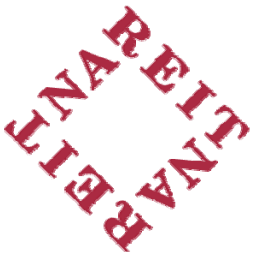

NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

September 6, 2007

Mr. Russell G. Golden
Chairman of Emerging Issues Task Force
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 06856-5116

Re: EITF Issue No. 07-6 – Accounting for the Sale of Real Estate When the Agreement Includes a Buy-Sell Clause

Dear Mr. Golden:

The National Association of Real Estate Investment Trusts ("NAREIT") is the representative voice for U.S. real estate investment trusts (REITs) and publicly traded real estate companies worldwide. Members are REITs and other businesses that develop, own, operate and finance income-producing real estate, as well as those firms and individuals who advise study and service those businesses.

NAREIT member companies are committed to providing financial statement users with high quality financial information, and financial executives of these companies and NAREIT staff have participated in the development of U.S. GAAP for many years. Joint ventures (JVs) and similar arrangements are used extensively in our industry, and JV formation transactions frequently include buy-sell clauses in connection with the contribution/sale of investment properties to such JVs by an investor.

We would like to share certain information and our members' experiences and views to provide input to the EITF's examination of the accounting for an investor's contribution/sale of real estate to a joint venture when the agreement between the investors includes a buy-sell clause.

Executive Summary

NAREIT understands that this issue is being addressed for two principal reasons. First, that there may be diversity in practice with respect to accounting for these transactions. Second, that the current accounting for these transactions may represent the recognition of partial sale and profit inconsistent with the intent of SFAS No. 66 *Accounting for Real Estate Sales* by allowing investors that

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contribute property to joint ventures to record a partial sale and profit when the investor may have the intention of using the buy-sell clause to later repurchase the property or be compelled to do so. Based on our extensive experience with the legitimate business purpose and operation of these clauses, we believe that the current, widely used accounting for these transactions is consistent with SFAS No. 66 and, therefore, appropriate.

As further discussed below, NAREIT believes that View B in the Issue Summary provides for accounting that most faithfully represents the intent, operation and underlying economics of the buy-sell clauses under examination.

Business Purpose and Operation of Buy-Sell Clauses

Buy-sell clauses included in joint venture formation documents establish, at the inception of a venture, a clear mechanism for an investor to exit the venture for any one of a number of reasons. As supported by the survey discussed below, these clauses are infrequently triggered. We believe the major reasons for this are that: a) investors understand that investments in real estate, particularly investment property, represent long-term investments; b) in spite of the long-term nature of these investments, venture properties may be sold to third parties and proceeds distributed to the investors in the normal course of business; and, c) the buy-sell clause provides incentive for investors to discuss and resolve issues before the clause is triggered.

Buy-sell clauses are included in joint venture agreements in order to avoid complicated negotiations, disagreements over the value of the investors' interests (see discussion below under View C regarding the "Named Price" as defined in the Issue Summary) and protracted/expensive legal proceedings between the investors in the event that an investor desires to exit the venture. While these clauses are triggered infrequently (see discussion of survey results below), they could be triggered if:

- there is a disagreement between the investors regarding the operation of the ventures and one investor desires to end the disagreement by exiting the partnership;
- one of the investors desires to adjust the allocation of its capital and/or management among types of property or geographic areas;
- one investor simply desires to recycle its capital invested in the venture; or
- the investors disagree as to the disposition of joint venture assets.

Again, buy-sell clauses minimize the likelihood of an extended stalemate and costly negotiations in the circumstances discussed above.

NAREIT Survey Results

To substantiate our view that there is generally no diversity in accounting for real estate sales to joint ventures when buy-sell clauses are included in the venture agreement, NAREIT issued a survey to 155 member companies on August 9, 2007. To date 31 companies have responded to the survey. Since not all 155 member companies are affected by this issue, we believe that the 31

responses represent a significant response to the survey. Following is a summary of the results of the survey:

- All 31 companies invest in joint ventures and include "buy-sell" clauses in the venture agreement.
- 19 of the agreements indicate that the "price" offered pursuant to the buy-sell clause should represent fair market value and 16 of the agreements provide no basis for the offering price.
- Of 27 companies that contribute property to the joint venture, 26 recognize a partial sale and profit and only one company indicated that it had been precluded from this accounting solely because of the buy-sell clause.
- 26 companies indicated that buy-sell clauses have either never been triggered (15 companies) or rarely triggered (11 companies).
- Accounting firms opining on the financial statements of companies that responded to the survey include all of the major accounting firms.

Comments Regarding the Alternate Views Expressed in the Issue Summary

Before commenting on the views presented in the Issue Summary, we would emphasize that the contribution/sale by an investor clearly transfers to the other investor the full risks and rewards of ownership. The other investor participates in the periodic cash flow generated by the property, as well as in the changes in the value of the property. Further, the other investor has the right to exit the venture by triggering the buy-sell clause. If the offeree accepts the offer made by the offeror, the investor/offeror will own 100% of the property and have the ability to sell the property in the open market. If the offeree chooses to buy the offeror's interest in the property, the offeror will have liquidated its interest. The buy-sell clause places no restriction on the other investor's ability to liquidate its investment in the venture at a fair price. Further, while buy-sell clauses may serve as an incentive for the parties to negotiate the resolution of issues that may arise, these clauses are not determinative as to which party may eventually be the buyer or seller if the clause is triggered and do not limit the rights of the parties.

View A

Proponents of View A conclude that a buy-sell clause contained in a sale agreement of real estate to an entity by a venture partner is akin to an "option" or other form of prohibited continuing involvement for purposes of income recognition by the selling partner. NAREIT strongly disagrees with this conclusion based on analogies to current literature directly related to accounting for the sale of real estate.

First, footnote 7 in SFAS No. 66 explicitly states that "a right of first refusal based on a bona fide offer from a third party ordinarily is not an obligation or an option to repurchase." Under a right of first refusal, the original seller has no option to buy the property back unless a condition arises that is outside the control of the original seller. Similarly, the original seller provided with a buy-sell clause has no option to repurchase the property sold unless the other investor accepts an offer

made by the original seller or the other investor makes an offer – also outside the control of the seller. Both the right of first refusal and the buy-sell clause may present opportunities to repurchase the property only upon action by another party outside the control of the original seller.

The second analogy on which we base our conclusion with respect to View A is the EITF conclusion in EITF Issue No. 86-6 *Antispeculation Clauses in Real Estate Sales Contracts.* These clauses provide that, if the buyer of land fails to comply with the provisions of the sales contract that require the buyer to develop the land in a specific manner at a specified pace or prohibit certain uses of the property, the seller can repurchase the property. Task Force members concluded that, if the probability of the buyer not complying with the terms of the sale agreement is remote, these clauses would not preclude sale/profit recognition. In concluding that "a probability test would not be appropriate if the seller's repurchase option is not contingent upon compliance by the buyer," the EITF also took the position that a probability test is appropriate when the option to repurchase is contingent on actions outside the control of the seller.

While SFAS No. 66 may not "specifically address the probability that a seller would reacquire the sold real estate", the conclusion in EITF No. 86-6 clearly invokes a notion of probability of actions outside the control of the seller. Further, based on NAREIT's survey and for the reasons discussed above, buy-sell clauses are infrequently triggered.

View B

As indicated in the Executive Summary of this letter, NAREIT agrees with View B. For reasons discussed above, we do not believe that a buy-sell clause by itself represents a prohibited form of continuing involvement. We agree that there may be unusual facts and circumstances that, along with a buy-sell clause, would cause one to conclude that a sale and profit should not be recognized. The considerations identified in paragraph 12 of the Issue Summary represent some of the factors that may lead to this conclusion.

We are troubled that some believe that View B represents the most appropriate accounting only when the Named Price is specified to be fair value. Our views on this position are discussed below.

View C

Paragraph 14 suggests that the selling investor could compel the other investor to sell the real estate back to the seller by offering a price in excess of the fair value of the property. Paragraph 15 suggests that the Offeror can influence the outcome of the buy-sell clause if it sets the exercise price at an amount other than fair value. This concern is simply off the mark. If the concern were valid, such concern also arises with regard to any sale. If a company sells real estate with absolutely no continuing involvement and later decides that the property sold would be valuable in terms of its synergy with other property owned by the original seller, such seller could offer to buy back the property at a value in excess of what some might say is fair value.

This is simply part of the negotiation process. Would those that support View C, allow the recognition of any sale and resulting profit? Further, if the joint venturers are not related, whatever price they agree to is by definition a fair market price since they represent a willing buyer and a willing seller.

With respect to the analogy to a seller in a sale-leaseback transaction and question 2 in EITF 97-1, we agree that when the facts and circumstances with respect to a buy-sell clause are such that the seller could be economically compelled to repurchase the property or the buyer could be economically compelled to sell, the appropriate accounting is that partial sale and profit recognition would be precluded. This is entirely consistent with the comments underlying View B and thus this analogy to Issue 97-1 better supports View B since the conclusion in Issue 97-1 is unaffected by the basis for determining the exercise price; that is, the conclusion in Issue 97-1 is the same for an unspecified price, fair value or a specific formula exercise price.

While a buy-sell clause may not state a specified price or require that any offer must be at fair value, we believe that a fair value as between the offeror and offeree is implied in virtually all cases. In our view, joint venture partners are "market participants" since they are: a) independent of each other; b) well-versed and knowledgeable of the real estate market; c) customarily have the financial capacity to follow-through on a prospective buy-sell process; and, d) are willing to transact for the asset in question based on their specific motives and are not forced or otherwise compelled under a buy-sell arrangement.

Further and more importantly, requiring the Named Price to be fair value would negate the business purpose of the buy-sell clause bargained for in the original transaction. The entire transaction, including the buy-sell clause, is designed to provide a simple mechanism for either investor to exit the venture, including setting the Named Price. Many companies use the term fair market value or similar terms when the clear intention is that the value must be considered a fair value between the investors – willing buyers and sellers. We understand that rarely do the terms of buy-sell clauses rely on an appraisal of the property or of the interest in the venture. Again, this would be counter to the business purpose of the buy-sell clause.

In summary NAREIT rejects View C and agrees with the statement in the Issue Summary that "Unspecified Price buy-sell clauses (the type most frequently used) are designed to incorporate into the transaction price the natural tension between the interests of both investors in a buy-sell situation and thereby achieve an acceptable outcome for both investors without protracted negotiations over fair value and the need for binding arbitration to resolve disputes."

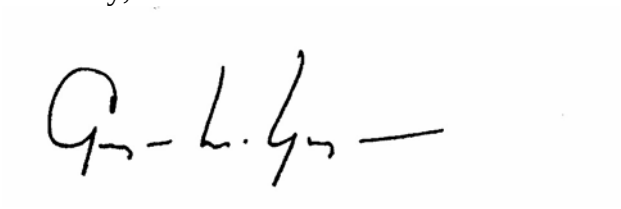
Effective Date and Transition

If View B is adopted by the Task Force, we do not believe transition guidance is needed since this view reflects the accounting generally applied.

If either View A or C is adopted, NAREIT would urge the Task Force to adopt transition Alternative D. We agree with the staff's analysis that a significant number of these transactions have been consummated over the past 30 years and, to currently reassess the accounting for these transactions would not be appropriate or cost effective.

If you have any questions regarding the comments set forth in this letter or if we can provide additional information, please contact me at (202) 739-9432 or gyungmann@nareit.com.

Sincerely,



George L. Yungmann
Sr. Vice President, Financial Standards

cc: James L. Kroeker, Deputy Chief Accountant, SEC