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Legend:

Trust	=
Date 1	=
LP	=
a	=
b	=
Sub 1	=
Sub 2	=
c	=
LLC 1	=
Year 1	=
Company A	=
Sub 3	=
LLC 2	=
Sub 4	=

Sub 5 =

d =

Retailer =

Individual A =

e =

City =

LP 2 =

Corporation A =

f =

g =

Mall A =

LP 3 =

Corporation B =

h =

Dear :

This is in reply to a letter dated December 5, 2003, and subsequent submissions, requesting rulings on behalf of Trust. The requested rulings concern issues related to leases of space by joint venture partnerships in which a taxable REIT subsidiary (TRS) of Trust is a member; whether the rental of shopping carts at Trust's properties will be treated as personal property that is leased in connection with the lease of real property within the meaning of section 856(d)(1)(C) of the Internal Revenue Code; and whether a partnership in which Trust is indirectly a member will realize gross income under section 856(c)(2) from reimbursements for certain expenses shared by Trust and other entities related to Trust. Several of the requested rulings have been withdrawn.

Facts:

Trust is a domestic corporation that elected to be taxed as a real estate investment trust (REIT) beginning with its taxable year ended Date 1. Trust is a fully

integrated, self-managed company that conducts substantially all of its business through LP, a limited partnership in which Trust owns an a percent interest as the sole general partner and a b percent interest as a limited partner, as of December 31, 2002. Trust is engaged primarily in the ownership, development, redevelopment, leasing, acquisition, expansion, and management of retail and entertainment oriented retail shopping centers (the Malls), community centers (the Centers) (collectively with the malls, "the Properties"), as well as other net-leased single tenant retail properties.

LP owns the Properties either directly or through joint venture partnerships in which it is a member (Property Owners). LP also owns all of the shares of Sub 1, a corporation which provides development, management, leasing, and financial services to entities with which it is affiliated, including performing property management services to the joint venture partnerships. Sub1 has jointly elected with Trust to be treated as a TRS of Trust, as defined in section 856(l). In addition, Sub 1 owns securities possessing more than 35 percent of the total voting power and value of the outstanding securities of each of its lower-tier subsidiaries. Consequently, pursuant to section 856(l)(2), each subsidiary of Sub 1 is considered to be a TRS of Trust. Sub 1 and its subsidiaries file a consolidated federal income tax return.

Certain of Trust's TRSs are tenants of the Properties. In addition, certain of the Trust TRSs are members of joint ventures with persons unrelated to Trust for purposes of the related party rent provisions of section 856(d)(2)(B). Each joint venture is a partnership for federal tax purposes and is a tenant at one or more of the Properties.

Sub 2 is a subsidiary of Sub 1 and is therefore a Trust TRS. Sub 2 holds a c percent capital interest in LLC 1, a joint venture created by Trust in Year 1 to engage in various food and beverage business ventures. The remaining interests in LLC 1 are held by Company A. As its primary activities, LLC 1 leases space at certain of the Properties from the Property owner under a master lease in which it pays rent to the Property owner. LLC 1 also is the holder of certain franchisee licenses and engages directly in food and beverage operations as a tenant at certain Properties (Operating Lease). At each Property where there is an Operating Lease, other persons unrelated to Trust for purposes of section 856(d)(2)(B) conduct food and beverage service businesses.

Sub 1 and Sub 3, a wholly owned subsidiary of Sub 1 and a Trust TRS, are the members of LLC 2, a partnership. Accordingly, LLC 2 is indirectly wholly-owned by LP. LLC 2 holds a food court master lease at a Property and is also engaged in the food and beverage service operations under an Operating Lease. Persons unrelated to Trust for purposes of section 856(d)(2)(B) conduct food and beverage services comparable to those under the LLC 2 Operating Lease at the same Property.

Sub 4, a subsidiary of Sub 1 and a Trust TRS, manages closed-circuit television networks at many of the Properties. Sub 4 leases space and television equipment from the applicable Property owner. Sub 4 uses the space and equipment to

provide a closed-circuit television network at the Property, which airs ads and other information designed to promote sales activity for the Property's tenants. There is no tenant at a Property where Sub 4 is a tenant that is engaged in all of the same activities as Sub 4. However, each Property in which Sub 4 is a tenant has multiple tenants unrelated to Trust that are engaged in various service businesses.

Sub 5, a subsidiary of Sub 1 and a Trust TRS, enters into periodic leases with Property Owners. Sub 5 sells clothing and other goods to customers of the applicable Property. Each Property where Sub 5 is a tenant has many other similar retailers as tenants that are unrelated to Trust.

Sub 2 holds a d interest in entities formed with Retailer as TRS joint ventures. Each of the entities formed as joint ventures is classified as a partnership. Each joint venture (Retailer JV) engages in the sale of goods at a Property. Each Property where Retailer JV is a tenant has many other retailers as tenants that are engaged in the same business and are unrelated to Trust.

Sub 2, together with entities affiliated with Individual A, have formed a TRS joint venture in which each partner owns an equal share. The joint venture is classified as a partnership for federal tax purposes. The TRS joint venture leases space and operates a restaurant at one or more of the Properties. Each Property in which this TRS joint venture operates a restaurant has other food and beverage operators as tenants that are unrelated to Trust.

Cart Rentals

Each Property owner has entered into an arrangement whereby shopping carts are rented on a self-serve basis to general public patrons. The carts are released for use through a coin operated vending device. Either LP 2 or Corporation A manages the cart operations for each Property owner. LP 2 is a limited partnership that is owned by LP through other controlled entities. Corporation A is a Trust TRS. LP 2 and Corporation A pay all expenses related to the carts from cash accounts maintained for each Property owner to whom they are responsible. Each Property owner is paid $f per day for: (1) supplying labor that collects monies from the vending machines and delivers the monies to either LP 2 or Corporation A, (2) repairing and maintaining the carts, and (3) collecting abandoned carts from parking lots or within the Property. LP 2 retains approximately g percent of the gross receipts and remits the balance to the applicable Property owner. Sub 1 is the property manager for the Properties where Corporation A is the manager of the cart operations. Corporation A is compensated through the management fee paid by the Property owner to Sub 1. This results in all proceeds from the cart operations being returned to the Property owner.

Cost Reimbursements and Expense Allocations for Shared Employees

The administration of payroll and benefits for individuals employed by Trust and its affiliates, including the joint venture partnerships (with the exception of Mall A) is centralized in two entities: (1) LP 3, a limited partnership owned LP through other controlled entities, and (2) Corporation B, a Trust TRS. Trust represents that the centralization is done for purposes of efficiency, control, and cost savings.

Corporation B is responsible for administering the salary of individuals working at a specific Property (Mall Employees). LP 3 makes disbursements related to and administers the taxes and benefits of the Mall Employees. LP 3 also makes disbursements related to and administers the payroll, taxes, and benefits of other individuals working for the Trust affiliated entities, including management, development, legal, and accounting employees (Corporate Employees).

Each Property has entered into a management agreement with either LP 3 or Sub 1. Properties that are wholly-owned by LP are managed by LP 3. The Properties that are owned by a joint venture enter into a management agreement with Sub 1. Under these management agreements, Sub 1 is responsible for marketing, leasing, managing, operating, maintaining, and servicing the Property and for the performance on behalf of the Property owner of certain of its obligations. In this capacity, Sub 1 agrees to employ such personnel as may be necessary to perform its obligations, including all of the Mall Employees for the respective Property (for example, the on-site mall manager, on-site security and maintenance personnel, and on-site accounting personnel) and Corporate Employees (for example, regional management, accounting, lease administration, and human resources personnel). Under the joint venture property management agreement, the Property agrees to pay a management fee as well as reimburse Sub 1 at a rate of h percent of compensation plus medical benefits of the Mall Employees and of certain classes of the Corporate Employees that render services under the joint venture property management agreement.

In connection with Sub 1's obligations under the joint venture property management agreements and in recognition of LP 3's responsibility for administering the payroll function for all Corporate Employees and the Mall Employee non-salary costs, Sub 1 has entered into an expense sharing and cost reimbursement arrangement with LP 3 (the Arrangement). Under the Arrangement, LP 3 agrees to perform and carry out the administrative services required of Sub 1 under the joint venture property management agreements, which include: (i) administering payroll services, (ii) human resource services, including monitoring compliance with laws, preparation and administration of benefit plans, recruitment and maintenance of personnel records, (iv) training services; and (v) office services necessary to carry out these functions.

Sub 1 agrees to reimburse LP 3 for direct expenses associated with Mall Employee non-salary costs and Corporate Employee costs attributable to individuals rendering services on behalf of Sub 1 under a joint venture property management agreement, including, without limitation, (i) wages and bonuses; (ii) pension and similar benefits; (iii) vacation, sick leave or similar benefits; (iv) parking fees, car allowances

and similar benefits; and (v) compensation related taxes and charges with these costs (Payroll Reimbursements). In addition, Sub 1 may reimburse LP 3 for the full cost of indirect costs including: (i) recruiting fees and hiring expenses; (ii) training; (iii) professional services provided to LP 3 by third parties related to the joint venture property management agreements, and (iv) office expenses incurred in connection with administering the payroll, which may include the cost of stationery, printing costs, and identifiable charges for postage, phone, and similar charges. These indirect expense reimbursements are divided between Sub 1 and LP 3 on a predetermined arm's length basis. The direct and indirect costs that Sub 1 reimburses LP 3 are from amounts collected from the joint venture Properties under the joint venture property management agreements.

LP 3 represents that under the Arrangement: (i) the LP 3 reimbursement amount will not exceed the actual amounts paid by LP 3 on behalf of Sub 1 and lower-tier subsidiaries of Sub 1; (ii) LP 3 will not derive any profit with respect to the reimbursement amounts, and (iii) LP 3 will not take a tax deduction for any expenses offset by the reimbursements.

Law:

To qualify as a REIT, an entity must derive at least 95 percent of its gross income from sources listed in ' 856(c)(2) and at least 75 percent of its gross income from sources listed in ' 856(c)(3). ARents from real property@ are among the sources listed in both of those sections.

Section 856(d)(1) defines "rents from real property" (subject to exclusions provided in ' 856(d)(2)) to include rents from interests in real property, charges for services customarily rendered in connection with the rental of real property, and rent attributable to certain leased personal property. Section 856(d)(1)(C) provides that "rents from real property" includes rents attributable to personal property leased under, or in conjunction 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 taxable year attributable to both the real and personal property.

Section 1.856-4(b)(2)(ii) of the Income Tax Regulations provides that, in general, the 15-percent test in section 856(d)(1)(C) is applied separately to each lease of real property. However, where the REIT rents all (or a portion of all) the units in a multiple unit project under substantially similar leases (such as the leasing of apartments in an apartment building or complex to individual tenants), the 15-percent test may be applied with respect to the aggregate rent received or accrued for the taxable year under the similar leases of the property, by using the average of the trust's aggregate adjusted bases of all real and personal property subject to such leases.

Section 856(d)(2)(B) provides, in part, that except as provided in ' 856(d)(8), the term Arents from real property@ does not include any amount received or accrued

directly or indirectly from any person if the REIT owns, directly or indirectly - (i) in the case of any person that is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or (ii) in the case of any person that is not a corporation, an interest of 10 percent or more in the assets or net profits of such person. Section 856(d)(5) provides that for purposes of ' 856(d), the rules prescribed in section 318(a) apply for determining the ownership of stock, assets, or net profits of any person, except as modified by subparagraphs (A) and (B) of '856(d)(5).

Section 856(d)(8)(A) provides that amounts paid to a REIT by a TRS shall not be excluded from rents from real property by reason of ' 856(d)(2)(B) if at least 90 percent of the leased space of the property is rented to persons other than TRSs of the REIT and other than related parties described in ' 856(d)(2)(B), but only to the extent that the amounts paid to the REIT by the TRS as rents from real property are substantially comparable to such rents paid by the other tenants of the REIT=s property for comparable space.

Rev. Proc. 2003-66, 2003-33 I.R.B. 364, describes conditions under which payments to a REIT from a joint venture between a TRS of the REIT and a third party that is not related to either the REIT or the TRS for space at a property owned by the REIT will be treated as rents from real property under section 856(d). The revenue procedure provides that such rents will qualify as rents from real property if amounts paid to the REIT are substantially comparable to rents paid by other tenants of the REIT's property for comparable space and at least 90 percent of the leased space of the REIT's property is rented to persons other than (i) TRSs of the REIT and (ii) related parties described in section 856(d)(2)(B) (including other joint ventures that are included in the scope of the revenue procedure).

Under ' 1.856-3(g) of the Income Tax Regulations, a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and to be entitled to the income of the partnership attributable to that share. For purposes of ' 856, the interest of a partner in the partnership's assets is determined in accordance with the partner's capital interest in the partnership.

In Rev. Rul. 84-138, 1984-2 C.B. 123, a regulated investment company (RIC) and its wholly-owned subsidiary shared facilities and some personnel. It was agreed that the RIC would pay all the expenses for general and administrative overhead, including personnel costs and the subsidiary would reimburse the RIC for its pro rata share of the expenses on an arm=s length basis. The ruling, in distinguishing Jergens Co. v. Commissioner, 40 B.T.A. 868 (1939), states that the RIC was not engaged in the business of receiving compensation for services of the type that were reimbursed. Instead, reimbursements to the RIC from the subsidiary were merely repayments of advances made on behalf of the subsidiary. Accordingly, the ruling holds that the

reimbursements were not included in the RIC=s gross income under ' 61, and, therefore, were not subject to the gross income requirement of ' 851(b)(2).

Rev. Rul. 57-104, 1957-1 C.B. 166, considers whether the amount paid by a taxpayer to an independent contractor as reimbursement for the costs of a union negotiated qualified pension plan for the contractor=s employees will be deductible to the taxpayer and included in the income of the contractor. The taxpayer, a ship owner, contracted with a stevedore contractor to handle its cargoes. Pursuant to their contract, the taxpayer reimbursed the contractor for the amount required to be contributed by the contractor to the pension trust. The ruling holds that the amount paid by the taxpayer as a reimbursement is part of the cost of the services rendered by the independent contractor to the taxpayer, and, as such, is a deductible expense to the taxpayer under ' 162. The ruling also holds that the reimbursement of amounts contributed to the trust on behalf of its employees is includible in gross income by the contractor under ' 61.

Analysis and Conclusions:

A. Related Party Rents

In establishing the comparable rent standard as part of the limited rental exception that permits a TRS to lease space from its parent REIT, Congress was concerned that an arm's length relationship be maintained in dealings between the TRS and the REIT. Congress did not indicate that it intended to disqualify rents received from its TRS if the space leased to the TRS is unique and there is no comparable space at the same property upon which to base the comparable rent standard. Accordingly, if there is no comparable space at Trust's property upon which to base the comparable rent standard required under section 856(d)(8)(A) for rent paid by a TRS or TRS partner in a joint venture to Trust, such rent will satisfy the comparable rent standard if it is substantially comparable to rents paid by unrelated tenants for comparable space located in the same geographic area as the Trust property in which the TRS is a tenant.

B. Cart Rentals

The cart rental program described herein is integrally related to the lease of retail space by Trust's tenants. The convenience provided by the carts facilitates sales by tenants to customers. Accordingly, as provided in section 856(d)(1)(C), amounts received by a Property Owner from the ownership and operation of the cart rental program will be treated as rent attributable to personal property that is leased in connection with the lease of real property if the rent attributable to the personal property (cart rentals) does not exceed 15 percent of the total rent for the taxable year attributable to both the real property and the personal property leased under, or in connection with the lease of space at a Property.

C. Mall Expense Reimbursements

In this case, LP 3 has agreed to pay the salary and other administrative expenses incurred by Sub 1 as a property manager of certain Properties. As a matter of administrative convenience and cost efficiency, Sub 1 has agreed to reimburse LP 3 for the expenses paid on its behalf. LP 3 will not derive a profit with respect to the reimbursement amounts and will not take a tax deduction for any expenses offset by the reimbursements. Although LP 3 and Sub 1 are both in the property management business, like the RIC in Rev. Rul. 84-138, Sub 1 is not compensating LP 3 for a service that it is in the business of providing to others. Accordingly, LP 3 will not realize gross income for purposes of section 856(c)(2) as a result of the reimbursements from Sub 1 that offset payroll administration costs.

Other Information:

No opinion is rendered concerning whether Trust and the Subs otherwise satisfy the requirements of subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate
Chief Counsel
(Financial Institutions & Products)

Enclosures:
Copy of this letter
Copy for section 6110 purposes