

NOTICE TO INTERESTED PERSONS

The Local 697 IBEW and Electrical Industry Pension Fund (the "Pension Fund") has requested final authorization from the U.S. Department of Labor (the "Department") that the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) shall not apply to the proposed sale by the Pension Fund of a parcel of real property (the "Outlot"), located at the northwest corner of 73rd Avenue and Mississippi Street, Merrillville, Lake County, Indiana, to the IBEW Local 697 (the "Union"), a party in interest with respect to the Pension Fund. The Outlot consists of a vacant tract of land that is adjacent to the IBEW Local 697 building (the "Building"), which houses the offices of the Pension Fund, the Union, the IBEW Local 697 Credit Union (the "Credit Union"), and the Lake County Electrician's Joint Apprenticeship & Training Committee (the "JATC").

A transaction between the Pension Fund and the Union involving the sale of real property is considered a "prohibited transaction" under the Act. The Pension Fund, however, has requested authorization from the Department, pursuant to procedures contained in Prohibited Transaction Exemption (PTE) 96-62, 61 FR 39988 (July 31, 1996), as amended by 67 FR 44622 (July 2, 2002), regarding the Pension Fund's contemplated sale of the Outlot to the Union.

Tentative Authorization

The proposed sale transaction has met the requirements for tentative authorization under PTE 96-62. Accordingly, the Department has granted tentative authorization for such transaction, subject to certain terms and conditions. Final authorization, if granted, will occur 5 days after the expiration of the Comment Period, described below, unless the Department notifies the Pension Fund's fiduciaries, otherwise. If final authorization is obtained, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act will not apply to the proposed sale transaction, provided that the following conditions are satisfied:

- (a) The sale is a one-time transaction for cash, and the Pension Fund pays no commissions, fees or other expenses with respect to the transaction.
- (b) The Pension Fund receives, as consideration for the Outlot, the greater of (1) \$160,000, or (2) the fair market value of the Outlot, as reflected in an appraisal on the date of the sale, as performed by a qualified independent appraiser.
- (c) The terms of the transaction are at least as favorable to the Pension Fund as those obtainable in an arm's length transaction with an unrelated party.
- (d) A qualified independent fiduciary has determined that the transaction is appropriate for the Pension Fund and is in the interest of the Pension Fund and its participants and beneficiaries.
- (e) The Pension Fund's qualified independent fiduciary reviews and approves the methodology used by the qualified independent appraiser, to ensure that such methodology is properly applied in determining the fair market value of the Outlot on the date of the sale, and also determines whether it is prudent to go forward with the proposed transaction.

Proposed Transaction and Terms

The Pension Fund is a trust fund, created pursuant to the terms of the Taft-Hartley Act of 1947. It is jointly administered by a board of trustees (the "Trustees"), consisting of equal representation from the Union and management (i.e., 4 Union and 4 employer Trustees). The Pension Fund is based in Merrillville, Indiana, and it provided pension benefits to approximately 1,579 participants as of April 13, 2013. As of May 31, 2013, the Pension Fund had total assets of \$139,359,364. Investment decisions for the Pension Fund are made by the Trustees.

The Pension Fund owns an undeveloped parcel of real property, consisting of 1.26 acres that is located in Merrillville, Indiana. The Pension Fund acquired the Outlot in 2009, for investment purposes, from the Lake County Trust #4004, 1/3 Interest, David B. Morris, as Trustee (the "Trust"), an unrelated party, for a total purchase price, including closing costs, of \$158,332. The Pension Fund paid the consideration to the Trust in cash. As of December 31, 2009, the assets of the Pension Fund were valued at \$98,504,954, based on the Pension Fund's 2009 Form 5500. Thus, the 2009 purchase price of the Outlot represented 0.0015% (one fifteenth of one percent) of the Pension Fund's assets.

The Pension Fund acquired the Outlot from the Trust in 2009. In a separate transaction also occurring in 2009, the INTAC 697 Owners Association, Inc* ("INTAC") acquired from the Trust 17.08 acres of land ("2009 Joint Purchase") adjacent to the Outlot (the "Adjacent Property"). INTAC is comprised of representatives of each of the Pension Fund, the Union, the Credit Union, and the JATC (each a "Purchaser" and collectively, the "Purchasers"). Pursuant to the 2009 Joint Purchase, INTAC constructed the Building on the Adjacent Property that currently serves as office space for each of the Purchasers and as training facilities for Union members. The Building, upon its completion in 2011, was subdivided into four separate condominium units for each Purchaser in proportion to each Purchaser's ownership interest. Each Purchaser owns a single condominium unit in fee simple in the Building. The common areas of the four units are collectively operated and administered by INTAC.

The Outlot is undeveloped and vacant, and it has never generated any income to the Pension Fund. In addition, the Outlot has not been used by or leased to anyone, including parties in interest since it has been owned by the Pension Fund. During its ownership of the Outlot, the

* According to the applicant, each of the Purchasers holds a proportionate interest in the Building's common areas. The maintenance and all other costs associated with the common areas are shared by the Purchasers in proportion to their interest in the common areas. INTAC collects the Purchasers' proportional shares to pay for services provided with respect to the common areas and it does not charge any fee for this pass-through payment service. PTEs 76-1 (41 FR 12740, March 26, 1976) and 77-10 (77 FR 33918, July 1, 1977) permit a multiemployer plan to secure office space and administrative services jointly with a participating employee organization, employer or employer association, or with another multiemployer plan on a pro rata basis based on each party's use of such space or services. Such joint use of office space or administrative services does not constitute a prohibited transaction as long as the terms and conditions of these class exemptions are met. The applicant represents that the Pension Fund has maintained records of its proportionate interest in the relevant common area.

Pension Fund has incurred \$74.24 in real estate taxes and \$700 in appraisal fees, or total holding costs of \$774.24. Thus, the Pension Fund's aggregate acquisition and holding costs with respect to the Outlot is \$159,106.24.

Subject to the Pension Fund's obtaining final authorization from the Department, the Union proposes to purchase the Outlot for the purpose of constructing and operating a 100 kilowatt wind turbine (the "Turbine"). After selling the Outlot to the Union, the Pension Fund will have no financial interest in, bear any costs, fees or expenses of, nor have any responsibility or liability with respect of the Turbine. The Union will undertake the Turbine project as evidence of its commitment to alternative energy sources, as a means of attracting the membership of alternative energy workers, and as a training vehicle for Union members. The Union will sell the electricity generated by the Turbine to the local power company.

In November 2012, the Pension Fund and the Union entered into a purchase agreement (the "Purchase Agreement") in which the Union agreed to pay \$160,000 for the Outlot, subject to the Pension Fund's obtaining final authorization for the transaction from the Department. Assuming that a purchase price of \$160,000 equals or exceeds fair market value as determined by the qualified independent appraiser, the Outlot's purchase price will represent approximately 0.0014% (one fourteenth of one percent) of the Pension Fund's assets.

In accordance with the Purchase Agreement, the Union will pay the Pension Fund, as consideration for the Outlot, the greater of (1) \$160,000.00, or (2) the fair market value of such property, as reflected in the qualified independent appraisal on the date of the sale, as performed by the qualified independent appraiser. There will be no financing or lending agreements between the Pension Fund and the Union. The Pension Fund will not pay any real estate fees, commissions or other expenses with respect to the proposed transaction.

Fiduciary Counselors Inc. ("FCI") of Washington, DC, has been retained by the Trustees to serve on behalf of the Pension Fund as the qualified independent fiduciary. FCI is an investment adviser, registered with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940. The firm primarily acts as an independent fiduciary for employee benefit plans and has extensive ERISA experience. FCI represents that it maintains no ongoing relationship with either the Pension Fund or the Union and that it is independent of all parties involved in the subject transaction. FCI also states that its opinions are the result of its analysis, alone. FCI further represents that it understands and accepts its duties and responsibilities under ERISA in acting as independent fiduciary on behalf of the Pension Fund with respect to the proposed sale of the Outlot.

As the qualified independent fiduciary, FCI was appointed by the Trustees to ensure that a qualified independent appraiser was retained to value the Outlot at its fair market value at the time of the transaction's closing, and to determine whether the appraised value for the Outlot is "fair" to the Pension Fund. FCI has reviewed the terms of the Purchase Agreement. On the basis of this review, FCI has determined that the sale is in the interests of the Pension Fund and its

participants and beneficiaries, and is protective of the rights of such participants and beneficiaries because, among other reasons, the Outlot constitutes such a small percentage of Pension Fund assets. Thus, the sale of the Outlot would not exacerbate the funded status of the Pension Fund. FCI represents that “as of March 31, 2013, the [Pension Fund] had approximately \$138 million in assets. Therefore, the Outlot represents only 0.12% of the [Pension Fund] assets.” FCI further represents that “since the Outlot is a non-income producing asset, selling the Outlot for cash that can be invested in the [Pension Fund’s] portfolio will yield additional return.” Finally, FCI notes that the Outlot does not meet the definition of acceptable real estate investments as defined in the Supplemental Investment Policy Statement for Alternative Investments (“SIPS”), dated 2010. As a result, FCI concludes that “selling the Outlot for cash will enable the [Pension Fund’s] investments to become compliant with the [Pension Fund’s] Investment Policy and the SIPS.” FCI will ensure that the proposed sale is properly effectuated and that the Pension Fund receives the appropriate cash payment from the Union.

The Outlot has been appraised by a qualified independent appraiser, Kevin Kernan, MAI, MRICS, the Managing Director of Stout Risius Ross, Inc. (“SRR”), a real estate appraisal and consulting firm located in Chicago, Illinois. Mr. Kernan is an Indiana Certified General Appraiser and a licensed real estate broker. He focuses his practice in commercial real estate valuation and advisory services, where he has 13 years of national and international appraisal, review, and management experience. According to Mr. Kernan, SRR has received significantly less than 1% of its gross 2013 income from the Union and other parties in interest with respect to the Pension Fund.

In an appraisal report dated March 22, 2013, Mr. Kernan placed the fair market value of the Outlot at \$160,000 as of March 13, 2013, using the Sales Comparison Approach to valuation. Mr. Kernan also concluded that there was no assemblage value to be added to the Outlot because the subject parcel is not necessary to the operation of the condominium units on the Adjacent Property. Further, Mr. Kernan represents that the Outlot is not required for parking for the condominium units or any other purpose that would inure to the benefit of the Union as one of the condominium owners. Mr. Kernan will update his appraisal report on the date of the proposed sale.

Anticipated Date of Proposed Transaction

August 15, 2013.

Right to Comment

As an interested person, you have the right to comment to the Department concerning the proposed sale transaction by writing to the following address before the expiration of the Comment Period:

Submission E-00728
Office of Exemption Determinations
U.S. Department of Labor

200 Constitution Ave., NW, Room N-5700
Washington, DC 20210
Attn.: Mrs. Blessed Chuksorji-Keefe

Comments may also be submitted by fax or e-mail to the attention of Mrs. Chuksorji-Keefe by fax at (202) 219-0204 or by e-mail at Chuksorji.Blessed@dol.gov. **Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. If you have any questions regarding your right to comment on the Notice to Interested Persons, you may contact Mrs. Chuksorji-Keefe at (202) 693-8567.

Expiration of Comment Period

The comment period will expire on August 5, 2013.

Substantially-Similar Transactions

The Department has previously approved a number of substantially-similar transactions between unions and related trust funds. In general, under PTE 96-62, the Pension Fund must identify two substantially similar transactions contained in an individual exemption that has been approved by the Department in the previous 120 months and one EXPRO submission that has received final authorization within the past 60 months. The Pension Fund is relying on the following substantially similar-transactions for the purposes of this submission:

- **PTE 2007-06 (72 FR 1299 (April 30, 2007); Kern County Electrical Pension Trust (the Pension Plan), et al.**, involving the sale by the Pension Plan of unimproved real property to the International Brotherhood of Electrical Workers Local Union 428, a party in interest with respect to the Pension Plan.
- **FAN 2009-15E (November 14, 2009); The Network Funding Corporation Employee Welfare Benefit Plan (the Welfare Plan)**, involving the sale by the Welfare Plan of a parcel of real property to the Welfare Plan trustees, who were also indirect owners of the Welfare Plan's sponsor.