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Person To Contact: _____, ID No. 50-01431

Telephone Number: _____

Refer Reply To:
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PLR-112471-04

Date:
November 19, 2004

Legend:

Trust =

Operating Partnership =

ⓧ =

State A =

Dear _____ :

This is in reply to your letter requesting various rulings relating to Trust's status as a real estate investment trust (REIT) under section 856 of the Internal Revenue Code.

Facts:

Trust is a domestic corporation that has elected to be treated as a REIT under subchapter M of Chapter 1 of the Internal Revenue Code. Trust owns approximately ⓧ percent and is the sole managing general partner of Operating Partnership (OP). Substantially all of Trust's assets are held by, and its operations are conducted through, OP. Additionally, OP owns some of its assets, and conducts some of its operations, through interests in subsidiary partnerships.

Trust is a self-administered and self-managed REIT specializing in acquiring, leasing, financing, managing, and developing Class A office buildings in the State A area (the Properties) through partnerships (the Property-Owning Entities).

Under the terms of the leases of space in certain of the Properties, certain interior cleaning services are required to be performed. Such services include basic routine dusting, emptying of wastepaper baskets, cleaning of floors or floor coverings (e.g. vacuuming), ceilings, doors, walls, and rendering other general janitorial services, including cleaning of lavatories and washing windows (the Routine Cleaning Services). Trust represents that the Routine Cleaning Services are customarily furnished or arranged for by landlords in connection with the leasing of space in Class A office buildings located in the State A area. The Routine Cleaning Services provided are part of the total package offered in exchange for the rent paid by tenants and are an integral part of the rental of the space.

The Routine Cleaning Services and supervision of the workers providing them are currently performed for each of the Property-Owning Entities by an independent contractor (Cleaning Company) from whom Trust does not derive or receive any income, as provided in section 856(d)(7)(C)(i). It is represented that Cleaning Company qualifies as an independent contractor within the meaning of section 856(d)(3). Trust now desires to have these Routine Cleaning Services performed directly by employees of Trust. Trust will contract with Cleaning Company to supervise the performance of the Routine Cleaning Services.

Currently, all of the employees of Trust are maintained on the payroll of three or more taxable REIT subsidiaries (the TRSs) of Trust. Trust is charged an overall management fee by the TRSs, and reimburses the TRSs for the actual costs of the employees who perform services on behalf of Trust. Under the proposed arrangement, the employees performing Routine Cleaning Services to tenants of the Properties will be employed directly by Operating Partnership (or, a subsidiary partnership if Operating Partnership does not own the property directly). Under the supervision of the Cleaning Company, these cleaning employees will perform all of the Routine Cleaning Services to tenants of Properties. Trust will be responsible for all of the costs of providing such services, such as employees' salaries and the costs of equipment and supplies. Charges to the tenants for Routine Cleaning Services are not separately stated from rents tenants pay for office space. Trust will compensate the Cleaning Company, at an arm's length rate, for its supervisory services.

Tenants of the Properties may also request to have additional cleaning performed within their leased space for an additional charge (Special Cleaning Services). Tenants requesting Special Cleaning Services will contact Cleaning Company. Cleaning Company will separately contract with the tenants for these services, collect the amounts, and remit a separate fee to the TRSs. No portion of this fee will be remitted by the TRSs to Trust. In addition, Trust will not receive any direct

payments from either the TRSs or from the Cleaning Company for the Special Cleaning Services.

Trust does not intend to provide any services in connection with its lease of space to its tenants, other than usual and customary services and activities permitted by landlords with respect to their property or by trustees with respect to the trust. The employees providing non-customary services for the tenants of the Properties will be employed by the TRSs of the Trust

For customary services that may be performed by the employees of the Trust's TRSs on behalf of the Trust, the Trust and the respective TRS may enter into reimbursement or cost sharing arrangements for the payment of these employees' services. Trust will be responsible for the payment of its share of the cost of these services and expenses. The payments made by Trust are intended to make the TRSs whole and not to generate a profit.

Law and Analysis:

Section 856(c) provides that to qualify as a REIT, a corporation must: (1) derive at least 95 percent of its gross income (excluding gross income from prohibited transactions) from sources listed in section 856(c)(2), which includes dividends, interest, rents from real property, and certain other items; and (2) derive at least 75 percent of its gross income (excluding gross income from prohibited transactions) from sources listed in section 856(c)(3), which includes rents from real property and certain other items.

Under section 1.856-3(g) of the Income Tax Regulations, a REIT that is a partner in a partnership is deemed (1) to own its proportionate share of each of the assets of the partnership, and (2) to be entitled to the income of the partnership attributable to that share. For purposes of section 856, the partner's interest in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership retain the same character in the hands of the partners for all purposes of section 856.

Section 856(d)(1) defines the term "rents from real property" to include: (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 personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year for both the real and personal property under the lease.

Section 1.856-4(b)(1) provides that, for purposes of section 856(c)(2) and (c)(3), the term "rents from real property" includes charges for services customarily furnished

or rendered in connection with the rental of real property, whether or not the charges are separately stated. Services rendered to tenants of a particular building will be considered customary if, in the geographic market in which the building is located, tenants in buildings of a similar class are customarily provided with the service. The furnishing of water, heat, light, and air-conditioning, the cleaning of windows, public entrances, exits, and lobbies, the performance of general maintenance and of janitorial and cleaning services, the collection of trash and the furnishing of elevator services, telephone answering services, incidental storage space, laundry equipment, watchman or guard services, parking facilities, and swimming pool facilities are examples of services which are customarily furnished to the tenants of a particular class of buildings in many geographic marketing areas.

Section 1.856-4(b)(5)(ii) provides that the trustees or directors of a REIT are not required to delegate or contract out their fiduciary duty to manage the trust itself, as distinguished from rendering or furnishing services to the tenants of its property or managing or operating the property. Thus, the trustees or directors may do all those things necessary, in their fiduciary capacities, to manage and conduct the affairs of the trust itself.

Section 856(d)(2)(C), however, excludes "impermissible tenant service income" from the definition of rents from real property. Section 856(d)(7)(A) defines impermissible tenant service income to mean, with respect to any real or personal property, any amount received or accrued directly or indirectly by a REIT for services furnished or rendered by the REIT to tenants of the property, or for managing or operating the property. Section 856(d)(7)(B) provides that de minimis amounts of impermissible tenant service income, that is 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 amount to not be treated as rents from real property.

Section 856(d)(7)(C)(i) 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 REIT does not derive or receive any income. Similarly, section 856(d)(7)(C)(ii) excludes amounts that would be excluded from unrelated business taxable income (UBTI) under section 512(b)(3) if received by an organization described in section 511(a)(2).

Section 512(b)(3) provides, in part, that rents from real property are excluded from the computation of UBTI. Section 1.512(b)-1(c)(5) provides that payments for the occupancy of space where services are also rendered to the occupant, are not rents from real property. Generally, services are considered rendered to the occupant if they are primarily for the occupant's convenience and are other than those usually or customarily rendered in connection with the rental of 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, the collection of trash, etc., 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, of offices in any office building, etc., are generally rent from real property.

Trust represents that the Routine Cleaning Services are customarily furnished or arranged for by landlords in connection with the leasing of space in Class A office buildings in the State A area. These Routine Cleaning Services are limited office cleaning services of a janitorial nature and the activities described above are routine cleaning services that are customarily furnished or arranged for by landlords in connection with the leasing of space in Class A office buildings in the State A area within the meaning of section 856(d)(1)(B).

In connection with the Special Cleaning Services provided to the tenants, Trust will not receive any direct payments from either TRSs or Cleaning Company. Trust represents that it does not intend to provide any services in connection with its lease of space to its tenants, other than usual and customary services and activities permitted by landlords with respect to their property or by trustees with respect to the trust. Further, the employees providing noncustomary services for the tenants of the properties will be employed by the TRSs.

With regard to customary services that may be performed by the employees of the TRSs on behalf of Trust, the Trust and the respective TRSs may enter into reimbursement and/or cost sharing arrangements for the payment of these employees' services. The Trust will be responsible for the payment of its share of the cost of these services and expenses. For example, general and administrative overhead expenses of the Trust, including its share of the employee expenses associated with customary services performed on the behalf of the Trust, may be incurred by the TRSs and reimbursed by the Trust. The reimbursements are intended to make the TRSs whole and not to generate a profit.

Holdings

Based on the information provided and the representations made by Trust, we conclude as follows:

The performance of Routine Cleaning Services by the Trust will not cause amounts received from the Properties to fail to qualify as "rents from real property" under section 856(d).

The Special Cleaning Services performed by the Cleaning Company through its contract with the TRSs will be considered to be rendered by the Cleaning Company or by the TRSs and not by the Trust for purposes of section 856(d)(7)(C)(i). Accordingly,

the Special Cleaning Services will not give rise to impermissible tenant service income and will not cause otherwise qualifying rental income generated by the Properties at which these services are performed to be treated as other than “rents from real property” under section 856(d).

Trust will not be treated as having directly or indirectly received any amounts for Special Cleaning Services as a result of the TRSs’ receipt of fees from the Cleaning Company as a third-party provider for special cleaning.

The amounts paid by Trust to the TRSs as reimbursements for Trust’s allocable share of expenses related to personal, general, and administrative overhead, as well as Trust’s share of the costs of customary services performed by the TRSs on the Trust’s behalf pursuant to the reimbursement and cost sharing arrangements, as described above, will not be considered gross income to the TRSs. Consistent with this conclusion, the TRSs will not be entitled to a deduction for the reimbursed expenses.

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 Trust qualifies as a REIT under subchapter M of the Code. Furthermore, no opinion is expressed whether the TRSs qualify as Taxable REIT Subsidiaries of Trust.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,
/S/

ELIZABETH A. HANDLER
Chief, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes