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IRS Issues Guidance to Assist REITs Facing Liquidity Issues

As a result of the credit crisis, many real estate investment trusts ("REITs") are facing significant liquidity problems. These liquidity issues are further heightened by the requirement that a REIT distribute at least 90 percent of its taxable income to its shareholders each year. This requirement may be difficult to satisfy for many REITs, either because of a lack of cash or a desire to preserve cash reserves in order to meet debt service obligations.

In the recent past, some REITs facing similar liquidity issues have conserved cash by declaring distributions payable in either cash or common stock of the REIT at the election of individual shareholders, but subject to a cap on the amount of cash distribution that the REIT can be required to pay. The Internal Revenue Service (the "IRS") has issued several private letter rulings concluding that so long as at least 20 percent of the aggregate distribution is paid in cash, the entire distribution is treated as a dividend for purposes of the 90 percent distribution requirement.

New guidance from the IRS will make it easier for publicly traded REITs to use common stock to satisfy the 90 percent distribution requirement. Revenue Procedure 2008-68 (the "Revenue

Procedure") provides that the IRS will treat a REIT's distribution of common stock that is declared on or after January 1, 2008 with respect to a taxable year ending on or before December 31, 2009 as a qualifying dividend for purposes of the 90 percent distribution requirement so long as it meets certain conditions, including a "cash limitation" requirement that at least 10 percent of the aggregate distribution be paid in cash. A copy of the Revenue Procedure is available at: http://www.hunton.com/emailblast/pdfs/Rev_PROC_2008-68.pdf.

The Revenue Procedure's reduction of the cash limitation requirement from 20 percent to 10 percent, should enhance a REIT's ability to conserve cash while satisfying the 90 percent distribution requirement.

If you would like to receive more information about the Revenue Procedure, please contact George C. Howell, III at (804) 788-8793 or ghowell@hunton.com, Cameron N. Cosby at (804) 788-8604 or ccosby@hunton.com, Mark C. Van Deusen at (804) 788-8349 or mvandeusen@hunton.com, or Caroline G. Root at (804) 788-8206 or croot@hunton.com.

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