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NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®

October 16, 2002

VIA HAND DELIVERY

Pamela F. Olson, Esq.
Assistant Secretary (Tax Policy)
Department of Treasury
1500 Pennsylvania Ave., N.W., Room 3120
Washington, D.C. 20220

Re: REIT Dividend Reinvestment Plans and Cash Option Purchase Plans

Dear Assistant Secretary Olson:

This submission supplements the National Association of Real Estate Investment Trusts® ("NAREIT") submissions dated February 11, 1998, June 11, 1999, and March 2, 2000, that addressed certain tax issues raised by dividend reinvestment plans ("DRIPs") and cash option purchase plans ("COPPs") in the context of real estate investment trusts ("REITs"). Specifically, this submission requests that the Treasury Department include in the next quarterly update of its Business Plan an item to change the Internal Revenue Service's (the "Service") ruling position to conclude that a dividend does not result from a "discount" to the trading price of REIT shares on a particular purchase date under a DRIP or COPP as a result of an objective pricing formula.

NAREIT is the national trade association for real estate companies. Members are real estate investment trusts ("REITs") and other public businesses that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service these businesses.

The basic structure and operation of every REIT DRIP and COPP is essentially the same. In a typical DRIP, a shareholder that wishes to participate must complete a certificate authorizing an agent (such as a financial intermediary or brokerage firm) to receive distributions from the REIT on behalf of the shareholder. The agent is further authorized to reinvest all or a portion of those



1875 Eye Street, NW, Suite 600, Washington, DC 20006-5413
Phone 202-739-9400 Fax 202-739-9401 www.nareit.com

distributions in additional shares of REIT stock. COPPs, with a similar effect, entitle investors to purchase REIT shares directly from the REIT; however, in contrast, to DRIPs, COPPs may be open to both shareholders and non-shareholders alike.

The purchase price of shares of REIT stock acquired under a DRIP or COPP is often determined by an objective, multi-day pricing formula. For example, the purchase price is calculated by multiplying the average daily high and low trading prices (the "Average Price") of a REIT's stock reported by an established securities exchange for a certain period of days preceding the applicable purchase date ("Pricing Period") less a particular discount determined by the REIT's board of directors to be reasonable. The multi-day pricing period is intended to minimize unwanted volatility in the purchase price of Company's shares that might otherwise arise if a fixed-date pricing mechanism were used. Because the pricing formula is based primarily upon an average price that is determined over the multi-day Pricing Period, it is possible that on any given purchase date the purchase price of common shares under the DRIP or COPP may be less than 95%, or more than 100%, of the average price of REIT stock on the purchase date.

NAREIT believes that participants in a DRIP or COPP should be treated no differently for tax purposes than unrelated third parties that purchase a REIT's stock in the market. Accordingly, the Service should hold that a purchase and sale of stock at arm's length has occurred, and no issue of preferential dividend arises if a publicly-traded, widely-held REIT offers for sale its shares through a DRIP or COPP, regardless of the price at which such shares are offered, so long as such plans provide each investor with the opportunity to invest on identical terms.

Unfortunately, to the extent that the purchase price of the REIT's shares on any purchase date (the Average Price multiplied by the previously-agreed upon discount) is viewed as representing a "discount" to the average price of the REIT's shares on such date, the Service's current ruling position, as stated in PLR 200052031, provides that the potential "discounts" offered by DRIPs and COPPs are dividends but will not be treated as preferential so long as they do not exceed 5% of the "fair market value" of the sponsoring corporation's stock on the relevant investment date. We note that this ruling position seems contrary to a number of private letter rulings issued to mutual funds, which find no preferential dividend so long as the "benefit" is offered to all shareholders of a particular class of shares. See, e.g., PLRs 200008023 and 199920031.

Because any concerns about preferential distributions in this context are adequately addressed by market factors, NAREIT believes that the Service's position is inconsistent with other published guidance concerning multi-day pricing, does not reflect economic reality, hinders REITs' efforts to raise capital efficiently, and is unnecessary. Accordingly, NAREIT respectfully requests that the Treasury Department and the Service include as an item in the next quarterly update to the Treasury Department and Service's Business Plan a re-evaluation of the Service's ruling position on REIT DRIPs and COPPs. Because the economic reality of such a "discount" is that it is



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achieved only after an objective, reasonable formula is applied to determine the purchase price of stock, any supposed discount that results after application of this formula is not intended to confer a special benefit on shareholders as such; instead, it represents a purchase price adjustment to an arm's-length price agreed upon between a willing buyer and a willing seller, and it should not be considered a dividend.

To assist you in evaluating this issue, we have enclosed two draft revenue rulings. We believe that the first ruling contains the preferred analysis. It holds that, for a REIT that maintains both a DRIP and COPP, the purchase price of a REIT's stock on the relevant purchase date that results from the application of an objective, multi-day pricing formula is considered to be an arm's length price. Accordingly, any "discount" to the REIT's trading price on the distribution date is not considered a dividend. For a REIT that maintains only a DRIP, while the facts and circumstances must be evaluated to determine whether any discount that results from the objective, multi-day pricing formula should be considered a dividend, any discount of up to 5% is deemed to be reasonable, result in an arm's length price, and not give rise to a dividend. While we believe that the first ruling is intellectually sounder, we have enclosed a second ruling that holds that while any purported "discount" of the purchase price of a REIT's stock under a DRIP or COPP is a dividend, so long as it results from application of an objective, multi-day pricing formula, it will not be preferential.

We request a meeting with Treasury and IRS representatives to discuss these issues in more detail. I look forward to hearing from you, and thank you for your consideration of this matter.

Respectfully submitted,



Tony M. Edwards
Senior Vice President & General Counsel

Enclosures

cc: Jeffrey H. Paravano, Esq.
Helen M. Hubbard, Esq.
Deborah Harrington, Esq.
William D. Alexander, Esq.
Lon B. Smith, Esq.
Alice M. Bennett, Esq.
William E. Coppersmith, Esq.
Alvin J. Kraft, Esq.
Dara F. Bernstein, Esq.

