

Internal Revenue Service

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In Re:

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

February 12, 2014

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

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Dear :

This letter responds to your letter dated August 22, 2013, requesting rulings on certain federal income tax consequences of a series of proposed transactions. Additional information was submitted in letters dated October 28, 2013, December 5, 2013, and January 14, 2014. The material information is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (as defined in the Proposed Transactions below, at Step (viii)): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 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 Distributing or Controlled (see § 355(e)(2)(A)(ii) and § 1.355-7).

Summary of Facts

Distributing, a State A corporation, is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return. Distributing's single outstanding class of stock is common stock (the "Distributing Common Stock"), which is widely held and publicly traded. Based on publicly available information filed with the Securities and Exchange Commission, each of Shareholder A, Shareholder B, and Shareholder C beneficially held five percent or more of the Distributing Common Stock as of Date 1. Unless otherwise stated, each entity described below is a State B entity and is treated as a corporation for federal income tax purposes.

Distributing owns all of the stock or interests in each of Sub 1 through Sub 92, each of which owns one or more Business C Assets and is referred to as a "Business C Company." Subs 1 through 54 and Subs 56 through 92 are State B limited liability companies that have elected under § 301.7701-3 of the Procedure and Administration Regulations to be treated as corporations for federal income tax purposes, and Sub 55 is a State B corporation. Distributing also owns all of the stock of each of Sub 93, Sub 94, and Sub 95, which are State B corporations. Sub 93 owns all of the stock of Sub 96. Sub 94 owns all of the stock of Sub 97. Sub 95 owns all of the stock of Sub 98. Sub 96, Sub 97, and Sub 98 are State B corporations.

Controlled is a State C corporation that was recently formed as part of the Proposed Transactions (described in the following part, below). All of the outstanding common stock of Controlled (the "Controlled Common Stock") will be owned by Distributing at the time of the Distribution. No other class of Controlled stock will be outstanding.

Distributing and the members of its "separate affiliated group," as defined in § 355(b)(3)(B) (the "DSAG"), engage directly in Business A and Business B. Financial information has been submitted indicating that Business A and Business B, as conducted by the DSAG, have had gross receipts and operating expenses representing the conduct of a trade or business for each of the past five years. Controlled and the members of its "separate affiliated group," as defined in § 355(b)(3)(B) (the "CSAG"), will, as a result of the Proposed Transactions, engage directly in Business D, which is part of Business B engaged in by the DSAG. Business D has been acquired in taxable transactions during Period. Financial information has been submitted indicating that Business D has had gross receipts and operating expenses representing the conduct of a trade or business for each of the past five years.

Following the Distribution, Distributing anticipates that there will be one overlapping director between Distributing and Controlled who will serve for a transitional period of no longer than a months. In addition, in connection with the Proposed Transactions, Distributing and Controlled expect to enter into (i) a separation and distribution agreement, (ii) a tax sharing agreement, (iii) an employee matters

agreement, and (iv) an agreement providing for certain customary transitional services (collectively, the “Continuing Agreements”). The Continuing Agreements will include certain provisions that may require Distributing or Controlled to make payments under such agreements regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise with respect to a taxable period ending on or before the date of the Distribution or for a taxable period beginning on or before and ending after the date of the Distribution and (ii) will not become fixed or determinable until after the Distribution (the “Post-Distribution Payments”).

As part of the Proposed Transactions, and following the Distribution, Controlled will declare and distribute a combination of cash and Controlled Common Stock in an amount sufficient to purge all of its earnings and profits accumulated in taxable years prior to its first taxable year as a REIT (the “Purging Distribution”). Each shareholder of Controlled will be permitted to elect to receive the shareholder’s entire entitlement under the Purging Distribution declaration in either money or Controlled Common Stock of equivalent value, subject to a limitation on the amount of money to be distributed in the aggregate to all Controlled shareholders (the “Cash Limitation”). The Cash Limitation will in no event be less than 20 percent of the Purging Distribution declaration (without regard to any cash that may be paid in lieu of fractional shares). If too many shareholders elect to receive money, each such electing shareholder will receive a pro rata amount of money corresponding to the shareholder’s respective entitlement under the Purging Distribution declaration, but in no event will any such electing shareholder receive in money less than 20 percent of the shareholder’s entire entitlement. The calculation of the number of shares to be received by any shareholder will be determined as close as practicable to the payment date of the Purging Distribution, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. It is expected that Controlled’s charter after the Distribution will have ownership limitations and that the stock distributed to a shareholder pursuant to the Purging Distribution will be subject to such ownership limitations.

Proposed Transactions

For what are represented to be valid business purposes, Distributing proposes to effect the Distribution (as defined in Step (viii)). The following steps will be undertaken (collectively, the “Proposed Transactions”) to implement the Distribution:

- (i) Subs 1 through 54, and Subs 56 through 92, will each elect to be treated as an entity that is disregarded as separate from its owner for federal income tax purposes under § 301.7701-3 (collectively, the “Business C Company Liquidations”), and Sub 55 will convert under State B law from a corporation to a limited liability company (the “Business C Company Conversion”). Immediately thereafter, all intercompany obligations

between Sub 1 through Sub 92, on the one hand, and Distributing, on the other hand, will be canceled. No election will be made to treat any of the above limited liability companies as a corporation for federal income tax purposes.

- (ii) Sub 96, Sub 97, and Sub 98 will each convert under State B law from a corporation to a limited liability company (LLC 1, LLC 2, and LLC 3, respectively; and such conversions, collectively, the “Lower-Tier Conversions”). No election will be made to treat any of the resulting limited liability companies as a corporation for federal income tax purposes.
- (iii) Sub 93, Sub 94, and Sub 95 will each convert under State B law from a corporation to a limited liability company (LLC 4, LLC 5, and LLC 6, respectively; and, together with the Lower-Tier Conversions and the Business C Company Conversion, the “Conversions”). No election will be made to treat any of the resulting limited liability companies as a corporation for federal income tax purposes.
- (iv) LLC 6 will distribute all of the outstanding membership interests in LLC 3 to Distributing; LLC 1 will contribute all of its assets used in Business B to newly-formed LLC 7, LLC 1 will distribute all of the outstanding interests in LLC 7 to LLC 4, and LLC 4 will distribute such interests to Distributing; and LLC 2 will contribute all of its assets used in Business B to newly-formed LLC 8, LLC 2 will distribute all of the outstanding interests in LLC 8 to LLC 5, and LLC 5 will distribute such interests to Distributing. LLC 3, LLC 7, and LLC 8 are referred to collectively as the “Business D Companies.”
- (v) Distributing will transfer to Controlled all of the outstanding membership interests in the Business C Companies and the Business D Companies in exchange for Controlled Common Stock, the assumption of certain liabilities of Distributing and a portion of the proceeds from the borrowing described in Step (vii), below (collectively, the “Contribution”).
- (vi) Controlled will form a State A limited liability company (“GP”) and contribute thereto a portion of the Business C Companies and the Business D Companies. Controlled and GP will then form a State A limited partnership (“Partnership”) and contribute thereto the Business C Companies and Business D Companies in exchange for partnership interests and the assumption of certain liabilities associated with Business C. GP and Controlled will hold a b-percent general partner interest and a c-percent limited partner interest, respectively, in

Partnership. To avoid the inconvenience and expense of multiple transfers, Controlled and GP will cause Distributing to transfer directly to Partnership the Business C Companies and the Business D Companies.

- (vii) Partnership and/or one or more of the Business C Companies will borrow up to \$d through a combination of (i) an issuance of new senior unsecured notes to unrelated creditors and (ii) drawing down on a new or existing credit facility, and will distribute at least e% of the total proceeds to Controlled, which will distribute such proceeds to Distributing (such distributed proceeds, the “Proceeds”). Distributing will use the Proceeds to (i) pay up to f regular quarterly dividends, (ii) satisfy third-party bank debt issued independently of the Proposed Transactions, and (iii) pay third-party trade payables that have or will have arisen both in the ordinary course of business and before the distribution of Controlled described in Step (viii). None of the third-party bank debt or the trade payables will have been incurred as a result of or in connection with the Proposed Transactions. Distributing at all times will keep the Proceeds in a segregated account.
- (viii) Distributing will distribute all of the issued and outstanding Controlled Common Stock pro rata to Distributing’s shareholders (the “Distribution”). No fractional shares will be distributed in the Distribution. Any fractional shares of Controlled Common Stock otherwise issuable in the Distribution will be transferred to a distribution agent, aggregated, and sold in the open market on behalf of the Distributing shareholders that would have received such fractional shares. The net proceeds of such sales will be distributed to such shareholders as soon as practicable following the Distribution.
- (ix) Controlled will declare and make the Purging Distribution (described above).
- (x) Following the Distribution, Controlled will elect to be treated as a REIT for its taxable year beginning the day after the Distribution, which is expected to be its year ending Date 2.

As a result of the Proposed Transactions, Distributing will be a separate, publicly-traded company primarily engaged in Business A, and Controlled will be an independent, publicly-traded REIT primarily engaged in Business C and also engaged in Business D. Controlled or one or more of its subsidiaries will lease Business C Assets pursuant to one or more long-term master lease agreements with Distributing or one or more of its subsidiaries (each a “Master Lease”). Under each Master Lease, Business C Assets will be leased on a Type basis. In general, the terms of each Master

Lease are intended to reflect customary, arm's length commercial terms and conditions and payments under such lease will be for fair market value.

It is contemplated that the terms of each Master Lease will include a right-of-first-offer and a landlord-consent provision. Specifically, in the event that Distributing desires to finance the acquisition of any new Business C Asset, Distributing will give Controlled a right-of-first -offer to provide such financing on terms that match, in all material respects, the best bona fide offer received by Distributing. In addition, if Controlled desires to acquire any new Business C Asset or a portfolio of g or fewer Business C Assets within a months of the closing of the Distribution, with certain exceptions, Controlled will give Distributing a right-of-first-offer to either (at Distributing's election) purchase and operate or only operate such new Business C Asset or portfolio of Business C Assets. Also, subject to certain conditions and exceptions, Controlled will have the right to consent to certain major transactions proposed by Distributing, including, but not limited to, acquisitions, dispositions, debt incurrence, distributions, sale of business, and actions affecting Controlled's status as a REIT.

Representations

The Business C Company Liquidations

The following representations have been made regarding each of the Business C Company Liquidations. For purposes of this letter, with respect to each Business C Company Liquidation, "Transferor" shall mean the liquidating corporation.

- (a) Distributing, on the date of adoption of the plan of liquidation, and at all times until the Business C Company Liquidation is effectuated, will be the owner of the sole membership interest in Transferor.
- (b) No membership interest in Transferor will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Transferor.
- (c) All distributions, for federal income tax purposes, from Transferor to Distributing pursuant to the plan of complete liquidation will occur on the effective date of the Business C Company Liquidation.
- (d) As soon as the Business C Company Liquidation is effective, Transferor will cease to be a going concern or conduct any activity as a corporation for federal income tax purposes.

- (e) Transferor will retain no assets for federal income tax purposes following the Business C Company Liquidation.
- (f) No Transferor will have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring (i) more than three years prior to the date of adoption of the plan of liquidation and (ii) in connection with the formation of certain Transferors.
- (g) No assets of Transferor have been, or will be, disposed of by either Transferor or Distributing except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years prior to adoption of the plan of liquidation, and (iii) dispositions occurring as part of the Proposed Transactions.
- (h) Except pursuant to the Proposed Transactions, no Business C Company Liquidation will be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Transferor, if persons holding, directly or indirectly, more than 20 percent in value of Transferor stock (as determined by application of § 318(a) as modified by § 304(c)(3)) also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient.
- (i) Prior to adoption of the liquidation plan, no assets of Transferor will have been distributed in kind, transferred, or sold to Distributing, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to adoption of the liquidation plan.
- (j) Transferor will report all earned income represented by assets that will be distributed to Distributing for federal income tax purposes, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (k) The fair market value of the assets of Transferor will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the effectuation of the Business C Company Liquidation.
- (l) There is no intercorporate debt existing between Distributing and any Transferor and none has been cancelled, forgiven, or discounted, except for (i) Debt 1, and (ii) transactions that occurred more than three years

prior to the date of adoption of the liquidation plan.

- (m) Distributing is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

The Conversions

The following representations have been made regarding each of the Conversions. For purposes of this letter, with respect to each Conversion, (i) “Transferor” shall mean the liquidating corporation, and (ii) “Transferee” shall mean the corporation receiving the liquidating distribution.

- (n) Transferee, on the date of adoption of the plan of liquidation, and at all times until the Conversion is effectuated, will be the owner of all of the issued and outstanding stock of Transferor.
- (o) No shares of Transferor stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation of Transferor.
- (p) All distributions, for federal income tax purposes, from Transferor to Transferee pursuant to the plan of complete liquidation will occur on the effective date of the Conversion.
- (q) As soon as the Conversion is effective, Transferor will cease to be a going concern or conduct any activity as a corporation for federal income tax purposes.
- (r) Transferor will retain no assets for federal income tax purposes following the Conversion.
- (s) No Transferor will have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring (i) more than three years prior to the date of adoption of the plan of liquidation, (ii) in connection with the formation of certain Transferors, and (iii) as a result of the Proposed Transactions.
- (t) No assets of any Transferor have been, or will be, disposed of by either the Transferor or the applicable Transferee, except for (i) dispositions in the ordinary course of business, (ii) dispositions occurring more than three years prior to adoption of the plan of liquidation, (iii) the assignment of Sub 98 voting stock on Date 3 to Sub 95 (the “Assignment”), and (iv) dispositions occurring as part of the Proposed Transactions.

- (u) Except pursuant to the Proposed Transactions, the Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (Recipient) of any of the businesses or assets of Transferor, if persons holding, directly or indirectly, more than 20 percent in value of Transferor stock (as determined by application of § 318(a) as modified by § 304(c)(3)) also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient.
- (v) Prior to adoption of the liquidation plan, no assets of any Transferor will have been distributed in kind, transferred, or sold to the applicable Transferee, except for (i) transactions occurring in the normal course of business, (ii) transactions occurring more than three years prior to adoption of the liquidation plan, and (iii) the Assignment.
- (w) Transferor will report all earned income represented by assets that will be distributed to Transferee for federal income tax purposes, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (x) The fair market value of the assets of Transferor will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the effectuation of the Conversion.
- (y) There is no intercorporate debt existing between any Transferee and the applicable Transferor 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, except (i) for transactions that occurred more than three years prior to the date of adoption of the liquidation plan, (ii) Debt 2, (iii) Debt 3, (iv) Debt 4, and (v) Debt 5.
- (z) Transferee is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.

The Contribution and the Distribution

The following representations have been made regarding the Contribution and the Distribution.

- (aa) Any indebtedness owed by Controlled to Distributing (or any of its affiliates) after the Distribution will not constitute stock or securities.

- (bb) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (cc) The five years of financial information submitted on behalf of the DSAG is representative of the present operation of Business A and Business B, and with regard to Business A and Business B there have been no substantial operational changes since the date of the last financial statements submitted.
- (dd) The five years of financial information submitted on behalf of the DSAG is representative of the present operation of Business D, and with regard to Business D there have been no substantial operational changes since the date of the last financial statements submitted.
- (ee) The DSAG neither acquired Business A or Business B nor acquired control of an entity conducting Business A or Business B during the five-year period ending 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.
- (ff) Following the Distribution, other than as provided in the Continuing Agreements, the DSAG and CSAG will each continue the active conduct of its respective business independently and with its separate employees.
- (gg) The Distribution will be carried out for the following corporate business purposes: (i) to increase the potential geographic scope of Business C, (ii) to expand the assets classes acquired in connection with Business C, (iii) to diversify the tenant base of Business C, (iv) to reduce the legal and regulatory risks associated with Business A and Business C, (v) to broaden the range of potential non-acquisition transactions engaged in by Business C, (vi) to enhance management focus on Business D, and (vii) to make the equity of Distributing and Controlled more attractive acquisition and compensation currency. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (hh) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (ii) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled Common Stock is solely for the purpose of avoiding the expense and inconvenience to Controlled of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the shareholders of

Distributing will not exceed one percent of the total consideration that will be distributed in the Distribution. It is also intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled Common Stock.

- (jj) The total adjusted basis and fair market value of the assets transferred to Controlled by Distributing in the Contribution will exceed the sum of (i) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 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 § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.
- (kk) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled in connection with the Contribution.
- (ll) Other than trade payables between Distributing and its affiliates and Controlled and its affiliates (i) incurred in the ordinary course of business or (ii) created pursuant to the Continuing Agreements, no intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.
- (mm) Payments made in connection with continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions intended to reflect agreements between parties bargaining at arm's length.
- (nn) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14, as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13, as published by T.D. 8597). Further, Distributing's excess loss account, if any, with respect to the Controlled Common Stock will be included in income immediately before the Distribution (see § 1.1502-19).

- (oo) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (pp) Immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing Common Stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing Common Stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (qq) Immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled Common Stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled Common Stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing Common Stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (rr) The Distribution is not part of a plan or series of related transactions (within the meaning of § 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 § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (ss) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Distribution, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (tt) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Distribution.
- (uu) The distribution of Controlled stock to Distributing's shareholders in the Distribution is with respect to their ownership of Distributing stock.

- (vv) Any money, property, or stock contributed by Distributing to Controlled in the Contribution will be exchanged solely for Controlled common stock, the assumption of certain liabilities of Distributing, and the Proceeds.
- (ww) The distribution of cash to Controlled's shareholders in the Purging Distribution is with respect to their ownership of Controlled stock.
- (xx) All of the stock of Distributing has been traded on an established securities market in the United States for the past five years.
- (yy) To the best of the knowledge of Distributing, (i) Shareholder A through Shareholder I are the only shareholders of Distributing that held more than five percent of the stock of Distributing at any time during the past five years (collectively, the Five-Percent Shareholders), (ii) each Five-Percent Shareholder is a United States person within the meaning of § 7701(a)(30) (a "U.S. Person"), and (iii) none of the Five-Percent Shareholders is a partnership or trust having partners or beneficiaries, respectively, who are not U.S. Persons.

Rulings

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled stock to Distributing's shareholders in the Distribution is with respect to their ownership of Distributing stock, (ii) any money, property, or stock contributed by Distributing to Controlled in the Contribution will be exchanged solely for Controlled common stock, the assumption of certain liabilities of Distributing, and the Proceeds, and (iii) any other transfer of stock, money, or property between Distributing, Controlled, or any Distributing shareholder and any person related to Distributing, Controlled, or any Distributing shareholder including the Business C Company Liquidations, the Conversions and the Purging Distribution is respected as a separate transaction, we rule as follows regarding the Proposed Transactions:

The Business C Company Liquidations

- (1) Each Business C Company Liquidation will be treated as a distribution by the Transferor in liquidation under § 332 (§ 332(b) and 1.332-2(d)).
- (2) No gain or loss will be recognized by Distributing on the deemed receipt of the assets and liabilities of the Transferor pursuant to the Business C Company Liquidation (§ 332(a)).
- (3) No gain or loss will be recognized by the Transferor on the deemed

distribution of its assets and liabilities to Distributing in the Business C Company Liquidation (§ 337(a) and § 1.332-7).

- (4) The basis in each asset of the Transferor deemed received by Distributing pursuant to a Business C Company Liquidation will be the same as the basis of that asset in the hands of the Transferor immediately before the Business C Company Liquidation (§ 334(b)(1)).
- (5) The holding period of each asset of the Transferor deemed received by Distributing in the Business C Company Liquidation will include the period during which that asset was held by the Transferor (§ 1223(2)).
- (6) Distributing will succeed to and take into account as of the close of the effective date of the Business C Company Liquidation the items of the Transferor described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).
- (7) Except to the extent that the Transferor's earnings and profits are reflected in Distributing's earnings and profits, Distributing will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of the Transferor as of the date of the Business C Company Liquidation (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1 and 1.1502-33(a)(2). Any deficit in the earnings and profits of the Transferor will be used only to offset earnings and profits accumulated after the date of the Business C Company Liquidation (§ 381(c)(2)(B)).
- (8) The excess loss account, if any, of Distributing with respect to the stock of the Transferor will not be recognized as a result of the Business C Company Liquidation (§ 1.1502-19(b)(2)).
- (9) Distributing will not realize income under § 61(a)(12) or § 1.301-1(m) with respect to the extinguishment of intercompany debt, if any, in the Business C Company Liquidation (see Rev. Rul. 74-54, 1974-1 C.B. 76).

The Conversions

- (10) Each Conversion will be treated as a distribution by the Transferor in complete liquidation under § 332.
- (11) No gain or loss will be recognized by the Transferee on the deemed receipt of the Transferor's assets and liabilities pursuant to the Conversion (§ 332(a)).

- (12) No gain or loss will be recognized by the Transferor on the deemed distribution of its assets and liabilities to the Transferee in the Conversion (§ 337(a) and § 1.332-7).
- (13) The basis of each asset of the Transferor deemed received by the Transferee pursuant to the Conversion will be the same as the basis of that asset in the hands of Transferor immediately before the Conversion (§ 334(b)(1)).
- (14) The holding period of each asset of the Transferor deemed received by the Transferee pursuant to the Conversion will include the period during which the Transferor held such asset (§ 1223(2)).
- (15) The transferee will succeed to and take into account as of the close of the effective date of the Conversion the items of the Transferor described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder (§ 381(a) and § 1.381(a)-1).
- (16) Except to the extent the Transferor's earnings and profits are reflected in the Transferee's earnings and profits, the Transferee will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of the Transferor as of the date of the Conversion (§ 381(c)(2)(A) and §§ 1.381(c)(2)-1 and 1.1502-33(a)(2). Any deficit in the earnings and profits of the Transferor will be used only to offset earnings and profits accumulated after the date of the Conversion (§ 381(c)(2)(B)).
- (17) The excess loss account, if any, of the Transferee with respect to the stock of the Transferor will not be recognized as a result of the Conversion (§ 1.1502-19(b)(2)).
- (18) The Transferee will not realize income under § 61(a)(12) or § 1.301-1(m) with respect to the extinguishment of intercompany debt, if any, in the Conversion (Rev. Rul. 74-54, 1974-1 C.B. 76).

The Contribution and the Distribution

- (19) The Contribution and the Distribution, taken together, will qualify as a reorganization described in § 368(a)(1)(D). Each of Distributing and Controlled will be a "party to the reorganization" within the meaning of § 368(b).
- (20) Provided that the proceeds of the Borrowing are used in the manner described in Step (vii) above, no gain or loss will be recognized by Distributing on its actual or constructive receipt of the Controlled stock and

the proceeds of the Borrowing in the Contribution (§§ 357(a) and 361(a), (b)).

- (21) No gain or loss will be recognized by Controlled in the Contribution (§ 1032(a)).
- (22) Controlled's basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- (23) Controlled's holding period in each asset received in the Contribution will include the period during which Distributing held the asset (§ 1223(2)).
- (24) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)).
- (25) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing upon receipt of the Controlled Common Stock in the Distribution (§ 355(a)).
- (26) Each Distributing shareholder's basis in a share of Distributing Common Stock (as adjusted under § 1.358-1) will be allocated between the share of Distributing Common Stock with respect to which the Distribution is made and the Controlled Common Stock (or allocable portions thereof) received in the Distribution with respect to the share of Distributing Common Stock in proportion to their fair market values in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).
- (27) Each Distributing shareholder's holding period in the Controlled Common Stock received will include the holding period of the Distributing Common Stock with respect to which the distribution of the Controlled Common Stock is made, provided that the Distributing Common Stock is held as a capital asset on the date of the Distribution (§ 1223(1)).
- (28) Earnings and profits (if any) will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e).
- (29) A Distributing shareholder that receives cash in lieu of a fractional share of Controlled Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a

capital asset on the date of the Distribution (§§ 1221 and 1222).

- (30) Except for purposes of § 355(g), any Post-Distribution Payments made by Distributing or any of its affiliates to Controlled or any of its affiliates, or vice versa, that (i) have arisen or will arise with respect to a taxable period ending on or before the date of the Distribution or for a taxable period beginning on or before and ending after the date of the Distribution and (ii) will not have become fixed and ascertainable until after the Distribution will be treated as occurring immediately before the Distribution. See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

The Purging Distribution

- (31) Any and all of the cash and stock distributed by Controlled to its shareholders as part of the Purging Distribution will be treated as a distribution of property with respect to its stock to which § 301 and § 305(b) apply, and as a dividend for purposes of § 301(c)(1) to the extent of Controlled's current and accumulated earnings and profits.
- (32) The amount of any distribution of stock received by any shareholder of Controlled as part of the Purging Distribution will be considered to equal the amount of money which could have been received instead (§ 1.305-1(b)(2)).
- (33) The distribution of cash and stock by Controlled to its shareholders (determined at the election of each shareholder, subject to a limitation on the aggregate amount of cash distributed) to effect a purge of all its earnings and profits accumulated in years prior to its first taxable year as a REIT will be treated as a dividend for purposes of § 857(a)(2).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and 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, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Distribution is used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both (see §§ 355(a)(1)(B) and 1.355-2(d));

(iii) Whether the Distribution 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 either Distributing or Controlled under § 355(e)(2)(A)(ii);

(iv) Whether Controlled otherwise qualifies as a REIT under part II of Subchapter M of Chapter 1 of the Code; and

(v) The federal income tax consequences of the Continuing Agreements and any other continuing transactions between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled).

In addition, Distributing has represented that it is a U.S. real property holding corporation. Under § 897(e) and § 1.897-6T(a)(1), gain is recognized if there is an exchange of stock that is a U.S. real property interest for stock that is not a U.S. real property interest. See § 1.897-6T(a)(4). No opinion is expressed in regard to the application of § 897(e) or the regulations thereunder to the receipt of any of the stock of Controlled pursuant to § 355.

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.

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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Mark J. Weiss
Reviewing Attorney, Branch 6
Office of Associate Chief Counsel (Corporate)