

**Internal Revenue Service**

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CC:CORP:B06

PLR-127348-11

Date:

September 28, 2012

Legend

Distributing 2 =

Distributing 1 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

LLC 8 =

LLC 9 =

LLC 10 =

LLC 11 =

LLC 12 =

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5

LLC 13 =

LLC 14 =

LLC 15 =

LLC 16 =

LLC 17 =

LLC 18 =

LLC 19 =

LLC 20 =

LLC 21 =

LLC 22 =

LLC 23 =

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6

LLC 24 =

LLC 25 =

UPREIT LLC =

Partnership 1 =

Partnership 2 =

Partnership 3 =

UPREIT LP =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Business A =

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7

Business B =

Business C =

Business D =

Competitors =

Licenses =

Taxes =

Expenses =

Type 0 =

Facilities =

Type A Facilities =

Facility 1 =

Facility 2 =

Facility 3 =

Facility 4 =

Facility 5 =

Facility 6 =

Facility 7 =

Facility 8 =

Facility 9 =

Facility 10 =

Facility 11 =

Facility 12 =

Facility 13 =

Position 1 =

Position 2 =

Type C =

Activity =

Structure 1 =

Structure 2 =

Structure 3 =

Specials =

Returns =

Services =



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9

Type 1 Assets =

Type 2 Assets =

Escalation =

Other Adjustments =

Debt 1 =

Debt 2 =

Debt 3 =

Debt 4 =

Debt 5 =

Debt 6 =

Debt 7 =

Debt 8 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

Subsidiary Stock =

Transition Services =

Date 1 =

Date 2 =

Year 1 =

Acquisition  
Transactions =

Disposition  
Transactions =

Changes =

Dear :

This letter responds to your June 28, 2011 letter requesting rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The material information submitted in that request and in later correspondence 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 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.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Internal Distribution or External Distribution (each defined below): (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 1, Distributing 2, or Controlled or any or all of them (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 1, Distributing 2, or Controlled (see § 355(e)(2)(A)(ii) and § 1.355-7).

#### **SUMMARY OF FACTS**

Distributing 2 is the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the "Distributing 2 Group"). The authorized and outstanding capital stock of Distributing 2 consists of one class of common stock that is publicly traded and widely held ("Distributing 2 Common Stock") and one class of preferred stock ("Distributing 2 Preferred Stock"). Based upon publicly available securities information, as of Date 1, Shareholder A, Shareholder B, and Shareholder C were five percent shareholders of Distributing 2 Common Stock and as of Date 2, Shareholder D and Shareholder E were five percent shareholders of Distributing 2 Preferred Stock.

Distributing 2 wholly owns Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and LLC 1, which is treated as an entity that is disregarded as separate from its owner for U.S. federal income tax purposes under § 301.7701-3 (a “disregarded entity”), and also owns all of the voting interests in Sub 8. An unrelated individual (“Individual Third Party”) owns all of the non-voting interests in Sub 8, and a third-party bank (the “Bank”) holds a Sub 8 warrant. Sub 3 wholly owns Distributing 1, Sub 9, and owns an a% interest in an operating subsidiary the remaining interest of which is owned by a third party. Distributing 1 wholly owns Sub 10, Sub 11, Sub 12, Sub 13, and various other operating subsidiaries. Sub 4 wholly owns Sub 14 and Sub 15. Sub 15 owns a b% interest in Partnership 1, which is treated as a partnership for federal income tax purposes, the remaining interests in which are held by third parties. Sub 5 wholly owns Sub 16, Sub 17, Sub 18, Sub 19, Sub 20, and various other operating subsidiaries. Sub 16 owns a c% interest in Partnership 2, which is treated as a partnership for federal income tax purposes, the remaining interests in which are owned d% by Distributing 2 and e% by Sub 5. Sub 17 owns a c% interest in Partnership 3, which is treated as a partnership for federal income tax purposes, the remaining interests in which are owned d% by Distributing 2 and e% by Sub 5. Sub 7 wholly owns Sub 21, Sub 22, Sub 23, LLC 2, and LLC 3, as well as various other operating subsidiaries and disregarded entities. Each of LLC 2 and LLC 3 is treated as a disregarded entity for federal income tax purposes. Each of Sub 22, Sub 8, and LLC 3 owns various disregarded entities.

Controlled will be formed by Distributing 1 in connection with the Proposed Transaction. Controlled will be authorized to issue common stock (the “Controlled Common Stock”) and preferred stock.

Distributing 2 and the members of its “separate affiliated group” as defined in § 355(b)(3)(B) (the “Distributing 2 SAG”) directly engage in Business A (through Sub 9), which is part of Business B engaged in by the Distributing 2 Group. Distributing 1 and the members of its “separate affiliated group” as defined in § 355(b)(3)(B) (the “Distributing 1 SAG”) will, as a result of the Proposed Transaction, directly engage in Business A (through Sub 9), which is part of Business B engaged in by the Distributing 2 Group. Controlled and the members of its “separate affiliated group” as defined in § 355(b)(3)(B) (the “Controlled SAG”) will, as a result of the Proposed Transaction, directly engage in Business C (through Sub 10), which is part of Business B engaged in by the Distributing 2 Group.

Financial information has been submitted indicating that each of Business A and Business C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Distributing 2 Group directly or indirectly owns or expects to own prior to effecting the Proposed Transaction, the following Type A Facilities: (i) Facility 3, (ii) Facility 4, (iii) Facility 5, (iv) Facility 6, (v) Facility 7, (vi) Facility 8, (vii) Facility 9, (viii)

Facility 10, and (ix) Facility 11. Each Type A Facility consists of a Structure 1 (or multiple Structures 1 welded, bolted, or pinned together) that serve as a Structure 2 upon which a Structure 3 (or Structures 3) is constructed to serve as a Facility or related facility. Once each Structure 1 that is intended to serve as a Structure 2 is transported to the final facility site, concrete is typically poured across the top of the Structure 1 (or Structures 1) to create a level Structure 2 for the Structure 3 (or Structures 3) of the Facility or related facility. Once the Structure 3 is constructed on the Structure 1 (or Structures 1), the entire Facility or the related facility resembles a Type 0 Structure 3 from the outside and inside. Construction of the Structure 3 (or Structures 3) on each Type A Facility was subject to local Type 0 Structure 3 codes and performed under the direction of a licensed contractor. Each remains subject to local Structure 3 and fire codes, is classified as real property for insurance purposes, and is connected to Type 0 utilities, e.g., power, water, sewer, and telephone. None were intended to be moved after the Structures 1 were finally positioned and construction was commenced on the Structures 3.

Following the External Distribution, Distributing 2 anticipates that there will be f overlapping directors between Distributing 2 and Controlled, and g of the overlapping directors will serve as Position 1 and Position 2. In addition, in connection with the Proposed Transaction, Distributing 2 (and/or its affiliates) and Controlled 2 (and/or its affiliates) will enter into certain agreements and arrangements including (i) a separation and distribution agreement, (ii) a tax sharing agreement, (iii) an employee matters agreement, (iv) a transition services agreement to provide for certain Transition Services for a limited period after the External Distribution, (v) an agreement relating to intellectual property (which may be a separate agreement or part of the separation and distribution agreement), and (vi) certain other agreements and arrangements as appropriate (collectively, the "Transaction Agreements").

As part of the Proposed Transaction, Controlled will declare and distribute an all cash distribution or a distribution consisting of a combination of cash and Controlled Common Stock at the election of each Controlled shareholder as discussed below, in an amount sufficient to purge all of its E&P accumulated in taxable years prior to its first taxable year as a REIT (the "Purging Distribution").

If the Purging Distribution is not an all cash 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 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% 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% of the shareholder's entire entitlement. The calculation of the number of shares to be received by any shareholder will be determined, over a period of up to two weeks ending 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.

### **PROPOSED TRANSACTION**

For what are represented to be valid business purposes, Distributing 2 proposes to effect the External Distribution (defined in step (xxxvii)). The following steps have been proposed (collectively, the "Proposed Transaction") to implement the External Distribution:

- (i) Sub 3 will convert to a limited liability company ("LLC") or merge with and into a newly formed, wholly owned LLC of Distributing 2 ("LLC 4") that is a disregarded entity (the "Sub 3 Liquidation"). LLC 4 will distribute to Distributing 2 a portion of accounts receivable respectively owed by Sub 4, Sub 5, and Sub 6.
- (ii) Distributing 2 will contribute its partnership interests in Partnership 2 and Partnership 3 (the "LP Interests") to LLC 4, which in turn will contribute the LP Interests to Distributing 1.
- (iii) Sub 12 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Distributing 1 ("LLC 5") that is a disregarded entity (the "Sub 12 Liquidation").
- (iv) Sub 1 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Distributing 2 ("LLC 6") that is a disregarded entity (the "Sub 1 Liquidation").
- (v) Sub 2 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Distributing 2 ("LLC 7") that is a disregarded entity (the "Sub 2 Liquidation").
- (vi) In disregarded transactions, all disregarded entities owned by Sub 22 will merge with and into Sub 22. Sub 22 will then convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 7 ("LLC 8") that is a disregarded entity (the "Sub 22 Liquidation"). Following the Sub 22 Liquidation, LLC 8 will distribute all Type 2 Assets to Sub 7.
- (vii) Sub 7 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Distributing 2 ("LLC 9") that is a disregarded entity (the "Sub 7 Liquidation").

- (viii) Sub 16 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 5 (“LLC 10”) that is a disregarded entity (the “Sub 16 Liquidation”).
- (ix) Sub 17 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 5 (“LLC 11”) that is a disregarded entity (the “Sub 17 Liquidation”).
- (x) Sub 18 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 5 (“LLC 12”) that is a disregarded entity (the “Sub 18 Liquidation”).
- (xi) Sub 19 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 5 (“LLC 13”) that is a disregarded entity (the “Sub 19 Liquidation”).
- (xii) Sub 20 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 5 (“LLC 14”) that is a disregarded entity (the “Sub 20 Liquidation” and, together with the Sub 16 Liquidation, the Sub 17 Liquidation, the Sub 18 Liquidation, and the Sub 19 Liquidation, the “Sub 5 Subsidiary Liquidations”).
- (xiii) Sub 14 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 4 (“LLC 15”) that is a disregarded entity (the “Sub 14 Liquidation”).
- (xiv) Sub 15 will convert to an LLC or merge with and into a newly formed, wholly owned LLC of Sub 4 (“LLC 16”) that is a disregarded entity (the “Sub 15 Liquidation,” and together with the Sub 14 Liquidation, the “Sub 4 Subsidiary Liquidations”).
- (xv) Distributing 2 will contribute a portion of accounts receivable (owed by each respective recipient to Distributing 2 as a result of Step (i)) to each of Sub 4, Sub 5, and Sub 6 without taking back any shares of stock of each respective recipient (the “First Receivables Contribution”). After this Step (xv) with respect to each of Sub 4, Sub 5, and Sub 6, the fair market value of assets will exceed liabilities.
- (xvi) Sub 5 will contribute the accounts receivable (owed by each respective recipient to Sub 5) to each of Partnership 2 and Partnership 3.
- (xvii) The following mergers will be effectuated:



- a. Sub 5 will merge with and into a newly formed, wholly owned LLC of Distributing 1 that is a disregarded entity (“LLC 17”) in constructive exchange for Distributing 1 stock (the “Sub 5 Cross Chain Merger”). As a result, each of Partnership 2 and Partnership 3 will dissolve.
  - b. Sub 6 will merge with and into a newly formed, wholly owned LLC of Distributing 1 that is a disregarded entity (“LLC 18”) in constructive exchange for Distributing 1 stock (the “Sub 6 Cross Chain Merger”).
  - c. Sub 9 will merge with and into a newly formed, wholly owned LLC of Distributing 1 that is a disregarded entity (“LLC 19”) in constructive exchange for Distributing 1 stock (the “Sub 9 Cross Chain Merger”).
  - d. Sub 4 will merge with and into a newly formed LLC of Distributing 1 that is a disregarded entity (“LLC 20”) in constructive exchange for Distributing 1 stock (the “Sub 4 Cross Chain Merger,” and together with the Sub 5 Cross Chain Merger, Sub 6 Cross Chain Merger, and Sub 9 Cross Chain Merger, the “Cross Chain Mergers”).
- (xviii) Each of LLC 10, LLC 11, LLC 12, LLC 13, and LLC 14 will distribute Type 1 Assets to LLC 17. Each of LLC 15 and LLC 16 will distribute Type 1 Assets to LLC 20. Each of LLC 5, LLC 17, LLC 18, LLC 19, and LLC 20 will distribute Type 1 Assets to Distributing 1.
- (xix) Distributing 1 will form Controlled and contribute to Controlled certain assets (including all of the stock of Sub 10 and assets distributed to Distributing 1 in Step (xviii)) in actual or constructive exchange for Controlled Common Stock and cash (the “Loan 1 Proceeds”) that Controlled will borrow from an unrelated syndicate prior to or simultaneously with the contribution of assets (the “First Contribution”). Distributing 1 will hold the Loan 1 Proceeds in a segregated Distributing 1 account pending the distribution of the special dividend. Distributing 1 will declare a special dividend and distribute the Loan 1 Proceeds to LLC 4, which in turn will distribute such proceeds to Distributing 2, which will hold the Loan 1 Proceeds in a segregated Distributing 2 account.
- (xx) Distributing 2 will settle for cash its intercompany obligation to Sub 11.
- (xxi) Sub 11 will transfer all Type 2 Assets to a newly formed, wholly owned LLC of Sub 23 (“LLC 21”) that is a disregarded entity (the “Sub 11 Sale”) in exchange for the assumption by LLC 21 of the liabilities associated with the transferred assets.
- (xxii) Distributing 2 will contribute to LLC 4 all intercompany receivables owed by Sub 13 to Distributing 2, and LLC 4 will contribute such receivables to Distributing 1, which will contribute such receivables to the capital of Sub 13 without taking back

any additional membership interests of Sub 13 (the “Sub 13 Receivables Contribution”). As a result, the fair market value of the assets of Sub 13 will exceed liabilities of Sub 13.

- (xxiii) Sub 13 will merge with and into a newly formed, wholly owned LLC of Controlled that is a disregarded entity (“LLC 22”) in constructive exchange for shares of Controlled Common Stock (the “Sub 13 Merger”).
- (xxiv) Distributing 1 will contribute to the capital of Sub 11 all open account intercompany receivables owed by Sub 11 to Distributing 1 without taking back any shares of Sub 11 stock (the “Sub 11 Receivables Contribution,” and together with the First Receivables Contribution and the Sub 13 Receivables Contribution, the “Receivables Contribution”). As a result, the fair market value of the assets of Sub 11 will exceed liabilities of Sub 11.
- (xxv) Sub 11 will merge with and into a newly formed, wholly owned LLC of Controlled that is a disregarded entity (“LLC 23”) in constructive exchange for shares of Controlled Common Stock (the “Sub 11 Merger,” together with the Sub 13 Merger, the “Controlled Mergers,” and together with the Cross Chain Mergers, the “Mergers”). Following the Sub 11 Merger, Distributing 1 will contribute a note owed by Sub 11 to the capital of Controlled, which in turn will contribute such note to LLC 23.
- (xxvi) Distributing 1 will distribute all of the stock of Controlled to LLC 4, which in turn will distribute all of the stock of Controlled to Distributing 2 (the “Internal Distribution”).
- (xxvii) Each of LLC 6, LLC 7, and LLC 1 will distribute Type 1 Assets to Distributing 2.
- (xxviii) In disregarded transactions, all disregarded entities owned by Sub 8 will merge with and into Sub 8. Sub 8 will merge with and into a newly formed, wholly owned LLC of Distributing 2 that is treated as a disregarded entity (“LLC 24”) (the “Sub 8 Liquidation,” and together with the Sub 4 Subsidiary Liquidations, the Sub 5 Subsidiary Liquidations, the Sub 3 Liquidation, Sub 12 Liquidation, Sub 1 Liquidation, Sub 2 Liquidation, and the Sub 7 Liquidation are collectively referred to as the “Liquidations,” and each individually, a “Liquidation”). In connection with the Sub 8 Liquidation any nonvoting membership interests of Sub 8 held by Individual Third Party will be redeemed solely in exchange for cash, and any warrant of Sub 8 held by the Bank is expected to be converted into a warrant for an interest in LLC 24 pursuant to the terms of the warrant. Following the Sub 8 Liquidation, in a disregarded transaction LLC 24 will distribute all Type 1 Assets to Distributing 2.

- (xxix) In disregarded transactions all disregarded entities of LLC 3 will merge with and into LLC 3.
- (xxx) In disregarded transactions, LLC 2 will distribute all Type 1 Assets to LLC 9, which in turn will distribute to Distributing 2 all Type 1 Assets (including all of the stock of Sub 21 and the membership interests of LLC 3, and LLC 8).
- (xxxii) In a disregarded transaction, Distributing 2 will contribute to LLC 3 all accounts receivable owed by LLC 3.
- (xxxiii) Distributing 2 will contribute to Controlled (i) all Type 1 Assets (including all of the stock of Sub 21 and the membership interests of LLC 3 and LLC 8) and (ii) all intercompany receivables owed by each of Sub 10 and Sub 21 to Distributing 2 in actual or constructive exchange for shares of Controlled Common Stock and cash (the "Loan 2 Proceeds") that Controlled will borrow from an unrelated syndicate prior to or simultaneously with the contribution of assets (the "Second Contribution"). Distributing 2 will hold the Loan 2 Proceeds in a Distributing 2 segregated account. Distributing 2 will use the Loan 1 and Loan 2 Proceeds to repay external debt (which repayments could include payments of premium, interest and associated fees (such as consent fees), as well as principal).
- (xxxiv) To establish an "UPREIT" structure, Controlled will form a new limited partnership that is initially treated as a disregarded entity ("UPREIT LP"), of which Controlled will be the general partner and a new, wholly owned LLC that is treated as a disregarded entity ("UPREIT LLC") will be a limited partner. Controlled will contribute assets received in the First Contribution, the Controlled Mergers, and the Second Contribution to UPREIT LP.
- (xxxv) Any intercompany obligations (not otherwise settled or resolved in other steps) that would result in obligations between the Distributing 2 Group and the Controlled Group immediately following the External Distribution will be settled.
- (xxxvi) Distributing 2 will redeem for cash a portion of the outstanding Distributing 2 Preferred Stock (including a portion of the Distributing 2 Preferred Stock held by Shareholder D). Additional steps may be taken to ensure that Controlled does not own directly, indirectly, or constructively 10% or more of Distributing 2 stock by vote or value following the External Distribution within the meaning of § 856(d)(2)(B), including potential sales or other dispositions of Distributing 2 stock by Shareholder C and Shareholder D. (Certain aspects of this Step (xxxvi) may occur earlier or later in the sequence of steps, but the redemption of a portion of the Distributing 2 Preferred Stock will in all events occur prior to the External Distribution.)

- (xxxvi) UPREIT LP will contribute all of the stock of the Sub 24 Transferred Entities to Sub 24 in exchange for all of the stock of Sub 24.
- (xxxvii) Distributing 2 will (i) distribute shares of Controlled Common Stock to Shareholder C in exchange for Distributing 2 Common Stock (the “Shareholder C Exchange”) and (ii) distribute the remaining shares of Controlled Common Stock pro rata to all other Distributing 2 shareholders (including to Shareholder F with respect to Distributing 2 Preferred Stock) (the “Share Distribution,” and together with the Shareholder C Exchange, the “External Distribution”). The exchange ratio for the Shareholder C Exchange will be determined closer to the time of the External Distribution. Immediately before the External Distribution the shares of Controlled Common Stock may be recapitalized into the appropriate number of shares in order to facilitate the External Distribution.
- (xxxviii) Immediately after the External Distribution, Distributing 2 and UPREIT LP will enter into the Master Lease pursuant to which UPREIT LP will lease to Distributing 2 the Leased Assets transferred to Controlled, and further transferred to UPREIT LP, in connection with the Proposed Transaction. Prior to entering into the Master Lease, Distributing 2 will contribute LLC 1, LLC 4, LLC 6, LLC 7, LLC 9, and LLC 24 to a newly created special purpose entity that will be treated as a disregarded entity (“LLC 25”).
- (xxxix) Controlled will make the Purging Distribution by declaring and distributing cash or a combination of Controlled stock and cash (with the stock portion not to exceed 80% of the fair market value of such distributions) in an amount sufficient to purge all of its E&P accumulated in taxable years prior to its first taxable year as a REIT.
- (xl) On its first federal income tax return Controlled will elect to become a REIT for the first taxable year ending after the date of the External Distribution (the “REIT Election”) and Controlled, together with Sub 24, will jointly elect to have Sub 24 treated as a “taxable REIT subsidiary” within the meaning of § 856(l) effective on the first day of the first taxable year of Controlled as a REIT.

As a result of the Proposed Transaction, Distributing 2 will be a separate, publicly-traded operator and manager of Facilities that primarily engages in Business B, and Controlled will be a separate, publicly-traded, self-administered, self-managed REIT that primarily engages in Business D by leasing Facilities pursuant to Type C arrangements. Following the Proposed Transaction, Distributing 2 (or its subsidiaries) will own under local law (including relevant regulations related to Business B) the Licenses and the movable furniture, fixtures, and equipment necessary to operate and manage the Facilities, except for Facility 1 and Facility 2 (including, the associated Licenses and movable furniture, fixtures, and equipment necessary to operate and manage Facility 1 and Facility 2) which are owned and operated by Sub 10 and Sub 21

(collectively the “Sub 24 Transferred Entities”) whose stock was transferred to Controlled in the First Contribution and the Second Contribution.

Following the External Distribution, under a leasing agreement (the “Master Lease”) UPREIT LP, as landlord, will generally lease to Distributing 2 (or a subsidiary that is treated as a disregarded entity), as tenant, the Type 1 Assets (excluding the assets owned by the Sub 24 Transferred Entities) (the “Leased Assets”). In addition, certain development facilities will be added to the portfolio of Leased Assets under the Master Lease upon completion. The Master Lease will be a long-term Type C arrangement in which Distributing 2 will make payments to UPREIT LP, as landlord, in respect of the Leased Assets. Under the Master Lease, Distributing 2 (or a subsidiary that is treated as a disregarded entity) will pay UPREIT LP (as defined below) an amount consisting of (i) a fixed annual base amount (the “Base Rent”), subject to the Escalation and Other Adjustments, and (ii) an amount based on the “Net Revenues” (as defined below) from the applicable leased Facility or related facility (the “Percentage Rent”).

Base Rent will be a fixed amount for the entire term of the Master Lease, subject to the Escalation and Other Adjustments. Base Rent will be established at the time the Master Lease is executed based on two components. Subject to the Escalation and Other Adjustments, the first component of Base Rent will be calculated based on the estimated replacement cost of the leased Facility or related facility, the accumulated depreciation since the last major refurbishment of the leased Facility, and a specified percentage yield. The second component of Base Rent will be calculated with reference to the projected “Net Revenues” (as defined below) from the applicable Facility or related facility for Year 1 (the “Year 1 Projected Net Revenues”) and will equal the product of  $h\%$  (or  $i\%$  in the case of Facility 12 and Facility 13) of  $j\%$  of the Year 1 Projected Net Revenues for the applicable Facility or related facility.

For the Leased Assets other than Facility 12 and Facility 13, subject to certain exceptions pursuant to the Master Lease, Percentage Rent will be fixed for  $k$ -year periods during the term of the Master Lease and based on a percentage fixed at the time the Master Lease is executed. For years  $l$  through  $m$ , Percentage Rent for such Leased Assets will be a fixed amount equal to the product of (a)  $h\%$  and (b)  $j\%$  of the Year 1 Projected Net Revenues for the applicable Facility or related facility. The Percentage Rent for such Leased Assets will be reset every  $n$  years to a fixed amount for the next  $n$ -year period equal to the product of (a)  $h\%$  and (b) the excess (if any) of (i) the average annual “Net Revenues” (as defined below) from the applicable Facility or related facility for the trailing  $n$ -year period over (ii)  $j\%$  of the Year 1 Project Revenues (the “Percentage Rent Allowance”) for such facility.

For Facility 12 and Facility 13, Percentage Rent will vary monthly and will be calculated based on actual monthly “Net Revenues” (as defined below) for the applicable Facility and a percentage fixed at the time the Master Lease is executed.

More specifically, the monthly Percentage Rent for Facility 12 and Facility 13 will equal the product of (a)  $i\%$  and (b) the excess (if any) of (i) the actual "Net Revenues" (as defined below) from the applicable Facility for the applicable month over (ii)  $1/12$  of the Percentage Rent Allowance for the facility.

For these purposes, "Net Revenues" means, without duplication, (i) the amount received by Distributing 2 (and its subsidiaries and sublessees) from patrons at the applicable Facility for Activity, less refunds, Specials, and less Returns (the "Activity Revenues"); plus (ii) gross receipts of Distributing 2 (and its subsidiaries and sublessees), for all goods and merchandise sold, the charges for all services performed, or any other revenues generated by Distributing 2 (and its subsidiaries and sublessees) in, at, or from the Leased Assets for cash, credit, or otherwise (without reserve or deduction for uncollected amounts), but excluding any Activity Revenues (the "Retail Sales"); less (iii) the retail value of Services at the applicable Facility (the "Promotional Allowance"), in each case subject to certain adjustments with respect to certain subtenants. Net Revenues will be calculated on an accrual basis for these purposes, as required under applicable generally accepted accounting principles. The Taxes and Expenses (such as salaries, income taxes, employment taxes, supplies, equipment, cost of goods and inventory, rent, office overhead, marketing and advertising, and other general administrative costs) will not be deducted in arriving at Net Revenues.

## **REPRESENTATIONS**

### The First Contribution and Internal Distribution

The following representations have been made regarding the First Contribution and the Internal Distribution:

- (a) Any indebtedness owed by Controlled to Distributing 1 after the Internal Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 1 in the Internal Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing 1 SAG), represents the present operations of the business, and regarding the business other than the Changes, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Business C (as conducted by the Controlled SAG), represents the present operations of the business, and regarding the business other than the Changes, there have been

no substantial operational changes since the date of the last financial statements submitted.

- (e) Following the Internal Distribution, the Distributing 1 SAG will continue the active conduct of Business A independently and with its separate employees, and will continue to use independent contractors consistent with past practice.
- (f) Neither Business A conducted by the Distributing 1 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. The Distributing 1 SAG will have been the principal owner of the goodwill and significant assets of Business A throughout the 5-year period ending on the date of the Sub 9 Cross Chain Merger. Following the Sub 9 Cross Chain Merger, the Distributing 1 SAG will be the principal owner of the goodwill and significant assets of Business A.
- (g) Following the Internal Distribution, the Controlled SAG will continue the active conduct of Business C independently and with its separate employees, and will continue to use independent contractors consistent with past practice.
- (h) Neither Business C conducted by the Controlled SAG (following the First Contribution) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. The Distributing 1 SAG will have been the principal owner of the goodwill and significant assets of Business C throughout the 5-year period ending on the date of the Internal Distribution. Following the Internal Distribution, the Controlled SAG will be the principal owner of the goodwill and significant assets of Business C.
- (i) The Internal Distribution will be carried out to facilitate the External Distribution.
- (j) The Internal Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.
- (k) The total fair market value of the assets transferred to Controlled by Distributing 1 in the First 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 (if any) 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 § 361(a) without the recognition of gain) received by Distributing 1 in connection

with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the First Contribution.

- (l) The total adjusted bases of the assets transferred to Controlled by Distributing 1 will equal or exceed the liabilities (if any) assumed (as determined under § 357(d)) by Controlled.
- (m) The liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in the First Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled in connection with the First Contribution.
- (n) Other than any trade payables between Distributing 1 and its affiliates and Controlled and its affiliates arising in the ordinary course of business from continuing transactions, no intercorporate debt will exist between Distributing 1 and Controlled at the time of, or subsequent to, the Internal Distribution.
- (o) 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 §§ 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).
- (p) Other than with respect to Transition Services, payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled, will be intended to be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (q) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (r) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 1 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 Internal Distribution.
- (s) For purposes of § 355(d), immediately after the Internal Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 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 Internal Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were 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 Internal Distribution.
- (t) The Internal 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of either corporation).
- (u) Immediately after the transaction (as defined in § 355(g)(4)), (i) any person that holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (v) There is no regulatory, legal, contractual, or economic compulsion or requirement that the LP Contribution and Sub 13 Receivables Contribution be made as a condition of the Internal Distribution, although such contributions facilitate nonrecognition treatment for various steps of the Proposed Transaction. For purposes of the preceding sentence, the fact that the LP Contribution and the Sub 13 Receivables Contribution may be made pursuant to provisions in the separation and distribution agreement shall not be considered contractual compulsion.

#### The Second Contribution and External Distribution

- (w) Any indebtedness owed by Controlled to Distributing 2 after the External Distribution will not constitute stock or securities.
- (x) The fair market value of the Controlled stock and other consideration to be received by Shareholder C will be approximately equal to the fair market value of the Distributing 2 stock surrendered by Shareholder C in the Shareholder C Exchange.
- (y) No part of the consideration to be distributed by Distributing 2 in the External Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2, except for, potentially, restricted shares of Controlled stock received by certain Distributing 2 employees with respect to restricted shares of Distributing 2 stock.

- (z) The five years of financial information submitted on behalf of Business A (as conducted by the Distributing 2 SAG), represents the present operations of the business, and regarding the business, other than the Changes there have been no substantial operational changes since the date of the last financial statements submitted.
- (aa) The five years of financial information submitted on behalf of Business C (as conducted by the Controlled SAG), represents the present operations of the business, and regarding the business, other than the Changes there have been no substantial operational changes since the date of the last financial statements submitted.
- (bb) Following the External Distribution, the Distributing 2 SAG will continue the active conduct of Business A independently and with its separate employees, and will continue to use independent contractors consistent with past practice.
- (cc) Neither Business A conducted by the Distributing 2 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Distributing 2 will have been the principal owner of the goodwill and significant assets of Business A throughout the 5-year period ending on the date of the External Distribution. Following the External Distribution, the Distributing 2 SAG will continue to be the principal owner of the goodwill and significant assets of Business A.
- (dd) Following the External Distribution, the Controlled SAG will continue the active conduct of Business C independently and with its separate employees, and will continue to use independent contractors consistent with past practice.
- (ee) Neither Business C conducted by the Controlled SAG (following the Second Contribution) nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. The Distributing 2 SAG will have been the principal owner of the goodwill and significant assets of Business C throughout the 5-year period ending on the date of the External Distribution. Following the External Distribution, the Controlled SAG will be the principal owner of the goodwill and significant assets of Business C.
- (ff) The External Distribution is being carried out to facilitate strategic expansion opportunities for Business D by providing Controlled the ability to (i) pursue transactions with Competitors that would not pursue transactions with Distributing 2, (ii) diversify into different businesses in which Distributing 2, as a

practical matter, could not diversify, (iii) pursue certain transactions that Distributing 2 otherwise would be disadvantaged by or precluded from pursuing due to regulatory constraints, and (iv) fund acquisitions with its equity on significantly more favorable terms than those that would be available to Distributing 2. The External Distribution is motivated in whole or substantial part by one or more of the corporate business purposes.

- (gg) The External Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.
- (hh) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 2 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 External Distribution.
- (ii) For purposes of § 355(d), no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled 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 External Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were 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 External Distribution.
- (jj) The External 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% or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of either corporation).
- (kk) The fair market value of the assets transferred to Controlled by Distributing 2 in the Second 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 (if any) owed to Controlled by Distributing 2 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 2 in connection

- with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Second Contribution.
- (ll) The total adjusted bases of the assets transferred to Controlled by Distributing 2 will equal or exceed the liabilities (if any) assumed (as determined under § 357(d)) by Controlled.
  - (mm) The liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in the Second Contribution were incurred in the ordinary course of business and are associated with the assets transferred to Controlled in connection with the Second Contribution.
  - (nn) Other than any trade payables between Distributing 2 and its affiliates and Controlled and its affiliates arising in the ordinary course of business from continuing transactions, no intercorporate debt will exist between Distributing 2 and Controlled at the time of, or subsequent to, the External Distribution.
  - (oo) 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 §§ 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).
  - (pp) Other than with respect to certain payments made pursuant to the Transaction Agreements, including payments for Transition Services, payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled, will be intended to be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
  - (qq) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
  - (rr) Immediately after the transaction (as defined in § 355(g)(4)), (i) any person that holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
  - (ss) Distributing 2 has no current plan or intention for third party investors to invest in UPREIT LP in connection with the Proposed Transaction.

- (tt) Distributing 2 has not engaged in any discussions or negotiations with any third party investors regarding an investment in UPREIT LP in connection with the Proposed Transaction.
- (uu) Controlled will be an United States real property holding corporation (“USRPHC”) (as defined in § 897(c)(2)) immediately after the External Distribution.
- (vv) Controlled will elect to be taxed, and intends to qualify, as a REIT for the taxable year including the Purging Distribution.

### The Liquidations

The following representations have been made regarding each of the Liquidations. For purposes of this letter, with respect to each of the Liquidations, “Subsidiary” shall mean the liquidating corporation, and “Parent” shall mean the corporation receiving the liquidating distribution. With respect to any Subsidiary that converts to an LLC or merges with and into a disregarded entity of Parent, the following representations are made by taking into account such resulting entity’s disregarded status.

- (ww) Parent, on the date of the adoption of the plan of liquidation, and at all times until the final liquidating distribution is completed, will own at least 80% of the single outstanding class of Subsidiary stock (other than with respect to the Sub 8 Liquidation), and with respect to the Sub 8 Liquidation will own at least 80% of the value and voting power of Subsidiary Stock outstanding.
- (xx) No shares of Subsidiary stock will have been redeemed during the three years preceding the adoption of the plan of complete liquidation by Subsidiary.
- (yy) All distributions from Subsidiary to Parent pursuant to the plan of complete liquidation will be made within a single taxable year of Subsidiary.
- (zz) The liquidation of Subsidiary will be effectuated by means of a conversion of Subsidiary into an LLC that will be disregarded as separate from Parent for federal income tax purposes or a state law merger of Subsidiary into a limited liability company disregarded as separate from Parent for U.S federal income tax purposes. Accordingly, all liquidating distributions will occur at the effective time of the conversion or merger and, at the time of the first liquidating distribution, Subsidiary will cease to be a going concern and will conduct no further activities.
- (aaa) Subsidiary will retain no assets following the final liquidating distribution.

- (bbb) Subsidiary will not have acquired assets in any nontaxable transaction at any time, except for (i) cash contributions in the ordinary course of business that would have occurred without regard to the Proposed Transaction (with respect to all of the Liquidations), (ii) acquisitions pursuant to the Proposed Transaction, (iii) acquisitions occurring more than three years prior to the date of adoption of the plan of liquidation, and (iv) the Acquisition Transactions.
- (ccc) No assets of Subsidiary have been or will be disposed of by either Subsidiary or Parent, 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) dispositions as part of the Proposed Transaction, and (iv) the Disposition Transactions.
- (ddd) Except with respect to transactions comprising steps of the Proposed Transaction and transfers in the ordinary course of business, the liquidation of Subsidiary 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 Subsidiary, if persons holding, directly or indirectly, more than 20% in value of the Subsidiary stock also hold, directly or indirectly, more than 20% in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3).
- (eee) Prior to adoption of the liquidation plan, no assets of Subsidiary will have been distributed in kind, transferred, or sold to Parent, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than 3 years prior to adoption of the liquidation plan.
- (fff) Subsidiary will report all earned income represented by assets that will be distributed to Parent, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (ggg) The fair market value of the assets of Subsidiary will exceed its liabilities both at the date of the adoption of the plan of complete liquidation and immediately prior to the time the first liquidating distribution is made.
- (hhh) Except for (i) Debt 1 (with respect to the Sub 2 Liquidation), (ii) Debt 2 (with respect to the Sub 3 Liquidation), (iii) Debt 3 (with respect to the Sub 7 Liquidation), (iv) Debt 4 (with respect to the Sub 8 Liquidation), (v) Debt 5 (with respect to the Sub 12 Liquidation), (vi) Debt 6 (with respect to the Sub 18 Liquidation), (vii) Debt 7 (with respect to the Sub 19 Liquidation), and (viii) Debt 8 (with respect to the Sub 20 Liquidation), there is no intercorporate debt existing between Parent and Subsidiary, and to the best knowledge of Distributing 2 none has been cancelled forgiven or discounted, except for

- transactions that occurred more than three years prior to the date of adoption of the plan of liquidation.
- (iii) Parent is not an organization that is exempt from federal income tax under § 501 or any other provision of the Code.
  - (jjj) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Liquidation have been fully disclosed.
  - (kkk) With respect to the Sub 8 Liquidation, the fair market value of the consideration received by Parent and by the minority shareholder, if any, for each share of Subsidiary Stock will approximately equal the fair market value of that stock.
  - (III) With respect to the Sub 8 Liquidation, none of the assets being distributed by Subsidiary to the minority shareholder, if any, (i) has a fair market value greater than its basis in the hands of Subsidiary, (ii) is an installment obligation, (iii) is property described in the recapture provisions of the Code, or (iv) is property for which Subsidiary obtained a deduction.

#### The Mergers

The following representations have been made regarding the Mergers. For purposes of this letter, with respect to each Merger, “Target” shall mean the corporation merging out of existence, “Shareholder” shall mean a shareholder of Target, and “Acquiring” shall mean the corporation into which Target merges.

- (mmm) In the Merger, the following will occur simultaneously as a result of state law: (i) all of the assets and liabilities of Target at the effective time of the Merger will become the assets and liabilities of Acquiring, and (ii) the separate legal existence of Target will cease to exist for all purposes.
- (nnn) Continuity of proprietary interest in Target will be preserved (within the meaning of § 1.368-1(e)).
- (ooo) The Merger is being effectuated for the purpose of facilitating the realization of the corporate business purposes of the External Distribution.
- (ppp) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the transaction, except for (i) dispositions made in the ordinary course of business, (ii) transfers described in § 368(a)(2)(C) or § 1.368-2(k), or (iii) the transactions that comprise the Proposed Transaction.

- (qqq) The liabilities of Target assumed by Acquiring (within the meaning of § 357(d)) were incurred by Target in the ordinary course of its business and are associated with the assets to be transferred.
- (rrr) Acquiring will continue the historic business of Target or use a significant portion of Target's historic business assets in a business as described in the Proposed Transaction.
- (sss) Acquiring and Target will pay their respective expenses, if any, incurred in connection with the Merger.
- (ttt) There is no intercorporate indebtedness existing between Target and Acquiring that was issued, acquired, or will be settled at a discount.
- (uuu) No two parties to the Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (vvv) The total fair market value of the assets to be transferred to Acquiring by Target will exceed the sum of the liabilities of Target to be assumed by Acquiring (within the meaning of § 357(d)). The fair market value of the assets of Acquiring will exceed the amount of its liabilities immediately after the Merger plus the amount of liabilities, if any, to which the transferred assets are subject.
- (www) Target is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

#### Other Representations

- (xxx) Distributing 2 has no current plan to move any of the Type A Facilities.
- (yyy) Each Type A Facility was designed and constructed to remain permanently in place.
- (zzz) The terms of the Master Lease are intended to reflect customary, arm's-length commercial terms and conditions, and payments by Distributing 2 (and/or its subsidiaries) to UPREIT LP pursuant to the Master Lease will be for fair market value.

### **RULINGS**

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Proposed Transaction:



The First Contribution and Internal Distribution

- (1) The First Contribution and the Internal Distribution, taken together, will qualify as a reorganization described in § 368(a)(1)(D). Each of Distributing 1 and Controlled will be a “party to the reorganization” within the meaning of § 368(b).
- (2) Provided that the Loan 1 Proceeds are used in the manner described above, no gain or loss will be recognized by Distributing 1 on its actual or constructive receipt of the Controlled stock and the Loan 1 Proceeds in the First Contribution (§§ 357(a) and 361(a), (b)).
- (3) No gain or loss will be recognized by Controlled in the First Contribution (§ 1032(a)).
- (4) Controlled’s basis in each asset received in the First Contribution will be the same as the basis of that asset in the hands of Distributing 1 immediately before its transfer (§ 362(b)).
- (5) Controlled’s holding period in each asset received in the First Contribution will include the period during which Distributing 1 held the asset (§ 1223(2)).
- (6) No gain or loss will be recognized by Distributing 1 on the Internal Distribution (§ 361(c)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 upon receipt of the Controlled stock in the Internal Distribution (§ 355(a)).
- (8) Distributing 2’s basis in a share of Distributing 1 common stock (as adjusted under § 1.358-1) will be allocated between the share of Distributing 1 common stock with respect to which the Internal Distribution is made and the share of Controlled stock (or allocable portions thereof) received with respect to the share of Distributing 1 common stock in proportion to their fair market values in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).
- (9) Distributing 2’s holding period in the Controlled stock received will include the holding period of the Distributing 1 common stock with respect to which the distribution of the Controlled stock is made, provided that the Distributing 1 common stock is held as a capital asset on the date of the Internal Distribution (§ 1223(1)).
- (10) Earnings and profits (if any) will be allocated between Distributing 1 and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).

The Second Contribution and External Distribution

- (11) The Second Contribution and the External Distribution, taken together, will qualify as a reorganization described in § 368(a)(1)(D). Each of Distributing 2 and Controlled will be a “party to the reorganization” within the meaning of § 368(b).
- (12) Provided that the Loan 2 Proceeds are used in the manner described above, no gain or loss will be recognized by Distributing 2 on its actual or constructive receipt of the Controlled stock and the Loan 2 Proceeds in the Second Contribution (§§ 357(a) and 361(a), (b)).
- (13) No gain or loss will be recognized by Controlled in the Second Contribution (§ 1032(a)).
- (14) Controlled’s basis in each asset received in the Second Contribution will be the same as the basis of that asset in the hands of Distributing 2 immediately before its transfer (§ 362(b)).
- (15) Controlled’s holding period in each asset received in the Second Contribution will include the period during which Distributing 2 held the asset (§ 1223(2)).
- (16) No gain or loss will be recognized by Distributing 2 on the External Distribution (§ 361(c)).
- (17) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the shareholders of Distributing 2 upon receipt of the Controlled stock in the External Distribution (§ 355(a)).
- (18) Each Distributing 2 shareholder’s basis in a share of Distributing 2 Common Stock (as adjusted under § 1.358-1) will be allocated between the share of Distributing 2 Common Stock or Distributing 2 Preferred Stock with respect to which the Share Distribution is made and the share of Controlled stock (or allocable portions thereof) received with respect to the share of Distributing 2 Common Stock in proportion to their fair market values in accordance with § 1.358-2(a)(2) (§ 358(a), (b), and (c)).
- (19) The basis of the shares of Controlled stock received by Shareholder C in the Shareholder C Exchange (including any fractional share interest in Controlled Common Stock to which Shareholder C may be entitled) will be the same as Shareholder C’s basis in the Distributing 2 stock surrendered in exchange therefor, allocated in the manner described in § 1.358-2(a)(2) (§ 358(a)(1)).

- (20) Each Distributing 2 shareholder's holding period in the Controlled stock received will include the holding period of the Distributing 2 Common Stock or Distributing 2 Preferred Stock with respect to which the distribution of the Controlled stock is made, provided that the Controlled stock is held as a capital asset on the date of the External Distribution (§ 1223(1)).
- (21) Earnings and profits (if any) will be allocated between Distributing 2 and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e).
- (22) A Distributing 2 shareholder that receives cash in lieu of a fractional share of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in Ruling (18) with respect to the Share Distribution or in Ruling (19) with respect to the Shareholder C Exchange, 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 External Distribution (§§ 1221 and 1222).
- (23) Neither Sub 24 nor any of its subsidiaries will be a successor to Distributing 2 for purposes of § 1504(a)(3); therefore any subsidiary of Distributing 2 that is transferred by Controlled to Sub 24 that is an "includible corporation" (under § 1504(b)) and satisfies the ownership requirements of § 1504(a)(2) will be a member of an affiliated group of corporations and entitled to file a consolidated federal income tax return with Sub 24 as the common parent.
- (24) 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 External Distribution or for a taxable period beginning on or before and ending after the date of the External Distribution and (ii) will not have become fixed and ascertainable until after the External Distribution will be treated as occurring immediately before the External Distribution. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

#### The Liquidations

- (25) The Liquidation will qualify as a complete liquidation under § 332 (§§ 332(b) and 1.332-2(d)).
- (26) No gain or loss will be recognized by Parent on its receipt of Subsidiary's assets and the assumption of Subsidiary's liabilities (§ 332(a)).

- (27) No gain or loss will be recognized by Subsidiary on the distribution of its assets to, and the assumption of its liabilities by, Parent (§§ 336(d)(3) and 337(a)).
- (28) Parent's basis in each asset received from Subsidiary in the Liquidation will be the same as the basis of that asset in the hands of Subsidiary immediately before the Liquidation (§ 334(b)(1)).
- (29) Parent's holding period in each asset received from Subsidiary in the Liquidation will include the period during which that asset was held by Subsidiary (§ 1223(2)).
- (30) Parent will succeed to and take into account as of the close of the effective date of the Liquidation the items of Subsidiary 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).
- (31) The excess loss account, if any, of Parent with respect to the stock of Subsidiary will not be recognized as a result of the Liquidation (§ 1.1502-19(b)(2)).

#### The Receivables Contribution

- (32) Each Contributing Parent will increase its basis (or reduce its excess loss account) in its shares of the relevant Recipient Subsidiary by an amount equal to the adjusted basis of the relevant Contributed Debt (§§ 108(e)(6) and 1016(a)(1); § 1.1502-19(d)(1)). For purposes of this letter, with respect to the Receivables Contribution, "Contributed Debt" means the intercompany receivables contributed in the relevant Receivables Contribution, "Contributing Parent" means the parent corporation contributing the Contributed Debt in the relevant Receivables Contribution, and "Recipient Subsidiary" means the respective debtor corporation to which the Contributed Debt is transferred.

#### The Mergers

- (33) Each of the Mergers will qualify as a reorganization within the meaning of § 368(a)(1)(A), and Target and Acquiring will each be "a party to a reorganization" under § 368(b).
- (34) No Target will recognize gain or loss on any of the Mergers (§§ 357(a) and 361(a)).
- (35) Acquiring will recognize no gain or loss on its receipt of the assets of Target in constructive exchange for Acquiring stock (§ 1032(a)).

- (36) Acquiring's basis in each asset received in each of the Mergers will equal the basis of the asset in the hands of each Target immediately prior to the Mergers (§ 362(b)).
- (37) Acquiring's holding period in each asset received in each of the Mergers will include the period during which such asset was held by Target (§ 1223(2)).
- (38) Acquiring will succeed to and take into account as of the close of the effective date of each of the Mergers the attributes of each Target 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).
- (39) No gain or loss will be recognized by any Shareholder on any of the Mergers (§ 354(a)(1)).
- (40) The basis of the Acquiring stock constructively received by a Shareholder in each of the Mergers will (i) be the same as the Shareholder's basis in the Target stock surrendered in the exchange and (ii) will be adjusted for any allocation to eliminate and equalize an excess loss account (§ 358(a)(1) and § 1.1502-19(d)).
- (41) Each Shareholder's holding period in the Acquiring stock constructively received will include the holding period of the Target stock exchanged therefor, provided the Target stock is held as a capital asset on the date of such Merger (§ 1223).
- (42) The excess loss account, if any, of any Shareholder with respect to its interest in the stock of Target will not be recognized as a result of the Mergers. § 1.1502-19(b)(2).

#### Other Rulings

- (43) Sub 11 will realize loss under § 1001 upon the Sub 11 Sale to the extent that the adjusted bases of the assets sold by Sub 11 exceed their fair market value.
- (44) The loss realized by Sub 11 upon the Sub 11 Sale will be taken into account upon the External Distribution (§§ 1.1502-13; 1.267(f)-1).
- (45) Sub 23 will take a cost basis under § 1012 in the assets purchased from Sub 11.
- (46) Each of the Type A Facilities will constitute "real property" for purposes of § 856(c)(2)(C) and 856(c)(3)(A) and a "real estate asset" for purposes of § 856(c)(4)(A) and 856(c)(5)(B).
- (47) UPREIT LP's receipt of Percentage Rent payments under the Master Lease and the specified adjustments to amounts payable under the Master Lease pursuant to the Escalation and the Other Adjustments will not cause any amounts received

under the Master Lease to be treated as other than “rents from real property” under § 856(c)(2)(C) and 856(c)(3)(A).

- (48) 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) and 857(a)(2) to the extent of Controlled’s current and accumulated earnings and profits.
- (49) Any and all of the cash and stock distributed by Controlled to its shareholders as part of the Purging Distribution treated as a dividend will first reduce Controlled’s earnings and profits accumulated in any “non-REIT year” pursuant to § 857(d)(3).
- (50) 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 the money which could have been received instead (§ 1.305-1(b)(2)).

### **CAVEATS**

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. We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effect resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether either the Internal Distribution or the External Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether either the Internal Distribution or the External Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether either the Internal Distribution or the External Distribution is part of a plan (or series of related transactions) 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;
- (v) Whether the Purging Distribution constitutes a preferential dividend under § 562(c); and
- (vi) Distributing has not represented that it has not been a USRPHC at any time during the five-year period ending on the date of the External Distribution, or that

no foreign person will hold greater than five percent of the stock of Distributing on the date of the External Distribution. Therefore, no opinion is expressed regarding the federal tax consequences to any greater than five percent foreign shareholder under section 897 as a result of the External Distribution.

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.

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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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,

*Richard K. Passales*

Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)