

## Internal Revenue Service

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Date:  
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Exchange =

Distributing =

Distributing =  
1

Distributing =  
2

Distributing =  
3

Distributing =  
4

Controlled =

Newco =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

FSub 1 =

FSub 2 =

FSub 3 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

Business A =

Business B =

Business  
C =

Business  
D =

Business E =

Business F =

Business  
G =

Business  
H =

Certain  
Assets =

State A =

State B =

State C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

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Dear \_\_\_\_\_ :

This letter responds to your March 15, 2013 letter, submitted by your authorized representatives, requesting rulings on certain U.S. Federal income tax consequences of the Proposed Transactions (defined below). The material information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any of the Distributions or Foreign Distributions (each defined below): (i) satisfies the business purpose requirement of Treasury Regulation § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of any Distributing Corporation or Controlled Corporation or combination thereof (see Section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in any Distributing Corporation or Controlled Corporation (see Section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Distributing is a publicly traded corporation and the parent of a worldwide group of entities (the "Distributing Group"). Distributing is also the common parent of an affiliated group of corporations filing a consolidated U.S. Federal income tax return (the "Distributing Consolidated Group"). Distributing has two classes of stock outstanding ("Class A and Class B Common Stock"), each of which trade on the Exchange. Distributing has two shareholders that own 5 percent or more of the voting stock in Distributing.

The Distributing Group is engaged in a number of businesses, including Business A and Business B.

Before the occurrence of any steps relating to the Proposed Transaction, the Distributing Group was structured as follows. Distributing wholly owned, among other subsidiaries, Distributing 4 and Sub 1. Distributing, together with other members of the Distributing Group, owned all of the equity in Sub 2. Each of Distributing 4, Sub 1 and Sub 2 is a State A corporation.

Sub 2 wholly owned, among other subsidiaries, FSub 1, an entity that is treated as a corporation for U.S. Federal income tax purposes. FSub 1 directly owned a percent of the equity in FSub 2, an entity that is treated as a corporation for U.S. Federal income

tax purposes, and b percent of the equity in FSub 2 through its ownership of DRE 1, an entity that is disregarded as separate from its sole owner for U.S. Federal income tax purposes (a "disregarded entity").

FSub 2 owned all of the equity in DRE 3, a disregarded entity, through a series of entities, each of which is a disregarded entity.

Distributing 4 wholly owned Distributing 3, which wholly owned Distributing 2, which wholly owned Distributing 1. Each of Distributing 4, Distributing 2 and Distributing 1 is a State A corporation. Distributing 3 is a State B corporation.

Distributing 1 wholly owned Sub 3 and Sub 4, each a State A corporation.

Sub 3 wholly owned Sub 5, a State A corporation, and DRE 4.

Sub 4 wholly owned Sub 6 and Sub 7, each a State A corporation.

Sub 4 owned c percent of the Sub 2 equity (the "Sub 4 Sub Stock"), Sub 7 owned d percent of Sub 2 equity (the "Sub 7 Sub Stock"), and Sub 3 owned e percent of the Sub 2 equity (the "Sub 3 Sub Stock"). Distributing and other wholly owned subsidiaries of Distributing owned the remaining equity in Sub 2.

Sub 5 held f shares of Distributing's Class B Common Stock (the "Sub 5 Hook Stock"), and Sub 6 held g shares of Distributing's Class B Common Stock. Sub 5 also currently owns all of the stock in Sub 8, a State A corporation.

Distributing 1, a member of the Distributing "separate affiliated group" as defined in Section 355(b)(3)(B) (a "SAG," and such SAG, the "Distributing SAG") directly engages in Business C, which is part of Business A.

Sub 1 and Sub 3 each directly engages in Business D, which is part of Business B.

Sub 7 directly engages in Business E, which is part of Business B. Since Date 1, Sub 7 has continuously owned the Sub 7 Sub Stock, which stock has continuously constituted more than h percent of Sub 7's assets since such date.

Distributing has determined that the separation of Business B from Business A will serve the following corporate business purposes: (i) to enable the management team of each business to focus on its relevant business and its requirements and performance without the distraction of one or more businesses operating under a different business model; (ii) to provide Distributing and Controlled with a more attractive equity currency for acquisitions; (iii) to enhance and align the equity-based incentive programs of Distributing and Controlled to better reflect the specific business objectives, goals, and financial performance of each business; and (iv) to better enable each of Distributing and Controlled to independently optimize its capital structure and return of capital policies (collectively, the "Corporate Business Purpose").

Distributing will pay the expenses associated with the Proposed Transaction on behalf of Distributing and its affiliates except that Controlled will pay its own expenses following the IPO (defined below).

Distributing and Controlled will enter into certain agreements in connection with the implementation of the Proposed Transactions, which may include (i) a separation and distribution agreement, (ii) a tax matters agreement, (iii) a transition services agreement, (iv) an employee matters agreement and (v) an intellectual property agreement (collectively, the "Continuing Agreements").

As part of the Proposed Transactions, after the External Distribution (as defined below), Controlled may elect to become a real estate investment trust (a "REIT," and such election, the "REIT Election"). In this event, Controlled will jointly elect with certain of its corporate subsidiaries to have such subsidiaries treated as "taxable REIT subsidiaries" ("TRSs") within the meaning of Section 856(l) effective on the first day of Controlled's first taxable year as a REIT. Any other corporate subsidiaries of Controlled (including, potentially, Newco) would then be treated as qualified REIT subsidiaries within the meaning of Section 856(i)(2).

### **Proposed Transactions**

For what are represented to be valid business purposes, Distributing has undertaken, or proposes to undertake (although not necessarily in the order enumerated below), the following steps (the "Proposed Transactions"):

- (i) On Date 2, Sub 5 contributed the Sub 5 Hook Stock to its wholly owned subsidiary, Sub 8. On Date 3, i days later, Sub 3 contributed its interest in DRE 4, Business H and the Sub 3 Sub Stock to Sub 5.
- (ii) Later on Date 3, Sub 3 distributed the stock of Sub 5 to its sole shareholder, Distributing 1, in a distribution intended to qualify as tax-free under Section 355 for which rulings are not being sought.
- (iii) On Date 7, Distributing 1 contributed all of the outstanding shares of Sub 3 to Newco, a newly formed State C corporation, in exchange for Newco stock.
- (iv) Sub 3 then converted from a corporation to a single member limited liability company ("Sub 3 LLC") that is treated as an entity disregarded as separate from its sole owner, Newco, for U.S. Federal income tax purposes (the "Sub 3 Reorganization").
- (v) On Date 5, Sub 2 formed DRE 2, a disregarded entity.

- (vi) On Date 6, FSub 2 and DRE 2 formed FSub 3, an entity that is treated as a corporation for U.S. Federal income tax purposes, and the Business F entities and assets were consolidated under FSub 3 (the "FSub 3 Formation") through a series of internal restructuring steps for which rulings are not being sought.
- (vii) On Date 8, Distributing 1 contributed certain Business A assets to Sub 4.
- (viii) On Date 9, Distributing sold Sub 1 to Sub 3 LLC for nominal cash equal to the fair market value of Sub 1.
- (ix) For U.S. Federal income tax purposes, FSub 2 will distribute its k percent interest in FSub 3 to FSub 1 (the "FSub 2 Distribution").
- (x) FSub 1 will distribute its k percent interest in FSub 3 to Sub 2 (the "FSub 1 Distribution").
- (xi) Sub 4 will convert from a corporation to a single member limited liability company that will, for U.S. Federal income tax purposes, be treated as an entity disregarded as separate from its sole owner, Distributing 1 (the "Sub 4 Liquidation").
- (xii) Sub 4 will distribute the Sub 4 Sub Stock and the stock of Sub 7 to Distributing 1 in a distribution that is disregarded for U.S. Federal income tax purposes.
- (xiii) For U.S. Federal income tax purposes, Sub 2 will distribute its l percent interest in FSub 3 to Distributing 1 in a value-for-value redemption of a portion of the Sub 4 Sub Stock held by Distributing 1 (the "Sub 2 Exchange," and, together with the FSub 2 Distribution and the FSub 1 Distribution, the "Foreign Distributions").
- (xiv) Sub 7 will convert into a single member limited liability company that will be treated as a disregarded entity ("Sub 7 LLC"), with Sub 7 LLC surviving (the "Sub 7 Reorganization").
- (xv) Sub 7 LLC will distribute the Sub 7 Sub Stock to Distributing 1 in a distribution that is disregarded for U.S. Federal income tax purposes.
- (xvi) Distributing 1 will contribute the stock of FSub 3, the interests in Sub 7 LLC, and the stock of Newco to Controlled, a newly formed State C corporation, in exchange for stock of Controlled and an amount of cash expected to equal the aggregate proceeds from the Controlled Borrowing (defined below) plus the IPO less any cash required by Controlled for the



Purging Distribution or other operating needs (the "Cash Amount" and such contribution, the "Contribution").

- (xvii) Controlled will borrow approximately \$m to \$n from third-party lenders (the "Controlled Borrowing").
- (xviii) Controlled will sell less than o percent of its shares to one or more underwriters in an initial public offering (including any exercise of an over-allotment option) ("IPO").
- (xix) Controlled will use the proceeds received in the Controlled Borrowing and the IPO to fund the Cash Amount.
- (xx) Distributing 1 will distribute all of its interest in Controlled to Distributing 2 ("Internal Distribution 1").
- (xxi) Distributing 2 will distribute all of its interest in Controlled to Distributing 3 ("Internal Distribution 2").
- (xxii) Distributing 3 will distribute all of its interest in Controlled to Distributing 4 ("Internal Distribution 3").
- (xxiii) Distributing 4 will distribute all of its interest in Controlled to Distributing ("Internal Distribution 4" and, together with Internal Distributions 1-3, the "Internal Distributions"; the Internal Distributions, together with the External Distribution (defined below), the "Distributions").
- (xxiv) Distributing will commence one or more exchange offers pursuant to which Distributing will offer, in one or more offerings, to exchange all of its Controlled common stock for outstanding shares of Distributing Common Stock (the "External Split-Off"). The exchange ratio for each exchange offer will be determined under a formula to be set by Distributing and may include a premium to induce holders of Distributing Common Stock to tender their Distributing Common Stock in the exchange offers. The premium offered may differ from time to time if there are different offerings pursuant to the exchange offers.
- (xxv) If all of the shares of Controlled common stock held by Distributing after the IPO are not subscribed for in the exchange offers, the balance of the Controlled common stock held by Distributing will be distributed, as promptly as practicable, to the holders of Distributing Common Stock on a pro rata basis (the "External Spin," and together with the External Split-Off, the "External Distribution"). The exchange offers and any required pro rata distribution with respect to the External Spin will be completed no later than one year after the consummation of the first exchange offer.

Distributing will not distribute fractional shares of Controlled common stock in the External Distribution. Rather, the distribution agent will aggregate and sell on the open market all fractional shares of Controlled common stock and distribute to each holder of Distributing Common Stock that otherwise would receive a fractional share of Controlled common stock in the External Distribution its proportionate share of the net proceeds of such sale.

- (xxvi) After the External Distribution, Controlled expects to make a REIT Election. In this event, Controlled will jointly elect with certain of its subsidiaries to have such subsidiaries treated as TRSs effective on the first day of Controlled's first taxable year as a REIT. In addition, Controlled will make an election under Section 1033(g)(3) to treat Certain Assets as real property for purposes of Chapter 1 of the Code.
- (xxvii) If a REIT Election is made, Controlled will declare a dividend in an amount at least equal to the Purging Distribution Amount within the last three months of the calendar year with respect to which Controlled makes the REIT Election. The Purging Distribution will be paid no later than Date 4 of the following calendar year.
- (xxviii) Within p months of the External Distribution, the Cash Amount will be distributed up the chain of ownership from Distributing 1 to Distributing. Distributing will use the entire Cash Amount to repay or redeem outstanding indebtedness of the Distributing Consolidated Group and/or make distributions to shareholders of Distributing.

### **Representations**

The following representations have been made with respect to the Proposed Transactions:

#### The Sub 3 Reorganization

- (a) Distributing 1 received solely Newco stock in the Sub 3 Reorganization.
- (b) Following the Sub 3 Reorganization, Distributing 1 owned all of the outstanding stock in Newco and owned such stock solely by reason of its ownership of all of the stock in Sub 3 immediately prior to the Sub 3 Reorganization.
- (c) The fair market value of the Newco stock received by Distributing 1 was approximately equal to the fair market value of the Sub 3 stock surrendered in exchange therefor.

- (d) At the time of the Sub 3 Reorganization, Sub 3 did not have any outstanding warrants, options, convertible securities, or any other type of right pursuant to which any person could have acquired shares of Sub 3.
- (e) With regard to the assets deemed transferred from Sub 3 to Newco, both (i) the total adjusted basis of the assets, and (ii) the fair market value of the assets each equaled or exceeded the sum of the liabilities (as determined under Section 357(d)) assumed by Newco.
- (f) All liabilities to which the Sub 3 assets were subject at the time of the Sub 3 Reorganization, and all liabilities of Sub 3 that were properly treated as being assumed by Newco in the Sub 3 Reorganization (as determined under Section 357(d)), were incurred in the ordinary course of business and were associated with assets deemed transferred from Sub 3 to Newco.
- (g) At all times prior to the deemed acquisition of the assets of Sub 3 in the Sub 3 Reorganization: (i) Newco had not been engaged in any business activity; (ii) Newco had no U.S. Federal income tax attributes (attributes described in Section 381(c)); and (iii) Newco held no assets (other than a nominal amount of cash required for the purpose of paying Newco's incidental expenses or necessary to maintain Newco's status as a corporation in accordance with the laws of its jurisdiction of incorporation).
- (h) Immediately after the Sub 3 Reorganization, Newco held (through Sub 3 LLC) all of the assets held by Sub 3 immediately prior to the Sub 3 Reorganization, except for assets used to pay expenses in connection with the Sub 3 Reorganization. The assets used to pay expenses were less than 1 percent of the fair market value of the net assets of Sub 3 immediately prior to the Sub 3 Reorganization. No assets were distributed, and there were no dissenting shareholders.
- (i) Sub 3 was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Section 368(a)(3)(A) at the time of the Sub 3 Reorganization.

#### The Foreign Distributions

For purposes of the following representations, each of the Foreign Distributions is referred to as a "Foreign Distribution," and the corporation that distributes the stock of FSub 3 in a Foreign Distribution is referred to as the "Foreign Distributing Corporation."

- (j) The indebtedness, if any, owed by FSub 3 to the Foreign Distributing Corporation after each Foreign Distribution will not constitute stock or securities.
- (k) No part of the consideration to be distributed in each Foreign Distribution will be received by the Foreign Distributing Corporation's shareholder(s) as a creditor, employee, or in any capacity other than that of a shareholder. The distribution of FSub 3 stock to Foreign Distributing Corporation's shareholder(s) in a Foreign Distribution is with respect to such shareholder(s)' ownership of the Foreign Distributing Corporation's stock.
- (l) The Foreign Distributing Corporation and FSub 3 will treat all members of their respective SAGs as defined in Section 355(b)(3)(B) as one corporation in determining whether the requirements of Section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (m) The five years of financial information submitted for Business G, as conducted by the Foreign Distributing SAG, is representative of the present operations of Business G and there have been no substantial operational changes since the date of the last financial statements submitted.
- (n) The five years of financial information submitted for Business F, as conducted by the FSub 3 SAG, is representative of the present operations of Business F and there have been no substantial operational changes since the date of the last financial statements submitted.
- (o) The Foreign Distributing Corporation SAG neither acquired Business G nor acquired control of an entity conducting Business G during the five-year period ending on the date of each Foreign Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of each Foreign Distribution, the Foreign Distributing Corporation SAG has been the principal owner of the goodwill and significant assets of Business G and will continue to be the principal owner following each Foreign Distribution.
- (p) The FSub 3 SAG neither acquired Business F nor acquired control of an entity conducting Business F during the five-year period ending on the date of each Foreign Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of each Foreign Distribution, the FSub 3 SAG has been (or will be treated as having been) the principal owner of

the goodwill and significant assets of Business F and will continue to be the principal owner following each Foreign Distribution.

- (q) No intercorporate debt will exist between the Foreign Distributing Corporation and FSub 3 at the time of, or subsequent to, each Foreign Distribution, except for indebtedness arising in the ordinary course of business.
- (r) Except as set forth in the Continuing Agreements, payments made in connection with all continuing transactions following the Proposed Transactions between the Foreign Distributing Corporation and FSub 3 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (s) Following each Foreign Distribution, the Foreign Distributing Corporation SAG will continue the active conduct of Business G, independently and with its separate employees, and the FSub 3 SAG will continue the active conduct of Business F, independently and with its separate employees.
- (t) The steps of the FSub 3 Formation will not result in Business F being acquired by FSub 3 in a transaction in which gain or loss was recognized within the meaning of Section 355(b).
- (u) Each Foreign Distribution is being carried out for the corporate business purpose of facilitating the External Distribution and is motivated, in whole or substantial part, by this corporate business purpose.
- (v) No Foreign Distribution is being used principally as a device for the distribution of the earnings and profits of the Foreign Distributing Corporation or FSub 3.
- (w) Immediately after each Foreign Distribution, (i) any person that holds a 50 percent or greater interest (within the meaning of Section 355(g)(3)) in any disqualified investment corporation (within the meaning of Section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither the Foreign Distributing Corporation nor FSub 3 is or will be a disqualified investment corporation for purposes of Section 355(g).
- (x) For purposes of Section 355(d), immediately after each Foreign Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of the Foreign Distributing Corporation entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of the Foreign Distributing Corporation, that was acquired

by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of each Foreign Distribution.

- (y) For purposes of Section 355(d), immediately after each Foreign Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of FSub 3 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of FSub 3 stock, that was either (i) acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of each Foreign Distribution or (ii) attributable to distributions on stock of the Foreign Distributing Corporation that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of each Foreign Distribution.
- (z) Each Foreign Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of Section 355(d)(4)) in the Foreign Distributing Corporation or FSub 3 (including any predecessor or successor of any such corporation).

#### The FSub 2 Distribution

- (2a) FSub 1 will be a Section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to FSub 2 immediately before and after the FSub 2 Distribution and a Section 1248 shareholder with respect to FSub 3 immediately after the FSub 2 Distribution.
- (2b) FSub 2 will be a controlled foreign corporation, within the meaning of Section 957(a), immediately before, and each of FSub 3 and FSub 2 will be a controlled foreign corporation, within the meaning of Section 957(a), immediately after, the FSub 2 Distribution.
- (2c) The notice requirements of Treasury Regulations § 1.367(b)-1(c) will be satisfied for the FSub 2 Distribution.
- (2d) The FSub 2 Distribution is not an exchange described in Treas. Reg. §§ 1.367-4(b)(1)(i), 1.367(b)-4(b)(2)(i) or 1.367(b)-4(b)(3).
- (2e) The FSub 2 Distribution will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired

gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

- (2f) Following the FSub 2 Distribution, FSub 1 will compute its pre-distribution amount and post-distribution amount with respect to FSub 2 and FSub 3 as defined under Treas. Reg. § 1.367(b)-5(e)(1) and (2). To the extent the pre-distribution amount exceeds the post-distribution amount with respect to either FSub 2 or FSub 3, FSub 2 will make basis adjustments and recognize income, if any, as required under the applicable Treasury Regulations.
- (2g) Neither FSub 2 nor FSub 3 will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the FSub 2 Distribution.
- (2h) Neither FSub 2 nor FSub 3 will be a U.S. real property holding corporation immediately after the FSub 2 Distribution.
- (2i) FSub 3 will not hold any U.S. real property interests, as defined in section 897(c)(1), immediately before or after the FSub 2 Distribution.

#### The FSub 1 Distribution

- (2j) Sub 2 will be a Section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to FSub 1 immediately before and after the FSub 1 Distribution and a Section 1248 shareholder with respect to FSub 3 immediately after the FSub 1 Distribution.
- (2k) FSub 1 will be a controlled foreign corporation, within the meaning of Section 957(a), immediately before, and each of FSub 3 and FSub 1 will be a controlled foreign corporation, within the meaning of Section 957(a), immediately after, the FSub 1 Distribution.
- (2l) The notice requirements of Treas. Reg. § 1.367(b)-1(c) will be satisfied for the FSub 1 Distribution.
- (2m) The FSub 1 Distribution will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.
- (2n) Following the FSub 1 Distribution, Sub 2 will compute its pre-distribution amount and post-distribution amount with respect to FSub 1 and FSub 3 as defined under Treas. Reg. § 1.367(b)-5(e)(1) and (2). To the extent the

pre-distribution amount exceeds the post-distribution amount with respect to either FSub 1 or FSub 3, FSub 1 will make basis adjustments and recognize income, if any, as required under the applicable Treasury Regulations.

- (2o) Neither FSub 1 nor FSub 3 will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the FSub 1 Distribution.
- (2p) Neither FSub 1 nor FSub 3 will be a U.S. real property holding corporation immediately after the FSub 1 Distribution.
- (2q) FSub 3 will not hold any U.S. real property interests, as defined in section 897(c)(1), immediately before or after the FSub 1 Distribution.

#### The Sub 4 Liquidation

- (2r) Sub 4 and Distributing 1 will adopt a plan of liquidation by conversion of Sub 4 into a limited liability company (Sub 4 Plan of Liquidation), and the Sub 4 Liquidation will occur pursuant to the Sub 4 Plan of Liquidation.
- (2s) Distributing 1, on the date of the adoption of the Sub 4 Plan of Liquidation, and at all times thereafter until the Sub 4 Liquidation is completed, will own 100 percent of the single outstanding class of Sub 4 stock.
- (2t) No shares of Sub 4 stock will have been redeemed during the three years preceding the date of the Sub 4 Liquidation.
- (2u) The distribution by Sub 4 to Distributing 1 that will be deemed to occur pursuant to the Sub 4 Liquidation will take place on a single day, and such distribution will be with respect to Distributing 1's ownership of the Sub 4 stock.
- (2v) As of the effective date of the Sub 4 Liquidation, all of the stock of Sub 4 will be canceled, and Sub 4 will cease to be an entity that is separate from Distributing 1 for U.S. Federal income tax purposes.
- (2w) Sub 4 (as a corporation) will not retain any assets following the Sub 4 Liquidation for Federal income tax purposes.
- (2x) Except with respect to transfers made pursuant to the steps of the Proposed Transactions, Sub 4 will not have acquired assets in any nontaxable transaction at any time except for acquisitions occurring more than three years prior to adoption of the plan of liquidation.



- (2y) Except with respect to transfers made pursuant to the steps of the Proposed Transactions, no assets of Sub 4 have been or will be disposed of by either Sub 4 or Distributing 1 except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of liquidation.
- (2z) Sub 4 will report all earned income represented by assets that will be deemed distributed to Distributing 1, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (3a) The fair market value of the assets of Sub 4 will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the Sub 4 Liquidation occurs.
- (3b) There is no intercorporate debt existing between Distributing 1 and Sub 4 and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (3c) Distributing 1 is not an organization that is exempt from Federal income tax under Section 501 or another provision of the Code.
- (3d) Except with respect to transactions comprising steps of the Proposed Transactions and transfers in the ordinary course of business, the Sub 4 Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of Sub 4, if persons holding, directly or indirectly, more than 20 percent in value of the stock of Sub 4 also hold, directly or indirectly, more than 20 percent in value of the stock in such recipient. For purposes of this representation, ownership will be determined immediately after the External Distribution by application of the constructive ownership rules of Section 318(a), as modified by Section 304(c)(3).
- (3e) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Sub 4 Liquidation have been fully disclosed.

#### The Sub 2 Exchange

- (3f) Distributing 1 will be a Section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to FSub 3 immediately after the Sub 2 Exchange.
- (3g) The Sub 2 Exchange will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign

corporation, or the transferred corporation with respect to any unexpired gain recognition agreement within the meaning of Treas. Reg. §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

- (3h) Following the Sub 2 Exchange, Distributing 1 and Sub 2, respectively, will make basis adjustments and recognize income, if any, as required under the applicable Treasury Regulations and Distributing 1 and Sub 2 will comply with the requirements of Treas. Reg. §§ 1.1248(f)-1 and 1.1248(f)-2.
- (3i) Neither Distributing 1 nor FSub 3 will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the Sub 2 Exchange.
- (3j) Neither Distributing 1 nor FSub 3 will be a U.S. real property holding corporation immediately after the Sub 2 Exchange.
- (3k) FSub 3 will not hold any U.S. real property interests, as defined in section 897(c)(1), immediately before or after the Sub 2 Exchange.

#### The Sub 7 Reorganization

- (3l) The fair market value of the Distributing 1 stock deemed to be received by Distributing 1 will be approximately equal to the fair market value of the Sub 7 stock deemed to be surrendered in the Sub 7 Reorganization.
- (3m) In the Sub 7 Reorganization, no consideration other than voting stock of Distributing 1 will be, or will be deemed to be, issued.
- (3n) For U.S. Federal income tax purposes, Distributing 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 7 immediately prior to the Sub 7 Reorganization, and such acquisition will be in exchange solely for the deemed issuance of Distributing 1 voting stock. For purposes of this representation, amounts paid by Sub 7 to dissenters, amounts, if any, paid by Sub 7 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 7 immediately preceding the Sub 7 Reorganization will be included as assets of Sub 7 held immediately prior to the Sub 7 Reorganization.
- (3o) Distributing 1 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 7 deemed acquired in the Sub 7 Reorganization, except for dispositions made in the ordinary course of business or transfers described in Section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).

- (3p) For U.S. Federal income tax purposes, Sub 7 will be deemed to distribute the stock, securities, and other property it receives or is deemed to receive in the Sub 7 Reorganization, and its other properties, in pursuance of the plan of reorganization.
- (3q) The liabilities of Sub 7 deemed to be assumed (as described in Section 357(d)) by Distributing 1 were incurred by Sub 7 in the ordinary course of its business and are associated with the assets deemed transferred to Distributing 1.
- (3r) Distributing 1, either directly or through one or more members of Distributing 1's qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)), will continue one of the historic businesses of Sub 7 or use a significant portion of Sub 7's historic business assets in a business.
- (3s) There is no intercorporate indebtedness existing between Distributing 1 and Sub 7 that was issued, acquired, or will be settled at a discount.
- (3t) The total fair market value of the assets deemed transferred to Distributing 1 in the Sub 7 Reorganization will exceed the sum of (i) the amount of any liabilities assumed (as described in Section 357(d)) by Distributing 1 in the exchange and (ii) the amount of any liabilities owed to Distributing 1 by Sub 7 that are discharged or extinguished in connection with the Sub 7 Reorganization. The fair market value of the assets of Distributing 1 will exceed the amount of its liabilities immediately after the Sub 7 Reorganization.
- (3u) Sub 7 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Section 368(a)(3)(A).
- (3v) No party to the Sub 7 Reorganization is an investment company as defined in Section 368(a)(2)(F)(iii) and (iv).
- (3w) Items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations as a result of the Sub 7 Reorganization (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13, as published by T.D. 8597).

#### The Contribution and Internal Distribution 1

- (3x) The total adjusted bases and fair market value of the assets to be transferred to Controlled by Distributing 1 will each equal or exceed the sum of (i) the liabilities assumed (as determined under Section 357(d)) by

Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of Section 361(b)) received by Distributing and transferred to its creditors and/or shareholders in connection with the reorganization.

- (3y) The liabilities assumed, if any (as determined under Section 357(d)), by Controlled will be incurred in the ordinary course of business and will be associated with the assets transferred.
- (3z) The total fair market value of the assets transferred to Controlled by Distributing 1 in the Contribution will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of Section 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under Section 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange.
- (4a) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (4b) Any money, property, or stock contributed by Distributing 1 to Controlled in the Contribution will be exchanged solely for stock or securities, if any, in Controlled and the Cash Amount.
- (4c) No party to Internal Distribution 1 will be an investment company as defined in Section 368(a)(2)(F)(iii) and (iv).
- (4d) No part of the consideration to be distributed by Distributing 1 in Internal Distribution 1 will be received by Distributing 2 for U.S. Federal income tax purposes as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1. The distribution of Controlled stock to Distributing 2 in Internal Distribution 1 is with respect to Distributing 2's ownership of Distributing 1 stock.
- (4e) Distributing 1 and Controlled will treat all members of their respective SAGs as defined in Section 355(b)(3)(B) as one corporation in determining whether the requirements of Section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (4f) The five years of financial information submitted on behalf of Business C conducted by the Distributing 1 SAG is representative of the present business operations of Business C conducted by the Distributing 1 SAG

and with regard to Business C there have been no substantial operational changes since the date of the last financial statements submitted.

- (4g) The five years of financial information submitted on behalf Business D as conducted by the Controlled SAG is representative of the present business operations of Business D conducted by the Controlled SAG and with regard to Business D there have been no substantial operational changes since the date of the last financial statements submitted.
- (4h) Following Internal Distribution 1, Distributing 1 will continue the active conduct of Business C independently and with its separate employees.
- (4i) Following Internal Distribution 1, Controlled will continue the active conduct of Business D independently and with its separate employees.
- (4j) The Distributing 1 SAG neither acquired Business C nor control of any entity conducting that business was acquired during the five-year period ending on the date of Internal Distribution 1 in a transaction in which gain or loss was recognized or treated as recognized in whole or in part.
- (4k) The Controlled SAG neither acquired Business D nor control of any entity conducting that business was acquired during the five-year period ending on the date of Internal Distribution 1 in a transaction in which gain or loss was recognized or treated as recognized in whole or in part.
- (4l) Internal Distribution 1 will be carried out for the purpose of facilitating the External Distribution and is motivated, in whole or substantial part, by this corporate business purpose.
- (4m) Internal Distribution 1 will not be used principally as a device for distributing the earnings and profits of Distributing 1 or Controlled or both.
- (4n) For purposes of Section 355(d), immediately after Internal Distribution 1, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of Internal Distribution 1.
- (4o) For purposes of Section 355(d), immediately after Internal Distribution 1, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the

total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of Internal Distribution 1 or (ii) attributable to distributions on Distributing 1's stock or securities that were acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of Internal Distribution 1.

- (4p) Internal Distribution 1 is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of Section 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor to any such corporation).
- (4q) Following Internal Distribution 1, no person will hold a greater than 50 percent interest in either Distributing 1 or Controlled (within the meaning of 355(g)) who did not hold such an interest immediately before Internal Distribution 1.
- (4r) No intercorporate debt will exist between Distributing 1 and Controlled at the time of or subsequent to Internal Distribution 1, except that Distributing 1 may owe Controlled, or Controlled may owe Distributing 1, amounts payable under the Continuing Agreements. Any such indebtedness owed by Controlled to Distributing 1 on completion of Internal Distribution 1 will not constitute stock or securities.
- (4s) Except as set forth in the Continuing Agreements, payments made in connection with all continuing transactions following the Proposed Transactions between Distributing 1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (4t) Except as otherwise provided herein or in the Continuing Agreements, Distributing 1 and Controlled will each pay its own expenses, if any, incurred in connection with the Contribution and Internal Distribution 1.
- (4u) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.
- (4v) No property will be transferred by Distributing 1 to Controlled for which an investment credit allowed under section 46 has been or will be claimed.

- (4w) Immediately before Internal Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as currently in effect, Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing 1 may have in the stock of Controlled (or a member may have in the stock of another member that is required to be taken into account by Treas. Reg. § 1.1502-19) will be included in income immediately before Internal Distribution 1 to the extent required by Treasury Regulations (see Treas. Reg. § 1.1502-19).
- (4x) Distributing 1 will not have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of Internal Distribution 1.
- (4y) Distributing 1 will not be a U.S. real property holding corporation immediately after Internal Distribution 1.
- (4z) Within p months of the External Distribution, the Cash Amount will be distributed up the chain of ownership from Distributing 1 to Distributing. Distributing will use the entire Cash Amount to repay or redeem outstanding indebtedness of the Distributing Consolidated Group and/or make distributions to shareholders of Distributing, pursuant to the plan of reorganization.

#### Internal Distributions 2-4

The following representations are made with respect to the each of Internal Distribution 2, Internal Distribution 3 and Internal Distribution 4. Each of the distributions is referred to as an Internal Distribution, and the corporation that distributes the stock of Controlled in an Internal Distribution is referred to as the "Distributing Corporation."

- (5a) No part of the consideration to be distributed in each Internal Distribution will be received by the Distributing Corporation's shareholder as a creditor, employee, or in any capacity other than that of a shareholder. The distribution of Controlled stock to Distributing Corporation's shareholder in an Internal Distribution is with respect to its ownership of the Distributing Corporation's stock.
- (5b) The Distributing Corporation and Controlled will treat all members of their respective SAGs as one corporation in determining whether the requirements of Section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

- (5c) The Distributing Corporation SAG neither acquired Business C nor acquired control of an entity conducting Business C during the five-year period ending on the date of each Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of each Internal Distribution, the Distributing Corporation SAG has been the principal owner of the goodwill and significant assets of Business C and will continue to be the principal owner following the Internal Distribution.
- (5d) The Controlled SAG neither acquired Business D nor acquired control of an entity conducting Business D during the five-year period that will end on the date of each Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of each Internal Distribution, the Controlled SAG has been the principal owner of the goodwill and significant assets of Business D and will continue to be the principal owner following the Internal Distribution.
- (5e) Each Internal Distribution is being carried out for purposes of facilitating the External Distribution and is motivated, in whole or substantial part, by this corporate business purposes.
- (5f) No Internal Distribution is being used principally as a device for the distribution of the earnings and profits of the Distributing Corporation or Controlled.
- (5g) Immediately after each Internal Distribution, (i) any person that holds a 50 percent or greater interest (within the meaning of Section 355(g)(3)) in any disqualified investment corporation (within the meaning of Section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither the Distributing Corporation nor Controlled is or will be a disqualified investment corporation for purposes of Section 355(g).
- (5h) For purposes of Section 355(d), immediately after each Internal Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of the Distributing Corporation entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of the Distributing Corporation, that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the Internal Distribution.



- (5i) For purposes of Section 355(d), immediately after each Internal Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the Internal Distribution or (ii) attributable to distributions on the Distributing Corporation's stock that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the Internal Distribution.
- (5j) Each Internal Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of Section 355(d)(4)) in the Distributing Corporation or Controlled (including any predecessor or successor to any such corporation).
- (5k) Except as otherwise provided herein or in the Continuing Agreements, the Distributing Corporation and Controlled will each pay its own expenses, if any, incurred in connection with the each Internal Distribution.
- (5l) Except as set forth in the Continuing Agreements, payments made in connection with all continuing transactions following the Proposed Transactions between the Distributing Corporation and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (5m) No Distributing Corporation will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of each Internal Distribution.
- (5n) No Distributing Corporation will be a U.S. real property holding corporation immediately after each Internal Distribution.
- (5o) Immediately before each Internal Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as currently in effect, Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account the Distributing Corporation may have in the stock of Controlled (or a member may have in the stock of another member that is required to be taken into

account by Treas. Reg. § 1.1502-19) will be included in income immediately before each Internal Distribution to the extent required by Treasury Regulations (see Treas. Reg. § 1.1502-19).

- (5p) No intercorporate debt will exist between the Distributing Corporation and Controlled at the time of or subsequent to each Internal Distribution, except that the Distributing Corporation may owe Controlled, or Controlled may owe the Distributing Corporation, amounts payable under the Continuing Agreements. Any such indebtedness owed by Controlled to the Distributing Corporation on completion of Internal Distribution 1 will not constitute stock or securities.

#### The External Distribution

- (5q) The indebtedness owed by Controlled to Distributing after the External Distribution, if any, will not constitute stock or securities.
- (5r) The fair market value of the Controlled common stock to be received by each shareholder of Distributing pursuant to the External Distribution will be approximately equal to the fair market value of the Distributing common stock surrendered by the shareholder in the exchange.
- (5s) No part of the consideration to be distributed in the External Distribution will be received by any shareholder of Distributing as a creditor, employee, or in any capacity other than that of a shareholder of Distributing. The distribution of Controlled stock to Distributing's shareholders in the External Distribution is with respect to their ownership of Distributing stock.
- (5t) Distributing and Controlled will treat all members of their respective SAGs as one corporation in determining whether the requirements of Section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (5u) The five years of financial information submitted on behalf of Business C conducted by the Distributing SAG is representative of the present business operations of Business C conducted by the Distributing SAG, and with regard to Business C, there have been no substantial operational changes since the date of the last financial statements submitted.
- (5v) The five years of financial information submitted on behalf of Business D conducted by the Controlled SAG is representative of the present business operations of Business D conducted by the Controlled SAG, and with regard to Business D, there have been no substantial operational changes since the date of the last financial statements submitted.

- (5w) The Distributing SAG neither acquired Business D nor acquired control of an entity conducting Business D during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the External Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business D and will continue to be the principal owner following the External Distribution.
- (5x) The Controlled SAG neither acquired Business D nor acquired control of an entity conducting Business D during the five-year period that will end on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Controlled SAG has been the principal owner of the goodwill and significant assets of Business D and will continue to be the principal owner following the Distribution.
- (5y) Following the External Distribution and except as contemplated by the Transition Service Agreement, the Distributing SAG will continue the active conduct of Business C, independently and with its separate employees, and the Controlled SAG will conduct the active conduct of Business D, independently and with its separate employees.
- (5z) The External Distribution is being carried out for, and is motivated by, the Corporate Business Purpose.
- (6a) The External Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled.
- (6b) Immediately after the External Distribution, (i) any person that holds a 50 percent or greater interest (within the meaning of Section 355(g)(3)) in any disqualified investment corporation (within the meaning of Section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither Distributing nor Controlled is or will be a disqualified investment corporation for purposes of Section 355(g).
- (6c) For purposes of Section 355(d), immediately after the External Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of Distributing, that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the External Distribution.

- (6d) For purposes of Section 355(d), immediately after the External Distribution, no person (determined after applying Section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the External Distribution or (ii) attributable to distributions on Distributing's stock that was acquired by purchase (as defined in Section 355(d)(5) and (8)) during the five-year period (determined after applying Section 355(d)(6)) ending on the date of the External Distribution.
- (6e) The External Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of Section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (6f) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the External Distribution, except for payables arising under the Continuing Agreements or indebtedness otherwise arising in the ordinary course of business.
- (6g) Distributing will not have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the five-year period ending on the date of the External Distribution.
- (6h) Distributing will not be a U.S. real property holding corporation immediately after the External Distribution.
- (6i) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597). Any excess loss account Distributing may have in the Controlled Stock (or a member may have in the stock of another member that is required to be taken into account by Treas. Reg. § 1.1502-19) will be included in income immediately before the External Distribution to the extent required by the regulations (Treas. Reg. § 1.1502-19).

- (6j) Except as set forth in the Continuing Agreements, payments made in connection with all continuing transactions following the Proposed Transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (6k) Except as otherwise provided herein or in the Continuing Agreements, Distributing, Controlled, and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the External Distribution.

### **Rulings**

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of the stock in each applicable controlled corporation to each applicable distributing corporation's shareholders in each distribution is with respect to the distributing corporation's shareholders' ownership of stock in the distributing corporation, (ii) any money, property, or stock contributed by Distributing 1 to Controlled in the Contribution is exchanged solely for stock or securities, if any, in Controlled and the Cash Amount, and (iii) any other transfers of stock, money, or property between a distributing corporation, a controlled corporation, or any distributing corporation shareholder and any person related to a distributing corporation, a controlled corporation, or any distributing corporation shareholder is respected as a separate transaction for U.S. Federal income tax purposes, we rule as follows:

#### The Sub 3 Reorganization

- (1) For U.S. Federal income tax purposes, the Sub 3 Reorganization will be treated as the transfer by Sub 3 of all of its assets, subject to liabilities, to Newco in exchange for stock of Newco, followed by the distribution by Sub 3 of the Newco stock to its shareholder in liquidation, and will constitute a reorganization within the meaning of Section 368(a)(1)(F). Rev. Rul. 67-274, 1967-2 C.B. 141. Newco and Sub 3 will each be "a party to the reorganization" within the meaning of Section 368(b).
- (2) Sub 3 will recognize no gain or loss upon the transfer of all of its assets to Newco in exchange for Newco stock and Newco's assumption of Sub 3's liabilities. Sections 361(a) and 357(a). Sub 3 will recognize no gain on the distribution of Newco stock to Distributing 1. Section 361(c).
- (3) Newco will recognize no gain or loss upon its receipt of Sub 3's assets. Section 1032(a).

- (4) Newco's basis in the assets acquired from Sub 3 will be the same as Sub 3's basis in such assets immediately before the Sub 3 Reorganization. Section 362(b).
- (5) Newco's holding period for the assets acquired from Sub 3 will include the period during which Sub 3 held such assets. Section 1223(2).
- (6) Distributing 1 will recognize no gain or loss upon the receipt of the stock of Newco in exchange for the stock of Sub 3. Section 354(a)(1).
- (7) The basis of the Newco stock in the hands of Distributing 1 will be equal to the basis of the Sub 3 stock surrendered in exchange therefor. Section 358(a)(1).
- (8) The holding period for the Newco stock in the hands of the Distributing 1 will include the period during which Distributing 1 held the Sub 3 stock exchanged therefor, provided that the Sub 3 stock is held as a capital asset in the hands of Distributing 1 on the date of the exchange. Section 1223(1).
- (9) As provided by Section 381(a), Newco will succeed to the tax attributes of Sub 3 enumerated in Section 381(c), subject to the conditions and limitations specified in Sections 381, 382, 383 and 384 and the regulations thereunder. Section 381(a) and Treas. Reg. § 1.381(a)-1.

#### The FSub 2 Distribution

- (10) FSub 2 will recognize no gain or loss upon the FSub 2 Distribution. Section 355(c).
- (11) FSub 1 will recognize no gain or loss (and no amount will otherwise be included in its income) upon receipt of the FSub 3 stock in the FSub 2 Distribution. Section 355(a).
- (12) The basis of the stock of FSub 2 and FSub 3 in the hands of FSub 1 after the FSub 2 Distribution will be the same as the basis of the FSub 2 stock held immediately before the FSub 2 Distribution, allocated in proportion to the fair market value of FSub 2 and FSub 3 in accordance with Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2). Sections 358(b)(2) and (c).
- (13) FSub 1's holding period in the FSub 3 stock received will include the holding period of the FSub 2 stock with respect to which the distribution of the FSub 3 stock is made, provided that the FSub 2 stock is held as a capital asset on the date of the FSub 2 Distribution. Section 1223(1).

- (14) FSub 2's earnings and profits, if any, will be adjusted and FSub 3's earnings and profits will be determined in accordance with Section 312(h) and Treas. Reg. § 1.312-10(b).
- (15) The FSub 2 Distribution will be a distribution to which Treas. Reg. §§ 1.367(b)-1(c), -5(a), -5(c), and -5(f) apply. If FSub 1's post distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to FSub 2 or FSub 3 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to FSub 2 or FSub 3, FSub 1's basis in such stock immediately after the distribution must be reduced by the amount of the difference. FSub 1's basis in such stock, however, must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, FSub 1 must instead include such amount in income as a deemed dividend from such corporation. If FSub 1 reduces the basis in the stock of FSub 2 or FSub 3 (or has an inclusion with respect to such stock), FSub 1 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

#### The FSub 1 Distribution

- (16) FSub 1 will recognize no gain or loss on the FSub 1 Distribution. Section 355(c).
- (17) Sub 2 will recognize no gain or loss (and no amount will otherwise be included in its income) upon receipt of the FSub 3 stock in the FSub 1 Distribution. Section 355(a).
- (18) The basis of the stock of FSub 1 and FSub 3 in the hands of Sub 2 after the FSub 1 Distribution will be the same as the basis of the FSub 1 stock held immediately before the FSub 1 Distribution, allocated in proportion to the fair market value of FSub 1 and FSub 3 in accordance with Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2). Sections 358(b)(2) and (c).
- (19) Sub 2's holding period in the FSub 3 stock received will include the holding period of the FSub 1 stock with respect to which the distribution of the FSub 3 stock is made, provided that the FSub 1 stock is held as a capital asset on the date of the FSub 1 Distribution. Section 1223(1).
- (20) FSub 1's earnings and profits, if any, will be adjusted and FSub 3's earnings and profits will be determined in accordance with Section 312(h) and Treas. Reg. § 1.312-10(b).

- (21) The FSub 1 Distribution will be a distribution to which Treas. Reg. §§ 1.367(b)-1(c), -5(a), -5(c), and -5(f) apply. If Sub 2's post distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to FSub 1 or FSub 3 is less than its pre-distribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to FSub 1 or FSub 3, Sub 2's basis in such stock immediately after the distribution must be reduced by the amount of the difference. Sub 2's basis in such stock, however, must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Sub 2 must instead include such amount in income as a deemed dividend from such corporation. If Sub 2 reduces the basis in the stock of FSub 1 or FSub 3 (or has an inclusion with respect to such stock), Sub 2 must increase its basis in the stock of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

#### The Sub 4 Liquidation

- (22) For U.S. Federal income tax purposes, the Sub 4 Liquidation will be treated as a transfer by Sub 4 of all of its assets to Distributing 1, and an assumption of all the liabilities of Sub 4 by Distributing 1, in complete cancellation of all the stock of Sub 4. The Sub 4 Liquidation will qualify as a complete liquidation under Section 332. Section 332(b) and Treas. Reg. § 1.332-2(d).
- (23) Distributing 1 will recognize no gain or loss on the receipt of Sub 4's assets and the assumption of Sub 4's liabilities. Section 332(a).
- (24) Sub 4 will recognize no gain or loss on the distribution of its assets to, and the assumption of its liabilities by, Distributing 1. Sections 336(d)(3) and 337(a).
- (25) Distributing 1's basis in each asset received from Sub 4 in the Sub 4 Liquidation will be the same as the basis of that asset in the hands of Sub 4 immediately before the Sub 4 Liquidation. Section 334(b)(1).
- (26) Distributing 1's holding period in each asset received from Sub 4 in the Sub 4 Liquidation will include the period during which Sub 4 held that asset. Section 1223(2).
- (27) Distributing 1 will succeed to and take into account as of the close of the effective date of the Sub 4 Liquidation the items of Sub 4 described in Section 381(c), subject to the conditions and limitations specified in



Sections 381, 382, 383, and 384 and the regulations thereunder. Section 381(a) and Treas. Reg. § 1.381(a)-1.

- (28) The excess loss account, if any, of Distributing 1 with respect to the stock of Sub 4 will not be recognized as a result of the Sub 4 Liquidation.

#### The Sub 2 Exchange

- (29) Sub 2 will recognize no gain or loss on the Sub 2 Exchange. Section 355(c).
- (30) Distributing 1 will recognize no gain or loss (and no amount will otherwise be included in its income) upon receipt of the FSub 3 stock in the Sub 2 Exchange. Section 355(a).
- (31) The basis of the stock of Sub 2 and FSub 3 in the hands of Distributing 1 after the Sub 2 Exchange will be the same as the basis of the Sub 2 stock held immediately before the Sub 2 Exchange, allocated in proportion to the fair market value of Sub 2 and FSub 3 in accordance with Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2). Sections 358(b)(2) and (c).
- (32) Distributing 1's holding period in the FSub 3 stock received in the Sub 2 Exchange will include Distributing 1's (and Sub 4's) holding period in its Sub 2 stock surrendered in exchange therefor, provided the shares of Sub 2 stock are held as a capital asset by Distributing 1 on the date of the Sub 2 Exchange. Section 1223(1).
- (33) Sub 2's earnings and profits, if any, will be adjusted and FSub 3's earnings and profits will be determined in accordance with Section 312(h) and Treas. Reg. § 1.312-10(b).

#### The Sub 7 Reorganization

- (34) For U.S. Federal income tax purposes, the Sub 7 Reorganization will be treated as a transfer by Sub 7 of substantially all of its assets to Distributing 1 solely in exchange for Distributing 1 voting stock and the assumption of the liabilities of Sub 7, followed by the distribution by Sub 7 of the Distributing 1 voting stock to Distributing 1 in complete liquidation of Sub 7.
- (35) The Sub 7 Reorganization will qualify as a reorganization under Section 368(a)(1)(C) and will not be disqualified by reason of the subsequent transfers set forth in the Proposed Transactions. See Sections

368(a)(1)(C), 368(a)(2)(C), Treas. Reg. §§ 1.368-1(d) and 1.368-2(k)(1); Rev. Rul. 69-617, 1969-2 C.B. 57; Rev. Rul. 85-197, 1985-2 C.B. 120.

- (36) Distributing 1 and Sub 7 will each be a "party to a reorganization" within the meaning of Section 368(b).
- (37) Sub 7 will recognize no gain or loss on the transfer of substantially all of its assets to Distributing 1 solely in exchange for Distributing 1 voting stock and the assumption by Distributing 1 of the liabilities of Sub 7. Sections 361(a) and 357(a).
- (38) Sub 7 will recognize no gain or loss on the distribution of Distributing 1 voting stock to Distributing 1. Section 361(c).
- (39) Distributing 1 will recognize no gain or loss on the receipt of Sub 7's assets solely in exchange for Distributing 1 voting stock. Section 1032(a).
- (40) Distributing 1 will recognize no gain or loss upon the receipt of Distributing 1 stock solely in exchange for Sub 7 stock. Section 354(a)(1).
- (41) Distributing 1's basis in each of the assets of Sub 7 received in the Sub 7 Reorganization will be the same as the basis of such asset in the hands of Sub 7 immediately prior to the Sub 7 Reorganization. Section 362(b).
- (42) The holding period of each of the assets of Sub 7 in the hands of Distributing 1 will include the period during which Sub 7 held such asset. Section 1223(2).
- (43) Distributing 1 will succeed to and take into account the items of Sub 7 described in Section 381(c), subject to the conditions and limitations specified in Sections 381, 382, 383, and 384, and the regulations thereunder. Section 381(a) and Treas. Reg. § 1.381(a)-1.

#### The Contribution and Internal Distribution 1

- (44) For U.S. Federal income tax purposes, the transactions that comprise the Contribution and Internal Distribution 1 will be treated as (a) a transfer by Distributing 1 to Controlled of all Distributing 1's assets relating to Business B, including the stock of FSub 3, the interests in Sub 7 LLC, and the stock of Newco, in exchange for Controlled stock and the assumption of any liabilities relating to Business B and (b) a distribution by Distributing 1 of all the Controlled stock to its sole shareholder, Distributing 2.

- (45) The Contribution followed by Internal Distribution 1 will be a "reorganization" within the meaning of Section 368(a)(1)(D). Distributing 1 and Controlled each will be a "party to a reorganization" within the meaning of Section 368(b).
- (46) Distributing 1 will recognize no gain or loss upon the Contribution. Sections 361(a), 361(b)(1), 361(b)(3) and 357(a).
- (47) Controlled will recognize no gain or loss upon the Contribution. Section 1032(a).
- (48) Controlled's basis in each of the assets received pursuant to the Contribution will be equal to the basis of the asset in the hands of Distributing 1 immediately prior to the Contribution. Section 362(b).
- (49) Controlled's holding period in each of the assets received pursuant to the Contribution will include the period during which Distributing 1 held such asset. Section 1223(2).
- (50) Distributing 1 will recognize no gain or loss upon Internal Distribution 1. Section 361(c).
- (51) Distributing 2 will recognize no gain or loss (and no amount will be otherwise included in its income) upon the receipt of Controlled stock in Internal Distribution 1. Section 355(a)(1).
- (52) The basis of the stock of Distributing 1 and Controlled in the hands of Distributing 2 after Internal Distribution 1 will be the same as the basis of the Distributing 1 stock held immediately before the Internal Distribution 1, allocated in proportion to the fair market value of Distributing 1 and Controlled in accordance with Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2). Sections 358(b)(2) and (c).
- (53) Distributing 2's holding period in the Controlled stock will include the holding period of the Distributing 1 shares Distributing 2 held with respect to which Internal Distribution 1 is made, provided the Distributing 1 stock was held as a capital asset on the date of Internal Distribution 1. Section 1223(1).
- (54) Earnings and profits will be allocated between Distributing 1 and Controlled in accordance with Section 312(h) and Treasury Regulation §§ 1.312-10(a) and 1.1502-33(f)(2).
- (55) Distributing 1 will recognize no gain or loss upon receipt of the Cash Amount from Controlled, provided the conditions set forth in

representation (4z), above are satisfied, and provided none of the Cash Amount is used to retire debt of the Distributing Consolidated Group that was issued in anticipation of the Proposed Transactions. Section 361(b)(1)(A) and (b)(3).

- (56) Following Internal Distribution 1, Controlled will not be a successor of Distributing 1 for purposes of Section 1504(a)(3).

Internal Distributions 2-4

The following rulings are provided with respect to each of Internal Distribution 2, Internal Distribution 3, and Internal Distribution 4. Each of the distributions is referred to as an Internal Distribution, and the corporation that distributes the stock of Controlled in an Internal Distribution is referred to as the "Distributing Corporation." Each Distributing Corporation shareholder that receives Controlled stock in an Internal Distribution is referred to as "Distributing Corporation Shareholder."

- (57) Distributing Corporation will recognize no gain or loss upon the Internal Distribution. Section 355(c).
- (58) Distributing Corporation Shareholder will recognize no gain or loss (and no amount will otherwise be included in its income) upon receipt of the Controlled stock in Internal Distribution. Section 355(a).
- (59) The basis of the stock of Distributing Corporation and Controlled in the hands of Distributing Corporation Shareholder after the Internal Distribution will be the same as the basis of the Distributing Corporation stock held immediately before the Internal Distribution, allocated in proportion to the fair market value of Distributing Corporation and Controlled in accordance with Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2). Sections 358(b)(2) and (c).
- (60) Distributing Corporation Shareholder's holding period in the Controlled stock received will include the holding period of the Distributing Corporation common stock with respect to which the distribution of the Controlled stock is made, provided that the Distributing Corporation common stock is held as a capital asset on the date of Internal Distribution. Section 1223(1).
- (61) Distributing Corporation's earnings and profits, if any, will be adjusted and Controlled's earnings and profits will be determined in accordance with Section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(f)(2).

The External Distribution

- (62) Distributing will recognize no gain or loss upon the External Distribution. Section 355(c).
- (63) Distributing's shareholders will recognize no gain or loss (and no amount will otherwise be included in their income) upon receipt of the Controlled stock in the External Distribution. Section 355(a).
- (64) The basis of the stock of Distributing and Controlled in the hands of Distributing's shareholders after the External Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will be the same as the basis of the Distributing stock held immediately before the External Distribution, allocated in proportion to the fair market value of Distributing and Controlled in accordance with Section 358(a)(1) and Treas. Reg. § 1.358-2(a)(2). Sections 358(b)(2) and (c).
- (65) Each Distributing shareholder's holding period in the Controlled stock received in the External Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include such shareholders' holding period in its Distributing Common Stock with respect to which such Controlled stock is distributed (or for which such Controlled stock is exchanged), provided the shares of Distributing Common Stock are held as a capital asset by such holder on the date of the External Spin. Section 1223(1).
- (66) A shareholder who receives cash in lieu of fractional shares of Controlled stock will recognize gain or loss measured by the difference between the basis of such fractional share interest and the amount of cash received therefor. Rev. Proc. 77-41, 1977-2 C.B. 574. Provided the fractional share interest is a capital asset in the hands of the shareholder on the date of the External Distribution, any gain or loss will constitute capital gain or loss. Sections 1221 and 1222.
- (67) Distributing's earnings and profits, if any, will be adjusted and Controlled's earnings and profits will be determined in accordance with Section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33(e)(3) immediately following the time at which Distributing has distributed stock constituting control within the meaning of Section 368(c) pursuant to the steps comprising the External Distribution.
- (68) Except for purposes of Section 355(g), any payments made between any of Distributing and Controlled and their respective affiliates under any of the Continuing Agreements regarding liabilities, indemnities, or other

obligations that (a) have arisen or will arise for a taxable period ending on or before the External Distribution and (b) will not become fixed and ascertainable until after the Contribution, will be viewed as occurring before the Contribution. Cf. Arrowsmith v. Commissioner, 344 U.S. 6 (1952) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84.

### **Caveats**

This letter only addresses issues under the jurisdictions of CC:CORP (Corporate) and CC:INTL (International). A separate letter may be issued subsequently addressing issues under the jurisdiction of CC:FIP (Financial Institutions and Products). 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. No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions, including the international provisions, of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether any of the Distributions or Foreign Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any of the Distributions or Foreign Distribution are used principally as a device for the distribution of earnings and profits of any distributing corporation or controlled corporation or combination thereof (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether any of the Distributions or Foreign Distribution are part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7);
- (iv) The U.S. Federal income tax consequences of steps (i), (ii), and (vi) of the Proposed Transactions, Distributing's payment of expenses on behalf of its affiliates, or the Continuing Agreements.

### **Procedural Statements**

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

*Douglas C. Bates*

Douglas C. Bates  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel  
(Corporate)