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November 27, 1998

Legend:
Company =

Partnership =

State A =
State B =
State C =
State D =
State E =
a =
b =
Year 1 =

Dear

This responds to a letter dated May 22, 1998, submitted on behalf of the Company, a State A corporation that has elected to be taxable as a real estate investment trust (REIT) pursuant to section 856(c)(1) of the Code.

FACTS

The Company owns an a percent controlling general partnership interest in the Partnership, a State B limited partnership, whose primary business activity is owning, developing and operating commercial real estate (the "Properties") in States B, C, D, and E. Company conducts substantially all of its business activities through the Partnership.

Parking

In Year 1, the Partnership acquired an office building project in State B that includes a parking garage and an outside parking lot. The parking facilities are available to the general public and to customers, tenants, visitors and invitees to the property. The Partnership leases the parking garage to the Operator, which is responsible for the operation, maintenance and repair of the parking garage. Parking rates are hourly, daily or monthly, and the Operator collects the parking revenue from both

tenants and non-tenants. Access to the parking facilities is by electronic key cards.

The Partnership proposes to terminate the lease of the parking facilities and instead enter into a management agreement with the Operator. The Operator would collect the parking fees and pay all operating expenses out of those funds, including its management fee, and remit the balance to the Partnership. All parking attendants will be employees of the Operator, and they will only collect receipts from parking lot customers. The gross receipts above the monthly management fee and operating expenses will be distributed to the Partnership on a monthly basis. If gross receipts are insufficient to cover the management fee and operating expenses, the Partnership will reimburse the Operator. The Operator will be treated as an independent contractor and will be adequately compensated.

At several other recently acquired properties, independent contractor arrangements of the type described above are already in place. Partnership owns the associated parking garages/lots, which are used by both tenant employees and the general public. At these facilities, although parking is generally provided on an unreserved basis, there is some reserved parking for tenants. Tenants who pay monthly fees are issued access cards to allow entry and departure from the parking facilities. The Partnership provides usual and customary maintenance including cleaning, lighting, and arranging for repairs. Independent contractors have been hired by the Partnership at these facilities solely to collect receipts from tenants and non-tenants. At these facilities, customers are responsible for parking, locking and retrieving their own cars. The attendants do not provide any services to the customers of the parking facilities. The independent contractors collect all fees from the provision of parking spaces and pay operating expenses and management fees out of those funds, remitting the balances, if any, to the Partnership.

Telecommunications

In several of its Properties, the Partnership currently leases space to independent third parties who provide telecommunications services (i.e., local and long distance telephone service) to tenants. The amounts received from the third parties are either fixed or based on the gross revenue derived by the third parties from the telecommunication services.

The Partnership proposes to alter the existing arrangements by granting, under a license and easement arrangement, to independent third parties the exclusive right to provide telecommunications services to the tenants of the Properties. The Partnership will also grant the third parties the

nonexclusive license to have reasonable access to the Partnership's real properties for the purpose of installing, operating and maintaining telecommunications equipment. The Partnership will provide the third parties with adequate and secure space with electricity for the housing of the third parties' telecommunications equipment. The third parties will be responsible for maintaining such space.

The telecommunications services provided to the Partnership's tenants will be customary and usual for similar types of properties in the geographic markets in which the Partnership owns real property. All services associated with the telecommunications services will be provided by the independent third parties.

All equipment used to provide telecommunications services will be owned by the independent third parties. Under the license and easement agreement, the Partnership will receive a fixed license fee, plus a percentage of the gross receipts generated by the third parties from the telecommunication services rendered to the Partnership's tenants.

Office Equipment

At one of its Properties, the Partnership has one floor of executive office suites where the tenants of the floor have access to certain types of Partnership owned and metered office equipment such as photocopy and fax machines. Tenants on this floor are charged a higher rent than tenants on other floors of the same building who do not have access to the equipment. Moreover, tenants using the equipment are charged an additional amount based on their actual use of the equipment. Provision of some office equipment to tenants in a portion of an office building is usual and customary in the market place of the Properties. The rent attributable to the use of the office equipment by each tenant is less than b percent of the total rent paid by each such tenant. There are no services provided to the tenants with the office equipment, and all maintenance and repairs on the equipment are provided by independent contractors.

LAW AND ANALYSIS

Section 856 of the Code provides that to qualify as a REIT, a corporation must: (1) derive at least 95% of its gross income (excluding gross income from prohibited transactions) from sources listed therein which include dividends, interest, rents from real property and certain other items; (2) derive at least 75% of its gross income (excluding gross income from prohibited transactions) from sources listed therein which include rents from real property and certain other items; and (3) have at least 75% of the value of its assets represented by real estate assets,

cash and cash items (including receivables) and government securities.

Section 856(d)(1) of the Code 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 856(d)(2)(C) of the Code 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) of the Code if received by an organization described in section 511(a)(2) of the Code.

Section 512(b)(3) of the Code 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)-l(c)(5) of the regulations 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.

Rev. Rul. 69-178, 1969-1 C.B. 158, holds that amounts received by an exempt organization for the occasional use by others of its meeting hall are "rents from real property" within the meaning of section 512(b)(3) of the Code. The only services provided by that exempt organization consisted of the provision of utilities and janitorial services. Rev. Rul. 80-297, 1980-2 C.B. 196, holds that the leasing of tennis facilities to a third party without services and for a fixed fee is excluded from unrelated business taxable income as rent from real property under section 512(b)(3) and the regulations thereunder. Rev. Rul. 80-298, 1980-2 C.B. 197, holds that income from the lease of a football stadium by an exempt university to a professional football team is not excluded from unrelated business taxable income as rent from real property under section 512(b)(3) and the regulations thereunder because the university provided substantial services for the convenience of the team.

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) of the Code, 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.

Section 1.856-4(b)(1) of the 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.

In this case, the Company represents that all of the activities and services in connection with the provision of parking spaces, telecommunications, and office equipment are usual and customary for similar properties in the geographic area where the Properties are located and that the amenities to be provided to the tenants of the properties are similar to those offered by the Company’s principal competitors in the markets in which it operates. These services are not rendered primarily for the convenience of the tenants under section 1.512-1(c)(5) of the regulations for purposes of section 856(d)(7) of the Code. As a result, the services will fall within the exception provided in section 856(d)(7)(C)(ii) of the Code.

Company represents that where any incidental services are performed in connection with the provision of parking spaces, such services will be performed by an independent contractor from whom the Company derives no income.

CONCLUSIONS

Based on the facts as represented by the Company, we conclude that:

1. With respect to the provision of parking spaces, the management activities and services performed for the Partnership by independent contractors, will not cause either the income

derived from the parking garage/lots or otherwise qualifying income to be excluded from the term rents from real property under section 856(d) of the Code.

2. Amounts received by the Partnership that are derived from the provision of telecommunication services to tenants of the Properties will not be excluded from the term rents from real property under section 856(d) of the Code.

3. Amounts received by the Partnership from tenants for the use of office equipment in conjunction with the rental of real property from the Partnership will not be excluded from the definition of rents from real property under section 856(d) of the Code.

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 regarding the qualification of the Company as a REIT for federal tax purposes. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax returns of the Company for the taxable year in which the transactions covered by this ruling are consummated. In accordance with the power of attorney on file, we are sending a copy of this letter to the Company's authorized representative.

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

William E. Coppersmith
By: William E. Coppersmith
Chief, Branch 2