



REIT 8 =

REIT 9 =

Corp A =

Corp C =

Corp D =

Partnership =

Partnership 2 =

B =

Properties =

Preferred Buyers =

Year 1 =

c =

d =

e =

Dear \_\_\_\_\_ :

This letter replies to your authorized representative's letter dated May 27, 2016, requesting rulings on certain tax consequences of a proposed transaction. The information submitted is summarized below.

Parent REIT is a corporation that has elected to be taxed as a real estate investment trust (REIT). Parent REIT invests primarily in real estate serving the B industry. Parent REIT owns all the stock of Corp A, a corporation that has elected to be treated as a "taxable REIT subsidiary" of Parent REIT as defined in section 856(l) of the Internal Revenue Code, and also owns more than 99 percent of the interests in REIT 2, an entity that has elected to be subject to tax as a REIT. Parent REIT, REIT 2, and Corp A together own more than 99 percent of the interests in REIT 3, which has elected to be taxed as a REIT. Parent REIT and REIT 3 together own over 99 percent of the interests in Partnership, which is a partnership for federal income tax purposes. Partnership owns more than 99 percent of the interests in REIT 4, which has elected to be taxed as a REIT.

REIT 4 acquired the stock of a subsidiary of Corp C in Year 1 in order to acquire a large number of Properties engaged in aspects of the B industry. The Properties are now owned by REIT 4 through various partnerships and disregarded entities, and are leased back to Corp C pursuant to a long-term lease. Among those partnerships is Partnership 2, which was partly owned by REIT 4 and partly by Parent REIT. Parent REIT sold its interest to REIT 4 as described in the Proposed Transactions. Parent REIT had also acquired a c percent minority interest in Corp C which it intends to sell as part of the Proposed Transactions.

The business of Corp C has deteriorated recently. Corp C's problems have required REIT 4 and its subsidiaries to reduce the rents on the leases of the Properties to Corp C. Parent REIT intends to reduce its financial exposure to Corp C by engaging in the Proposed Transaction.

### **Proposed Transactions**

The proposed transactions will separate the Properties leased to Corp C in a separate group of entities under a separate, publicly-owned REIT. The series of transactions, some of which have been completed, are set forth below:

(i) Parent REIT formed Spin-REIT by transferring cash to Spin-REIT in exchange for common stock of Spin-REIT.

(ii) Parent REIT has transferred or will transfer cash to Spin-REIT in exchange for preferred stock and additional common stock of Spin-REIT. Before Parent REIT receives the preferred stock of Spin-REIT, Parent REIT entered into a prearranged binding contract to sell its Spin-REIT preferred stock to the Preferred Buyers in exchange for d dollars.

(iii) Parent REIT sold its interest in Partnership 2 directly to REIT 4 (the "Partnership 2 Sale"). After that sale, Partnership 2 was then owned by an LLC under REIT 4 and partly directly by REIT 4.

(iv) Spin-REIT will form a subsidiary REIT (REIT 5) and contribute- to REIT 5 some or all of the cash that Spin-REIT received from Parent REIT in exchange for common stock of REIT 5.

(v) REIT 5 will form four subsidiary REITs (REIT 6, REIT 7, REIT 8, and REIT 9, collectively referred to as the "Sub-REITs) and contribute cash to the Sub-REITs in exchange for common stock of each Sub-REIT. Corp D will hold one or more shares of common stock in each of REIT 5 and the Sub-REITs.

(vi) Each of the Sub-REITs plan to borrow funds from unrelated third-party lenders (the Loan Proceeds) in the total amount of e dollars, to be secured by the interests in Partnership received in Step (ix) and the Properties. Spin-REIT and REIT 5 may guarantee the borrowing.

(vii) Spin-REIT will contribute additional Spin-REIT common stock to REIT 5 in exchange for additional REIT 5 common stock. After this step and until the completion of step (ix), this stock is referred to as "Spin-REIT Hook Stock."

(viii) REIT 5 will contribute the Spin-REIT Hook Stock to each of the four Sub-REITs in the proportion of the values of the properties that will be associated with each Sub-REIT in exchange for additional common stock of each Sub-REIT.

(ix) Parent REIT and REIT 3 will sell all the interests in Partnership to the Sub-REITs (the "Partnership Sale") in exchange for a pro rata share of a portion of the Loan Proceeds held by each Sub-REIT and the Spin-REIT Hook Stock (collectively, the "Consideration").

(x) Parent REIT will sell its c percent interest in Corp C to the Sub-REITs in exchange for a portion of the Consideration (the "Corp C Stock Sale").

(xi) REIT 3 will distribute the Consideration that it received in Step (ix) through its ownership chain to Parent REIT. After this step, none of the Spin-REIT Hook Stock will be hook stock because it will be owned by Parent REIT, its original shareholder.

(xii) Parent REIT will distribute all or almost all of the common stock of Spin-REIT to Parent REIT shareholders (the Spin-Off). REIT 2 may continue to hold a de minimis amount of Spin-REIT common stock following the Spin-Off, and expects to sell that stock in the public market shortly after the Proposed Transaction. The taxpayers will treat the Spin-Off as a transaction in which gain or loss will be recognized.

(xiii) Parent REIT, pursuant to the prearranged binding sales contract described in step (ii), will sell all the Spin-REIT preferred stock to the Preferred Buyers.

Parent REIT and REIT 3 expect to recognize a loss on the Partnership Sale. Parent REIT also expects to recognize losses on the Partnership 2 Sale and the Corp C Stock Sale. These losses represent an actual decline in the value of the Properties due to the deteriorated financial position of Corp C, the Properties' sole tenant.

### **Representations**

The following representations have been made regarding the Partnership Sale.

(a) Pursuant to the Partnership Sale, Parent REIT and REIT 3 will contemporaneously transfer, in the aggregate, 100 percent of their interests in Partnership to the Sub-REITs.

(b) The total amount of the Consideration paid by each of the Sub-REITs for the partnership interests in the Partnership Sale will equal the fair market value of those interests.

(c) Parent REIT's current tax basis in the Partnership interests that it owns exceeds Parent REIT's expected amount realized on the Partnership Sale.

(d) REIT 3's current tax basis in the Partnership interests that it owns exceeds REIT 3's expected amount realized on the Partnership Sale.

(e) Each Sub-REIT will acquire less than 50 percent by value of the outstanding interests in Partnership.

(f) None of the Sub-REITs expects to acquire "substantially all" of Parent REIT's or REIT 3's assets, within the meaning of sections 354(b)(1) and 368(a)(1)(D).

(g) There is no plan or intent to merge or combine the Sub-REITs following the Spin-Off.

(h) Neither Parent REIT or REIT 3 expects to distribute all of their assets to their current shareholders as part of the Proposed Transaction.

The following representations are made with respect to the Corp C Stock Sale:

- (i) Pursuant to the Corp C Stock Sale, Parent REIT will transfer, in the aggregate, 100 percent of its interest in Corp C to the Sub-REITs.
- (j) The total amount of the consideration paid by the transferees for the Corp C interests in the Corp C Stock Sale will equal the fair market value of those interests.
- (k) Parent REIT's tax basis in the Corp C stock that it owns exceeds Parent REIT's expected amount realized on the Corp C Stock Sale.

The following representations are made with respect to the Partnership 2 Sale:

- (l) Pursuant to the Partnership 2 Sale, Parent REIT will transfer, in the aggregate, 100 percent of its interest in Partnership 2 to the Sub-REITs.
- (m) The total amount of the consideration paid by the transferees for the Partnership 2 interests in the Partnership 2 Sale will equal the fair market value of those interests.
- (n) Parent REIT's tax basis in the Partnership 2 interests that it owns exceeds Parent REIT's expected amount realized on the Partnership 2 Sale.

The following representations are made with respect to the Spin-Off:

- (o) Parent REIT intends to report the Spin-Off as a taxable distribution under Section 301.
- (p) Following the Spin-Off, Spin-REIT, REIT 5, and the Sub-REITs will not be members of the same "controlled group" as either Parent REIT or REIT 3, within the meaning of section 1563, as modified by section 267(f).

### **Rulings**

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

- (1) The Partnership Sale, the Corp C Stock Sale, and the Partnership 2 Sale will each be respected as a taxable sale of partnership interests or stock, as applicable.
- (2) Any losses recognized on the Partnership Sale, the Corp C Stock Sale, and the Partnership 2 Sale will be deferred (rather than disallowed) under section 267(f) until

the Partnership interests, the Corp C stock, or the Partnership 2 interests, as applicable, leave the Parent REIT's controlled group in the Spin-Off.

### **Caveats**

Except as provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Parent REIT, REIT 2, REIT 3, REIT 4, Spin-REIT, REIT 5, or any of the four Sub-REITs under REIT 5 qualifies or will qualify as a REIT under part II of subchapter M of the Code. In addition, no opinion is expressed with regard to whether Corp A qualifies as a "taxable REIT subsidiary" under part II of subchapter M of the Code.

### **Procedural Statements**

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number (PLR-116160-16) of this letter ruling.

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

Sincerely,

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

cc: