

## Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-129219-05

Date:

November 28, 2005

TY:

### **LEGEND**

Parent	=
Sub1	=
Sub2	=
Sub3	=
Sub4	=
Sub5	=
Sub6	=
Sub7	=
Sub8	=
Sub9	=
Sub10	=
Sub11	=
Sub12	=
Sub13	=
Sub14	=
Sub15	=
Sub16	=

Sub17 =

Sub18 =

Sub19 =

Sub20 =

Sub21 =

Sub22 =

Sub23 =

Sub24 =

Partnership1 =

Partnership2 =

Partnership3 =

Partnership4 =

Partnership5 =

Partnership6 =

Partnership7 =

Partnership8 =

Partnership9 =

Partnership10 =

Partnership11 =

Interest1 =

Interest2 =

Interest3 =

Interest4 =

Activity1 =

Activity2 =

Activity3 =

Activity4 =

Activity5 =

State1 =

State2 =

State3 =

Area1 =

#XYZ =

Date1 =

Date2 =

Date3 =

Date4 =

Assets1 =

Dear :

This letter responds to your May 27, 2005 (revised June 22, 2005) request for rulings regarding certain federal income tax consequences of a proposed transaction. Additional information was submitted in subsequent letters. The information provided is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **FACTS**

Publicly traded Parent is the common parent of an affiliated group of corporations ("Parent Affiliated Group") that files a consolidated federal income tax return. Parent is a "registered holding company" subject to the Public Utility Holding Company Act of

1935, as amended (“PUHCA”). Parent, through its subsidiaries, is engaged principally in Activity1 and Activity2.

Sub1 is a wholly-owned subsidiary of Parent. Sub1 is an “associate” of a registered holding company, *i.e.*, Parent, under the PUHCA. Sub1’s primary assets are the stock of its subsidiary companies. Sub1, through its subsidiaries, is engaged principally in Activity1 and Activity2. Sub1, through its subsidiaries, also engages in Activity3.

Sub3 is a wholly-owned subsidiary of Parent. For federal income tax purposes, Sub3’s primary assets are the stock of its subsidiary companies. The subsidiary companies are Sub12; and Sub7, Sub8, Sub9, Sub10, and Sub11 (together, the “Non-Sub12 Subsidiaries”).

Sub4 is a subsidiary of Sub1. In addition to common stock which is wholly-owned by Sub1, Sub4 has additional publicly-held voting preferred stock outstanding. Sub4 is a regulated utility engaged principally in Activity4 and Activity2 in Area1. Through a subsidiary, Sub4 is also engaged in Activity5.

Sub5 is a wholly-owned subsidiary of Sub1. Sub5 is an intermediate holding company, and its primary assets are the stock of its subsidiary companies, including Sub14, Sub15, Sub16 and Sub17. Sub5 also owns interests in the following partnerships: Partnership1; Partnership2; Partnership3; Partnership4; Partnership5; Partnership6; and Partnership7 (together, the “Partnership1-7 Partnerships”).

Sub12 is a wholly-owned subsidiary of Sub3. Sub12’s primary asset is the stock of its subsidiary company.

Sub15 is a wholly-owned subsidiary of Sub5. Sub15 holds investments in several leasing transactions, including those held through its wholly owned subsidiaries.

Sub13 is a wholly-owned subsidiary of Sub4. Sub13 is principally engaged in Activity5.

By order dated Date1 in File No. #XYZ (the “Initial Order”), the Securities and Exchange Commission (“SEC”) authorized Parent to acquire all of the issued and outstanding common stock of Sub1. Parent subsequently acquired Sub1 on Date2. In the Initial Order, the SEC reserved jurisdiction over whether Parent would be allowed to retain certain indirect non-utility subsidiaries and investments of Sub1 under section 11(b)(1) of the PUHCA, including the following:

- Sub5’s interest in Partnership9 (the “Partnership9 Interest”). Sub14, a wholly owned subsidiary of Sub5, owns the Partnership9 Interest.

- Sub5's interest in the Interest1. Sub16, a wholly owned subsidiary of Sub5, owns the Interest1 through a grantor trust. Sub16 also owns a partnership interest in Partnership8.
- Sub15's interest in the Interest2. Sub15 owns the Interest2 through a grantor trust.
- Sub15's interest in Partnership10 (the "State1 Office Building Interest"). Sub18 and Sub21, each a wholly owned subsidiary of Sub15, together own the State1 Office Building Interest.
- Sub15's interest in Partnership11 (the "State2 Office Building Interest"). Sub23 and Sub22, each a wholly owned subsidiary of Sub24, together own the State2 Office Building Interest. Sub24 is a wholly-owned subsidiary of Sub15.
- Sub15's interest in the Interest3. Sub22 owns the Interest3 through a grantor trust. As stated above, Sub22 is a wholly owned subsidiary of Sub24, which is a wholly owned subsidiary of Sub15.
- Sub15's interest in the Interest4. Sub19 and Sub20, each a wholly owned subsidiary of Sub15, together own the Interest4 through a grantor trust.

Interest1, Interest2, and Interest3 are herein referred to as the "Equipment Interests." The Partnership9 Interest, the State1 Office Building Interest, the State2 Office Building Interest, and Interest4 are herein referred to as the "Non-Equipment Interests." The Equipment Interests and the Non-Equipment Interests are together referred to herein as the "Non-Retainable Interests."

On Date3, the SEC entered an order in File No. #XYZ under section 11(b) of the PUHCA (the "Supplemental Order") directing Parent to sell or otherwise dispose of the Non-Retainable Interests. The Supplemental Order requires that Parent cause Sub5 or any subsidiary to complete the sale or disposition of the Non-Retainable Interests not later than Date4. Parent's request for the Supplemental Order specifies that Parent must, within 24 months of receipt, either (i) expend the net proceeds from any sale or disposition of a Non-Retainable Interest to either retire or cancel securities representing indebtedness of the transferor or purchase property other than "nonexempt property" within the meaning of Code section 1083 or (ii) invest such amount as a contribution to the capital, or as paid-in surplus, of another direct or indirect subsidiary of Parent in a manner that satisfies the nonrecognition provisions of Code section 1081. The SEC will authorize the Proposed Transactions in a subsequent order (the "Final Order"). The Final Order will recite that the Proposed Transactions are necessary or appropriate to the integration or simplification of Parent's holding company system and to effectuate the provisions of section 11(b)(1) of the PUHCA.

## **THE PROPOSED TRANSACTIONS**

To comply with the Supplemental Order, Parent will enter into the following Proposed Transactions:

1. Sub3 will contribute to Sub12 the stock of the Non-Sub12 Subsidiaries.
2. Sub5 will distribute the stock of Sub17 to Sub1.
3. Sub16 will distribute its interest in Partnership8 to Sub5.
4. Sub5 will distribute its interests in the Partnership1-7 Partnerships and Partnership8 to Sub1.
5. Sub1 will distribute the interests in the Partnership1-7 Partnerships and Partnership8 to Parent.
6. Parent will contribute the interests in the Partnership1-7 Partnerships and Partnership8 to Sub2, a wholly-owned subsidiary of Parent.
7. Sub2 will contribute the interests in the Partnership1-7 Partnerships and Partnership8 to Sub6, a wholly-owned subsidiary of Sub2.
8. Sub22 will distribute the Interest3 to Sub24.
9. Sub24 will distribute the Interest3 to Sub15.
10. Sub15 will distribute the Interest3 to Sub5.
11. Sub5 will contribute the Interest3 to Sub16.
12. Sub15 will distribute the Interest2 to Sub5.
13. Sub5 will contribute the Interest2 to Sub16.
14. Sub5 will transfer the stock of Sub16 to Sub13 in exchange for notes (the "Sub13 Notes") and possibly cash (together, the Sub13 Notes and the cash are referred to herein as the "Sub13 Consideration").
15. Sub5 will distribute the Sub13 Consideration to Sub1.
16. Sub1 will transfer the stock of Sub5 to Sub3 in exchange for notes (the "Sub3 Notes") and possibly cash (together, the Sub3 Notes and the cash are referred to herein as the "Sub3 Consideration").
17. Sub5 will distribute the stock of Sub15 to Sub3.

18. Parent will cause each of Sub14, Sub15, Sub16, Sub18, Sub22, Sub19, Sub20, Sub24, Sub23, and Sub21 to convert into State2 limited liability companies ("LLCs") and will cause Sub5 to convert to an State3 LLC (the "LLC Conversions"). Each LLC will be classified as a disregarded entity for federal income tax purposes.

19. Sub13 will sell the Sub16 membership interest to Purchaser in exchange for cash. For federal income tax purposes, the sale of Sub16 to the Purchaser will be treated as a sale of the Equipment Interests.

20. Sub3 will sell the Sub5 membership interest or the underlying Non-Equipment Interests to the Purchaser in exchange for cash. For federal income tax purposes, the sale will be treated as a sale of any underlying Non-Equipment Interests.

21. Sub3 will sell the Sub15 membership interest, and/or one or more membership interests owned by Sub15 or the underlying Non-Equipment Interests to the Purchaser in exchange for cash. For federal income tax purposes, the sale will be treated as a sale of any underlying Non-Equipment Interests.

22. On the date that Sub13 sells the Sub16 membership interest to Purchaser in exchange for cash, or within 24 months thereafter, Sub13 will expend the cash received from the Purchaser to reduce the Sub13 Notes or will otherwise expend such cash in accordance with Code section 1081(b)(2).

23. On the date that Sub3 sells the Sub5 membership interest or the underlying Non-Equipment Interests to the Purchaser in exchange for cash, or within 24 months thereafter, Sub3 will expend the cash received from the Purchaser for the sale of the Sub5 membership interest or the underlying Non-Equipment Interests to reduce the Sub3 Notes.

24. On the date that Sub3 sells the Sub15 membership interest, and/or one or more membership interests owned by Sub15 or the underlying Non-Equipment Interests to the Purchaser in exchange for cash, or within 24 months thereafter, Sub3 will expend the cash received from the Purchaser for the sale of the Sub15 membership interest or the underlying Non-Equipment Interests to reduce the Sub3 Notes.

### **ADDITIONAL REPRESENTATIONS**

In addition to the facts set forth above, Parent represents as follows:

- Parent is a "registered holding company" within the meaning of Code section 1083(b).
- Sub1, Sub13, Sub3, Sub12, the Non-Sub12 Subsidiaries, Sub5, Sub14, Sub16, Sub17, Sub15, Sub18, Sub22, Sub19, Sub20, Sub24, Sub23, Sub21, Sub2 and

Sub6 are each an “associate company” of Parent within the meaning of Code section 1083(b).

- Parent, Sub1, Sub13, Sub3, Sub12, the Non-Sub12 Subsidiaries, Sub5, Sub14, Sub16, Sub17, Sub15, Sub18, Sub22, Sub19, Sub20, Sub24, Sub23, Sub21, Sub2 and Sub6 are members of the same “system group” within the meaning of Code section 1083(d).
- Sub1, Sub13, Sub3, Sub12, the Non-Sub12 Subsidiaries, Sub5, Sub14, Sub16, Sub17, Sub15, Sub18, Sub22, Sub19, Sub20, Sub24, Sub23, Sub21, Sub2 and Sub6 are each a “majority-owned subsidiary company” of Parent within the meaning of Code section 1083(c).
- The Proposed Transactions will be subject to authorization by an “order of the Securities and Exchange Commission” within the meaning of Code section 1083(a) and such order will satisfy the requirements of Code section 1081(f) and, where applicable, the recital requirements of Code section 1081(b)(2).
- The Equipment Interests are primarily “section 1245 property” within the meaning of Code section 1245(a)(3).
- The Interest4 is “section 1250 property” within the meaning of Code section 1250(c).
- The Assets1 beneficially owned by Partnership9 is Section 1245 property.
- The State2 office building owned by Partnership11 and the State1 office building owned by Partnership10 are both Section 1250 property.
- Each of Partnership9, Partnership11 and Partnership10 is a partnership for federal income tax purposes.
- Immediately before the LLC Conversions, certain of Sub5, Sub14, Sub15, Sub16, Sub18, Sub22, Sub19, Sub20, Sub24, Sub23, and Sub21 will have an excess loss account (“ELA”) as defined under section 1.1502-32(a)(3)(ii) of the Treasury Regulations promulgated under the Code (the “Regulations”).
- After the LLC Conversions, each of Sub5, Sub14, Sub15, Sub16, Sub18, Sub22, Sub19, Sub20, Sub24, Sub23, and Sub21 will be a disregarded entity for federal income tax purposes. Parent will not elect to treat any of them as an association taxable as a corporation under section 301.7701-3(a) of the Regulations.
- Parent will timely file an accurate Form 982 with its consolidated federal income tax return for the taxable year in which the Proposed Transactions occur.



- Following the Proposed Transactions, Sub13's remaining assets will consist primarily of Section 1245 property and Section 1250 Property. Sub13 has sufficient basis in these assets to absorb a reduction for any unrecognized gain from the transfer of the Sub16 membership interest to the Purchaser in accordance with Code section 1082(a)(2)(A).
- Following the Proposed Transactions, Sub3's sole remaining asset will be its stock in Sub12. Sub3 has sufficient basis in its Sub12 stock to absorb a reduction for any unrecognized gain from the transfer of the Sub5 membership interest to the Purchaser in accordance with Code section 1082(a)(2)(F).

Recapture under section 1245 or 1250 includes any ordinary income under section 751(a) attributable to section 1245 or 1250 property held by a partnership. In applying the provisions of section 751, the amount of ordinary gain is first determined as if sections 751(a) and 1081 did not apply. Next, the amount of ordinary income is determined under section 751(a). Such ordinary income reduces the gain or creates a loss on the gain otherwise realized. For example, if the amount of gain would have been \$28,000 of capital gain if sections 751(a) and 1081 did not apply, and the amount of ordinary income under section 751(a) is \$30,000, then the \$28,000 capital gain is reduced by \$30,000, creating a capital loss of \$2,000. Any ordinary income realized under section 751 that is attributable to section 1245 or 1250 property held by the partnership is section 1245 or 1250 recapture to the partner. Section 1081 is applied after the application of section 751. To the extent that the partner has basis in other section 1245 or 1250 property after the disposition, the partner can avoid recognition under section 1081 of the section 1245 or 1250 recapture income by reducing the basis of such property under section 1082(a)(2).

## **RULINGS**

Based on the facts and representations as submitted, and provided that (i) the Proposed Transactions as described herein occur pursuant to an order of the SEC; (ii) such order recites that such Proposed Transactions are necessary or appropriate to effectuate the provisions of section 11(b) of the PUHCA; and (iii) the order and the Proposed Transactions will satisfy in all respects the conditions imposed by section 1081(f) of the Internal Revenue Code, we rule as follows:

1. No gain or loss will be recognized by Sub3 or Sub12 on the transfer of the stock of the Non-Sub12 Subsidiaries to Sub12. §1081(d)(1).
2. Sub12's basis in the stock of the Non-Sub12 Subsidiaries acquired from Sub3 will be the same as it would be in the hands of Sub3. §1082(d).
3. Sub3's basis in the stock of Sub12 will be increased by an amount equal to either--(A) Sub3's basis in the stock of the Non-Sub12 Subsidiaries transferred, or (B)

the fair market value of the stock of the Non-Sub12 Subsidiaries transferred, whichever is the lower. §1082(d)(1).

4. No gain or loss will be recognized by Sub1 or Sub5 on the distribution by Sub5 of the stock of Sub17 to Sub1. §1081(d)(1).

5. Sub1's basis in the stock of Sub17 will be the same as it would be in the hands of Sub5. §1082(d). Sub1 must reduce its basis in the stock of Sub5 by an amount equal to Sub5's basis in the stock of Sub17. §1.1502-32(b)(2)(iii).

6. No gain or loss will be recognized by Sub5 or Sub16 on the distribution by Sub16 of its interest in Partnership8 to Sub5. §1081(d)(1).

7. Sub5's basis in the interest in Partnership8 will be the same as it would be in the hands of Sub16. §1082(d). Sub5 must reduce its basis in the stock of Sub16 by an amount equal to Sub16's basis in the interest in Partnership8. §1.1502-32(b)(2)(iii).

8. No gain or loss will be recognized by Sub1 or Sub5 on the distribution by Sub5 of the interests in the Partnership 1-7 Partnerships and Partnership8 to Sub1. §1081(d)(1).

9. Sub1's basis in the interests in the Partnership 1-7 Partnerships and Partnership8 will be the same as it would be in the hands of Sub5. §1082(d). Sub1 must reduce its basis in the stock of Sub5 by an amount equal to Sub5's basis in the interests in the Partnership 1-7 Partnerships and Partnership8. §1.1502-32(b)(2)(iii).

10. No gain or loss will be recognized by Parent or Sub1 on the distribution by Sub1 of the interests in the Partnership 1-7 Partnerships and Partnership8 to Parent. §1081(d)(1).

11. Parent's basis in the interests in the Partnership 1-7 Partnerships and Partnership8 will be the same as it would be in the hands of Sub1. §1082(d). Parent must reduce its basis in the stock of Sub1 by an amount equal to Sub1's basis in the interests in the Partnership 1-7 Partnerships and Partnership8. §1.1502-32(b)(2)(iii).

12. No gain or loss will be recognized by Parent or Sub2 on the transfer of the interests in the Partnership 1-7 Partnerships and Partnership8 to Sub2. §1081(d)(1).

13. Sub2's basis in the interests in the Partnership 1-7 Partnerships and Partnership8 acquired from Parent will be the same as it would be in the hands of Parent. §1082(d).

14. Parent's basis in the stock of Sub2 will be increased by an amount equal to either--(A) Parent's basis in the interests in the Partnership 1-7 Partnerships and

Partnership8 transferred, or (B) the fair market value of the interests in the Partnership 1-7 Partnerships and Partnership8 transferred, whichever is the lower. §1082(d)(1).

15. No gain or loss will be recognized by Sub2 or Sub6 on the transfer of the interests in the Partnership 1-7 Partnerships and Partnership8 to Sub6. §1081(d)(1).

16. Sub6's basis in the interests in the Partnership 1-7 Partnerships and Partnership8 acquired from Sub2 will be the same as it would be in the hands of Sub2. §1082(d).

17. Sub2's basis in the stock of Sub6 will be increased by an amount equal to either--(A) Sub2's basis in the interests in the Partnership 1-7 Partnerships and Partnership8 transferred, or (B) the fair market value of the interests in the Partnership 1-7 Partnerships and Partnership8 transferred, whichever is the lower. §1082(d)(1).

18. No gain or loss will be recognized by Sub24 or Sub22 on the distribution by Sub22 of the Interest3 to Sub24. §1081(d)(1).

19. Sub24's basis in the Interest3 will be the same as it would be in the hands of Sub22. §1082(d). Sub24 must reduce its basis in the stock of Sub22 by an amount equal to Sub22's basis in the Interest3. §1.1502-32(b)(2)(iii).

20. No gain or loss will be recognized by Sub15 or Sub24 on the distribution by Sub24 of the Interest3 to Sub15. §1081(d)(1).

21. Sub15's basis in the Interest3 will be the same as it would be in the hands of Sub24. §1082(d). Sub15 must reduce its basis in the stock of Sub24 by an amount equal to Sub24's basis in the Interest3. §1.1502-32(b)(2)(iii).

22. No gain or loss will be recognized by Sub5 or Sub15 on the distribution by Sub15 of the Interest3 to Sub5. §1081(d)(1).

23. Sub5's basis in the Interest3 will be the same as it would be in the hands of Sub15. §1082(d). Sub5 must reduce its basis in the stock of Sub15 by an amount equal to Sub15's basis in the Interest3. §1.1502-32(b)(2)(iii).

24. No gain or loss will be recognized by Sub5 or Sub16 on the transfer of the Interest3 to Sub16. §1081(d)(1).

25. Sub16's basis in the Interest3 acquired from Sub5 will be the same as it would be in the hands of Sub5. §1082(d).

26. Sub5's basis in Sub16 will be increased by an amount equal to either--(A) Sub5's basis in the Interest3 transferred, or (B) the fair market value of the Interest3 transferred, whichever is the lower. §1082(d)(1).

27. No gain or loss will be recognized by Sub5 or Sub15 on the distribution by Sub15 of the Interest2 to Sub5. §1081(d)(1).

28. Sub5's basis in the Interest2 will be the same as it would be in the hands of Sub15. §1082(d). Sub5 must reduce its basis in the stock of Sub15 by an amount equal to Sub15's basis in the Interest2. §1.1502-32(b)(2)(iii).

29. No gain or loss will be recognized by Sub5 or Sub16 on the transfer of the Interest2 to Sub16. §1081(d)(1).

30. Sub16's basis in the Interest2 acquired from Sub5 will be the same as it would be in the hands of Sub5. §1082(d).

31. Sub5's basis in Sub16 will be increased by an amount equal to either--(A) Sub5's basis in the Interest2 transferred, or (B) the fair market value of the Interest2 transferred, whichever is the lower. §1082(d)(1).

32. No gain or loss will be recognized by Sub5 or Sub13 on the transfer of the stock of Sub16 for the Sub13 Consideration. §1081(d)(1).

33. Sub13's basis in the stock of Sub16 will be the same as it would be in the hands of Sub5. §1082(d).

34. Sub5's basis in the Sub13 Consideration will be the same as it would be in the hands of Sub13. §1082(d).

35. No gain or loss will be recognized by Sub1 or Sub5 on the distribution by Sub5 of the Sub13 Consideration to Sub1. §1081(d)(1).

36. Sub1's basis in the Sub13 Consideration will be the same as it would be in the hands of Sub5. §1082(d). Sub1 must reduce its basis in the stock of Sub5 by an amount equal to Sub5's basis in the Sub13 Consideration. §1.1502-32(b)(2)(iii).

37. No gain or loss will be recognized by Sub1 or Sub3 on the transfer of the stock of Sub5 for the Sub3 Consideration. §1081(d)(1).

38. Sub3's basis in the stock of Sub5 will be the same as it would be in the hands of Sub1. §1082(d).

39. Sub1's basis in the Sub3 Consideration will be the same as it would be in the hands of Sub3. §1082(d).

40. No gain or loss will be recognized by Sub3 or Sub5 on the distribution by Sub5 of the stock of Sub15 to Sub3. §1081(d)(1).

41. Sub3's basis in the stock of Sub15 will be the same as it would be in the hands of Sub5. §1082(d). Sub3 must reduce its basis in the stock of Sub5 by an amount equal to Sub5's basis in the stock of Sub15. §1.1502-32(b)(2)(iii).

42. No gain or loss will be recognized by Sub3, Sub13, the LLCs or Sub5 upon the LLC Conversions.

43. Sub3's and Sub13's basis in any assets deemed received upon the LLC Conversions will be the same as the basis in the hands of the LLCs and Sub5.

44. Except for any gain recognized under section 1245(a)(1) or 1250, no gain will be recognized by Sub13 on the transfer of the Sub16 membership interest to the Purchaser in exchange for cash, provided, and only to the extent that, at the time of the transfer or within 24 months of the transfer, the cash is expended to reduce the Sub13 Note, in accordance with an order of the SEC that satisfies section 1081(b)(2). §1081(b)(1) - (3). Any gain, to the extent that it cannot be applied in reduction of basis under section 1082(a)(2), shall be recognized. §1081(b)(1).

45. Any gain not recognized by Sub13 on the transfer of the Sub16 membership interest to the Purchaser in exchange for cash shall be applied to reduce the basis of the categories of property set forth in section 1082(a)(2) in the hands of Sub13 immediately after the transfer as well as property acquired within 24 months after such transfer by an expenditure or investment to which section 1081(b) relates on account of the acquisition of which gain is not recognized under such subsection, in the order provided under section 1082(a)(2). §1082(a)(2).

46. Any gain recognized by Sub13 under section 1245(a)(1) on the transfer by Sub13 of the Sub16 membership interest to Purchaser will be limited to the amount of unrecognized gain attributable to depreciation on section 1245 property that is applied to reduce Sub13's basis in its remaining property that is not section 1245 property.

47. Any gain recognized by Sub13 under section 1250(a) on the transfer by Sub13 of the Sub16 membership interest to Purchaser will be limited to the amount of unrecognized gain attributable to depreciation on section 1250 property that is applied to reduce Sub13's basis in its remaining property that is not section 1250 property.

48. With respect to the transfer by Sub3 of the Sub5 and Sub15 membership interests or the underlying Non-Equipment Interests to the Purchaser in exchange for cash:

(a) Except as provided in (c) and (d) of this ruling, no gain will be recognized by Sub3 provided, and only to the extent that, at the time of the transfer or within 24 months of the transfer, the cash is expended to reduce the Sub3 Notes, in accordance with an order of the SEC that satisfies section 1081(b)(2).

§1081(b)(1) - (3). Any gain, to the extent that it cannot be applied in reduction of basis under section 1082(a)(2), shall be recognized. §1081(b)(1).

(b) Any gain not recognized by Sub3 shall be applied to reduce the basis of the categories of property set forth in section 1082(a)(2) in the hands of Sub3 immediately after the transfer as well as property acquired within 24 months after such transfer by an expenditure or investment to which section 1081(b) relates on account of the acquisition of which gain is not recognized under such subsection, in the order provided under section 1082(a)(2). §1082(a)(2).

(c) Gain will be recognized by Sub3 under section 1245(a)(1) or 1250 with respect to any ordinary income realized under section 751 that is attributable to section 1245 or 1250 property held by a partnership. The ordinary income realized under section 751 is recognized under section 1245(a) or 1250 notwithstanding section 1081.

(d) Gain will be recognized by Sub3 under section 1250(a) with respect to the disposition of the Interest<sup>4</sup>.

### **PROCEDURAL STATEMENTS**

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

Each taxpayer involved in this transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Thomas I. Russell*

Thomas I. Russell  
Senior Counsel, Branch 5  
(Corporate)

cc: