

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B04

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Date:

March 07, 2006

**LEGEND:**

Parent REIT =

Operating Partnership =

Employer Company =

Sub 1 =

Sub 2 =

Holdings: =

State A =

State B =

Date A =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear \_\_\_\_\_ :

This letter responds to your November 10, 2005 request for rulings relating to the issuance of stock in connection with an employee compensation plan. The information provided for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Summary of Facts**

Parent REIT is a State A corporation that elected to be taxed as a real estate investment trust ("REIT") as of its taxable year ended Date A.

Parent REIT owns approximately a percent of the common interests, and approximately b percent of the preferred capital, in the Operating Partnership, a State B limited partnership that is classified as a partnership for federal income tax purposes. Other persons own the remaining approximately c percent of the common interests in the Operating Partnership, while a third party owns the remaining approximately d percent of the preferred capital. Parent REIT is the managing general partner of the Operating Partnership.

Operating Partnership holds slightly less than e percent of the membership interests in the Employer Company and f percent of the outstanding stock of Sub 1. Sub 1 owns approximately g percent of the stock of Sub 2. Sub 2 owns slightly less than h percent of the interests in the Employer Company. Holdings owns the remaining less than i percent interest in the Employer Company. Employer Company is classified as a partnership for federal income tax purposes.

Operating Partnership has engaged the Employer Company to provide various services to it on an exclusive basis, including management, leasing, development, acquisition, and administrative services. Employer Company employs individuals who provide those services.

Employer Company and Parent REIT have entered into a long-term incentive plan for the benefit of certain key employees of the Employer Company (the "Plan"). Under the Plan, the compensation committee of Parent REIT's board of directors (the "Compensation Committee") can grant awards ("Awards") to employees of the Employer Company based on past and expected future contributions of employees to the Employer Company. A separate sub account ("Sub Account") is established for each Award granted to an employee.

The denomination used for granting Awards is the restricted stock unit ("RSU"). Each RSU represents one share of common stock of Parent REIT ("Common Stock") payable to the participant on the Vesting Date (defined below). RSUs are the sole obligation of the Employer Company. An RSU is a notional unit that is used in determining the maximum number of shares of Common Stock an employee could receive from the Employer Company if his or her Sub Account vests. A participant in the Plan has no rights as a shareholder in Parent REIT by virtue of having a Sub Account with RSUs.

A participant's Sub Account is credited with a Dividend Equivalent Amount (defined below) as Parent REIT pays dividends to its shareholders with respect to its Common Stock. The Dividend Equivalent Amount is the product of: (i) the cash dividend amount declared with respect to a single share of Common Stock on the dividend equivalent date, and (ii) the number of RSUs credited to such Sub Account as of the dividend equivalent date.

The Compensation Committee establishes a Vesting Date for each Award. The Vesting Date generally will be on or about the third anniversary of the date on which the Award was granted; however, the Sub Account can vest earlier if the employee dies or meets certain requirements relating to retirement and disability. If the employee's employment terminates prior to the Vesting Date for any reason other than death, disability, or retirement, the participant's rights with respect to any Sub Accounts that have not yet vested generally will terminate and be forfeited.

Following the Vesting Date of a Sub Account, the Employer Company must pay to the participant, on satisfaction of certain tax withholding obligations, the participant's Sub Account. Employer Company plans to determine Federal, state, and local withholding obligations based upon the gross value of a Sub Account at the time of vesting and to use the Net Share Method (defined below). Under the Net Share Method, the Employer Company (i) will pay cash to the participant in an amount equal to the Dividend Equivalent Amount credited to the Sub Account, net of any withholding obligation attributable to such amount, and (ii) will transfer to the participant a number of shares of Common Stock that is based on the number of RSUs in the Sub Account on the Vesting Date less the amount of the attributable withholding obligation. Thus, upon vesting, a participant will receive a number of shares of Common Stock that is less than the number of RSUs in the participant's Sub Account. Immediately prior to the payment to the participant, Parent REIT will issue and transfer to the Employer Company only the number of shares of its Common Stock that the Employer Company actually will transfer to the participant (after taking into account the withholding obligations). Employer Company will fund the payment of the withholding obligations under the Net Share Method with cash on hand from business operations or through borrowing. Taxpayer has represented that the Employer Company will not be reimbursed by Parent REIT for amounts paid by the Employer Company in satisfaction of the withholding obligations under the Net Share Method.

For financial accounting purposes, Parent REIT will record on its books a contribution to the capital of the Employer Company and will charge a restricted stock equity account as an offset to the "contribution account" in each of the years during the vesting period, as if it actually had issued and transferred Common Stock to the Employer Company with a value equal to the amount of the compensation expense. When a Sub Account vests, both the prior contribution to capital by Parent REIT to the Employer Company and the restricted stock equity account will be reduced by the amount withheld under the Net Share Method. For financial accounting purposes, the reduction in Parent REIT's outstanding stock in exchange for the reduction in Parent REIT's paid in capital with respect to the Employer Company is viewed as a redemption by Parent REIT.

### **Rulings**

Based solely on the information submitted and the representations made, we rule that (1) the use of the Net Share Method will not cause Parent REIT to be treated as having redeemed its stock within the meaning of § 317(b) of the Internal Revenue Code; and (2) the use of the Net Share Method will not give rise to a preferential dividend under § 562(c).

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or

referenced in this letter. In particular, no opinion is expressed with regard to whether Parent REIT qualifies as a REIT under subchapter M of the Code.

In addition, no opinion is expressed in this ruling regarding the timing of income inclusion for participating individuals, the Employer Company's deduction under §§ 404(a)(5) or 83, nor the associated withholding and reporting requirements relating to Plan participation or contributions to any related trust or fund. Thus, this ruling does not express any opinion concerning possible constructive receipt or economic benefit issues that may exist in connection with the adoption, maintenance, and participation in the Plan or any related trust or fund. In addition, no opinion is expressed in this ruling regarding the application of § 409A to the Plan or participation in the Plan.

### **Procedural Statements**

This letter 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.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Under the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Richard K. Passales*

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel (Corporate)