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April 23, 1975

Dr. Valdis Muiznieks
President and Chairman of the Board
Latvian Foundation
2318 Gull Road
Kalamazoo, Michigan 49001

Dear Dr. Muiznieks:

You have requested our opinion as to the ability of a non-profit corporation organized under the laws of the State of Michigan to invest in second mortgages in Canada. In the course of our investigation, we have examined the provisions of applicable Michigan laws, but wish to caution that this opinion does not deal in any respect with the potential tax consequences of such an investment.

With respect to Michigan law, foundations are authorized, under Michigan Statutes Annotated, Section 21.165, to:

"...take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its objects and purposes, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal and income thereof in accordance with the laws of this state governing authorized investments for trustees and deal with and expend the principal and income of the foundation in such manner as in the judgment of the trustees will best promote its objects and be consistent with conditions that may be stated in any particular bequest, devise or gift."

The particular provision, which is of interest here, is the authority "to convey such property and to invest and reinvest the principal and income thereof in accordance with the laws of this state governing authorized investments for trustees." The authorized investments for trustees are set forth in Michigan Statutes Annotated, Section 26.85, which states in part:

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"...In the absence of investment specifications or limitations in the agreement, instrument, or order, trust property or funds shall within a reasonable time, be invested in such common or preferred stocks, share accounts of either state or federally chartered building and loan or savings and loan associations, bonds, mortgages, mortgage notes (but not including certificates or evidences of participation or undivided interests in real estate mortgages and mortgage notes), Notes, debentures, securities, including securities of companies which are registered with the federal securities and exchange commission under any of the acts enforced by it and whose principal and primary activities are investments in securities of other companies, or other properties, real or personal, or such contracts of annuity or insurance, payable to the beneficiary of such trust, issued by a legal reserve life insurance company duly admitted to operate in the state of Michigan, or annuity contracts written by any company authorized to do such business in the state of Michigan, as an ordinarily prudent man of intelligence and integrity, who is a trustee of the moneys of others, would purchase, in the exercise of reasonable care, judgment and diligence, under the conditions existing at the time of purchase, having due regard for the management, reputation and stability of the issuer and the character of the particular securities: Provided, however, That no such funds shall be invested in any securities or property purchased from said trustee, whether a person or a corporation, or from any subsidiary or affiliate of said corporation."

As you will note, from the language which we have underlined, the foundation would be authorized, pursuant to Michigan law, to invest in mortgages, mortgage notes, or other real or personal property. We would caution, however, that ordinarily second mortgages are not considered good investments for fiduciaries, and there are judicial decisions which limit such investments to situations where there is a substantial equity interest which may be secured by the second mortgage. In one such decision, a trustee had invested in a second mortgage upon a parcel of real estate where the first mortgage on the property covered only one-half of the present value thereof. The Court found this investment to be improper, even though there was still some equity remaining over and above both mortgages. While this may be an extreme case, we do wish to caution you that any investment in such second mortgages must be justifiable in terms of the ordinarily prudent man rule stated in

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the statute above. It is possible, however, that Michigan Courts would view the Canadian investments in a different light than the decisions we have reviewed since those decisions involved American second mortgages and since it appears that such investments in Canada are more secure in nature.

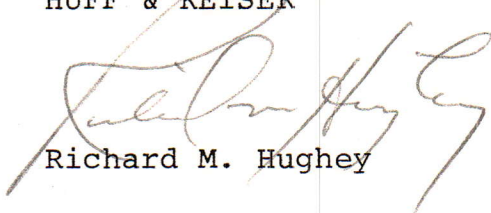
We understand that you intend to pledge assets of the foundation in order to borrow funds with which to make this investment. While we find no explicit authorization in any Michigan statute for a foundation to pledge assets, neither do we find any specific prohibition against same. In view of the language of the statute first quoted, where the trustees are authorized to deal with and expend the principal and income of the foundation in such manner as in the judgment of the trustees will best promote its objects, it is our opinion that you would be authorized to secure borrowings with assets of the foundation.

Therefore, it is our opinion that you would be authorized to pledge assets of the foundation and use the proceeds of any loan obtained thereby to invest in second mortgages in Canada provided that you are able to meet the prudent man rule of the statute and provided such an investment is not a participation or an undivided interest in same. Whether the prudent man standard has been met, must be interpreted under the facts and circumstances of each investment, and therefore we cannot give you an opinion as to what extent you may invest in any particular second mortgage. We also wish to again caution you that our opinion does not pertain to any potential tax consequences of this investment.

If you have any questions with regard to this matter, please feel free to contact me.

Very truly yours,

DEMING, HUGHEY, BENSON,
HUFF & KEISER



Richard M. Hughey

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