

## **Notice to Interested Persons**

The American Maritime Officers Safety and Education Plan (the “Plan”) has requested authorization from the Department of Labor (the “Department”) that the restrictions of sections 406(a)(1)(A) and (D) and sections 406(b)(1) and (b)(2) of the Act shall not apply to the purchase by the Plan of the real property and existing training facility structures known as the American Maritime Officers Campus, located in Dania Beach, Florida (the “Property”), which consists of an administrative and temporary residential facilities, a training building and land, and office and various support facilities, together with the land on which each facility or building sits, from the American Maritime Officers Building Corporation of Florida (the “AMO Building Corporation”), which is wholly-owned by the American Maritime Officers Union (the “AMO Union” and collectively with the AMO Building Corporation is referred to as the “Union”) (which such purchase of the Property will be effected by the Plan’s purchase of all of the equity interests in a special purpose real estate holding company which in turns wholly-owns the Property).

A transaction involving the sale of real property between the Plan and the Union is normally a “prohibited transaction” under the Employee Retirement Income Security Act of 1974 (“ERISA”). The Plan, however, has requested authorization from the Department to allow the Plan to purchase the Property from the Union, pursuant to procedures contained in Prohibited Transaction Class Exemption (“PTCE”) 96-62.

### **1. Tentative Authorization.**

The proposed purchase of the Property has met the requirements for tentative authorization under PTCE 96-62, and the Department has granted tentative authorization for the Plan to purchase the Property, subject to the satisfaction of certain terms and conditions.

Final authorization, if granted, will occur 5 days after the expiration of the Comment Period (as defined below), unless the Department notifies the Plan otherwise. If final authorization is obtained, the restrictions of Sections 406(a)(1)(A) and (D) and Sections 406(b)(1) and (b)(2) of ERISA will not apply to the proposed purchase of the Property (which such purchase of the Property will be effected by the Plan’s purchase of all of the equity interests in a special purpose real estate holding company which in turns wholly-owns the Property), provided that the following conditions are satisfied:

- (a) The purchase is a one-time transaction for cash, and no commissions are paid by the Plan with respect to the transaction;
- (b) The Plan pays as consideration for the Property the lesser of \$10,510,000 or the fair market value of the Property on the date of the transaction, as determined by a qualified, independent real estate appraiser;
- (c) The terms of the transaction are at least as favorable as those that the Plan could obtain in an arms length transaction with an unrelated party;

- (d) The Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries;
- (e) The Plan's independent fiduciary monitors the purchase of the Property by the Plan, enforces the terms of the final authorization, and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries; and
- (f) The Plan's independent fiduciary will review and approve the methodology used by the qualified, independent appraiser, to ensure that such methodology is properly applied in determining the fair market value of the Property on the date of the transaction, and will also determine whether it is prudent to go forward with the proposed transaction.

## **2. Terms of the Proposed Purchase.**

The Property in Dania Beach, Florida is a 6.51 acre property that serves as a special-use, educational facility utilized by the American Maritime Officers Safety and Education Plan for education, training and administrative uses. The Property, which is 100% occupied by the Plan and the Union, features multiple improvements, including administrative offices, classrooms and training simulators, motel-style housing and apartments, single family, duplex and triplex buildings, paved parking areas, and recreational amenities such as swimming pools and tennis courts. The Plan presently leases the Property from the Union. The Union intends to relocate its administrative offices whether or not the proposed transaction is consummated since the Union has purchased a nearby parcel specifically for this purpose. The Union proposes to sell the Property in order to diversify its investment holdings and in preparation of relocating its administrative offices offsite. This proposed transaction will allow the Plan to continue its training programs at their current location.

The terms of the Contract For Sale and Purchase between the Plan and the AMO Building Corporation involving the Property are usual and customary and are no less favorable to the Plan than would be obtainable in an arms-length transaction for cash at a purchase price which is the lesser of \$10,510,000 or the fair market value of the Property on the date of the transaction, as determined by a qualified, independent real estate appraiser. There will be no financing or lending arrangements between the Plan and the Union. The purchase will terminate the leases governing the Plan's use of the Property.

A qualified, independent fiduciary, Independent Fiduciary Services, Inc. ("IFS"), reviewed the proposed transaction and determined that the purchase is in the best interests of the Plan and its participants and beneficiaries. IFS will monitor the purchase, enforce the terms of the final authorization, and take whatever actions are necessary to protect the interests of the Plan participants through closing.

On March 9, 2008, the fair market value of the Property was appraised at \$10,510,000 by a qualified, independent real estate appraiser, Integra Realty Resources of Miami, Florida ("Integra"). The Plan will pay no more than the lesser of \$10,510,000 or the appraised value of the Property on the date of the transaction, and will not pay any commissions or other expenses with respect to the transaction, other than for (i) the services of the independent fiduciary, IFS;

(ii) the services of the independent appraiser, Integra; and (iii) any environmental reports, property condition reports, inspection reports, and property surveys.

**3. Anticipated Date of Proposed Purchase.**

As soon as practicable following authorization by the Department and upon authorization by the Union membership via referendum, but in no event before the grant of final authorization by the Department.

**4. Right to Comment.**

As an interested person, you have the right to comment to the Department concerning the Plan's proposed purchase of the Property by writing to the following address before the expiration of the Comment Period:

Submission E-00624  
Office of Exemption Determinations  
U.S. Department of Labor  
200 Constitution Avenue N.W., Room N-5649  
Washington, D.C. 20210

Comments may also be submitted by fax or e-mail to the attention of Ms. Karin Weng:

Fax: (202) 219-0204  
E-mail: Weng.Karin@dol.gov

**5. Expiration of the Comment Period.**

The Comment Period will expire on March 30, 2009.

**6. Substantially Similar Transactions.**

The Department has previously approved a number of substantially similar transactions between unions and their related trust funds. In conformity with the requirements of PTCE 96-62, the Plan has relied on the following substantially similar transactions:

- a. Prohibited Transaction Exemption ("PTE") 2000-21, issued to Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (65 Fed. Reg. 33376 (May 23, 2000), 65 Fed. Reg. 15367 (March 22, 2000), Application No. D-10777).
- b. Final Authorization Number ("FAN") 04-08E, issued to Kentucky State District Council of Carpenters Joint Apprenticeship & Journeyman Training Trust Fund (April 7, 2004).

The American Maritime Officers Safety and Education Plan (the Plan), Located in at 2 West Dixie Highway, Dania Beach, Florida 33004

### **Requested Final Authorization**

The restrictions of sections 406(a)(1)(A) and (D) and sections 406(b)(1) and (b)(2) of the Act shall not apply to the purchase of the American Maritime Officers Property in Dania Beach, Florida, which consists of administrative and temporary residential facilities (the AMO Plan Property), a training building and land (the Constitution Building Ground Lease Property), and office and various support facilities (the AMO Union Property), together with the land on which each facility or building sits (the Land, together with the AMO Property, the Constitution Building Ground Lease Property, and the AMO Union Property, collectively, the Property) by the Plan from the District 2 Marine Engineer's Benefit Association Building Corporation of Florida, Inc., now also known as American Maritime Officers Building Corporation of Florida (the AMO Building Corporation), which is a wholly-owned subsidiary of the American Maritime Officers Union (the AMO Union), for fair market value (which such purchase of the Property will be effected by the Plan's purchase of all of the equity interests in a special purpose real estate holding company which in turns wholly-owns the Property), provided that:

- (a) The purchase is a one-time transaction for cash, and no commissions are paid by the Plan with respect to the transaction;
- (b) The Plan pays as consideration for the Property the lesser of \$10,510,000 or the fair market value of the Property on the date of the transaction, as determined by a qualified, independent real estate appraiser;
- (c) The terms of the transaction are at least as favorable as those that the Plan could obtain in an arms length transaction with an unrelated party;
- (d) The Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries;
- (e) The Plan's independent fiduciary monitors the purchase of the Property by the Plan, enforces the terms of the final authorization, and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries; and
- (f) The Plan's independent fiduciary will review and approve the methodology used by the qualified, independent appraiser, to ensure that such methodology is properly applied in determining the fair market value of the Property on the date of the transaction, and will also determine whether it is prudent to go forward with the proposed transaction.

### **Summary of Facts and Representations**

1. The Plan is a jointly administered multiemployer welfare training plan funded pursuant to one or more collective bargaining agreements. The Plan has six Union trustees and six management trustees (the Plan Trustees). The purposes of the Plan are to (a) develop and

execute programs for the education, development and improvement of licensed marine officers, (b) develop and execute programs to increase safety in the operation of marine vessels, (c) create and execute programs to develop and maintain a skilled pool of licensed marine officers, and (d) develop and execute a research program on a variety of issues of interest to Plan participants and their employers. The Plan conducts training and accommodates the students attending training at the Property. As of September 30, 2007, the Plan had 3,350 active participants and \$40,787,810 in plan assets.

2. The Property located in Dania Beach, Florida, is a 6.51 acre property that serves as a special-use, educational facility utilized by the Plan for education, training and administrative uses. The Property, which is 100% occupied by the Plan and the AMO Union, features multiple improvements, including administrative offices, classrooms and training simulators, motel-style housing and apartments, single family, duplex and triplex residential buildings, paved parking areas, and recreational amenities such as swimming pools and tennis courts. Improvements erected on the Property commenced in the 1950's with various additions, renovations and repairs ongoing throughout the years. Some of these improvements have been constructed by the Plan. The record owner of the Property is the AMO Building Corporation, which is a wholly-owned subsidiary of the AMO Union. The AMO Building Corporation was incorporated by the AMO Union for the primary business purpose of serving as a real estate title holding company and manager of such real estate properties, including the Property, for the benefit of the AMO Union. For ease of reference, the AMO Union and the AMO Building Corporation shall be referred to as the "Union". The Property was acquired in a series of transactions between 1981 and 1997, with a majority of the parcels acquired between 1981 and 1984.

3. The Plan presently leases two components of the Property from the Union, as described more fully below. The Property includes three distinguishable components or real property parcels, based on their current use and encumbrances:

- a. The "AMO Plan Property" contains a number of administrative and temporary residential facilities used to house students. It is owned by the Union and leased to the Plan under a lease, which commenced in June, 2002, that, with options, provides the Plan exclusive use of the land and improvements until May, 2027.
- b. The "Constitution Building Ground Lease Property" is owned by the Union and contains a training building constructed by the Plan as a leasehold improvement. The lease, which commenced in April, 1997, provides the Plan exclusive use of the land until March, 2037, at which point the leasehold improvements become the property of the Union.
- c. The "AMO Union Property" is owned and occupied by the Union as its headquarters. The property contains office and various support facilities.

The Constitution Ground Lease Property and the AMO Union Property are surrounded on all sides, other than their frontage on West Dixie Highway, by the AMO Plan Property. The Property, therefore, while marketable, is largely subject to the terms of a long term lease arrangement to the Plan.

4. The Union has proposed to sell the Property in preparation of relocating its administrative offices to a nearby location and in order to diversify its holdings. The Plan wishes to purchase

the Property rather than continue to lease a portion of it so that the Plan will have the flexibility it needs to make ongoing and significant refurbishments and improvements to the Property conducive to the world class training the Plan provides. The Plan provides training and educational programs and related services for inland waters, Great Lakes, and ocean going professional mariners on the Property and envisions that it will continue its educational mission on the Property as it is expected that the Property will continue to meet its needs and requirements for the foreseeable future and that alternatives will be considerably more expensive. This proposed transaction will allow the Plan to continue its training programs at their current location. If the proposed transaction is closed prior to the completion of the Union's new headquarters building being planned for a nearby location, it would include a lease or rental arrangement from the Plan to the Union to continue occupancy and use of the existing Union Property.<sup>1</sup>

5. As previously stated, the Property is currently owned by the AMO Building Corporation, a special purpose real estate holding company that in turn is wholly owned by the AMO Union. The AMO Building Corporation also owns other real estate parcels that are not part of the proposed transaction.

To effect the proposed transaction, the AMO Union will form a new special purpose real estate holding company (New LLC). Immediately prior to the closing, the AMO Building Corporation will contribute the Property to New LLC in exchange for 100% of the membership interest in New LLC. The AMO Building Corporation will then sell all of its member interest in New LLC to the Plan (i.e., a stock sale). As a result, the Plan will wholly own New LLC, which in turn will wholly own the Property.

6. The Plan has retained Independent Fiduciary Services, Inc. (IFS) to review the subject transaction. With respect to IFS's qualifications to review the subject transaction, IFS represents that it is an investment advisory firm with over twenty years of experience. IFS provides investment advisory services to institutional investors, including ERISA employee benefit plans, including corporate and Taft-Hartley pension, 401(k) and welfare funds, public pension plans, foundations, endowments, and non-profit and charitable organizations. IFS's services include (i) investment consulting on a broad-based ongoing basis or on specific topics on a project basis; (ii) fiduciary decision-making, where it takes responsibility as an "independent fiduciary" for a specific investment transaction or asset on a project or ongoing basis; and (iii) operational reviews, which evaluate the client's investment organization and processes compared to "best practices," across funds of varying sizes and degrees of sophistication. Within its fiduciary decision-making services, IFS has served as independent fiduciary with respect to many real estate transactions, including several involving ERISA parties-in-interest and requiring individual prohibited transaction exemptions. IFS is knowledgeable as to its duties and responsibilities as an ERISA fiduciary by virtue of its previous experience. IFS has the experience necessary to effectively review and monitor real estate transactions of the type proposed by the Plan.

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<sup>1</sup> The Applicant is not seeking exemptive relief for the potential lease of the AMO Union Property back to the Union as it believes an exemption is already available pursuant to PTCE 76-1 and PTCE 77-10.

IFS is not an affiliate of any of the parties involved in the proposed transaction, namely the Plan or the Union. IFS is independent of both the Plan and the Union. IFS has not and will not receive any fee or other compensation from any party-in-interest to the Plan (i.e., the Union) in connection with the proposed transaction. IFS has no interests which may conflict with the interests of the Plan, its participants and beneficiaries. For its services as the qualified independent fiduciary to the Plan in connection with the proposed transaction, the Plan will compensate IFS in an amount that comprises no more than 2% of IFS's annual gross income.

7. On behalf of the AMO Plan, IFS commissioned an independent appraisal of the Property as it would be configured in the proposed transaction. The appraisal was conducted by Integra Realty Resources of Miami, Florida (Integra). IFS decided to retain Integra to appraise the Property, rather than rely on either or both of two existing appraisals, one each commissioned by the AMO Plan (Clobus, McLemore & Duke, Inc. – January 12, 2007) and the AMO Union (Wachtstetter Enterprises, Inc. – August 20, 2007), respectively, for the following reasons:

- a. The existing appraisals included, in a largely commingled manner, portions of the AMO Union's property not included in the proposed transaction;
- b. The existing appraisals largely disregarded the lease encumbrances on the Property due to the lessor and lessee being related parties. However, under the proposed transaction the lessor and lessee would operate at arms length through an independent fiduciary. The AMO Plan would, in any third party sale, be entitled to consideration if it abandoned its lease rights. If the Plan did not abandon its lease rights, the Property would be sold subject to those leases, this limiting its value. This factor in value was not considered in the existing appraisals resulting in a material overstatement of the value of the Property; and
- c. The existing appraisals were commissioned by the parties to the proposed transaction, and so cannot be deemed independent.

As of March 9, 2008, Integra appraised the combined value of the Property at \$10,510,000. In its valuation, Integra applied one or a combination of three valuation methodologies, including the "cost approach," the "sales comparison approach," and the "income capitalization approach." The "cost approach" assumes that an informed purchaser would pay no more than the cost of producing a substitute property with the same utility. This approach is particularly applicable when the improvements being appraised are relatively new and represent the highest and best use of the land, or when the property has unique or specialized improvements for which there is little or no sales data from comparable properties. The "sales comparison approach" assumed that an informed purchaser would pay no more for a property than the cost of acquiring another existing property with the same utility. This approach is essentially appropriate when active market provides sufficient reliable data. The sales comparison approach is less reliable in an inactive market, or when estimating the values of properties for which no comparable sales data is available. The sales comparison approach is often relied upon by owner-user properties. The "income capitalization approach" reflects the market's perception of a relationship between a property's potential income and its market value. This approach converts the anticipated net income from ownership of a property into a value

indication through capitalization. The primary methods are direct capitalization and discounted cash flow analysis, with one of both methods applied, as appropriate. This approach is widely favored in appraising income producing properties. Integra assigned a final property valuation to each of the three components of the Property, which involved weighing the alternative valuation methodologies, based on the applicability of each relative to the specific assignment and the availability of data specific to the property, the parties involved, the parties contractual engagements, or a combination of all factors. The table below summarizes Integra' valuation conclusions:

	<b>AMO Plan Property</b>	<b>Constitution Building Ground Lease Property</b>	<b>AMO Union Property</b>	
Cost Approach	\$8,240,000	Not used	\$1,680,000	
Sales Comparison Approach	\$8,565,000	Not used	\$1,670,000	
Income Capitalization Approach	\$8,550,000	\$285,000	Not used	
Reconciliation	\$8,550,000	\$285,000	\$1,675,000	<b>Total Valuation</b> \$10,510,000

8. IFS represents that Integra has reviewed all of the terms and conditions of the proposed purchase of the Property by the Plan, has considered the history of the arrangements made between the Union and the Plan, and the appraisal of the Property completed by Integra. IFS states that Integra's appraisal has considered all of the factors necessary to accurately determine the fair market value of the Property. IFS has determined, as of March 9, 2008, that the purchase price of \$10,510,000 for the Property is reasonable.

9. IFS acknowledges and accepts its duties, responsibilities and liabilities as a fiduciary under the Act. After consideration of the proposed transaction, IFS has determined that the proposed transaction would be appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. As the Plan's independent fiduciary, IFS will monitor the parties' compliance with the terms and conditions of the proposed transaction. IFS represents that it will take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries. In this regard, IFS will ensure that the current appraisal of the Property is updated at the time of the transaction and that the Plan pays no more than the fair market value of such Property at that time.

10. IFS represents that the Plan's acquisition of the Property for \$10,510,000 in cash will not adversely affect the Plan's ability to meet all of its current expenses after the proposed transaction. Thus, IFS states that the transaction will not adversely affect the Plan's liquidity needs. IFS states further that the Property contains suitable facilities for the Plan to continue carrying out its apprenticeship and training programs. Accordingly, IFS concludes that the purchase of the Property by the Plan would be a prudent transaction, and in the best interest of the Plan, since the Plan needs to continue to use this site as a training facility.

11. In summary, the Applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash, and no commissions will be paid by the Plan with respect to the sale; (b) the fair market value of the Property being acquired by the Plan represents approximately 26% of the Plan's total assets (as

of September 30, 2007); (c) the fair market value of the Property has been determined by Integra, a qualified, independent real estate appraiser, and such appraisal will be updated to ensure that the Plan pays no more than the lesser of \$10,510,000 or the fair market value for the Property on the date of the transaction; (d) IFS, the Plan's independent fiduciary for purposes of the proposed transaction, has reviewed the terms and conditions of the proposed transaction and the most recent appraisal of the Property, and has determined that such terms and appraisal are reasonable, and that the transaction would be appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (e) IFS will monitor the transaction, as the Plan's independent fiduciary, enforce the terms of the final authorization and will take whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries.