Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-125107-13

Date:
November 19, 2013

TY:

Legend

Taxpayer	=
DE	=
LP	=
Trust	=
Management Co.	=
Ground Lessee	=
Ground Lessor	=
State A	=
State B	=
Taxable Year 1	=
Exchange	=
X percent	=
Y percent	=
Z percent	=
RQ	=
Building	=
City	=
Date 1	=
Date 2	=
QI	=
Titleholder	=
Trustee	=

Dear :

This responds to your letter, dated May 29, 2013, requesting a private letter ruling under § 1031 of the Internal Revenue Code. You request the following ruling: Taxpayer's proposed transaction will conform to the requirements of the qualified intermediary and exchange accommodation titleholder safe harbor rules so that Taxpayer will not recognize gain or loss upon the conveyance of relinquished property and the receipt of replacement property.

APPLICABLE FACTS:

Taxpayer is a limited liability company that is treated as a partnership for federal income tax purposes. Taxpayer uses an overall accrual method of accounting for filing its federal income tax returns and uses an accounting period ending December 31. Taxpayer is owned X percent by DE, a disregarded entity for federal income tax that is wholly owned by LP, and Y percent by Management Co., a taxable real estate investment trust ("REIT") subsidiary under § 856(l), which is also wholly owned by LP. LP is an affiliate of Trust, and Trust is a publicly held statutory REIT organized in State A that elected to be taxed as a REIT at all times beginning with Taxable Year 1. LP and Taxpayer are related under § 1031(f)(3).

Taxpayer will enter into an agreement with an unrelated third party to sell RQ, a retail building. Taxpayer will then enter into an exchange agreement ("QI Agreement") with QI as the qualified intermediary, to whom it will assign its rights in the contract to sell RQ, with notice being given to the buyer. Taxpayer represents that QI is not Taxpayer or a disqualified person as defined in § 1.1031(k)-1(k). QI Agreement expressly limits Taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by QI as provided in § 1.1031(k)-1(g)(6).

Pursuant to the QI Agreement, in order to secure QI's obligations to acquire replacement property and transfer it to Taxpayer, QI will enter into a Qualified Exchange Trust Agreement ("Trust Agreement") and deposit the funds from the sale of RQ into a master customer trust account ("Qualified Exchange Trust") with Trustee of which Taxpayer shall be a beneficiary. It is represented that Trustee, as trustee of the Qualified Exchange Trust, is not Taxpayer or a disqualified person within the meaning of § 1.1031(k)-1(k). The Trust Agreement expressly limits Taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of cash or cash equivalent held by Trustee as provided in § 1.1031(k)-1(g)(6).

Ground Lessee, a State B limited liability company formed on Date 1 that is treated as a disregarded entity for tax purposes, is wholly owned by LP. Ground Lessee is the ground lessee of Building, a large, outdated, and vacant office building in City. Ground Lessor is a State B limited liability company formed on Date 2 that is treated as a disregarded entity for tax purposes and is directly and/or indirectly owned Z percent by LP. Ground Lessee will demolish Building and then sublease the vacant land to Titleholder or a disregarded entity for federal income tax purposes that is wholly owned by Titleholder (collectively Titleholder), or sublease Building to Titleholder which will then proceed to demolish it. The sublease will have a term in excess of 30 years, which is represented to be in excess of the useful life of the improvements, and which will be at fair rental value for the land alone. Further, the sublease will permit construction of improvements by Titleholder.

Taxpayer represents that Titleholder is and will be subject to federal income tax and is not Taxpayer or disqualified person. The qualified indicia of ownership, which is defined in Rev. Proc. 2000-37, 2000-2 C. B. 308, of the improvements and the ground sublease of Building (collectively "RP") will be held by Titleholder at all times from the effective date of the sublease ("Sublease Date") until RP is transferred to Taxpayer. At the time the qualified indicia of ownership of Building is transferred to Titleholder, it is Taxpayer's bona fide intent that the RP held by Titleholder will represent replacement property in an exchange qualifying for nonrecognition of gain or loss under § 1031.

Within five days after the Sublease Date, Taxpayer and Titleholder will enter into a Qualified Exchange Accommodation Agreement ("Accommodation Agreement"). It is represented that Titleholder will serve as exchange accommodation titleholder ("EAT"). The Accommodation Agreement will provide that Titleholder will hold RP for the benefit of Taxpayer in order to facilitate an exchange under § 1031 and Rev. Proc. 2000-37, and that Taxpayer and Titleholder will report the acquisition, holding, and disposition of RP as provided in Rev. Proc. 2000-37. The Accommodation Agreement further states that Titleholder will be treated as the beneficial owner of RP for all federal income tax purposes. The Accommodation Agreement specifies that within 45 days after the Sublease Date, Taxpayer will identify RQ as the relinquished property pursuant to § 1.1031(k)-1(c). In addition, within 180 days from the Sublease Date, RP will be transferred to Taxpayer as replacement property in a § 1031 exchange.

Taxpayer, or an entity related to Taxpayer, will advance to Titleholder the necessary funds to construct the improvements, and Taxpayer, or an entity related to Taxpayer, will oversee construction. Taxpayer will thereafter assign to QI its rights in the Accommodation Agreement to acquire RP. On or before the 180^{th} day from the Sublease Date, Titleholder will, pursuant to QI's direction, transfer RP directly to Taxpayer. Titleholder will only hold RP but not RQ.

Neither Taxpayer nor Ground Lessee will dispose of either of their interests within two years after the last transfer that was part of the exchange.

If, on the date RP is transferred to Taxpayer, the actual cost of the improvements is less than the sale proceeds of RQ held by Trustee, and Taxpayer did not timely identify and acquire additional like-kind replacement property, Taxpayer will receive the remaining funds as boot and will recognized gain to the extent of such boot. Moreover, if the construction of the identified RP is not completed by Titleholder on or before the 180^{th}

day from the Sublease Date, Titleholder will nevertheless be required by the Accommodation Agreement to transfer RP to Taxpayer prior to full completion.

Taxpayer represents that it will receive no money or other property directly, indirectly or constructively prior to or during the exchange and will receive no economic benefit or money or property other than that derived from the exchange. The only possible exception might be if QI has to transfer cash or other property to Taxpayer on or before the 180th day from the Sublease Date as a result of an inability to complete construction. In that event, Taxpayer will have taxable boot in addition to its like-kind replacement property.

APPLICABLE LAW:

General Requirements for Deferral under § 1031

Section 1031(a)(1) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment. Thus, for a transaction to qualify under § 1031, the properties must be: (1) exchanged; (2) held for productive use in a trade or business or for investment; and (3) of a like-kind.

Section 1.1031(a)-1(b) of the regulations defines like-kind as referring to the nature or character of the property and not to its grade or quality. Section 1.1031(a)-1(c)(2) provides that no gain or loss is recognized if a taxpayer who is not a dealer in real estate exchanges city real estate for a ranch or farm, or exchanges a leasehold of a fee with 30 years or more to run for real estate, or exchanges improved real estate for unimproved real estate.

Section 1031(f) sets forth special rules for exchanges between related persons. Under § 1031(f)(1), if (A) a taxpayer exchanges property with a related person; (B) there is nonrecognition of gain or loss to the taxpayer in accordance with § 1031 with respect to the exchange; and (C) within 2 years of the date of the last transfer that was part of the exchange either the taxpayer or the related person disposes of the property received in the exchange, then there is no nonrecognition of gain or loss in the exchange.

Section 1031(f)(4) provides that § 1031 shall not apply to any exchange that is part of a transaction, or series of transactions, structured to avoid the purposes of § 1031(f). If a transaction is set up to avoid the restrictions on exchanges between related persons, § 1031(f)(4) operates to prevent nonrecognition of the gain or loss on the exchange.

Section 1.1031(k)-1(a) provides that a deferred exchange is an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment and subsequently receives property to be held for productive use in a trade or business or for investment. In the case of a deferred exchange, if the requirements set forth in § 1031(a)(3) (relating to identification and receipt of replacement property) are not met, the replacement property received by the taxpayer will be treated as property which is not of like-kind to the relinquished property.

Section 1.1031(k)-1(c)(2) generally provides that replacement property is identified only if it is designated as replacement property in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or otherwise sent before the end of the identification period to either the person obligated to transfer the replacement property to the taxpayer or any other person involved in the exchange other than the taxpayer or a disqualified person. Section 1.1031(k)-1(c)(1) provides, in part, that any replacement property that is received by the taxpayer before the end of the identification period will in all events be treated as identified before the end of the identification period.

Section 1.1031(k)-1(d)(1) provides, in part, that the identified replacement property is received before the end of the exchange period if the taxpayer receives the replacement property before the end of the exchange period, and the replacement property received is substantially the same property as identified.

Section 1.1031(k)-1(e)(1) provides that a transfer of relinquished property in a deferred exchange will not fail to qualify for nonrecognition of gain or loss under § 1031 merely because the replacement property is not in existence or is being produced at the time the property is identified as replacement property.

Section 1.1031(k)-1(e)(2) provides that in the case of replacement property that is to be produced, the replacement property must be identified as provided in § 1.1031(k)-1(c) (relating to identification of replacement property). Section 1.1031(k)-1(e)(2)(i) requires a taxpayer to identify the replacement property by providing a legal description of the underlying land that is subject to sublease and as much detail as is practicable regarding the construction of the improvements at the site. For example, if the identified replacement property consists of improved real property where the improvements are to be constructed, the description of the replacement property satisfies the requirements of § 1.1031(k)-1(c)(3) (relating to description of replacement property) if a legal description is provided for the underlying land and as much detail is provided regarding construction of the improvements as is practicable at the time the identification is made.

Section 1.1031(k)-1(e)(3)(i) generally provides that for purposes of § 1.1031(k)-1(d)(1)(ii) (relating to receipt of the identified replacement property), in determining whether the replacement property received by the taxpayer is substantially the same property as identified where the identified replacement property is property to be produced, variations due to usual or typical production changes are not taken into account. However, if substantial changes are made in the property to be produced, the replacement property received will not be considered to be substantially the same property as identified.

Section 1.1031(k)-1(e)(3)(iii) further provides that if the identified replacement property is real property to be produced and the production of the property is not completed on or before the date the taxpayer receives the property, the property received will be considered to be substantially the same property as identified only if, had production been completed on or before the date the taxpayer receives the replacement property, the property received would have been considered to be substantially the same property as identified. Even so, the property received is considered to be substantially the same property as identified only to the extent the property received constitutes real property under local law.

Section 1.1031(k)-1(f)(1) generally provides that a transfer of relinquished property in a deferred exchange is not within the provisions of § 1031(a) if, as part of the consideration, the taxpayer receives money or other property. However, such a transfer, if otherwise qualified, will be within the provisions of either §1031(b) or (c). In the case of a transfer of relinquished property in a deferred exchange, gain or loss may be recognized if the taxpayer actually or constructively receives money or other property before the taxpayer actually receives like-kind replacement property. If the taxpayer actually or constructively receives money or other property in the full amount of the consideration for the relinquished property before the taxpayer actually receives like-kind replacement property, the transaction will constitute a sale and not a deferred exchange, even if the taxpayer may ultimately receive like-kind replacement property.

Section 1.1031(k)-1(f)(2) provides, in part, that except as provided in § 1.1031(k)-1(g) (relating to safe harbors), for purposes of § 1031 and § 1.1031(k)-1, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made under the general rules concerning actual and constructive receipt and without regard to the taxpayer's method of accounting. In addition, actual or constructive receipt of money or property by an agent of the taxpayer (determined without regard to § 1.1031(k)-1(k)) is actual or constructive receipt by the taxpayer.

Section 1.1031(k)-1(g)(2) through (g)(5) sets forth a variety of safe harbors for use in deferred exchange situations. The use of one or more of these safe harbors in a deferred exchange will shield a taxpayer from actual or constructive receipt of money or other property.

Section 1.1031(k)-1(g)(3)(i) provides that in the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property will be made without regard to the fact that the obligation of the taxpayer's transferee to transfer the replacement property to the taxpayer is or may be secured by cash or a cash equivalent if the cash or cash equivalent is held in a qualified escrow or in a qualified trust.

Section 1.1031(k)-1(g)(3)(iii) explains that a qualified trust is a trust wherein (A) the trustee is not the taxpayer or a disqualified person as defined in § 1.1031(k)-1(k) except that for this purpose the relationship between the taxpayer and the trustee created by the qualified trust will not be considered a relationship under § 267(b), and (B) the trust agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held be the trustee as provided in § 1.1031(k)-1(g)(6). Under § 1.1031(k)-1(g)(3)(iv), paragraph (g)(3)(i) ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held in the qualified trust. Pursuant to § 1.1031(k)-1(g)(3)(v), a taxpayer may receive money or other property directly from a party to the exchange, but not from a qualified trust without affecting the application of § 1.1031(k)-1(g)(3)(i).

Section 1.1031(k)-1(g)(4)(i) provides that in the case of a taxpayer's transfer of relinquished property involving a qualified intermediary, the qualified intermediary is not considered the agent of the taxpayer for purposes of § 1031(a). In such a transaction, the taxpayer's transfer of relinquished property and subsequent receipt of like-kind replacement property is treated as an exchange and the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made as if the qualified intermediary is not the agent of the taxpayer.

Pursuant to § 1.1031(k)-1(g)(4)(ii), the qualified intermediary safe harbor applies only if the agreement between the taxpayer and the qualified intermediary expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary as provided in § 1.1031(k)-1(g)(6).

Section 1.1031(k)-1(g)(4)(iii) defines the term "qualified intermediary" as a person, not the taxpayer or a disqualified person (as defined in § 1.1031(k)-1(k)), who enters into a written agreement with the taxpayer and, as required by the exchange agreement, acquires the relinquished property from the taxpayer, transfers the relinquished property, acquires the replacement property, and transfers the replacement property to the taxpayer.

Section 1.1031(k)-1(g)(4)(iv)(A) provides that, regardless of whether an intermediary acquires and transfers property under general tax principles, solely for purposes of § 1.1031(k)-1(g)(4)(iii)(B), an intermediary is treated as acquiring and transferring property if the intermediary acquires and transfers legal title to that property. Section 1.1031(k)-1(g)(4)(iv)(B) provides that an intermediary is treated as acquiring and transferring the relinquished property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other than the taxpayer for the transfer of the relinquished property to that person and, pursuant to that agreement, the relinquished property is transferred to that person.

Section 1.1031(k)-1(g)(4)(iv)(C) provides that an intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer.

Section 1.1031(k)-1(g)(4)(v) provides that solely for purposes of § 1.1031(k)-1(g)(4)(iii) and (iv), an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevant transfer of property. For example, if a taxpayer enters into an agreement for the transfer of relinquished property and thereafter assigns its rights in that agreement to an intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the transfer of the relinquished property, the intermediary is treated as entering into that agreement. If the relinquished property is transferred pursuant to that agreement, the intermediary is treated as having acquired and transferred the relinquished property.

Section 1.1031(k)-1(k)(1) defines the term "disqualified person" as a person described in § 1.1031(k)-1(k)(2), (k)(3), or (k)(4). Essentially, a disqualified person is an agent of the taxpayer, or a person related to the taxpayer or the agent. Generally, a person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction. However, for purposes of this definition, performance of the following services are not taken into account - (i) Services for the taxpayer with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under § 1031; and (ii) Routine financial, title insurance, escrow, or trust services for the taxpayer by a financial institution, title insurance company, or escrow company.

<u>The Parking Transaction under Rev. Proc. 2000-37 and Rev. Proc. 2004-51</u>

Rev. Proc. 2000-37 sets forth a safe harbor for acquiring replacement property under a qualified exchange accommodation arrangement ("QEAA") sometimes referred to as a "parking" transaction. As provided in this safe harbor, the Service will not challenge (a) the qualification of the property as either replacement or relinquished property (as defined in § 1.1031(k)-1(a)), or (b) the treatment of the EAT as the beneficial owner if the property is held in the QEAA as defined in § 4.02 of Rev. Proc. 2000-37. As provided in § 4.02 of the revenue procedure, property is held in the QEAA if all of the following requirements are met:

(1) Qualified indicia of ownership of the property is held by a person (the EAT) who is not the taxpayer or a disqualified person and either such person is subject to federal income tax or, if such person is treated as a partnership or S corporation for federal

income tax purposes, more than 90 percent of the entity is owned by partners or shareholders who are subject to federal income tax. Such qualified indicia of ownership must be held by the EAT at all times from the date of acquisition by the EAT until the property is transferred as described in § 4.02(5) of Rev. Proc. 2000-37. For this purpose, "qualified indicia of ownership" means legal title to the property, other indicia of beneficial ownership of property under applicable principles of commercial law (e.g., a contract for deed), or an interest in an entity that is disregarded as an entity separate from its owner for federal income tax purposes (e.g., a single member limited liability company) and that holds legal title to the property or such other indicia of ownership;

(2) At the time the qualified indicia of ownership of the property is transferred to the EAT, it is the taxpayer's bona fide intent that the property held by the EAT represent either replacement property or relinquished property in an exchange intended to qualify for nonrecognition of gain (in whole or in part) or loss under § 1031;

(3) No later than five business days after the transfer of qualified indicia of ownership of the property to the EAT, the taxpayer and the EAT enter into a written agreement (the "QEAA Agreement") providing that the EAT is holding the property for the benefit of the taxpayer in order to facilitate an exchange under § 1031 and Rev. Proc. 2000-37 and that the taxpayer and the EAT agree to report the acquisition, holding, and disposition of the property as provided in Rev. Proc. 2000-37. The agreement must specify that the EAT will be treated as the beneficial owner of the property for all federal income tax purposes. Both parties must report the federal income tax attributes of the property on their federal income tax returns in a manner consistent with this agreement;

(4) No later than 45 days after the transfer of qualified indicia of ownership of the replacement property to the EAT, the relinquished property is properly identified. Identification must be made in a manner consistent with the principles described in § 1.1031(k)-1(c). The taxpayer may properly identify alternative and multiple properties, as described in § 1.1031(k)-1(c)(4);

(5) No later than 180 days after the transfer of qualified indicia of ownership of the property to the EAT, (a) the property is transferred either directly or indirectly through a qualified intermediary (as defined in § 1.1031(k)-1(g)(4)) to the taxpayer as replacement property; or (b) the property is transferred to a person who is not the taxpayer or a disqualified person as relinquished property; and

(6) The combined time period that relinquished property and replacement property are held in the QEAA does not exceed 180 days.

Pursuant to § 4.03 of Rev. Proc. 2000-37, property will not fail to be treated as held in the QEAA as a result of any one or more of the following legal or contractual arrangements (listed below, in part), regardless of whether such arrangements contain terms that typically would result from arm's length bargaining between unrelated parties with respect to such arrangements:

(1) An EAT that satisfies the requirements of the qualified intermediary safe harbor set forth in § 1.1031(k)-1(g)(4) may enter into an exchange agreement with the taxpayer to serve as the qualified intermediary in a simultaneous or deferred exchange of the property under § 1031;

(2) The taxpayer or a disqualified person guarantees some or all of the obligations of the EAT, including secured or unsecured debt incurred to acquire the property, or indemnifies the EAT against costs and expenses;

(3) The taxpayer or a disqualified person loans or advances funds to the EAT or guarantees a loan or advance to the EAT; and

(4) The taxpayer or a disqualified person manages the property, supervises improvement of the property, acts as a contractor, or otherwise provides services to the EAT with respect to the property.

In Rev. Proc. 2004-51, 2004-2 C.B. 294, the Service modified Rev. Proc. 2000-37 to provide that the safe harbor of Rev. Proc. 2000-37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a QEAA. Rev. Proc. 2000-37 will not apply to replacement property held in a QEAA if the property is owned by the taxpayer within the 180-day period ending on the date of transfer of qualified indicia of ownership of the property to the EAT. Rev. Proc. 2004-51 stated that the Service and Treasury Department are continuing to study parking transactions, including transactions in which a person relating to the taxpayer transfers a leasehold in land to an accommodation party and the accommodation party makes improvements to the land and transfers the leasehold with the improvements to the taxpayer in exchange for other real estate.

ANALYSIS:

In the present case, Taxpayer is exchanging a fee interest in improved real estate for a long-term lease of a tract of land for a period of more than 30 years and improvements. Accordingly, the property to be transferred and the property to be received by Taxpayer are of like-kind under § 1.1031(a)-1(b).

Neither § 1031(f)(1) nor (f)(4) apply to trigger gain recognition in Taxpayer's exchange or to disqualify the application of §1031. Section 1031(f)(1) is not applicable because Taxpayer is exchanging property with QI, who is not a related person to Taxpayer. Section 1031(f)(4) is not applicable because, although a related party provides a part of RP, there will be no cashing out by any of the related parties within 2 years of the last transfer in the series of transaction. Rev. Proc. 2004-51 has no bearing here because RP held by Titleholder has not been owned by Taxpayer.

Pursuant to § 1.1031(k)-1(g)(3) and (4), Taxpayer will not be in actual or constructive receipt of money or other property for purposes of § 1031 and the regulations thereunder by employing the proposed transaction. Taxpayer will satisfy all requirements of § 1.1031(k)-1(g)(3) and (4). In addition, pursuant to Rev. Proc. 2000-37, Titleholder will be treated as the beneficial owner of RP for federal income tax purposes when RP is held under the Accommodation Agreement because the requirements of Rev. Proc. 2000-37 will be satisfied.

If other property is transferred to Taxpayer incident to the failure of the contractors to timely complete improvements on RP prior to its transfer to Taxpayer, Taxpayer will have taxable boot in addition to any like-kind replacement property received in the exchange. Also, to the extent the cost of the improvements is less than the funds held by Trustee, if Taxpayer does not timely identify and acquire additional like-kind replacement property, then Taxpayer will receive the remaining qualified funds as taxable boot.

HOLDING:

Accordingly, based on the documents presented, including the QI Agreement, the Accommodation Agreement, and all other representations made, Taxpayer's transaction will conform with the requirements of the qualified intermediary and EAT safe harbor rules, so that QI and Titleholder will not be agents of Taxpayer, and Taxpayer will not be in actual or constructive receipt of money or other property before receiving RP. Taxpayer will not recognize any gain or loss upon the conveyance of RQ to a third party and the receipt of RP. However, if planned improvements are not completed within the exchange period, gain will be recognized to the extent of any boot received in the exchange. Also, to the extent the cost of the improvements is less than the sale proceeds of RQ held by Trustee, if Taxpayer does not timely identify and acquire additional like-kind replacement property, then Taxpayer will receive the remaining funds as boot. Gain would then be recognized to the extent of such boot.

CAVEATS AND EXCEPTIONS:

Except as specifically provided above, no opinion is expressed as to the federal income tax treatment of the transaction under any other provisions of the Internal Revenue Code and the Income Tax Regulations that may be applicable or under any other general principles of federal income taxation. Neither is any opinion expressed as to the tax treatment of any conditions existing at the time of, nor effects resulting from, the transaction that are not specifically covered by the above ruling. No opinion is expressed as to whether the accommodators used in this transaction are disqualified persons as defined in § 1.1031(k)-1(k), as that would constitute essentially a factual determination. This ruling assumes that QI and Titleholder are eligible to serve as exchange accommodators.

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

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

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Seoyeon Park
Assistant to the Branch Chief, Branch 5
Office of Chief Counsel
(Income Tax & Accounting)

Enclosure (1)

cc: