiduciary to appoint the Qualified Independent Appraiser to determine the fair market value of the Property. As in PTE 2015-01, the Qualified Independent Fiduciary reviewed and approved the methodology used by the Qualified Independent Appraiser and ensured that the appraisal methodology was properly applied.

B. Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund, Cape Girardeau, Missouri, [Prohibited Transaction Exemption 2015-04, 80 FR 19690, 4/13/2015]

In PTE 2015-04, the DOL issued an individual exemption to allow a transaction that involved the sale of real property by a welfare plan to a union. A comparison of the material terms to the Proposed Transaction follows:

PTE 2015-04 was a sale of real property by a welfare plan to a union. The Proposed Transaction is the sale of real property by a welfare plan to a union.

PTE 2015-04 was a one-time transaction for cash. The Proposed Transaction is a one-time transaction for cash.

In PTE 2015-04, the sale price for the property was the greater of either: (1) $250,000; or (2) the fair market value of the property as established by qualified independent appraiser in an appraisal of the property that was updated on the date of the sale. In the Proposed Transaction, the Plan will receive the greater of: (1) $5,700,000, the current appraised value, or (2) the fair market value of the Property, as determined by the Qualified Independent Appraiser as of the date of the sale.

PTE 2015-04 involved a qualified independent fiduciary reviewing and approving the methodology used by the appraiser to ensure that such methodology is properly applied in determining the fair market value of the property and determining that it is prudent to engage in the sale. The Proposed Transaction similarly includes the use of a Qualified Independent Fiduciary to appoint the Qualified Independent Appraiser who determined the current fair market value of the Property, and to review and approve the methodology used by the Qualified Independent Appraiser, and to ensure the methodology was properly applied.

Neither PTE 2015-04 nor the Proposed Transaction require the respective plans to pay commissions, costs, or fees with respect to the sale of the subject real property.

In PTE 2015-04, the terms of the sale are no less favorable to the plan than the terms the plan would receive under similar circumstances in an arm's length transaction with an unrelated third party. Similarly, the terms of the Proposed Transaction must be at least as favorable to the Plan as it would receive in an arm's length transaction with an unrelated third party, as reviewed and approved by the Qualified Independent Fiduciary.

C. Western Pennsylvania Operating Engineers Joint Apprenticeship and Training Program (the Plan) [Submission E-00813, FAN 19-01E, 1/23/2019]

In FAN 19-01E, the DOL issued final authorization to allow a transaction that involved the sale of real property by an apprenticeship plan to a party in interest union. A comparison of the material terms to the Proposed Transaction follows:

FAN 19-01E was a sale of real property by an apprenticeship plan to a union. The Proposed Transaction is the sale of real property by a welfare plan to a union.

FAN 19-01E was a one-time transaction for cash. The Proposed Transaction is a one-time transaction for cash.

In FAN 19-01E, the sale price for the property was the greater of either: (1) $350,000; or (2) the fair market value of the property as established by qualified independent appraiser in an appraisal of the property that was updated on the date of the sale. In the Proposed Transaction, the Plan will receive the greater of: (1) $5,700,000, the current appraised value, or (2) the fair market value of the Property, as determined by the Qualified Independent Appraiser as of the date of the sale.

FAN 19-01E involved a qualified independent fiduciary reviewing and approving the methodology used by the appraiser to ensure that such methodology is properly applied in determining the fair market value of the property and determining that it is prudent to engage in the sale. The Proposed Transaction similarly includes the use of a Qualified Independent Fiduciary to appoint the Qualified Independent Appraiser who determined the current fair market value of the Property, and to review and approve the methodology used by the Qualified Independent Appraiser, and to ensure the methodology was properly applied.

Neither FAN 19-01E nor the Proposed Transaction require the respective plans to pay commissions, costs, or fees with respect to the sale of the subject real property.

In FAN 19-01E, the terms of the sale are no less favorable to the plan than the terms the plan would receive under similar circumstances in an arm's length transaction with an unrelated third party. Similarly, the terms of the Proposed Transaction must be at least as favorable to the Plan as it would receive in an arm's length transaction with an unrelated third party, as reviewed and approved by the Qualified Independent Fiduciary.

RIGHT TO COMMENT

As a person who may be affected by the Proposed Transaction, you have the right to comment on the Proposed Transaction. All comments should be addressed to the:

(By Mail)
U. S. Department of Labor
Employee Benefits Security Administration
Office of Exemption Determinations
200 Constitution Avenue, NW, Suite 400
Washington, DC 20210
Attention: EXPRO Submission No. E-00821
Mrs. Blessed Chuksorji-Keefe
(By Private Carrier (Fedex, UPS, etc.)
U.S. Department of Labor
Employee Benefits Security Administration
Office of Exemption Determinations
122 C Street NW, Suite 400
Washington, DC 20001-2109
ATTENTION: EXPRO Submission No. E-00821
Mrs. Blessed Chuksorji-Keefe

Comments may also be transmitted to the Department electronically at e-oed@dol.gov or at http://www.regulations.gov (follow instructions for submission), and should prominently reference the file number listed above. In addition, comments may be transmitted to the DOL via facsimile at (202) 693-8474. Individuals submitting comments on this matter are advised not to disclose sensitive personal data, such as Social Security numbers.

The Department will make no final decision on the proposed exemption until it reviews the comments received in response to the enclosed notice.