

## NOTICE TO ALL INTERESTED PERSONS

**TO:** The Sole Participant in the Carbondale Corporation Money Purchase Pension Plan

**FROM:** The Plan Administrator

**DATE:** October 6, 2006

You hereby are notified that a written submission has been filed on behalf of the Carbondale Corporation Retirement Trust with the United States Department of Labor (the "Department") seeking authorization, pursuant to the procedures and requirements of Prohibited Transaction Exemption 96-62 (61 FR 39988, July 31, 1996) as amended by 67 FR 44622, July 3, 2002, to permit a transaction by the Carbondale Corporation Money Purchase Pension Plan (the "Plan") that otherwise would constitute a prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended (the "Act"), and the Internal Revenue Code of 1986, as amended (the "Code"). The transaction, described below, has met the requirements for tentative authorization under Prohibited Transaction Exemption 96-62. Upon final authorization, the proposed transaction will be deemed to be exempt from the result of having met the Prohibited Transaction Exemption 96-62. However, as a person who may be affected by this transaction, you have the right to submit written comments to the Department of Labor, as described below.

The Carbondale Corporation Retirement Trust holds a 50% limited partnership interest in 1250 Prospect Street, L.P. and desires to sell this interest for cash to Elizabeth C. Considine, the sole participant in the Plan and the owner of the stock of the Plan sponsor, in order to provide additional liquidity to the Plan (the "Proposed Transaction"). 1250 Prospect Street, L.P. (the "L.P.") holds and manages real estate assets. Specifically, the primary asset of the L.P. is an office and retail property and accompanying land located in California. The real estate currently is valued at \$16,400,000, as of February 23, 2006. The real estate is subject to a mortgage in the amount of \$5,465,000 as of 2005 year-end in favor of an unrelated third party (GMAC Commercial Mortgage). The Plan's L.P. interest was appraised as of February 23, 2006, at \$3,400,000. This value incorporates an adjustment for the Plan's minority interest in the L.P. and the lack of marketability of the limited partnership interest. Both the real estate appraisal and the valuation of the L.P. interests were performed by qualified and independent appraisers, specifically, Larry W. Stark, MAI, and Gary Storc of National Valuation Consultants, Inc. The valuation of the L.P. interest will be updated to the date of the transaction. Ms. Considine will pay the price indicated by the updated valuation in cash to the Plan. The transaction will be consummated as soon as possible after Final Authorization is granted by the U.S. Department of Labor.

The L.P. leases the office and commercial space to third party tenants (not related to the Plan), which provides current income to the L.P. The Plan's interest in the L.P. was acquired in 1997. At the time of purchase, the then general and limited partners were not disqualified persons in relation to the Plan (nor are they so now). The purchase of the L.P. interest by the Plan was approved by the trustees of the Plan. The trustees of the Plan are Terence M. Considine and Elizabeth C. Considine. The L.P. is paying the mortgage payments on the property from partnership cash flow. The Plan has not made any direct payments on the mortgage. All of the Plan's expenses in conjunction with the limited partnership interests since acquisition have been partnership expenses paid from the partnership's cash flow. The plan has not incurred any direct expense since that date.

Partnership interests in 1250 Prospect Street, L.P. are not traded on any exchange and a transfer of any interest only can be made pursuant to the partnership agreement. The sale of property between a qualified plan and on of its participants is prohibited by the Act and the Code absent an exemption.

The Department's authorization of the Proposed Transaction is subject to the following conditions:

- The terms and conditions of the Proposed Transaction are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.
- The Proposed Transaction is a one-time transaction for cash.
- The participant will purchase the partnership interest from the Plan at fair market value on the date of such Proposed Transaction, as determined by a qualified independent appraiser.
- The Plan will pay no commission, cost, or other expense in connection with the Proposed Transaction.
- The transaction will not be part of any larger integrated transaction.

The trustee of the Plan believes that the sale of the Plan's interest in the limited partnership is prudent to ensure the liquidity of Plan assets. Further, it is represented that the Proposed Transaction poses little, if any, risk of abuse or loss to the Plan as the Proposed Transaction will enable the Plan to dispose of its interest in the limited partnership for cash and at a price equal to the fair market value of the partnership interests at the time of the transaction, as determined by an independent, qualified appraiser.

The basic terms and conditions for the sale of the limited partnership interest will be substantially similar to the terms and conditions approved by the Department of Labor in Individual Prohibited Transaction Exemption 2001-09 and EXPRO Exemption Application Number E-00430, which are summarized below. These factors include:

- (1) The sale represents a one-time transaction for cash;
- (2) The Plan will receive an amount equal to the fair market value of the interests on the date of the sale, as established by a qualified independent appraiser; and
- (3) The Plan will not pay any commissions or any other expenses relating to the sale.

Prohibited Transaction Exemption 2001-09, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association Section 401(k) Profit Sharing Plan, 66 Fed. Reg. 15,907 (March 21, 2001) (Exemption Application No. D-10856) – The DOL granted an exemption for the sale of investments including limited partnership interests from participants' accounts in the Plan to participants for cash at an amount equal to the fair market value of the investment on the date of the sale. In that case, the current trustee of the plan requested that interests in the limited partnerships be removed from the plan in order to simplify the administration and recordkeeping for the plan. Like the instant proposed transaction, investments had been made in the plan based upon the individual direction of participants. The value of the interests in both cases would be determined by a qualified independent entity, and would be the fair market value at the time of the transaction. Finally, as with IPTE 2001-09, no commissions will be charged in connection with the sale of the interests. The DOL approved the transaction in IPTE 2001-09 because (a) the sales were one-time transactions for cash; (b) no commissions or other fees would be charged in connection with the transactions; and (c) the sales prices for the units would be at fair market value at the time of the sale based on the appraisals of the units prepared by the general partners of the partnerships. No material differences between IPTE 2001-09 and the proposed transaction are apparent from the exemption.

EXPRO Exemption 05-04E, Synergy, Inc. Profit-Sharing Plan, March 26, 2005 (EXPRO Exemption Application Number E-00430) – The DOL granted an exemption in connection with the profit-sharing plan's sale of units in an LLC. The assets of the LLC were two real estate limited partnerships and two venture capital limited partnerships (the purpose of the LLC was solely to hold the interests in the limited partnerships). One of the limited partnerships had been formed for the purpose of owning, renovating, operating, and managing residential apartment complexes in Texas and Georgia. The trustees wanted to initiate a transaction whereby the Plan would sell the units in the LLC to current and former officers and

directors of the plan sponsor for cash (the officers and directors were or had participated in the plan and also were members of the plan sponsor's operational committee). The trustees had determined that the sale of the units was in the best interest of the plan for the following reasons: (a) to allow the plan to dispose of an illiquid asset; (b) to enable the plan sponsor to consummate a merger of the plan into a plan sponsored by a related company; (c) to enable employee investment direction with respect to the proceeds from the sale; and (d) to accommodate daily valuations of the proceeds from the sale. The applicants agreed to pay cash to the plan equal to the fair market value of the real estate limited partnerships and the book value of the venture capital limited partnerships (to the extent that book value exceeded fair market value). The DOL approved of the transaction because: (a) it was a one-time transaction for cash; (b) no commissions or other fees would be charged in connection with the transaction; (c) the terms and conditions of the transaction were at least as favorable to the plan as those obtainable in an arms-length transaction with an unrelated party; and (d) the valuation was based on an appraisal of the partnership performed by an independent qualified appraiser. No material differences between this granted EXPRO application and the proposed transaction are apparent from the exemption.

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

Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Room N-5700  
Washington, DC 20210  
Attention: Submission No. E-00534

Comments also may be faxed to 202-219-0204, or emailed to Anna Vaughan at [Vaughan.anna@dol.gov](mailto:Vaughan.anna@dol.gov).

The application for submission and the comments received will be available for public inspection at the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The comment period will close on November 1, 2006. Final Authorization of the Proposed Transaction will not occur until the Department reviews all comments received in response to this notice. The transaction will be consummated as soon as possible after Final Authorization is granted.