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Date:
September 29, 2000

LEGEND

Company	=
Operating Partnership	=
Subsidiary Partnership	=
Subsidiary Corporation	=
Real Estate Corporation	=
State A	=
State B	=
Date 1	=
Date 2	=
Date 3	=
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Dear :

This letter is in response to a letter dated December 30, 1999, and subsequent correspondence, submitted on behalf of Company requesting various rulings relating to Company's status as a real estate investment trust ("REIT") under section 856 of the Internal Revenue Code. The letter is based on the facts as submitted, and summarized herein.

A. Background

Company is a State A corporation that has elected to be treated as a REIT. Company conducts substantially all of its operations through Operating Partnership, a State B limited partnership, and through certain other entities that are owned or controlled by Operating Partnership or Company. Company owns or controls a portfolio of more than a manufactured home communities (the "Communities") located throughout the United States.

B. General

1. FACTS

Company represents that all of the services described below that it provides or intends to provide are customarily provided to tenants of manufactured home communities or residential real estate in the relevant geographic areas in which the Communities are located.

a. Trash Collection

At most Communities, independent contractors remove trash from trash rooms, dumpsters or compactors. At certain Communities, tenants place trash on the curb outside their manufactured home to be picked up and placed into trailers that are towed by trucks. The trailers are then emptied into compactors maintained by an independent contractor for disposal and later removal by the independent contractors. Where curb side pick-up is provided, Operating Partnership uses its employees to collect the trash at curb-side and to deliver it to compactors maintained by the independent contractors. Operating Partnership may separately charge for this service.

b. Nine-Hole Walk-On Golf Courses/Pitch and Putt/Putting Greens

Tenants do not pay any fees to utilize these facilities. Generally, the courses are available to all tenants and their guests on an unreserved basis. At one of the courses, tenants administer tee times without any involvement from Operating Partnership. The facilities have no clubhouses, no pro shops and no employees. Operating Partnership provides no services in connection with the facilities other than ordinary maintenance.

c. Boat Docks/Ramps

The boat docks/ramps are located in an internal waterway accessible only to tenants of the Communities. Tenants do not pay any fees to utilize these facilities, which are available to all tenants and their guests on an unreserved basis. Operating Partnership provides no services in connection with the facilities other than ordinary maintenance.

d. Miscellaneous Facilities

At certain of the Communities, tenants have access to exercise rooms, whirlpool spas, libraries and car wash areas. Tenants do not pay any fees to utilize these facilities, which are available to all tenants and their guests on an unreserved basis. Operating Partnership provides no services in connection with the facilities other than ordinary maintenance.

e. Utilities

In some instances, Operating Partnership provides utility services by purchasing the utility at wholesale rates and then selling the utility at retail prices to the tenants. In some cases, Operating Partnership charges an administrative fee to the tenants for all of the costs of providing the utility service. For this purpose, utility services include water, sewer, electric and gas.

In other instances, Operating Partnership owns and operates its own water and sewage treatment facility. Operating Partnership separately charges tenants for the costs of providing the utility service.

In addition, Operating Partnership owns a one percent general partner interest in Subsidiary Partnership, which owns all of the common stock of Subsidiary Corporation. Subsidiary Corporation is currently engaged in the business of owning and operating a water and sewage treatment facility that provides water and sewage treatment services at certain Communities. Operating Partnership intends to take over and operate these water and sewage treatment facilities. Tenants will be separately charged for their water and sewage usage. Operating Partnership represents that ownership and operation of a water and sewage treatment facility is usual and customary for manufactured home communities in the relevant geographic markets.

f. Vending Machines

At one Community, Operating Partnership leases space to an independent third party who provides automated teller machines (“ATMs”). Operating Partnership proposes to lease space at other Communities to independent third parties who provide other vending machines including ATMs. The vending machines and ATM equipment will be owned by the independent third parties. Under the agreement between Operating Partnership and the independent third parties, Operating Partnership will rent space to the third party and receive either a fixed fee, a fee per banking transaction (or per banking transaction in excess of a threshold number), or a percentage of the gross receipts generated by the third parties from the vending services rendered to the tenants through the vending machines and ATMs. The third parties will have reasonable access to the Communities for the purpose of installing, operating and maintaining the vending and ATM equipment. Operating Partnership will provide the third parties with adequate space and electricity for the housing of the third parties’ vending and ATM equipment. The third parties will be responsible for maintaining such space.

g. Telecommunications

Communities will be improved with a network of voice, video and data communications systems that will be owned by Operating Partnership and/or by one or more third-parties (“Provider”). Provider or Operating Partnership may provide telecommunication-related equipment to the tenants in connection with the provision of telecommunication services. Telecommunications services means the transmission and provision of the following information and information services: telephone and other communications, e-mail, video communications, electronic research, Internet access, communications networking, safety and security systems, and environmental control systems.

Company or Operating Partnership will derive income in connection with the provision of telecommunication services as follows. First, pursuant to an agreement, a Provider may pay Company or Operating Partnership a fee that may be expressed as a fixed dollar amount, as a percentage of Provider’s gross receipts or as some combination of the two. Second, in addition to or in lieu of such fees received from a Provider, a tenant may pay Company or Operating Partnership a fee that may be expressed as a fixed dollar amount, as a percentage of tenants’ payments made to a Provider or as some combination of the two. Third, in the case where Company or Operating Partnership owns an equity interest in an entity that is treated as a partnership for Federal income tax purposes, Company or Operating Partnership may derive income in connection with the provision of telecommunication services by reason of Company’s or Operating Partnership’s proportionate share of charges received by such entity from tenants and Providers in connection with the provision of telecommunication services to tenants. The telecommunications services described above may be included in a package of services provided to tenants for a fee or tenants may be charged a fee for each individual telecommunications service received. In addition, tenants may be charged a fee based upon the actual amount of usage of a particular telecommunications service.

2. LAW AND ANALYSIS

Section 856(c)(2) requires at least 95% of a REIT’s gross income to be derived from passive sources, including dividends, interest, rents from real property and certain other items.

Section 856(c)(3) requires at least 75% of a REIT’s gross income to be derived from real property interests, including rents from real property and interest on obligations secured by mortgages on real property or on interests in real property.

Section 856(d)(1) provides that "rents from real property"' include (subject to exclusions provided in section 856(d)(2)): (A) rents from interests in real property, (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and (C) rent

attributable to both the real and personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the year attributable to both the real and personal property leased under, or in connection with, such lease.

Section 1.856-4(b)(1) of the Income Tax Regulations provides that services provided to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings which are of a similar class are customarily provided with the service. Such services include the furnishing of water, heat, light, air conditioning and telephone answering services. Where it is customary in a particular geographic marketing area to furnish electricity or other utilities to tenants in buildings of a particular class, the submetering of such utilities to tenants in such buildings will be considered a customary service.

Section 856(d)(2)(C) excludes from the definition of "rents from real property"' any impermissible tenant service income as defined in section 856(d)(7). Section 856(d)(7)(A) provides, in relevant part, that the term impermissible tenant service income means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for managing or operating such property. Section 856(d)(7)(B) provides that de minimis amounts of impermissible tenant service income, i.e., amounts less than one percent of all amounts received or accrued by the REIT with respect to a particular property during the taxable year, will not cause otherwise qualifying amounts to not be treated as rents from real property.

Section 856(d)(7)(C) excludes from the definition of impermissible tenant service income amounts received for services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income. Similarly, subparagraph (C) excludes amounts that would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 512(b)(3) provides, in part, that there shall be excluded from the computation of unrelated business taxable income all rents from real property and all rents from personal property leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

Section 1.512(b)-1(c)(5) provides that payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts or motels, or for the use or occupancy of space in parking lots, warehouses or storage garages, do not constitute rent from real property. Generally, services are considered rendered to the occupant if they are primarily for the tenant’s convenience and are other than those usually or customarily rendered in connection with the rental

of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exits, stairways and lobbies, and the collection of trash are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units or offices in an office building are generally treated as rent from real property.

The Report of the Conference Committee on the Tax Reform Act of 1986, H.R.Rep. No. 99-841, 99th Cong., 2d Sess. 1 (1986), 1986-3 (Vol. 4) C.B. 1, 220, in discussing section 856(d)(2)(C), provides that:

> The conferees wish to make certain clarifications regarding those services that a REIT may provide under the conference agreement without using an independent contractor, which services would not cause the rents derived from the property in connection with which the services were rendered to fail to qualify as rents from real property (within the meaning of section 856(d). The conferees intend, for example, that a REIT may provide customary services in connection with the operation of parking facilities for the convenience of tenants of an office or apartment building, or shopping center, provided that the parking facilities are made available on an unreserved basis without charge to the tenants and their guests or customers. On the other hand, the conferees intend that income derived from the rental of parking spaces on a reserved basis to tenants, or income derived from the rental of parking spaces to the general public, would not be considered to be rents from real property unless all services are performed by an independent contractor. Nevertheless, the conferees intend that the income from the rental of parking facilities properly would be considered to be rents from real property (and not merely income from services) in such circumstances if services are performed by an independent contractor.

Company represents that the activities described above are customary services in similar manufactured home communities in the relevant geographic markets in which the Communities are located within the meaning of section 856(d)(1)(B). These services will be those ordinarily rendered in connection with the rental of a site in a manufactured home community for occupancy only and will not be considered rendered primarily for the convenience of the tenants of the Communities under section 1.512-1(c)(5) for purposes of section 856(d)(7). As a result, the services fall within the exception provided in section 856(d)(7)(C)(ii) and will not prevent amounts received from the Communities from qualifying as “rents from real property” under section 856(d)(1).

3. CONCLUSIONS

Based on the facts as represented by Company, we conclude that the activities described above will not cause Company’s share of income from the Communities to

be excluded from “rents from real property” as defined in section 856(d), and income earned by Company directly or through Operating Partnership from such activities will constitute “rents from real property” under section 856(d).

C. Separate Lines of Business

1. FACTS

a. Golf Courses

Several of the Communities have golf courses that are currently operated by an unrelated third party. Operating Partnership intends to take over their operation and to make all such golf courses accessible to tenants and non-tenants. Each course will have its own staff and equipment but will also share employees and equipment with the Community. Employees will be shared if hiring separate employees will result in the impractical duplication of services already performed at the Communities. Each course will keep its own set of books and records.

For the use of these golf courses, the Operating Partnership will impose charges such as membership dues and greens fees. The golf courses will be equally accessible to both the general public and the tenants and tenants will not be given any preference on tee times. However, members of one golf course (whether they are tenants or non-tenants) generally will be entitled to discounts, favorable tee times and participation in golf leagues.

The golf courses will be operated and accounted for separately from the rental operation of the Communities, are separately viable as independent businesses, and constitute separate and independent profit centers. Income from the courses will be kept separate from the rents of the Communities and will be treated by the Company as other income that does not qualify as “rents from real property” under section 856(d)(2)(B).

b. Boat Marina

Operating Partnership owns and operates a marina at one of the Communities. The marina is equally accessible to both tenants and non-tenants, though tenants are generally entitled to discounts or reduced fees. Approximately e% of all boat slips are currently leased to non-tenants. Because hiring separate employees would result in impractical duplication of services already performed at the Community, the marina shares employees and equipment with the Community. The marina conducts its marketing and advertising independently from the Community. The marina is operated and accounted for separately from the rental operation of the Community, is separately viable as an independent business, and constitutes a separate and independent profit center. Income from the marina is kept separate from the rents of the Community and is treated by Company as other income that does not qualify as “rents from real property” under section 856(d)(2)(B).

2. ANALYSIS

The golf courses and marina should not be treated as services rendered to the tenants of the Communities since these facilities are not made available in connection with the rental of the sites in the Communities. Tenants will be given no preference in using the golf courses or marina, and separate fees for these facilities will be charged. The golf courses and marina will be completely accessible to the general public. The golf courses and marina are separate cost and profit centers operated independently with largely its own employees and equipment. Amounts received or accrued by Company in connection with the golf courses and marina will not be treated as "rents from real property" under sections 856(c)(2) and 856(c)(3). However, because Company's activities with respect to these businesses are not rendered to or for the tenants of the Communities in connection with the rental of real property by those tenants, the activities will not cause rental income of Company derived from tenants of the Communities to be treated as other than "rents from real property" under section 856(d).

3. CONCLUSIONS

Based on the facts as represented by Company, we conclude that the management and operation of the golf courses and boat marina by Company through Operating Partnership will not cause Company's share of income from the Communities to be excluded from "rents from real property" as defined in section 856(d).

D. Loans to Purchasers of Manufactured Homes

1. FACTS

Real Estate Corporation is currently engaged in the business of making mortgage loans to purchasers of manufactured homes, secured by the manufactured home. Operating Partnership proposes to take over this operation and make mortgage loans to the purchasers of manufactured homes, secured by the manufactured home. Operating Partnership will hold the mortgages and will have the power to collect payments on the mortgages and to foreclose on defaulted mortgages. Operating Partnership may also collect various amounts in connection with a borrowing that will include prepayment penalties, loan assumption fees and late payment charges. The Company represents that these amounts are collected for the use or forbearance of money and not for services rendered.

2. LAW AND ANALYSIS

Section 856(c)(4)(A) provides that at the close of each quarter of its tax year, at least 75 percent of the value of a REIT's total assets must be represented by real estate assets, cash and cash items (including receivables), and Government securities.

Section 856(c)(5)(B) defines the term “real estate assets”, in part, to mean real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other REITs.

Rev. Rul. 71-220, 1971-1 C.B. 210, concerns a real estate investment trust that developed a mobile home community on land it had purchased. The mobile homes were affixed to the ground and connected to utilities. A carport or screened porch was attached to each unit. The REIT leased the homesites to the owners of the mobile homes and financed the mobile home purchases. The debt of a mobile home purchaser was evidenced by a note. Rev. Rul. 71-220 holds that the mobile homes were “real property” within the meaning of section 856. Rev. Rul. 71-220 further holds that to the extent the notes were secured by real property they would be considered obligations secured by mortgages on real property or interests in real property.

Rev. Rul. 65-67, 1968-1 C.B. 269, holds that interest income derived from mortgages originated and held for investment by a REIT constitutes “interest on obligations secured by mortgages” within the meaning of section 856(c)(3)(B).

Interest received by Operating Partnership on mortgage loans that are secured by manufactured homes will be qualifying income for purposes of section 856(c)(2) and (c)(3). Mortgages owned by Operating Partnership are held as investments and not for sale to customers in the ordinary course of a trade or business.

3. CONCLUSIONS

Based on the facts as represented by Company, we conclude that Operating Partnership’s loans to purchasers of manufactured homes will be “real estate assets” under section 856(c)(5), and Company’s allocable share of amounts received by Operating Partnership as interest with respect to the loans will qualify as “interest on obligations secured by mortgages on real property” under section 856(c)(3)(B).

E. Timeshares

1. FACTS

Operating Partnership proposes to purchase interests in timeshare residential dwelling units or provide secured mortgage financing on interests in timeshare residential dwelling units. The interests will be acquired or financed in a variety of properties ranging from manufactured home communities to high quality condominium resorts. The interests will consist of either deeded ownership interests in a fraction of a timeshare unit or non-deeded interests that allow for the use of the timeshare unit for a specific amount of time each year for a stated number of years. Generally, Operating Partnership will acquire interests for multiple week periods.

The timeshare units will provide tenants with an economical vacation alternative. Operating Partnership will offer the fully-furnished timeshare units for rent by its existing

tenants and prospective tenants for periods ranging from one week up to the total amount of time that Operating Partnership owns a particular timeshare unit. To the extent that existing and prospective tenants of the Communities do not rent the timeshare units, Operating Partnership will provide an opportunity for others to rent the timeshare units at reasonable rates. All out-of-pocket expenses for travel to the timeshare units will be paid for by the tenants.

Operating Partnership will direct the marketing and promotion activities with respect to the timeshare units it owns. The units will be promoted on the basis of convenience, service and reliability. Operating Partnership also intends to perform certain lease administration and accounting functions including billing, bookkeeping, lease tracking functions, certain legal work, and the collection and deposit of rents and other receipts in connection with this rental activity.

The rental amount will be similar to that charged for similar accommodations and amenities for the same period of rental in the relevant geographic market where the timeshare unit is located. Timeshare units will be available with different levels of amenity packages, but generally will include cable television, local telephone service, and all utilities provided without extra charge. The management company for the timeshare development, an independent contractor within the meaning of section 856(d), will be responsible for providing or contracting with other independent third parties for management services, administration, housekeeping and repair, landscaping and pool maintenance, accounting and legal services, insurance taxes and utilities. As a matter of convenience, Operating Partnership will pay the annual maintenance fees charged by the management company and will collect pursuant to a separately stated charge as part of the tenant's period of use. Operating Partnership will not be involved in the performance of the services described above and will not bear any portion of the costs associated with these services provided to the tenants of the timeshare units. Operating Partnership will derive no income from the provision of such services by the management company or the management company's contractors.

It is customary in the rental of such accommodations that the timeshare be fully furnished. In certain cases, Operating Partnership may own an undivided interest in the furniture, kitchen items, linens and other personalty (collectively, "Timeshare Personalty") in the timeshare units. In other cases, Operating Partnership will lease the Timeshare Personalty from the management company, in exchange for a portion of the maintenance fees paid to the management company. In either case, the management company will be responsible for replacement and upkeep of the Timeshare Personalty.

In addition, certain timeshare units offer amenities that may include the following: swimming pool, spa tub, on-site beach, clubhouse, exercise facilities, boating facilities, restaurant/bar, golf courses, downhill or cross-country skiing, health spa and casino/gaming. Certain timeshare units may also include complimentary access to golf courses, ski-lift tickets or other similar promotional items. Such promotional items are customary in the timeshare industry and are furnished by the management company without additional charge. Operating Partnership will not pay any separately stated

charge for such promotional items and will provide the same to the tenants of the timeshare units without separate charge to the extent they relate to the tenant's period of use.

2. LAW AND ANALYSIS

Section 1.856-3(c) provides that the term "interests in real property" includes timeshare interests that represent an undivided fractional fee interest, or undivided leasehold interest, in real property, and that entitle the holders of the interests to the use and enjoyment of the property for a specified period of time each year.

Section 856(d)(1) provides a formula to allocate a portion of the total rent to the rent attributable to personal property owned by a REIT and leased to tenants, for purposes of section 856(d)(1)(C).

Operating Partnership will solicit existing tenants and prospective tenants as part of an overall marketing strategy to, among other things, attract new tenants to its Communities and assist in leasing timeshare units and will negotiate leases with respect to the timeshare units. The existing tenants are under no obligation to lease the timeshare units. The services provided at the timeshare units through the use of qualifying independent contractors from whom Operating Partnership will not derive any income are customary in the geographic markets in which they are provided. Operating Partnership will collect maintenance fees for these services pursuant to a separately stated charge and remit all amounts collected to the management company. Operating Partnership will not bear any of the costs of these services and will derive no income from the provision of these services. Accordingly, the performance by Operating Partnership of the services and activities described above with respect to the timeshare units will not cause the income generated by the timeshare units to be treated by Company as other than "rents from real property."

In the cases in which Operating Partnership does not own an undivided interest in the Timeshare Personalty, it merely collects the separately stated maintenance fee from its tenant and remits the fee to the management company, in effect acting as agent for the management company. In addition, the maintenance fee relates both to the provision of personal property and the provision of services by the management company. Accordingly, the maintenance fee should not be included in the gross income of the Company for purposes of section 856(c)(2), (c)(3) and (d)(1)(C).

The complimentary items that sometimes accompany the rental of the timeshare units are courtesies provided by the management company for which no separate fee is charged. These courtesies are infrequent, limited and insubstantial and Operating Partnership does not derive any income from them. Accordingly, they will not cause income derived from the rental of timeshare units to be treated as other than "rents from real property" for purposes of section 856(c)(2) and (c)(3).

The interest received by Operating Partnership on mortgage loans that it originates that are secured by interests in timeshare residential dwelling units will be qualifying income for purposes of section 856(c)(2) and (c)(3). Mortgages owned by Operating Partnership are held as investments and not for sale to customers in the ordinary course of a trade or business.

3. CONCLUSIONS

Based on the facts as represented by Company, we conclude that Company's allocable share of amounts received by Operating Partnership from the rental of timeshares, other than separately stated amounts received from tenants and remitted to the management company on account of maintenance fees, will qualify as "rents from real property" under section 856(d). Separately stated amounts received by Operating Partnership and remitted to the management company on account of maintenance fees will be disregarded in determining Company's gross income for purposes of section 856(c)(2), (c)(3) and (d)(1)(C). Operating Partnership's loans to purchasers of interests in timeshare residential dwelling units will be "real estate assets" under section 856(c)(5), and Company's allocable share of amounts received by Operating Partnership as interest with respect to the loans will qualify as "interest on obligations secured by mortgages on real property or on interests in real property" under section 856(c)(3)(B).

F. Recreational Vehicle Long-Term Parking/Storage

1. FACTS

At some of the Communities, Operating Partnership provides long-term parking and storage of recreational vehicles for a charge. In connection with these facilities, Operating Partnership provides general maintenance and administrative services. Operating Partnership does not provide attendants or other services. Tenants who park or store their recreational vehicles are responsible for the delivery, placement and retrieval of the recreational vehicle, and also assume risk of loss for property damage.

2. ANALYSIS AND CONCLUSIONS

The long-term parking and storage of recreational vehicles at the Communities constitutes the rental of real property. Company represents that the services provided in connection with the rental of the long-term parking and storage of recreational vehicles are usually and customarily rendered with the rental of a site in a manufactured home community for occupancy only. Further, such services are not considered rendered primarily for the convenience of the tenants under section 1.512-1(c)(5) for purposes of section 856(d)(7). Accordingly, Company's allocable share of amounts received by Operating Partnership from the rental and storage of recreational vehicles will qualify as "rents from real property" under section 856(d).

G. Employee Stock Purchase Plan

1. FACTS

Company has adopted an employee stock purchase plan ("ESP Plan") that is not an employee stock purchase plan under section 423. Company represents that shares purchased under the ESP Plan will be property transferred in connection with the performance of services under section 83. The purpose of the ESP Plan is to encourage share ownership by employees and directors of Company, so that they may acquire or increase their proprietary interest in the growth and success of Company, and to encourage eligible employees and directors to remain in the employ of Company.

Under the ESP Plan, employees satisfying certain length of employment requirements are eligible to participate in the ESP Plan and eligibility terminates on retirement, death or termination of employment. Rights to participate are non-transferable and are exercisable only during a participant's lifetime.

Eligible employees participate by completing payroll deduction authorization forms with regard to monthly offerings authorizing a deduction from pay of not less than b dollars, subject to an annual cap of $c, or by contributing an amount of cash. Employee contributions do not accrue interest prior to investment in Company stock and are held as part of the general assets of Company. Each employee's rights to the contributions credited to the employee's account shall be that of a general and unsecured creditor of Company. Employees may withdraw from participation pursuant to specific notification procedures.

The purchase price paid by employees for each common share purchased may be as low as d% of the lesser of (i) the fair market value of a share on the first business day of the monthly offering period and (ii) the fair market value of a share on the last business day of the offering period. The amount of any discount is reported as wage income on the employee's Form W-2 for the taxable year of the purchase or on Form 1099-MISC of the directors.

2. LAW AND ANALYSIS

Section 857(a)(1) provides, in part, that the provisions of part II of subchapter M of Chapter 1 (except sections 856(g) and 857(d)) shall not apply to a REIT for a tax year unless the deduction for dividends paid during the year (as defined in section 561, but determined without regard to capital gains dividends) equals or exceeds 95 percent of its REIT taxable income.

Section 857(b)(2)(B) provides that in determining REIT taxable income, the taxable income of the REIT will be adjusted by, among other things, the deduction for dividends paid (as defined in section 561) computed without regard to that portion of

such deduction that is attributable to the net income from foreclosure property.

Section 561(a) provides, in relevant part, that the deduction for dividends paid shall be the sum of (1) the dividends paid during the tax year, and (2) the consent dividends for the tax year (determined under section 565).

Section 562(a) provides that the term dividend shall, except as otherwise provided in that section, include only dividends described in section 316 (relating to the definition of dividends for purposes of corporate distributions).

Section 562(c) provides that the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared to another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

Section 1.562-2(a) provides, in part, that a corporation will not be entitled to a deduction for dividends paid with respect to any distribution upon a class of stock if there is distributed to any shareholder of such class (in proportion to the number of shares held by him) more or less than his pro rata part of the distribution as compared with the distribution made to any other shareholder of the same class. Nor will a corporation be entitled to a deduction for dividends paid in the case of any distribution upon a class of stock if there is distributed upon such class of stock more or less than the amount to which it is entitled compared with any other class of stock. A preference exists if any rights to preference inherent in any class of stock are violated. The disallowance, where any preference in fact exists, extends to the entire amount of the distribution and not merely to a part of such distribution.

Rev. Rul. 83-117, 1983-2 C.B. 98, considers two situations in which a REIT's dividends paid deduction may be affected by a discount on the reinvestment of dividends in shares of the REIT's stock under a dividend reinvestment plan (DRIP). Under the first plan (Situation 1), the REIT's shareholders may elect to have cash dividends that would otherwise be distributed to them reinvested in newly issued shares of the REIT's stock. The stock acquired by shareholders under this plan is priced at 95 percent of its fair market value on the distribution date. The 5 percent discount approximates the costs that the REIT would otherwise incur in issuing new shares. Under the second plan (Situation 2), the REIT's shareholders also may have their cash dividends reinvested, but the stock acquired is priced at less than 95 percent of its fair market value on the distribution date. Thus, the discount exceeds 5 percent.

In Situation 1, Rev. Rul. 83-117 holds that the REIT is entitled to a dividends paid deduction for the amount of any distribution made in both cash and discounted stock. The plan treats the shareholders impartially by giving them an equal opportunity to reinvest. Moreover, the plan's discount is relatively small, resulting in relatively minor

differences in the amounts received by shareholders of the same class.

In Situation 2 of Rev. Rul. 83-117, the plan's discount is no longer relatively small, causing more than relatively minor differences in the amounts received by shareholders of the same class. Accordingly, the dividend in Situation 2 is preferential and the REIT is not entitled to any dividends paid deduction.

If the shares purchased by Company's employees and directors under the ESP Plan are construed as dividends, a sale at d% of the fair market value would raise the issue of preferential dividends under section 562(c) of the Code. If those dividends were preferential, Company would be denied a dividends paid deduction and could fail to satisfy the requirements of section 857(a)(1).

In Rev. Rul. 72-296, 1972-1 C.B. 208, a REIT adopted a share option plan providing for the sale of its shares to its employees. The revenue ruling holds that options granted under the plan and the beneficial shares issued upon exercise of the options are property transferred in connection with the performance of services within the meaning of section 83 of the Code. The adoption of the plan and the grant of options under the plan did not impair or adversely affect the qualification of the REIT under section 856.

Luckman v. Commissioner, 418 F.2d 381 (7th Cir. 1969), concerned the tax treatment by a corporation of restricted stock options offered below market value to employees. The court stated that employee stock options represent a form of compensation paid to employees in connection with successful present and future business performance. Employee stock options are not distributions with respect to stock and are not comparable to non-taxable pro rata stock dividends. 418 F.2d at 384.

In Commissioner v. LoBue, 351 U.S. 243 (1956), substantially below market value stock options were given to employees to provide them with an incentive to promote growth of the company by permitting them to share in its success. The stock options were nontransferable and were contingent on the continued employment of the offerees. The Court determined that the stock options were not gifts and stated that when assets are transferred from an employer to an employee to secure better services they are compensation. 351 U.S. at 246-248.

The offerings under the ESP Plan are made to employees in their capacity as employees, and such employees may or may not be shareholders. Thus, the discounted price under the ESP Plan constitutes compensation for services, not a dividend.

3. CONCLUSIONS

Based upon the information submitted and the representations made, we conclude that the sale of stock under the ESP Plan as described above will not

constitute a preferential dividend and the amount of any discount will not affect the calculation of the dividends paid deduction for purposes of section 857(a). Further, any discount will not otherwise affect the qualification of Company as a REIT.

H. Dividend Reinvestment Plan

1. FACTS

Company has adopted a Dividend Reinvestment and Share Purchase Plan ("Plan"). The Plan contains a dividend and distribution reinvestment provision ("DRIP") and a cash option purchase provision ("COPP"). Under the DRIP, Company's eligible electing shareholders and Operating Partnership's eligible electing unitholders may have part or all of their periodic distributions automatically reinvested in additional shares of Company common stock. Under the COPP, eligible electing shareholders, eligible electing unitholders, and "Interested Investors" may purchase shares of Company stock. "Interested Investors" includes any person who wishes to purchase Company shares who does not currently own Company stock. Eligible electing shareholders, eligible electing unitholders, and Interested Investors are collectively referred to as "Participants". Persons who wish to purchase stock under the COPP must submit an authorization form and become enrolled in the Plan prior to purchasing shares.

Participation in the Plan commences with the next "Investment Date" after the enrollment request has been processed by Company. The Investment Date is held monthly on one of two dates. In months when a cash dividend is paid, the Investment Date is the distribution date of the dividend. In months when no dividend is distributed, the Investment Date is on or around the tenth business day of the month. Participants may receive Company stock directly from the Company or receive Company shares purchased by the Administrator of the Plan. When Participants purchase shares directly from Company, the cash received by the Company pursuant to the DRIP or the COPP ("Proceeds") will be reinvested (or invested) on the Investment Date. When the Administrator buys shares on behalf of the Participants, the Proceeds are transferred to the Administrator who buys the shares in a privately negotiated transaction or on the open market. The Proceeds will be paid to the Administrator on the Investment Date and the Administrator will use the Proceeds to acquire Company shares as soon as practicable after the Investment Date. These shares will be distributed to Participants at the weighted average purchase price for the shares including any brokerage commissions paid by the Administrator.

Participants who reinvest dividends through the DRIP or purchase shares through the COPP may receive a discount of up to f% on the purchase price of the shares ("Discount"). Participants who wish to invest more than $g at an Investment Date must obtain a waiver from Company. Upon granting a waiver, Company may grant a discount to Participants who wish to purchase over $g in stock on an Investment

Date ("Waiver Discount"). The Waiver Discount will not exceed f% of the average of the high and low trading prices of Company shares on the Investment Date.

In Date 1, Company commenced a common stock repurchase plan for up to h shares of stock. This plan was expanded to authorize repurchase of up to i shares on Date 2. The number of authorized repurchases was further increased to j shares in Date 3. On Date 4, Company was authorized to repurchase an additional h shares of common stock. By Date 4, Company had repurchased over k shares of common stock under the repurchase plan.

The taxpayer has made the following representations in connection with the rulings requested:

(a) Except as described above, Company has not redeemed any of its outstanding shares of stock during the last three years.

(b) Company has no present plan or intention to redeem any of the shares of stock to be issued under the DRIP or the COPP.

(c) Shares issued under the DRIP or the COPP are not redeemable at the option of any shareholder.

2. CONCLUSIONS

Based upon the above facts and representations submitted, we conclude as follows:

1. Participants who reinvest dividends through the DRIP will treat the stock attributable to reinvested dividends as received in a distribution to which section 301 applies by reason of section 305(b)(1). The amount of the distribution will be the fair market value of the Company stock received on the date of distribution plus any brokerage fee or commission that is paid by Company to acquire stock for the shareholders on the open market (sections 301 of the Code and 1.305-1(b) of the Income Tax Regulations).

2. Participants in the Plan who reinvest dividends in the DRIP and receive a Discount or a Waiver Discount will be treated as having received a distribution to which section 301 applies by reason of the application of section 305(b)(2) (section 1.305-3 of the regulations). The amount of the distribution will be the value of the Discount and/or Waiver Discount on the date of distribution (section 1.305-1(b)).

3. Participants in the Plan who purchase stock in the COPP and receive a Discount or a Waiver Discount will be treated as having received a distribution to which section 301 applies by reason of the application of section 305(b)(2)

(section 1.305-3 of the regulations). The amount of the distribution will be the value of the Discount and/or Waiver Discount on the date of distribution (section 1.305-1(b)).

4. Any Participant who acquires shares under the COPP when no discount is being offered will not realize a distribution to which section 301 applies.

5. Company's payment of the administrative costs of the DRIP and the COPP will not constitute a distribution to which section 301 applies. The amount of any Discount or Waiver Discount granted by Company shall not be considered an administrative cost for purposes of this ruling.

6. The redemptions of Company stock made pursuant to the common stock repurchase plan will not result in a section 305 deemed distribution to any Company shareholders who do not receive a Discount or a Waiver Discount (1.305-3(e), Example (13)).

7. Dividends paid by Company will not fail to qualify for the dividends paid deduction under sections 857, 858, 860, 561, and 4981 as a result of distributions under the DRIP and COPP aspects of the Reinvestment Plan to which section 301 applies, provided that the purchase price of the shares acquired by the participating shareholders is not less than 95 percent of the fair market value of the shares determined on the applicable Investment Date. The amount of any brokerage fees or commissions paid by the Administrator on the shareholder's behalf for the purchase of shares is included in the discount in computing this five percent limitation.

Except as specifically set forth above, no opinion is expressed regarding the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,
Acting Associate Chief Counsel
(Financial Institutions & Products)
By: William E. Coppersmith
Chief, Branch 2

Enclosures:
Copy of this letter
Copy for section 6110 purposes