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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-122375-13

Date:
July 16, 2014

Distributing 1 =

Distributing 2 =

Controlled =

Controlled Sub =

Merger Sub =

Exchange =

Sub 1 =

Sub 2 =

PLR-122375-13

2

Sub 3

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Sub 4

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Sub 5

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Sub 6

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Sub 7

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Sub 8

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Sub 9

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Sub 10

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Sub 11

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Sub 12

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Sub 13

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Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

PLR-122375-13 4

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

Sub 29 =

Sub 30 =

Sub 31 =

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Sub 33 =

Sub 34 =

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Sub 35

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Sub 41

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Sub 57

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Sub 58

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Sub 59

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Sub 60

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LLC 1

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LLC 2

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LLC 3

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LLC 4

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LLC 5

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DRE 1

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DRE 2 =

DRE 3 =

Business A =

Business A-1 =

Business B =

Business C =

Business Plan =

Other Parties =

Services =

System =

Asset Z =

PLR-122375-13 9

Asset AA =

Asset BB =

Asset CC =

Asset DD =

Asset EE =

Asset FF =

Asset GG =

Asset HH =

Asset II =

Asset JJ =

Asset LL =

Type NN =

Type OO =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State A =

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State B =

State C =

State D =

State E =

State F =

State G =

State H =

State I =

State J =

State K =

State L =

Tranche A Debt =

Tranche B Debt =

Note 1 =

Note 2 =

Note 3 =

Note 4 =

Note 5 =

Note 6 =

Note 7 =

\$a =

\$b =

\$c =

\$d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

\$o =

p =

\$r =

\$s =

t =

u =

v =

w =

Cost RR =

Problem =

Rights UU =

Rights VV =

Rights WW

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Escrow LLC

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Dear :

We respond to your May 10, 2013, request for rulings, submitted by your authorized representatives, on certain U.S. federal income tax consequences of a series of proposed and partially completed transactions (collectively, as defined below, the Transactions). The information submitted in that letter 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 penalties-of-perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for rulings, it is subject to verification upon examination.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Transactions: (i) satisfy the business purpose requirement of section 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 the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code (Code) and section 1.355-2(d)), or (iii) 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 the distributing corporation or the controlled corporation (see sections 355(e) and 1.355-7).

Summary of Facts

Distributing 2 is a publicly traded holding company and the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the Distributing Group). Distributing 2 has a single class of common stock outstanding (the Distributing 2 Common Stock) that trades on Exchange.

Distributing 2 wholly owns Distributing 1, which was previously the common parent of the Distributing Group. Distributing 1 had a single class of common stock outstanding (the Distributing 1 Common Stock) that traded on Exchange. On Date 1, Distributing 1 formed Distributing 2. On Date 2, Distributing 2 formed Merger Sub. On Date 3, Merger Sub merged into Distributing 1, with Distributing 1 becoming a wholly owned subsidiary of Distributing 2 (the Merger), and each share of Distributing 1 Common Stock converted into the right to receive a share of Distributing 2 Common Stock. As a result of the Merger, Distributing 2 became the common parent of the Distributing Group.

As of Date 4, Distributing 1 had outstanding \$a in Tranche A Debt, \$b in Tranche B senior secured credit facilities including, but not limited to, the Tranche B Debt, \$c in a revolving line of credit under its senior secured line of credit (the Revolver), and \$d of senior unsecured notes, including, but not limited to, Note 1, Note 2, Note 3, Note 4, Note 5, Note 6, and Note 7 (collectively, the Notes).

The Distributing Group engages in Business A (including Business A-1), Business B, and Business C. Before the occurrence of any step relating to the Transactions, set forth below, the Distributing Group was structured as follows:

Distributing 1, directly and indirectly through its subsidiaries, engages in Business A, Business B, and Business C. Distributing 1 directly wholly owned, among other subsidiaries, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 13, Sub 16, Sub 26, Sub 33, Sub 35, Sub 42, Sub 46, and LLC 1, each of which was, or was treated as, a domestic corporation for U.S. federal tax purposes. Distributing 1 also directly wholly owned DRE 1, an entity that was disregarded from its sole owner for U.S. federal tax purposes (a disregarded entity). Distributing 1 also directly wholly owned Sub 11, a domestic corporation, through its ownership of DRE 2, a disregarded entity. Distributing 1 also directly owned e percent of the sole class of stock of Sub 15, a domestic corporation. The remaining f percent of the stock of Sub 15 was owned by Sub 13.

Sub 7 directly wholly owned Sub 8, Sub 9, and Sub 10, each a domestic corporation. LLC 1 directly wholly owned Sub 12, a domestic corporation. Sub 13 directly wholly owned Sub 14, a domestic corporation. Sub 16 directly wholly owned Sub 17, which in turn directly owned Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, and Sub 25, each a domestic corporation. Sub 26 directly wholly owned Sub 27, Sub 28, Sub 29, and Sub 32, each a domestic corporation. Sub 29 directly wholly owned Sub 30 and Sub 31, each a domestic corporation. Sub 33 directly wholly owned Sub 34, a domestic corporation. Sub 35 directly wholly owned Sub 36, Sub 37, and Sub 38, each a domestic corporation. Sub 38 directly wholly owned Sub 39, Sub 40,

and Sub 41, each a domestic corporation. Sub 42 directly wholly owned Sub 43, Sub 44, and Sub 45, each a domestic corporation. Sub 46 directly wholly owned Sub 47, a domestic corporation, and Sub 47 directly wholly owned Sub 48 and Sub 49, each a domestic corporation. Sub 49 directly wholly owned Sub 50 and Sub 59, each a domestic corporation, through its ownership of DRE 3, a disregarded entity. Sub 50 directly wholly owned Sub 51 and Sub 56, each a domestic corporation, and Sub 51 directly wholly owned Sub 52, Sub 53, and Sub 55, each a domestic corporation. Sub 53 directly wholly owned Sub 54, a domestic corporation, and Sub 56 directly wholly owned Sub 57 and Sub 58, each a domestic corporation. Sub 59 directly wholly owned domestic Sub 60.

Distributing 1, directly and indirectly through its subsidiaries, owns System, which it leases to third parties in Business C and which it utilizes in Business A and Business B. Business B utilizes System to offer Services to consumers in certain locations. Before the occurrence of any of the steps of the Transactions, each of Sub 8, Sub 12, Sub 15, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, Sub 25, Sub 27, Sub 32, Sub 37, Sub 38, Sub 39, Sub 40, Sub 45, Sub 48, Sub 49, Sub 51, Sub 54, Sub 55, Sub 58, and Sub 60 were engaged in, and held assets related to, Business B.

System is comprised mainly of Assets Z, AA, BB, CC, DD, EE, FF, GG, and HH (collectively, the Distribution Assets, including Asset II). The taxpayer has not requested any rulings with regard to Asset JJ that is also a component of System.

The Distribution Assets are subject to certain easements (the Easements) held by Distributing 1 or Other Parties. Distributing 1 also holds Asset LL and enters into Type OO agreements (collectively, the Rights). Distributing 1 also enters into certain Type NN agreements with respect to Asset BB (the Agreements). Each of the Easements, the Rights, and the Agreements provides the holder with certain rights regarding certain of the Distribution Assets. The Easements are typically acquired for an unlimited or indefinite period of time, whereas the Agreements and the Rights are generally for a fixed period of time in exchange for consideration. The Agreements typically have terms of k to l years, with automatic renewal terms thereafter. The Asset LL Rights are usually for a term of w. Type OO agreements are typically for m to k years, with n-year renewal terms thereafter. The holder of a Right or an Agreement generally is required to pay its proportionate share of Cost RR and to maintain the Distribution Assets located at the site.

In recent years, Distributing 1 has shifted more of its focus to Business A; thus, as part of the Transactions, Distributing 1 will transfer Business B and Business C to Controlled, its recently-formed and wholly-owned State A subsidiary. Management of Distributing 1 has determined that separating Business B and Business C from Business A will serve the following corporate business purposes: (i) provide Distributing 1, Distributing 2, and Controlled with increased flexibility to pursue the Business Plan and acquisition strategy, including alternatives that are unlikely to be available absent the Distributions; (ii) enable Controlled to issue equity on meaningfully more favorable

terms in connection with investments and acquisitions, which management believes is critical to the success of the Business Plan, with less dilution to existing shareholders; (iii) meaningfully enhance the ability of the corporation to raise capital for Business C by issuing equity on more favorable terms than would be possible, absent the Distributions, in the public markets to institutional investors that invest in real estate investment trusts (REITs); (iv) reduce the actual or perceived competition for capital resources within the Distributing Group; (v) meaningfully enhance each of Distributing 1's, Distributing 2's, and Controlled's ability to attract and retain qualified management; and (vi) allow Business C to optimize its leverage and enhance Business A's credit profile, providing the Distributing Group with greater financial and strategic flexibility (collectively, the Corporate Business Purposes).

As part of the Transactions, after the External Distribution (as defined below), Controlled will make an election to be treated as a REIT (the REIT Election) and, together with Controlled Sub, its recently formed wholly owned State A subsidiary, will jointly elect to treat Controlled Sub as a taxable REIT subsidiary within the meaning of section 856(l) effective on the first day of Controlled's first taxable year as a REIT (the First REIT Taxable Year). Controlled will retain Business C, and Controlled Sub will hold Business B.

In connection with the REIT election, prior to the end of the First REIT Taxable Year, Controlled intends to distribute to its shareholders with respect to their Controlled Stock all of its earnings and profits (E&P) that were, or will be, accumulated by Controlled for all taxable periods ending prior to the First REIT Taxable Year as required by section 857(a)(2)(B) (the Purging Distribution). The Purging Distribution will take the form of cash and Controlled common stock. Controlled also currently intends to make cash and stock distributions in the two years following the effective date of the REIT Election (the Other Distributions and, together with the Purging Distribution, the REIT Distributions).

When Controlled makes the REIT Distributions, it intends to allow each Controlled shareholder to elect to receive the shareholder's distribution in either cash or Controlled shares of equivalent value, subject to a limitation on the amount of cash to be distributed in the aggregate to all shareholders (the Cash Limitation). If a shareholder fails to make a valid election by the election deadline, that shareholder will be deemed to have made an election to be determined by Controlled at Controlled's sole discretion. To the extent necessary, Controlled will issue cash in lieu of fractional shares of its stock. Although Controlled has not yet determined the amount of the Cash Limitation, it will not be less than 20 percent of each REIT Distribution declaration (without regard to any cash that may be paid in lieu of fractional shares).

If the total number of shares for which an election to receive a distribution in cash is made would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then all shareholders electing to receive cash will receive cash on all such shares. If too many shareholders elect to receive cash, each

shareholder electing to receive cash will receive a pro rata amount of cash corresponding to the shareholder's respective entitlement under the REIT Distribution declaration, but in no event will any shareholder electing to receive cash receive less than 20 percent of the shareholder's entire entitlement under the distribution declaration in cash.

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 REIT Distribution, based on a formula using market prices that is designed to equate in value the number of shares to be received with the amount of cash that could be received instead.

After the External Distributions (as defined below), Controlled will lease the Distribution Assets to either Distributing 1 or Distributing 2 under a triple-net lease (the Lease) with a g to t year term. In the aggregate, the Lease will provide for a fixed annual rent of approximately \$o for the first m years. Thereafter, the rent will increase under the Lease on an annual basis at a rent escalator that has yet to be determined by the parties. All amounts received under the Lease will be for the use of the Distribution Assets. The Lease will provide Distributing 1 or Distributing 2, as relevant, with the right to renew for as many as u p-year terms, which renewal will be priced at the then fair market value for such Lease. After the External Distributions, Controlled will also acquire, develop, and lease similar assets to unrelated tenants.

To avoid Problem, Distributing 1 will enter into certain agreements under which it will irrevocably assign all of the benefits and burdens of the Easements, the Rights, and the Agreements, through assignment and assumption agreements (the Assignment Agreements), to Controlled. The Assignment Agreements will provide for Rights UU, VV, and WW.

For administrative convenience and to avail itself of economies of scale with respect to employment costs, certain employees may perform services for both Controlled and Controlled Sub following the Transactions. For example, Distributing 1 expects that Controlled's collective human resources, legal, accounting, and other administrative departments will be located in either Controlled or Controlled Sub, and the personnel in those departments will provide services to both Controlled and Controlled Sub pursuant to an employee sharing agreement (the ESA).

Under the ESA, the employer, whether Controlled or Controlled Sub, will loan or advance the shared employees to the service recipient to the extent those employees spend time performing services for the service recipient. The service recipient will reimburse the employer for the service recipient's allocable share of the employee's costs, including salaries, benefits, and other compensation costs associated with payroll administration, and allocable overhead costs including, but not limited to, office supplies, furniture, and equipment. The amount of the reimbursements will be computed periodically and will be determined on the basis of the relative amount of time

the employees spend performing services on behalf of the employer versus the service recipient (or pursuant to another reasonable allocation method).

Controlled and Controlled Sub also expect to co-occupy the corporate offices of Controlled following the Transactions. Controlled and Controlled Sub will co-own or co-lease and co-occupy the offices, but only one or the other will be listed as the primary owner or lessee, as applicable, of the space. With respect to the shared space, Controlled and Controlled Sub will enter into a space sharing agreement (the SSA and, together with the ESA, the Cost Sharing Arrangements) that will provide that each party pays its allocable share of costs associated with the shared space on a cost reimbursement basis based upon the use of the space and its elements. Reimbursed costs may include, but are not limited to, utilities, taxes, mortgage expense, rents, and building maintenance and improvement expenses.

Distributing 1 and Controlled will enter into certain agreements in connection with the implementation of the Transactions that are intended to include: (i) a separation and distribution agreement, (ii) a tax matters agreement (the Tax Matters Agreement), (iii) a transition services agreement (the Transition Services Agreement), and (iv) an employee matters agreement (collectively, the Transaction Agreements).

The Transactions

For what are represented to be valid corporate business purposes, Distributing 2 has proposed the following series of proposed and partially completed transactions (the Transactions):

First Internal Restructuring

On Date 4, the following transactions occurred, although not necessarily in the order enumerated (collectively, the First Internal Restructuring):

- (i) DRE 2 merged into Distributing 1, and, thereafter, Sub 11 merged into its parent, Distributing 1 (the Sub 11 Liquidation).
- (ii) LLC 1 merged into Distributing 1 (the LLC 1 Liquidation), and, thereafter, Sub 12 merged into its parent, Distributing 1 (the Sub 12 Liquidation).
- (iii) Each of Sub 13, Sub 33, and Sub 42 merged into its parent, Distributing 1 (the Sub 13 Liquidation, the Sub 33 Liquidation, and the Sub 42 Liquidation, respectively).
- (iv) Sub 17 merged into its parent, Sub 16 (the Sub 17 Liquidation), and, thereafter, Sub 16 merged into its parent, Distributing 1 (the Sub 16 Liquidation).
- (v) Sub 38 merged into its parent, Sub 35 (the Sub 38 Liquidation).

- (vi) DRE 3 merged into its parent, Sub 49, and thereafter, each of Sub 50 and Sub 59 merged into its parent, Sub 49 (the Sub 50 Liquidation and the Sub 59 Liquidation, respectively); subsequently, Sub 56 merged into its parent, Sub 49 (the Sub 56 Liquidation), after which Sub 57 merged into its parent, Sub 49 (the Sub 57 Liquidation).

Second Internal Restructuring

Distributing 1 will complete the following steps in the following order to align the various assets and entities relating to Business A, Business B, and Business C (collectively, the Second Internal Restructuring). Following the First Internal Restructuring and the Second Internal Restructuring, all of the assets related to Business B and Business C will be treated as directly owned by Distributing 1 for U.S. federal income tax purposes.

- (vii) Sub 1 will merge into a newly-formed State A corporation wholly owned by its parent, Distributing 1. Immediately thereafter, the State A corporation will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 1 Liquidation).
- (viii) Each of Sub 2 and Sub 3 will convert under State B law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 2 Liquidation and the Sub 3 Liquidation, respectively).
- (ix) Sub 4 will convert under State C law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 4 Liquidation).
- (x) Each of Sub 5 and Sub 6 will convert under State D law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 5 Liquidation and the Sub 6 Liquidation, respectively).
- (xi) Sub 14 will convert under State F law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 14 Liquidation).
- (xii) Sub 15 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 15 Liquidation).
- (xiii) Sub 7 will merge into Distributing 1 (the Sub 7 Liquidation).

- (xiv) Sub 10 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 10 Liquidation).
- (xv) Sub 9 will convert under State E law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 9 Liquidation).
- (xvi) Sub 8 will contribute certain Business B assets and Business B to LLC 2, a newly formed State A limited liability company that is disregarded as separate from Sub 8 for U.S. federal tax purposes; immediately thereafter, Sub 8 will distribute all of the member interests in LLC 2 to Distributing 1.
- (xvii) Each of Sub 18, Sub 19, Sub 20, Sub 22, Sub 23, Sub 24, and Sub 25 will distribute its Business B assets to Distributing 1.
- (xviii) Sub 21 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes.
- (xix) Sub 26 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 26 Liquidation), and subsequently, Sub 27 will distribute assets related to Business B to Sub 26.
- (xx) Sub 29 will merge into Sub 26, an entity that will be disregarded as separate from its parent, Distributing 1 (the Sub 29 Liquidation).
- (xxi) Sub 28 will merge into a newly formed State A corporation that is wholly owned by its parent, Sub 26, a disregarded entity that is wholly owned by Distributing 1. Immediately thereafter, the State A corporation will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 28 Liquidation).
- (xxii) Sub 30 will merge into a newly formed State A corporation that is wholly owned by its parent, Sub 26, a disregarded entity that is wholly owned by Distributing 1. Immediately thereafter, the State A corporation will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 30 Liquidation).
- (xxiii) Sub 31 will merge into a newly formed State A corporation that is wholly owned by its parent, Sub 26, a disregarded entity that is wholly owned

by Distributing 1. Immediately thereafter, the State A corporation will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 31 Liquidation).

- (xxiv) Sub 32 will contribute certain assets related to Business B and Business C to LLC 3, a newly formed State A limited liability company that is disregarded as separate from Sub 32 for U.S. federal tax purposes; subsequently, Sub 32 will distribute all of the member interests in LLC 3 to Sub 26, an entity that will be disregarded as separate from its parent, Distributing 1, for U.S. federal tax purposes.
- (xxv) Sub 34 will convert under State F law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 34 Liquidation).
- (xxvi) Sub 35 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 35 Liquidation). Subsequently, Sub 37 will distribute certain assets related to Business B to Sub 35.
- (xxvii) Each of Sub 39, Sub 40 and Sub 41 will convert under State G law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 39 Liquidation, Sub 40 Liquidation, and Sub 41 Liquidation, respectively).
- (xxviii) Sub 36 will convert under State H law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 36 Liquidation).
- (xxix) Sub 43 will convert under State I law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 43 Liquidation).
- (xxx) Sub 44 will convert under State J law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 44 Liquidation).
- (xxxii) Sub 45 will convert under State I law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 45 Liquidation).
- (xxxii) Sub 46 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes.

- (xxxiii) Sub 47 will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes.
- (xxxiv) Sub 48 and Sub 49 will each convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes.
- (xxxv) Sub 51 will merge into a newly formed State A corporation that is wholly owned by its parent, Sub 49. Immediately thereafter, the newly formed State A corporation will convert under State A law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 51 Liquidation).
- (xxxvi) Sub 58 will convert under State C law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 58 Liquidation).
- (xxxvii) Sub 60 will convert under State L law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 60 Liquidation).
- (xxxviii) Sub 52 and Sub 53 will each merge into Sub 51 (the Sub 52 Liquidation and the Sub 53 Liquidation).
- (xxxix) Sub 54 will convert under State C law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 54 Liquidation).
- (xxxx) Sub 55 will convert under State K law into a limited liability company that is disregarded as separate from Distributing 1 for U.S. federal tax purposes (the Sub 55 Liquidation).

Debt Exchange

- (xxxxi) One or more investment banks (individually, an Investment Bank and collectively, the Investment Banks) intend to solicit non-binding orders from third-party investors for debt securities and loans under a term loan facility to be issued by Controlled with a currently estimated face amount of up to approximately \$ (the Controlled Securities).
- (xxxii) At least 14 days prior to the closing date of the Distributions, each Investment Bank, acting as principal for its own account, will acquire in the marketplace some or all of the Tranche A Debt, the Tranche B Debt, the Revolver, and the Notes (the Exchange Debt).

- (xxxxiii) No sooner than five days after acquiring the Exchange Debt and at least nine days prior to the Distributions (defined below), Distributing 1 expects that the Investment Banks will enter into an exchange agreement with Distributing 1 pursuant to which the parties will agree to exchange an amount of Exchange Debt for up to a currently estimated aggregate \$r face amount of Controlled Securities, less a specified spread (the Debt Exchange). The exchange ratio for the Debt Exchange will be negotiated between Distributing 1 and the Investment Banks, bargaining at arms' length, no earlier than the time they enter into the exchange agreement. Each Investment Bank expects to obtain binding commitments at such time from third-party investors who will agree to purchase the Controlled Securities from each Investment Bank following the Debt Exchange.

The Contribution and the Distributions

- (xxxxiv) Distributing 1 will contribute all of the assets and liabilities comprising Business B and Business C to Controlled. As part of this contribution, Distributing 1 will transfer membership interests in limited liability companies that are disregarded from it for U.S. federal tax purposes and that hold the Distribution Assets and Business B. Distributing 1 may also cause limited liability companies that are disregarded as separate from it to directly transfer assets to Controlled. As described earlier, Distributing 1 will also irrevocably assign the Easements, the Rights, and the Agreements, through the Assignment Agreements, to Controlled.
- (xxxxv) In exchange for the assignments and the contributions of Business B and Business C (the Contributed Assets), Distributing 1 will receive all of the common stock of Controlled, \$s in cash that Controlled expects to borrow from unrelated third-parties (the Controlled Cash), and the Controlled Securities (the Contribution). In order to address certain issues under Distributing 1's debt covenants, Escrow LLC, a disregarded entity formed by Controlled, will borrow from third parties, the proceeds of which will be held in an escrow account and pledged to the lenders until the conditions to the Distributions (defined below) have been satisfied. In the event that the Distributions do not occur, the proceeds will be used to fund a mandatory redemption of Distributing 1's existing debt. Upon satisfaction of all of the conditions to the Distributions, the proceeds of the borrowing will be released from the escrow account, and Escrow LLC will distribute the proceeds to Controlled, who in turn, will distribute them to Distributing 1 in connection with the Contribution. Immediately following completion of the Distributions, Escrow LLC will be merged into Controlled.
- (xxxxvi) Controlled will contribute Business B to Controlled Sub in exchange for

Controlled Sub stock.

- (xxxxvii) Distributing 1 and the Investment Banks will consummate the Debt Exchange.
- (xxxxviii) Distributing 1 will distribute all of the stock of Controlled to Distributing 2 (the Internal Distribution).
- (xxxxix) Distributing 2 will distribute all of the stock of Controlled, pro rata, to the holders of the Distributing 2 Common Stock (the External Distribution and, together with the Internal Distribution, the Distributions).
- (xxxxx) As promptly as practicable after the Distributions, but in no event later than one year after the Distributions, Distributing 1 will use the Controlled Cash received in the Contribution to repay existing Tranche B Debt, the Notes, or other existing debt and/or to distribute to Distributing 2 for the repurchase of shares of common stock.

The Elections

- (xxxxxi) Controlled will make the REIT Election by electing to become a REIT as of the first day of its taxable year beginning the day after the Distributions occur, and Controlled will elect jointly with Controlled Sub to have Controlled Sub treated as a “taxable REIT subsidiary” within the meaning of section 856(l) effective on the first day of Controlled’s first taxable year as a REIT.
- (xxxxxii) In accordance with section 857(b)(9), Controlled will declare a dividend in an amount equal to the Purging Distribution within the last three months of the calendar year in which Controlled makes the REIT Election. The Purging Distribution will be paid no later than January 31st of the following calendar year.

Representations

The Liquidations

The following representations have been made with respect to each of the Sub 1 Liquidation, the Sub 2 Liquidation, the Sub 3 Liquidation, the Sub 4 Liquidation, the Sub 5 Liquidation, the Sub 6 Liquidation, the Sub 7 Liquidation, the Sub 9 Liquidation, the Sub 10 Liquidation, the Sub 11 Liquidation, the Sub 12 Liquidation, the Sub 13 Liquidation, the Sub 14 Liquidation, the Sub 15 Liquidation, the Sub 16 Liquidation, the Sub 17 Liquidation, the Sub 26 Liquidation, the Sub 28 Liquidation, the Sub 29 Liquidation, the Sub 30 Liquidation, the Sub 31 Liquidation, the Sub 33 Liquidation, the Sub 34 Liquidation, the Sub 35 Liquidation, the Sub 36 Liquidation, the Sub 38

Liquidation, the Sub 39 Liquidation, the Sub 40 Liquidation, the Sub 41 Liquidation, the Sub 42 Liquidation, the Sub 43 Liquidation, the Sub 44 Liquidation, the Sub 45 Liquidation, the Sub 50 Liquidation, the Sub 51 Liquidation, the Sub 52 Liquidation, the Sub 53 Liquidation, the Sub 54 Liquidation, the Sub 55 Liquidation, the Sub 56 Liquidation, the Sub 57 Liquidation, the Sub 58 Liquidation, the Sub 59 Liquidation, the Sub 60 Liquidation, and the LLC 1 Liquidation (each, a Liquidation). For purposes of these representations, each liquidating corporation is referred to as “Liquidating Subsidiary” and each parent corporation of such Liquidating Subsidiary is referred to as “Parent.”

- (a) Except with respect to transactions comprising steps of the Transactions and transfers in the ordinary course of business, the liquidation of each Liquidating 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 such Liquidating Subsidiary, if persons holding, directly or indirectly, more than 20 percent in value of the Liquidating Subsidiary stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation and in each place that it appears herein, ownership will be determined immediately after the External Distribution and by application of the constructive ownership rules of section 318(a) as modified by section 304(c)(3).
- (b) Parent, on the date of adoption of each plan of liquidation, and at all times thereafter until the completion of the final liquidation, will own 100 percent of the single outstanding class of stock of each Liquidating Subsidiary. For purposes of this representation, each plan of liquidation is considered to be adopted by Parent immediately prior to such Liquidation.
- (c) No shares of stock of any Liquidating Subsidiary will have been redeemed during the three years preceding the date of the Transactions.
- (d) All distributions from each Liquidating Subsidiary to its Parent pursuant to the plan of complete liquidation will be made within a single taxable year of such Liquidating Subsidiary.
- (e) As of the effective date of each Liquidation, each Liquidating Subsidiary will cease to be an entity that is separate from its Parent for U.S. federal tax purposes.
- (f) For U.S. federal tax purposes, no Liquidating Subsidiary (as a corporation) will retain any assets following its Liquidation.
- (g) No Liquidating Subsidiary will have acquired assets in any nontaxable transaction at any time except for acquisitions occurring more than three

years prior to the Transactions.

- (h) Except with respect to transfers made pursuant to the steps of the Transactions, no assets of any Liquidating Subsidiary have been or will be disposed of by its Parent, except for dispositions in the ordinary course of business and dispositions occurring more than three years prior to adoption of the plan of liquidation.
- (i) Each Liquidating Subsidiary will report all earned income represented by assets that will be deemed distributed to its Parent, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (j) The fair market value of the assets of each Liquidating 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 Liquidation occurs.
- (k) There is no intercorporate debt existing between any Liquidating Subsidiary and its Parent and none has been cancelled, forgiven, or discounted, except for transactions that occurred more than three years prior to the date of adoption of the liquidation plan.
- (l) Parent is not an organization that is exempt from U.S. federal tax under section 501 or any other provision of the Code.
- (m) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Liquidations have been fully disclosed.
- (n) In each Liquidation, the assets of the Liquidating Subsidiary that relate to Business B and that will ultimately be contributed to Controlled Sub will make up less than 20 percent of the fair market value of the total assets previously held by such Liquidating Subsidiary.

The Contribution and the Distributions

The following representations have been made with respect to the Internal Distribution and the External Distribution (each such Distribution is referred to as a Distribution, and the corporation that will distribute the stock of Controlled in each such Distribution is referred to as the Distributing Corporation):

- (o) With the exception of the Controlled Securities to be held by Distributing 1 prior to the Debt Exchange, the indebtedness, if any, owed by Controlled to the Distributing Corporation after the Distribution will not constitute

stock or securities.

- (p) No part of the consideration to be distributed by the Distributing Corporation with respect to the Distributing Corporation's stock will be received by any shareholder of the Distributing Corporation as a creditor, employee, or in any capacity other than that of a shareholder of the Distributing Corporation.
- (q) The Distributing Corporation and Controlled will treat all members of their respective separate affiliated groups (as defined in section 355(b)(3)(B)) (the SAG) as one corporation in determining whether the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
- (r) The five years of financial information submitted on behalf of Business A-1 conducted by DRE 1 is representative of the present business operations of DRE 1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (s) The five years of financial information submitted on behalf of Business B is representative of the present business operations of Business B, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (t) Following the Distribution and except as contemplated by the Transition Services Agreement, the Distributing Corporation SAG and the Controlled SAG will continue the active conduct of their respective businesses, independently and with their separate employees.
- (u) Neither the Distributing Corporation nor any member of the Distributing Corporation SAG acquired Business A-1 or control of any entity conducting Business A-1 during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under section 1.355-3 of the proposed regulations) in whole or in part, excluding acquisitions that constitute an expansion of Business A-1. Throughout the five-year period ending on the date of the Distribution, the Distributing Corporation and/or members of the Distributing Corporation SAG will have been the principal owner(s) of the goodwill and significant assets of Business A-1 and will continue to be the principal owner(s) following the Distribution.
- (v) Neither the Distributing Corporation nor any member of the Distributing Corporation SAG acquired Business B or control of any entity conducting Business B during the five-year period ending on the date of the

Distribution in a transaction in which gain or loss was recognized (or treated as recognized under section 1.355-3 of the proposed regulations) in whole or in part, excluding acquisitions that constitute an expansion of Business B. Throughout the five-year period ending on the date of the Distribution, the Distributing Corporation and/or members of the Distributing Corporation SAG will have been the principal owner(s) of the goodwill and significant assets of Business B, and Controlled or members of the Controlled SAG will be the principal owner(s) following the Distribution.

- (w) The Distributions are being carried out for one or more of the following corporate business purposes: (i) to provide Distributing 1, Distributing 2, and Controlled with increased flexibility to pursue the Business Plan and acquisition strategy, including alternatives that are unlikely to be available absent the Distributions; (ii) to enable Controlled to issue equity on meaningfully more favorable terms in connection with investments and acquisitions, which management believes is critical to the success of the Business Plan, with less dilution to existing shareholders; (iii) to meaningfully enhance the ability of Business C to raise capital by issuing equity on more favorable terms than would be possible, absent the Distributions, in the public markets to institutional investors that invest in REITs; (iv) to reduce the actual and perceived competition for capital resources within the Distributing Group; (v) to meaningfully enhance each of Distributing 1 and Distributing 2, and Controlled's ability to attract and retain qualified management; and (vi) to allow Business C to optimize its leverage and enhance Business A's credit profile, providing the Distributing Group with greater financial and strategic flexibility. The Distributions are motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (x) The Distribution is not being used principally as a device for the distribution of the earnings and profits of the Distributing Corporation or Controlled.
- (y) Immediately after the Distribution, (i) any person that holds a 50 percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)) will have held such an interest in such corporation immediately before the transaction, or (ii) neither the Distributing Corporation nor Controlled will be a disqualified investment corporation for purposes of section 355(g).
- (z) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all

classes of stock of the Distributing Corporation entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of the Distributing Corporation, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (aa) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing Corporation stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (bb) The External Distribution is not part of a plan or series of related transactions (within the meaning of section 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 section 355(d)(4)) in the Distributing Corporation or Controlled (including any predecessor or successor of any such corporation).
- (cc) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing 1 each will equal or exceed the sum of (i) any liabilities assumed (within the meaning of section 357(d)) by Controlled and (ii) the total of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing 1.
- (dd) The liabilities (if any) to be assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (ee) Except for the Controlled Securities, no indebtedness will exist between Distributing 1 and Controlled at the time of, or subsequent to, the Internal Distribution, except for obligations arising in the ordinary course of business or obligations arising pursuant to the Transaction Agreements.
- (ff) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see sections 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; section 1.1502-13 as published in T.D. 8597). Any

excess loss account the Distributing Corporation may have in the Controlled Stock will be included in income immediately before the Distribution to the extent required by the regulations (see section 1.1502-19).

- (gg) Except for certain payments that will be made in connection with the Tax Matters Agreement and certain services agreements that are transitional in nature, payments made in connection with any continuing transactions between the Distributing Corporation (and its subsidiaries) and Controlled (and its subsidiaries) following the Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (hh) No property will be transferred by Distributing 1 to Controlled for which an investment credit allowed under section 46 will be (or has been) claimed.
- (ii) Pursuant to the plan of reorganization, Distributing 1 will use the Controlled Cash received in the Contribution to repay existing Tranche B Debt, Notes, other existing debt, and/or to distribute to Distributing 2 for the repurchase of shares of Common Stock. Such proceeds will be held in a segregated account until they are used, as described above.
- (jj) The Tranche A Debt, the Tranche B Debt, and the Notes (the Specified Exchange Debt) to be used in the Debt Exchange were not issued in anticipation of the External Distribution.

Other Representations

- (kk) Unless required by law or loss of other rights, neither Distributing 1 presently, nor Controlled following the Distributions, has or will have the intent to remove the Distribution Assets prior to the end of the economic useful life of the Distribution Assets.
- (ll) The Distribution Assets were designed and constructed to remain in place for the entirety of the economic useful lives of the Distribution Assets.
- (mm) Asset JJ and any personal property leased as part of the Distribution Assets will not exceed y percent of the aggregate fair market value of both the real property and personal property attributable to the Distribution Assets.
- (nn) In the event Controlled and Controlled Sub share office or facility space, each of Controlled and Controlled Sub will bear its proportional amount of the costs for such space through a cost-sharing arrangement.

- (oo) Reimbursements for shared personnel, equipment, and space will be at cost and will be deducted or capitalized, as applicable, by the party bearing such costs under the cost-sharing arrangement; the reimbursed party under a cost-sharing arrangement will not deduct or capitalize the costs of shared personnel or space for which it receives reimbursement.
- (pp) Neither Controlled nor Controlled Sub will be in the business of receiving compensation from other persons for services or use of property of the types that will be shared.
- (qq) Rent attributable to any personal property leased in connection with the Distribution Assets will not exceed y percent of the total rent of both the real property and personal property included in the System.
- (rr) The Distribution Assets are passive and include no machinery or equipment that produces any products or commodities.
- (ss) The Distribution Assets have economic useful lives of approximately h to i years.
- (tt) The Distribution Assets have never been moved to a new location and a substantial part of the Distribution Assets cannot be moved without prohibitive expense and damage to the System. Although Parties MM or parties who control a right of way occasionally require Distributing 1 to build and/or move certain Distribution Assets, this only affects approximately j percent of the System each year. Such projects typically involve installing new Distribution Assets in a new location and abandoning the old. If Parties MM so require, Distributing 1 completes removal and disposal of the old components. In rare instances, an Asset BB can be reused in a new location. Components otherwise are removed only for replacement rather than use at another location at the end of their useful life.
- (uu) Controlled will be the substantive owner of the Easements, the Rights, and the Agreements.
- (vv) No portion of the rent paid by Distributing 2 will be based on Distributing 2's net income or profit within the meaning of section 856(d)(2)(A).
- (ww) With regard to the ESA, the employer will not deduct or capitalize the costs reimbursed by the service recipient; rather, the service recipient will deduct or capitalize those costs, as appropriate.
- (xx) With regard to the SSA, neither party will deduct or capitalize any costs that are reimbursed by the other party; rather, each party will deduct or

capitalize its share of the costs, as appropriate. The reimbursement under the Cost Sharing Arrangements will be solely for the associated costs, both direct and indirect, with no mark-up. The allocation of general and administrative overhead expenses under the Cost Sharing Arrangements will be made on an equitable basis consistent with an arm's length standard. Neither Controlled nor Controlled Sub will be in the business of receiving compensation from others for services or use of property of the types that will be reimbursed under the Cost Sharing Arrangement.

Rulings

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

The Liquidations

For purposes of Rulings 1-7 below, with respect to each Liquidation, each liquidating corporation is referred to as a "Liquidating Subsidiary," and each parent corporation of such Liquidating Subsidiary is referred to as "Parent." With respect to each of the Liquidations, we rule as follows:

- (1) The Liquidation will qualify as a complete liquidation under section 332 (sections 332(b) and 1.332-2(d)).
- (2) No gain or loss will be recognized by Parent on its receipt of the Liquidating Subsidiary's assets and the assumption of the Liquidating Subsidiary's liabilities (section 332(a)).
- (3) No gain or loss will be recognized by the Liquidating Subsidiary on the distribution of its assets to, and the assumption of its liabilities by, its Parent (sections 336(d)(3) and 337(a)).
- (4) Parent's basis in each asset received from the Liquidating Subsidiary in the Liquidation will be the same as the basis of that asset in the hands of the Liquidating Subsidiary immediately before the Liquidation (section 334(b)(1)).
- (5) Parent's holding period in each asset received from the Liquidating Subsidiary in the Liquidation will include the period during which that asset was held by the Liquidating Subsidiary (section 1223(2)).
- (6) Parent will succeed to and take into account as of the close of the effective date of the Liquidation the items of the Liquidating Subsidiary described in section 381(c), subject to the conditions and limitations specified in sections 381, 382, 383, and 384 and the regulations

thereunder (sections 381(a) and 1.381(a)-1)).

- (7) The excess loss account, if any, of Parent with respect to the stock of the Liquidating Subsidiary will not be recognized as a result of the Liquidation.

The Contribution, Internal Distribution, and Debt Exchange

- (8) The Contribution (including the receipt by Distributing 1 of the Controlled Cash and the Controlled Securities), together with the distribution of the Controlled stock in the Internal Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing 1 and Controlled each will be “a party to a reorganization” within the meaning of section 368(b).
- (9) Provided that the Controlled Securities are transferred in the Debt Exchange and the Controlled Cash is dispensed of as described in step (xxxxx) and representation (ii) above, Distributing 1 will not recognize any gain or loss on the Contribution, including the receipt by Distributing 1 of the Controlled Stock, the Controlled Securities, the Controlled Cash, and the assumption of any liabilities (sections 361(a), 361(b) and 357(a)).
- (10) Controlled will not recognize gain or loss on the Contribution (section 1032(a)).
- (11) Controlled’s basis in each asset received in the Contribution will be the same as the basis of that asset in the hands of Distributing 1 immediately before the Contribution (section 362(b)).
- (12) Controlled’s holding period in each asset received in the Contribution will include the period during which Distributing 1 held the asset (section 1223(2)).
- (13) Distributing 1 will not recognize gain or loss on the distribution of its Controlled stock in the Internal Distribution (section 361(c)).
- (14) Provided that the Controlled Securities are transferred in the Debt Exchange, Distributing 1 will not recognize any income, gain, loss, or deduction with respect to the transfer of the Controlled Securities solely in exchange for the Specified Exchange Debt in the Debt Exchange (section 361(c)).
- (15) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon its receipt of the Controlled stock in the Internal Distribution (section 355(a)).
- (16) Distributing 2’s basis in the Distributing 1 Common Stock and Controlled

stock immediately after the Internal Distribution will equal its basis in its Distributing 1 Common Stock immediately before the Internal Distribution, allocated between the Distributing 1 Common Stock and the Controlled stock in proportion to the fair market value of each immediately following the Internal Distribution in accordance with section 1.358-2(a)(2)(iv) (section 358(a), (b)(2) and (c)).

- (17) Distributing 2's holding period in the Controlled stock received from Distributing 1 in the Internal Distribution will include the holding period of the Distributing 1 Common Stock with respect to which the Internal Distribution is made, provided that the Distributing 1 Common Stock is held as a capital asset on the date of the Internal Distribution (section 1223(1)).
- (18) Earnings and profits (if any) will be allocated between Distributing 1 and Controlled in accordance with section 312(h) and sections 1.312-10(a) and 1.1502-33(e).
- (19) Except for purposes of section 355(g), any post-distribution payments made by Distributing 1 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 Internal Distribution or for a taxable period beginning on or before and ending after the date of the Internal Distribution and (ii) will not have become fixed and ascertainable until after the Internal Distribution will be treated as occurring immediately before the Internal Distribution (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

The External Distribution

- (20) No gain or loss will be recognized by Distributing 2 on the External Distribution (section 355(c)).
- (21) No gain or loss will be recognized by (and no amount will be included in the income of) the Distributing 2 shareholders upon their receipt of the Controlled stock in the External Distribution (section 355(a)).
- (22) Each Distributing 2 shareholder's basis in the Distributing 2 Common Stock and Controlled stock (including any fractional share interest in Controlled to which the shareholder may be entitled) immediately after the External Distribution will equal the basis of the Distributing 2 Common Stock that the shareholder held immediately before the External Distribution, allocated between the Distributing 2 Common Stock and the Controlled stock in proportion to the fair market value of each immediately following the External Distribution in accordance with section 1.358-

2(a)(2)(iv) (section 358(a), (b)(2) and (c)).

- (23) Each Distributing 2 shareholder's holding period in the Controlled stock received in the External Distribution (including any fractional share interest in Controlled to which the shareholder may be entitled) will include the holding period of the Distributing 2 Common Stock with respect to which the External Distribution is made, provided that the shareholder holds such Distributing 2 Common Stock as a capital asset on the date of the External Distribution (section 1223(1)).
- (24) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with section 312(h) and sections 1.312-10(b) and 1.1502-33(e)(3).

Other Rulings

- (25) The Distribution Assets (including Assets Z, AA, BB, CC, DD, EE, FF, GG, HH, and II) will constitute "real property" for purposes of sections 856(c)(2)(C) and 856(c)(3)(A). The Easements, the Rights, and the Agreements are interests in real property and each will qualify, under section 856(c)(5)(B), as a "real estate asset," and assuming Controlled is the owner of the Easements, the Rights, and the Agreements, the amounts derived by Controlled under the agreements will be considered "rents from real property" within the meaning of section 856(d)(1).
- (26) Payments received by Controlled under the Lease will be treated as "rents from real property" under section 856(d).
- (27) Any amounts received by Controlled or Controlled Sub as reimbursements under a cost-sharing arrangement will not be included in the reimbursed party's gross income, including for purposes of section 856(c)(2) and (3) (to the extent Controlled is the reimbursed party). Also, the reimbursed party will not be entitled to a deduction for any expenses that are later reimbursed.
- (28) All of the cash and Controlled Stock to be distributed in the Purging Distribution or Other Distributions by Controlled to holders of Controlled Stock will be treated as a distribution of property with respect to its stock to which sections 301 and 305(b) apply. Provided (a) Controlled elects to be taxed as, and qualifies as, a REIT as of the First REIT Taxable Year and (b) the Purging Distribution occurs during the First REIT Taxable Year and the Other Distributions occur thereafter, the amount of the distribution of stock shall be considered to equal the amount of cash that could have been received instead of such stock (section 1.305-1(b)(2) and 1.305-2(b),

Example (2), of the Income Tax Regulations). The Purging Distribution will not be deductible by Controlled.

Caveats

We express no opinion about the federal income tax treatment of the Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Transactions that are not specifically covered by the above rulings. Rulings concerning the Purging Distribution and Other Distributions are void, and we do not express any opinion on the tax consequences of the Purging Distribution and the Other Distributions if the Purging Distribution is not completed by the end of the First REIT Taxable Year and the Other Distributions thereafter.

In particular, we express no opinion regarding:

- (a) whether the Transactions (i) satisfy the business purpose requirement of section 1.355-2(b), (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see sections 355(a)(1)(B) and 1.355-2(d)), or (iii) 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 the distributing corporation or the controlled corporation (see sections 355(e) and 1.355-7);
- (b) whether Controlled otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code;
- (c) whether any asset not listed above as part of the Distribution Assets or included in the Easements, the Rights, and the Agreements will qualify as a real estate asset;
- (d) who is the owner of the Easements, the Rights, and the Agreements following their assignments, as described herein;
- (e) whether Asset JJ that is a part of Distributing 1's System will qualify as real estate assets under section 856(c)(5)(B);
- (f) whether any amounts paid to Controlled by Controlled Sub as rents will clearly reflect income for purposes of section 857(b)(7)(B); and
- (g) the federal income tax treatment of the Merger or the transactions described in steps (xvi), (xvii), (xviii), (xxiv), (xxxii), (xxxiii), (xxxiv), and (xxxvi).

Procedural Matters

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

A copy of this ruling 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.

Under a power of attorney on file in this office, we are sending a copy of this ruling letter to your authorized representatives.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)