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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

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Date:

June 10, 2014

Legend

Distributing 3 =

Distributing 2 =

Distributing1/Controlled2 =

LLC1 =

LLC2 =

LLC3 =

LLC4 =

Controlled 1 =

Controlled 3 =

Business 1 =

Business 2 =

Business 3 =

Business 4 =

State A =

X =

Project =

Shareholder A =

Shareholder B =

Shareholder C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

Dear _____ :

This letter responds to your representative's August 21, 2013 letter requesting rulings on certain federal income tax consequences of the proposed transaction. The material information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the facts, representations, and other information 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 Distributions and External Distribution (both defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code ("Code") and § 1.355-2(d)); or (iii) are part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see § 355(e) and § 1.355-7).

FACTS

Distributing 3 is a publicly traded corporation that has elected to be classified as a real estate investment trust (a "REIT") within the meaning of § 856(a). Distributing 3 wholly owns LLC1, which is disregarded as an entity separate from Distributing 3 for federal income tax purposes (a "disregarded entity"). Distributing 3, through LLC1 and certain LLC1 disregarded subsidiaries (some of which are treated as qualified REIT subsidiaries by the taxpayer), owns all the outstanding stock of Distributing 2. Distributing 2 is the common parent of an affiliated group of corporations that file a consolidated federal income tax return. Distributing 2 wholly owns Distributing1/Controlled2, formerly a limited liability company that had elected to be treated as a corporation for federal income tax purposes, and effective as of Date 4, pursuant to a conversion under State A law, a corporation.

Distributing 3 has outstanding one class of common stock and no preferred stock. As of Date 1, Distributing 3 has shares of common stock outstanding.

The Distributing 3 group is primarily engaged in four businesses, Business 1, Business 2, Business 3, and Business 4. Distributing 3, through its disregarded entities and subsidiary REITs, operates Business 1, which is REIT-qualifying. Disregarded entities of Distributing1/Controlled2 operate the other three businesses, which are non-REIT qualifying. Specifically, Business 2 is conducted primarily through LLC2, Business 3 is conducted primarily through LLC3, and Business 4 is conducted primarily through LLC4. Financial information has been submitted indicating that each of Business 2 and Business 3 has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Prior to Date 2, Distributing 2 conducted the operations of Business 2 and Business 3. On Date 2, Distributing 2 transferred all its operating assets, including Business 2 and Business 3, to Distributing1/Controlled2, in exchange for the deemed issuance to it of Distributing1/Controlled2's membership interests and Distributing1/Controlled2's assumption of related liabilities. Historically, Business 3 included the production of X. However, since the completion of Project on or about Date 3, Business 3 has substantially exited the business of producing X.

PROPOSED TRANSACTION

For what are represented as valid business reasons, the taxpayer proposes the following transactions (the "Proposed Transaction"):

- (1) Distributing1/Controlled2 will borrow \$b from third-party lenders (the "External OpCo Debt").
- (2) Distributing1/Controlled2 will transfer all the proceeds of the External OpCo Debt to Distributing 2 in repayment of intercompany debt, if any, and will transfer the remainder to Distributing 2 as a distribution. The amount of cash distributed with respect to the stock of Distributing1/Controlled2 will not exceed Distributing 2's basis in the stock of Distributing1/Controlled2.
- (3) Distributing1/Controlled2 will transfer all its assets, except for the interests in LLC3 and certain related entities, to a newly formed corporation ("Controlled 1") in exchange for all of Controlled 1's stock (the "First Contribution"). Controlled 1 will assume certain liabilities associated with the contributed assets. All or a portion of the assumed liabilities will be deductible or capitalized into the basis of assets by Controlled 1 under its normal method of accounting following the Proposed Transaction (the "Distributing1/Controlled2 Deductible Liabilities").
- (4) Distributing1/Controlled2 will distribute all of its Controlled 1 shares to Distributing 2 (the "First Internal Distribution").

- (5) Distributing 2 will distribute all of the shares of Distributing1/Controlled2, indirectly through disregarded entities and qualified REIT subsidiaries, to Distributing 3 (the "Second Internal Distribution," together with the First Internal Distribution, the "Internal Distributions").
- (6) Following the Second Internal Distribution, Distributing 3 will transfer all of the shares of Distributing1/Controlled2 to a newly formed corporation ("Controlled 3") in exchange for \$c (the "Section 361(b) Proceeds") and all of Controlled 3's stock (the "Second Contribution"). Controlled 3 will fund the Section 361(b) Proceeds with a loan from third-party lenders (the "Controlled 3 Debt"). The Section 361(b) Proceeds, \$c, will be in excess of Distributing 3's basis in its Controlled 3 stock. Moreover, in connection with the Second Contribution, Controlled 3 will assume certain liabilities associated with the contributed assets. All of the liabilities assumed by Controlled 3 will be deductible or capitalized into the basis of assets by Controlled 3 under its method of accounting following the Proposed Transaction (the "Distributing 3 Deductible Liabilities").
- (7) Distributing 3 will distribute all of its Controlled 3 stock, pro rata, to its shareholders (the "External Distribution").
- (8) Distributing 3 will use all of the Section 361(b) Proceeds to repurchase outstanding Distributing 3 stock and to pay quarterly or special dividends to its shareholders. The repurchase and distribution will be completed within d months after the External Distribution.

Following the Proposed Transaction, Distributing 3 and Controlled 3 will operate as two independent companies. Immediately after the Proposed Transaction, it is anticipated that the board of directors of Distributing 3 and Controlled 3 will have no common directors. The current Chairman, President, and CEO of Distributing 3 will become the Chairman, President, and CEO of Controlled 3.

In connection with the Proposed Transaction, Distributing 3 and Controlled 3 may enter into certain agreements and arrangements, including a separation and distribution agreement, a transition services agreement (the "Transition Services Agreement"), tax matters agreement, and an intellectual property agreement (the "IP Agreement") (collectively, the "Continuing Arrangements").

The Transition Services Agreement will not last more than d months, and the services will be provided at cost. The IP Agreement will be world-wide, fully paid-up, royalty free, and perpetual. Among other things, the agreement will provide Controlled 3 with a license to use and display certain specified Distributing 3 trademarks. Moreover, Distributing 3 and Controlled 3 will receive a license to use certain intellectual property of the other.

Due to the Proposed Transaction, certain Controlled 3 employees, officers, and directors may own awards granted by Distributing 3. Moreover, because of the conversion of certain outstanding Distributing 3 share based awards, some Distributing 3 employees, officers, and directors will own awards granted by Controlled 3. In particular, each Distributing 3 stock option will be converted into an adjusted Distributing 3 stock option and a Controlled 3 stock option, with each having a vesting period of up to three years. Additionally, holders of Distributing 3 restricted stock will retain those awards, and will also receive restricted stock of Controlled 3, with each having a vesting period of up to three years.

REPRESENTATIONS

The taxpayer has made the following representations in connection with the Proposed Transaction:

First Contribution and First Internal Distribution

- (1a) No part of the consideration to be distributed by Distributing1/Controlled2 will be received by a shareholder of Distributing1/Controlled2 as a creditor or an employee or in any capacity other than that of a shareholder of Distributing1/Controlled2. In addition, the distribution of Controlled 1 stock to Distributing 2 in the First Internal Distribution is with respect to Distributing 2's ownership of Distributing1/Controlled2 stock.
- (1b) Distributing1/Controlled2 will treat all members of its separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Distributing1/Controlled2 SAG") as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (1c) Controlled 1 will treat all members of its separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Controlled 1 SAG") as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (1d) No intercorporate debt will exist between Distributing1/Controlled2 (or any member of the Distributing1/Controlled2 SAG) and Controlled 1 (or any member of the Controlled 1 SAG) at the time of, or subsequent to, the First Internal Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the Continuing Arrangements. Any indebtedness owed by Controlled 1 (or any member of the Controlled 1 SAG) to Distributing1/Controlled2 (or any member of the Distributing1/Controlled2 SAG) after the First Internal Distribution will not constitute stock or securities.

- (1e) The five years of financial information submitted on behalf of Business 2 conducted by the Distributing1/Controlled2 SAG, and to be conducted by the Controlled 1 SAG following the First Internal Distribution, is representative of the present business operations, and there have been no substantial operational changes to Business 2 since the date of the last financial statements submitted.
- (1f) The five years of financial information submitted on behalf of Business 3 conducted by the Distributing1/Controlled 2 SAG is representative of the present business operations. Except for the change to Business 3 previously noted, there have been no substantial operational changes to Business 3 since the date of the last financial statements submitted.
- (1g) The Controlled 1 SAG neither acquired Business 2 nor acquired control of an entity conducting Business 2 during the five-year period ending on the date of the First Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except (i) transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 2 was the parent, and (ii) certain acquisitions which were immaterial relative to the overall size and scope of Business 2.
- (1h) The Distributing1/Controlled2 SAG neither acquired Business 3 nor acquired control of an entity conducting Business 3 during the five-year period ending on the date of the First Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except (i) transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 2 was the parent, and (ii) certain acquisitions which were immaterial relative to the overall size and scope of Business 3.
- (1i) Following the First Internal Distribution, the Distributing1/Controlled2 SAG will continue the active conduct of Business 3, independently and with its separate employees, except as provided pursuant to the Continuing Arrangements.
- (1j) Following the First Internal Distribution, the Controlled 1 SAG will continue the active conduct of Business 2, independently and with its separate employees or employees of related entities consistent with past practice, except as provided pursuant to the Continuing Arrangements.
- (1k) The First Internal Distribution will be carried out for the corporate business purposes of facilitating the Second Internal Distribution and facilitating the External Distribution, thereby achieving the benefits associated with the External Distribution. The First Internal Distribution is motivated in whole or in substantial part by these corporate business purposes.

- (1l) The First Internal Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing1/Controlled2 or Controlled 1 or both.
- (1m) The total fair market value of the assets transferred to Controlled 1 by Distributing1/Controlled2 in the First Contribution will equal or exceed the sum of:
 - (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1, (ii) the amount of any liabilities owed to Controlled 1 by Distributing1/Controlled2 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any 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 Distributing1/Controlled2 in connection with the exchange.
- (1n) The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the First Contribution.
- (1o) The total adjusted bases of the assets transferred by Distributing1/Controlled2 to Controlled 1 in the First Contribution will equal or exceed the sum of the liabilities (other than Distributing1/Controlled2 Deductible Liabilities) assumed by Controlled 1 as determined under § 357(d)).
- (1p) The liabilities, if any, to be assumed (within the meaning of § 357(d)) by Controlled 1 in the First Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (1q) The incurrence of Distributing1/Controlled2 Deductible Liabilities assumed by Controlled 1 did not result in the creation of, or increase in, basis of any assets of Distributing1/Controlled2 or Controlled 1 or the stock of Distributing1/Controlled2 or Controlled 1 prior to the First Internal Distribution.
- (1r) The Distributing1/Controlled2 Deductible Liabilities are accrued liabilities for financial accounting purposes by Distributing1/Controlled2, but will not meet the timing requirements for a deduction by Distributing1/Controlled2 before the First Contribution under Distributing1/Controlled2's method of tax accounting. The Distributing1/Controlled2 Deductible Liabilities will meet the timing requirements for a deduction by Controlled 1 after the First Contribution under Controlled 1's method of tax accounting.
- (1s) Except pursuant to the Proposed Transaction, Distributing1/Controlled2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Proposed Transaction.

- (1t) At the time of the First Internal Distribution, Distributing1/Controlled2 will have no excess loss account, within the meaning of § 1.1502-19(a)(2) with respect to the Controlled 1 stock.
- (1u) For purposes of § 355(d), immediately after the First Internal 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 Distributing1/Controlled2 stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing1/Controlled2 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 First Internal Distribution.
- (1v) For purposes of § 355(d), immediately after the First Internal 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 1 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled 1 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 First Internal Distribution or (ii) attributable to distributions on Distributing1/Controlled2 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 First Internal Distribution.
- (1w) Payments made in connection with all continuing transactions between Distributing1/Controlled2 (or any of its subsidiaries) and Controlled 1 (or any of its subsidiaries) following the First Internal Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except as provided in the Continuing Arrangements.
- (1x) No two parties to the First Internal Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (1y) Distributing1/Controlled2, Controlled 1, and Distributing 2 will each pay their own expenses, if any, incurred in connection with the First Internal Distribution.
- (1z) The First 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-percent or greater interest (within the meaning of § 355(d)(4)) in either Distributing1/Controlled2 or Controlled 1 (including any predecessor of or successor to any such corporation).
- (1aa) Immediately after the transaction (within the meaning of § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of

§ 355(g)(3)) in Distributing1/Controlled2 or Controlled 1, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (directly or through attribution) immediately before the transaction, or (iii) neither Distributing1/Controlled2 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Second Internal Distribution

- (2a) No part of the consideration to be distributed by Distributing 2 in the Second Internal Distribution will be received by a shareholder as a creditor or an employee or in any capacity other than that of a shareholder of Distributing 2. In addition, the distribution of Distributing1/Controlled2 stock to Distributing 3 in the Second Internal Distribution is with respect to Distributing 3's ownership of Distributing 2 stock.
- (2b) Distributing 2 will treat all members of its separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Distributing 2 SAG") as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (2c) Distributing1/Controlled2 will treat all members of the Distributing1/Controlled2 SAG as one corporation in determining whether it meets the requirements of § 355 (b)(2)(A) regarding the active conduct of a trade or business.
- (2d) No intercorporate debt will exist between Distributing 2 (or any member of the Distributing 2 SAG) and Distributing1/Controlled2 (or any member of the Distributing1/Controlled2 SAG) at the time of, or subsequent to, the Second Internal Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the Continuing Arrangements. Any indebtedness owed by Distributing1/Controlled2 (or any member of the Distributing1/Controlled2 SAG) to Distributing 2 (or any member of the Distributing 2 SAG) after the Second Internal Distribution will not constitute stock or securities.
- (2e) The five years of financial information submitted on behalf of Business 2 conducted by the Distributing1/Controlled2 SAG, and to be conducted by the Distributing 2 SAG following the Second Internal Distribution, is representative of the present operations of the business, and there have been no substantial operational changes in the business since the date of the last financial statements submitted.

- (2f) The five years of financial information submitted on behalf of Business 3 conducted by the Distributing1/Controlled2 SAG is representative of the present operations of the business. Except for the change to Business 3 previously noted, there have been no substantial operational changes to Business 3 since the date of the last financial statements submitted.
- (2g) The Distributing 2 SAG neither acquired Business 2 nor acquired control of an entity conducting Business 2 during the five-year period ending on the date of the Second Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except (i) transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 2 was the parent, and (ii) certain acquisitions which were immaterial relative to the overall size and scope of Business 2.
- (2h) The Distributing1/Controlled2 SAG neither acquired Business 3 nor acquired control of an entity conducting Business 3 during the five-year period ending on the date of the Second Internal Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except (i) transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 2 was the parent, and (ii) certain acquisitions which were immaterial relative to the overall size and scope of Business 3.
- (2i) Following the Second Internal Distribution, the Distributing 2 SAG will continue the active conduct of Business 2, independently and with its separate employees or employees of related entities consistent with past practice, except as provided pursuant to the Continuing Arrangements.
- (2j) Following the Second Internal Distribution, the Distributing1/Controlled2 SAG will continue the active conduct of Business 3, independently and with its separate employees, except as provided pursuant to the Continuing Arrangements.
- (2k) The Second Internal Distribution will be carried out for the corporate business purpose of facilitating the External Distribution, thereby achieving the benefits associated with the External Distribution. The Second Internal Distribution is motivated in whole or in part by this corporate business purpose.
- (2l) The Second Internal Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Distributing1/Controlled2 or both.
- (2m) Immediately before the Second Internal 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, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account of a member in the stock of another member that is required to be taken into account by § 1.1502-19 will be included in income as appropriate. At the time of the Second Internal Distribution, neither Distributing 2 nor any member of Distributing 2's consolidated group will have an excess loss account in the stock of Distributing1/Controlled2 or any subsidiary of Distributing1/Controlled2.

- (2n) For purposes of § 355(d), immediately after the Second Internal 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 2 stock entitled to vote, or 50-percent or more of the total combined 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 Second Internal Distribution.
- (2o) For purposes of § 355(d), immediately after the Second Internal 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 Distributing1/Controlled2 stock entitled to vote, or 50-percent or more of the total value of all classes of Distributing1/Controlled2 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 Second Internal 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 Second Internal Distribution.
- (2p) Except pursuant to the Proposed Transaction, Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (2q) Payments made in connection with all continuing transactions, if any, between Distributing 2 (or any of its subsidiaries) and Distributing1/Controlled2 (or any of its subsidiaries) following the Second Internal Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except as provided in the Continuing Arrangements.
- (2r) The Second 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-percent or greater interest (within the meaning of § 355(d)(4)) in either Distributing 2 or Distributing1/Controlled2 (including any predecessor of or successor to any such corporation).

- (2s) Immediately after the transaction (within the meaning of § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 2 or Distributing1/Controlled2, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (directly or through attribution) immediately before the transaction, or (iii) neither Distributing 2 nor Distributing1/Controlled2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Second Contribution and External Distribution

- (3a) Other than the conversion of Distributing 3 share based awards into Controlled 3 share based awards, no part of the consideration to be distributed by Distributing 3 will be received by a shareholder of Distributing 3 as a creditor or an employee or in any capacity other than that of a shareholder of Distributing 3. In addition, the distribution of Controlled 3 stock to Distributing 3's shareholders in the External Distribution is with respect to their ownership of Distributing 3 stock.
- (3b) Distributing 3 will treat all members of its separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Distributing 3 SAG") as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (3c) Controlled 3 will treat all members of its separate affiliated group (within the meaning of § 355(b)(3)(B)) (the "Controlled 3 SAG") as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (3d) No intercorporate debt will exist between Distributing 3 (or any member of the Distributing 3 SAG) and Controlled 3 (or any member of the Controlled 3 SAG) at the time of, or subsequent to, the External Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the Continuing Arrangements. Any indebtedness owed by Controlled 3 (or any member of the Controlled 3 SAG) to Distributing 3 (or any member of the Distributing 3 SAG) after the External Distribution will not constitute stock or securities.
- (3e) The five years of financial information submitted on behalf of Business 2 conducted by the Distributing1/Controlled2 SAG, and to be conducted by the Distributing 3 SAG following the External Distribution, is representative of the present operations of the business, and there have been no substantial operational changes in the business since the date of the last financial statements submitted.

- (3f) The five years of financial information submitted on behalf of Business 3 conducted by the Distributing1/Controlled2 SAG, and to be conducted by the Controlled 3 SAG following the External Distribution, is representative of the present operations of the business. Except for the change to Business 3 previously noted, there have been no substantial operational changes to Business 3 since the date of the last financial statements submitted.
- (3g) The Distributing 3 SAG neither acquired Business 2 nor acquired control of an entity conducting Business 2 during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except for (i) transfers between members of the affiliated group (as defined in § 1504(a) determined without regard to § 1504(b)) of which Distributing 3 was the parent, and (ii) certain acquisitions which were immaterial relative to the overall size and scope of Business 2.
- (3h) The Controlled 3 SAG neither acquired Business 3 nor acquired control of an entity conducting Business 3 during the five-year period ending on the date of the External Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except for (i) transfers between members of the affiliated group (as defined in § 1504(a) determined without regard to § 1504(b)) of which Distributing 3 was the parent, and (ii) certain acquisitions which were immaterial relative to the overall size and scope of Business 3.
- (3i) Following the External Distribution, the Distributing 3 SAG will continue the active conduct of Business 2, independently and with its separate employees or employees of related entities consistent with past practice, except as provided pursuant to the Continuing Arrangements.
- (3j) Following the External Distribution, the Controlled 3 SAG will continue the active conduct of Business 3, independently and with its separate employees, except as provided pursuant to the Continuing Arrangements.
- (3k) The External Distribution will be carried out for the corporate business purposes of (i) providing Business 3 with enhanced strategic and financial flexibility and enhanced management focus to pursue its business plan and acquisition strategy, free from the REIT structural and capital allocation constraints that could limit the growth potential of Business 3; (ii) enabling management of Distributing 3 to concentrate exclusively on its REIT-qualifying Business 1 and its complementary Business 2 and Business 4; (iii) facilitating the ability of both Distributing 3 and Controlled 3 to establish appropriate capital structures for their respective businesses; (iv) providing Distributing 3 with flexibility to pursue share repurchases in connection with the External Distribution; (v) providing each of Distributing 3 and Controlled 3 flexibility in raising future capital; (vi) enhancing

the ability of both Distributing 3 and Controlled 3 to make strategic acquisitions; and (vii) enhancing employee hiring, retention and alignment of management compensation with performance of the business. The External Distribution is motivated in whole or in substantial part by these corporate business purposes.

- (3l) The External Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled 3 or both.
- (3m) The total fair market value of the assets transferred to Controlled 3 by Distributing 3 in the Second Contribution will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 3, (ii) the amount of any liabilities owed to Controlled 3 by Distributing 3 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any 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 3 in connection with the exchange.
- (3n) The fair market value of the assets of Controlled 3 will exceed the amount of its liabilities immediately after the Second Contribution.
- (3o) The fair market value of the assets Distributing 3 transfers to Controlled 3 in the Second Contribution will equal or exceed the aggregate adjusted basis of those assets.
- (3p) The total adjusted bases of the assets transferred by Distributing 3 to Controlled 3 in the Second Contribution will equal or exceed the sum of (i) the liabilities (other than Distributing 3 Deductible Liabilities) assumed by Controlled 3 as determined under § 357(d)) and (ii) the total amount of money and the fair market value of other property (within the meaning of § 361(b)) received by Distributing 3 and transferred by it to its creditors in the External Distribution.
- (3q) The liabilities, if any, to be assumed (within the meaning of § 357(d)) by Controlled 3 in the Second Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (3r) The incurrence of Distributing 3 Deductible Liabilities assumed by Controlled 3 did not result in the creation of, or increase in, basis of any assets of Distributing 3 or Controlled 3 or the stock of Distributing 3 or Controlled 3 prior to the External Distribution.
- (3s) The Distributing 3 Deductible Liabilities are accrued liabilities for financial accounting purposes by Distributing 3, but will not meet the timing requirements for a deduction by Distributing 3 before the Second Contribution under Distributing 3's method of tax accounting. The Distributing 3 Deductible

Liabilities will meet the timing requirements for a deduction by Controlled 3 after the Second Contribution under Controlled 3's method of tax accounting.

- (3t) Distributing 3 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (3u) For purposes of § 355(d), immediately after the External 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 3 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing 3 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.
- (3v) For purposes of § 355(d), immediately after the External 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 3 stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled 3 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 3 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.
- (3w) Payments made in connection with all continuing transactions between Distributing 3 (or any of its subsidiaries) and Controlled 3 (or any of its subsidiaries) following the External Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except as provided in the Continuing Arrangements.
- (3x) No two parties to the External Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (3y) Distributing 3, Controlled 3, and Distributing 3 shareholders will each pay their own expenses, if any, incurred in connection with the External Distribution.
- (3z) 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-percent or greater interest (within the meaning of § 355(d)(4)) in either Distributing 3 or Controlled 3 (including any predecessor of or successor to any such corporation).
- (3aa) Immediately after the transaction (within the meaning of § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of

- § 355(g)(3)) in Distributing 3 or Controlled 3, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation (directly or through attribution) immediately before the transaction, or (iii) neither Distributing 3 nor Controlled 3 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (3bb) Distributing 3 is a United States real property holding corporation (a “USRPHC”) (as defined in § 897(c)(2)) during the five-year period ending on the date of the External Distribution. Following the External Distribution, Distributing 3 will continue to be a USRPHC.
- (3cc) All of the stock of Distributing 3 has been regularly traded on an established securities market in the United States for the past five years.
- (3dd) To the best knowledge of Distributing 3, (i) Shareholder A, Shareholder B, and Shareholder C are the only shareholders of Distributing 3 that held more than five percent of the stock of Distributing 3 at any time during the past five years, (ii) all of the greater than five percent shareholders of Distributing 3 (the “Five-Percent Shareholders”) during the past five years are United States persons 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

First Contribution and First Internal Distribution

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled 1 stock to Distributing1/Controlled2’s shareholder in the First Internal Distribution is with respect to Distributing 2’s ownership of Distributing1/Controlled2 stock, (ii) any money, property, or stock contributed by Distributing1/Controlled2 to Controlled 1 in the First Contribution is exchanged solely for stock or securities in Controlled 1, and (iii) any other transfer of stock, money, or property between Distributing1/Controlled 2, Controlled 1, or Distributing 2 and any person related to Distributing1/Controlled2, Controlled 1, or Distributing 2 is respected as a separate transaction, we rule as follows on the First Contribution and First Internal Distribution:

- (1) The First Contribution, followed by the First Internal Distribution, will be a reorganization under § 368(a)(1)(D). Distributing1/Controlled2 and Controlled 1 will each be “a party to the reorganization” under § 368(b).

- (2) Distributing1/Controlled2 will recognize no gain or loss on the First Contribution. Sections 357(a) and 361(a). The Distributing 1/Controlled 2 Deductible Liabilities will be excluded in determining the amount of liabilities of Distributing1/Controlled2 assumed by Controlled 1 for purposes of §§ 357(c) and 358(d).
- (3) Controlled 1 will recognize no gain or loss on the First Contribution. Section 1032(a).
- (4) Immediately after the First Contribution, Controlled 1's basis in each asset received in the First Contribution will equal the basis of that asset in the hands of Distributing1/Controlled2 immediately before the First Contribution. Section 362(b).
- (5) Controlled 1's holding period for each asset received in the First Contribution will include the period during which Distributing1/Controlled2 held the asset. Section 1223(2).
- (6) Distributing1/Controlled2 will recognize no gain or loss on the First Internal Distribution. Section 361(c)(1).
- (7) Distributing 2 will not recognize any gain or loss (and will not otherwise include any amount in income) upon its receipt of Controlled 1 stock in the First Internal Distribution. Section 355(a)(1).
- (8) The basis of the Distributing1/Controlled2 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after the First Internal Distribution will equal the basis of the Distributing1/Controlled2 stock held by Distributing 2 immediately before the First Internal Distribution, allocated between the stock of Distributing1/Controlled2 and Controlled 1 in proportion to the fair market value of each immediately following the First Internal Distribution in accordance with § 1.358-2(a). Section 358.
- (9) The holding period of the Controlled 1 stock received by Distributing 2 in the First Internal Distribution will include the holding period of the Distributing1/Controlled2 stock on which the First Internal Distribution is made, provided the Distributing1/Controlled2 stock is held as a capital asset on the date of the First Internal Distribution. Section 1223(1).
- (10) Earnings and profits will be allocated between Distributing1/Controlled2 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

Second Internal Distribution

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Distributing1/Controlled2 stock to Distributing 3 in the Second Internal Distribution is with respect to Distributing 3's ownership of Distributing 2 stock, and (ii) any transfer of stock, money, or property between Distributing 2, Distributing1/Controlled2, or Distributing 3 and any person related to Distributing 2, Distributing1/Controlled2, or Distributing 3 is respected as a separate transaction, we rule as follows on the Second Internal Distribution:

- (11) Distributing 3 will not recognize any gain or loss (and will not otherwise include any amount in income) upon its receipt of Distributing1/Controlled2 stock in the Second Internal Distribution. Section 355(a)(1).
- (12) Distributing 2 will recognize no gain or loss on the Second Internal Distribution. Section 355(c).
- (13) The basis of the Distributing 2 stock and the Distributing1/Controlled2 stock in the hands of Distributing 3 immediately after the Second Internal Distribution will equal the basis of the Distributing 2 stock held by Distributing 3 immediately before the Second Internal Distribution, allocated between the stock of Distributing 2 and Distributing1/Controlled2 in proportion to the fair market value of each immediately following the Second Internal Distribution in accordance with § 1.358-2(a). Section 358.
- (14) The holding period of the Distributing1/Controlled2 stock to be received by Distributing 3 in the Second Internal Distribution will include the holding period of the Distributing 2 stock on which the Second Internal Distribution is made, provided the Distributing 2 stock is held as a capital asset on the date of the Second Internal Distribution. Section 1223(1).
- (15) Earnings and profits, will be allocated between Distributing 2 and Distributing1/Controlled2 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

Second Contribution and External Distribution

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled 3 stock to Distributing 3's shareholders in the External Distribution is with respect to their ownership of Distributing 3 stock, (ii) any money, property, or stock contributed by Distributing 3 to Controlled 3 in the Second Contribution is exchanged solely for stock or securities in Controlled 3, and (iii) any other transfer of stock, money, or property between Distributing 3, Controlled 3, or any Distributing 3 shareholder and any person related to Distributing 3, Controlled 3, or any Distributing 3 shareholder is respected as a separate transaction, we rule as follows on the Second Contribution and External Distribution:

- (16) The Second Contribution, together with the External Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 3 and Controlled 3 each will be a “party to the reorganization” within the meaning of § 368(b).
- (17) Distributing 3 will recognize no gain or loss on its transfer of the stock of Distributing 1/Controlled 2 to Controlled 3 in the Second Contribution. Sections 357(a) and 361(a). The Distributing 3 Deductible Liabilities will be excluded in determining the amount of liabilities of Distributing 3 assumed by Controlled 3 for purposes of §§ 357(c) and 358(d).
- (18) Controlled 3 will recognize no gain or loss on the Second Contribution. Section 1032(a).
- (19) Immediately after the Second Contribution, Controlled 3’s basis in each asset received in the Second Contribution will equal the basis of that asset in the hands of Distributing 3 immediately before the Second Contribution. Section 362(b).
- (20) Controlled 3’s holding period for each asset received in the Second Contribution will include the period during which Distributing 3 held that asset. Section 1223(2).
- (21) Distributing 3 will recognize no gain or loss on the External Distribution. Section 361(c)(1).
- (22) Distributing 3’s shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) upon their receipt of Controlled 3 stock in the External Distribution. Section 355(a)(1).
- (23) The basis of the Distributing 3 stock and the Controlled 3 stock in the hands of Distributing 3 shareholders immediately after the External Distribution will equal the basis of the Distributing 3 stock held by Distributing 3 shareholders immediately before the External Distribution, allocated between the stock of Distributing 3 and the stock of Controlled 3 in proportion to the fair market value of each immediately following the External Distribution in accordance with § 1.358-2(a). Section 358.
- (24) The holding period of the Controlled 3 stock received by Distributing 3 shareholders in the External Distribution will include the holding period of the Distributing 3 stock on which the External Distribution is made, provided the Distributing 3 stock is held as a capital asset on the date of the External Distribution. Section 1223(1).
- (25) Earnings and profits will be allocated between Distributing 3 and Controlled 3 in accordance with § 312(h) and § 1.312-10(a).

- (26) Except for purposes of § 355(g), payments made between Distributing 3 and Controlled 3 and their respective affiliates under any of the Continuing Arrangements regarding liabilities, indemnities, or other obligations that (i) have arisen, or will arise, for a taxable period ending on or before the External Distribution or for a taxable period beginning before and ending after the External Distribution and (ii) will not become fixed and ascertainable until after the External Distribution, will be viewed 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).

CAVEATS

Except as specifically provided herein, we express no opinion concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions or of any other matter under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction not specifically covered by the above rulings. In particular, Distributing 3 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 3 pursuant to § 355. Moreover, no opinion is expressed regarding:

- (i) Whether the Internal Distributions and External Distribution satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Internal Distributions and External Distribution are used principally as a device for the distribution of the earnings and profits of any distributing corporation, any controlled corporation, or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether the Internal Distributions and External Distribution are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50- percent or greater interest in any distributing corporation or any controlled corporation (see § 355(e) and § 1.355-7);
- (iv) Whether Distributing 3 qualifies as a REIT under subchapter M of the Code;
- (v) Whether Distributing 2 qualifies as a taxable REIT subsidiary under § 856(l); and

- (vi) The proper treatment under § 856(c) of income earned or attributable to Distributing 3 and of assets held by Distributing 3.

PROCEDURAL STATEMENTS

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter 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 this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: