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, ID No.

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Refer Reply To:  
CC:CORP:3  
PLR-126768-20

Date:  
May 20, 2021

Legend

Distributing =

Controlled 1 =

Controlled 2 =

Business A =

Business B =

Business C =

Controlled 1 Segment of Business A =

Controlled 2 Segment of Business A =

PLR-126768-20

2

Controlled 1 Development Project =

General Partnership =

GP Controlled 1 =

LLC1 =

Corporation 1 =

Corporation 2 =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Shareholder G =

Shareholder H =

Shareholder I =

Shareholder J =

Shareholder K =

PLR-126768-20

3

Beneficiary 1 =

Beneficiary 2 =

Beneficiary 1 Trust =

Beneficiary 2 Trust =

Revocable Trust 1 =

Grantor Trust 1 =

Grantor Trust 2 =

Grantor Trust 3 =

Grantor Trust 4 =

Grantor Trust 5 =

Grantor Trust 6 =

Grantor Trust 7 =

Grantor Trust 8 =

PLR-126768-20 4

Transaction Agreements =

Transitional Agreement =

Separate Agreement =

New Debt 1 =

New Debt 2 =

New Debt 3 =

New Debt 4 =

Year 1 =

State A =

State B =

State C =

a =

b =

c =

d =

e =

f =

g =

h =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

Dear :

This letter responds to your letter dated November 12, 2020, as supplemented on May 7, 2021, and May 19, 2021, requesting rulings under sections 355 and 368(a)(1)(D) of the Internal Revenue Code (the "Code") with respect to the proposed transaction described below (the "Proposed Transaction"). The material information is summarized below.

The rulings contained in this letter are based upon information 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 material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" under sections 355 and 368 of the Code. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

This office has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporations, or any predecessor or successor of the distributing corporation or the controlled corporations, within the meaning of Treas. Reg. § 1.355-8T (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### **Summary of Facts**

Distributing is an accrual method taxpayer that was formed in Year 1 as a State A corporation. Distributing owns a percent of General Partnership and Shareholder A owns b percent of General Partnership. Distributing is engaged in Business A and Business B.

Distributing also owns c percent of LLC1. General Partnership owns d percent of LLC1. Via direct and indirect ownership, Distributing's interest in LLC1 is greater than 33 1/3 percent. The Beneficiary 1 Trust and the Beneficiary 2 Trust each own e percent of LLC1. Corporation 1 and Corporation 2 each own f percent of LLC1. LLC1 owns and operates Business C.

General Partnership also owns: (1) part of the Controlled 1 Segment of Business A and the Controlled 1 Division and (2) part of the Controlled 2 Segment of Business A and the Controlled 2 Division.

Distributing has two classes of common stock: Series A voting shares and Series B non-voting shares. Distributing has g shares of Series A voting stock outstanding and h shares of Series B non-voting stock outstanding.

Shareholder A owns k percent of each of Distributing Series A and Series B shares. Shareholder B (Shareholder A's spouse) owns k percent of each of Distributing Series A and Series B shares. Shareholder C and Shareholder D each own l percent of each of Distributing Series A and Series B shares. Shareholder E owns m percent of each of Distributing Series A and Series B shares. Shareholder F, Shareholder G, Shareholder H, Shareholder I, and Shareholder J each own n percent of each of Distributing Series A and Series B shares. Shareholder K owns o percent of each of Distributing Series A and Series B shares.

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

Disputes have arisen among Shareholder C, Shareholder D, and Shareholder E as to the management of the businesses. To allow Shareholder C, Shareholder D, and Shareholder E to each manage and conduct the Distributing active businesses more effectively and profitably without interference or direction from the others, Distributing proposes the Proposed Transaction.

### **Preliminary Steps**

#### *Stock split of Distributing Series A and Series B shares*

Distributing will effect a stock split of its Series A and Series B shares (the "Recapitalization"). The voting power of the Distributing Series A voting shareholders will not be affected by the Recapitalization. Each Distributing shareholder will own the same percentage of Distributing Series A and Series B shares after the Recapitalization. The Recapitalization will not affect the value of the Distributing shares that each shareholder will own immediately after the Recapitalization.

#### *Shareholder A's formation of grantor trusts and trust transfers*

Shareholder A and Shareholder B will transmute under State A law a portion of the Distributing Series A and Series B shares that they own as community property to the separate property of Shareholder A and Shareholder B. To the extent the transmutation causes a shift in ownership, such shift will not exceed p percent of all of the interests of Distributing Series A or p percent of all of the interests of Distributing Series B shares. Any shift in either the total voting power or the total value will not exceed q percent.

Shareholder A will form Grantor Trust 1 and Grantor Trust 2 in State B. Grantor Trust 1 will be formed for the benefit of Shareholder C, Beneficiary 1, and Beneficiary 1's

descendants. Grantor Trust 2 will be formed for the benefit of Shareholder C, Beneficiary 2, and Beneficiary 2's descendants.

Shareholder A will also form Grantor Trust 3 in State C. Grantor Trust 3 will be formed for the benefit of Shareholder D, Shareholder F, Shareholder G, and their descendants.

Shareholder A will transfer Distributing Series A shares to each of Grantor Trust 1, Grantor Trust 2, and Grantor Trust 3. Shareholder A will continue to be treated as the owner of the Distributing Series A shares he transfers to Grantor Trust 1, Grantor Trust 2, and Grantor Trust 3 for Federal income tax purposes under sections 671-679.

#### *Shareholder B's formation of grantor trusts and trust transfers*

Shareholder B will form Grantor Trust 4, Grantor Trust 5, and Grantor Trust 6 in the State B. Grantor Trust 4 will be formed for the benefit of Shareholder C and Beneficiary 1 and her descendants. Grantor Trust 5 will be formed for the benefit of Shareholder C and Beneficiary 2 and his descendants. Grantor Trust 6 will be formed for the benefit of Shareholder E and her descendants. Shareholder B will also form Grantor Trust 7 in State C. Grantor Trust 7 will be formed for the benefit of Shareholder D and her descendants.

Shareholder B will transfer Distributing Series B shares to each of Grantor Trust 4, Grantor Trust 5, Grantor Trust 6, and Grantor Trust 7. Shareholder B will continue to be treated as the owner of the Distributing Series B shares she transfers to Grantor Trust 4, Grantor Trust 5, Grantor Trust 6, and Grantor Trust 7 for Federal income tax purposes under sections 671-679.

#### *Transfer to Revocable Trust 1*

Any Distributing shares that Shareholder A or Shareholder B have not transferred to the grantor trusts, will be transferred to Revocable Trust 1. Following the Proposed Transaction, Revocable Trust 1 will hold approximately  $\underline{\quad}$  percent of the Distributing Series A shares attributed to Shareholder A, approximately  $\underline{\quad}$  percent of the Distributing Series A shares attributed to Shareholder B, approximately  $\underline{\quad}$  percent of the Controlled 1 Series A shares, and approximately  $\underline{\quad}$  percent of the Controlled 2 Series A shares. Shareholder A and Shareholder B will continue to be treated as the owners of the shares transferred to or held by Revocable Trust 1 for Federal income tax purposes under sections 671-679.

Upon the death of Shareholder A and Shareholder B, Revocable Trust 1's Distributing Series A and Series B shares will be conveyed to Shareholder C, Grantor Trust 1, Grantor Trust 2, Grantor Trust 4, and Grantor Trust 5. Upon the death of Shareholder A and Shareholder B, Revocable Trusts 1's Controlled 1 Series A and Series B shares will be conveyed to Controlled 1's shareholders and Revocable Trusts 1's Controlled 2 Series A and Series B shares will be conveyed to Controlled 2's shareholders.



*Shareholder E's formation of grantor trust and trust transfers*

Shareholder E will form Grantor Trust 8 in State B. Shareholder E will transfer a portion of her Distributing Series A shares and all of her Distributing Series B shares to Grantor Trust 8. Shareholder E will continue to be treated as the owner of the Distributing Series A and Series B shares that she transfers to Grantor Trust 8 for Federal income tax purposes under sections 671-679.

**Proposed Transaction**

To achieve the business purpose described above, Distributing proposes the following Proposed Transaction:

- Step 1: Distributing will form Controlled 1 as a direct, wholly owned subsidiary of Distributing.
- Step 2: Distributing will form Controlled 2 as a direct, wholly owned subsidiary of Distributing.
- Step 3: Distributing will negotiate with its lenders to release Distributing from all legal obligations under the applicable loan documents secured by real property that will be conveyed in the Controlled 1 Contribution (in Step 5) and the Controlled 2 Contribution, as the case may be, so that such properties may be contributed to Controlled 1 and Controlled 2, respectively, with Controlled 1 or Controlled 2, as applicable, assuming all liabilities under such loans. It is currently contemplated that all the loans secured by real property that will be transferred to Controlled 1 and Controlled 2 will be assumed by Controlled 1 and Controlled 2, if applicable, with Distributing being released by the lenders from all liability thereunder. In the event that Controlled 1 and Controlled 2, as applicable, obtain new debt in connection with these conveyances and distribute the proceeds to Distributing, Distributing will use the proceeds to extinguish the historic indebtedness that is secured by the property or other historic Distributing indebtedness. In the event that Controlled 1 or Controlled 2, as applicable, retains all or a portion of new loan proceeds (e.g., if the loan proceeds from the new loan are greater than the principal amount of the existing indebtedness that is being retired), Controlled 1 or Controlled 2, as applicable, shall use such retained loan proceeds in their respective businesses. Following the Proposed Transaction, none of Distributing, Controlled 1 nor Controlled 2 will guarantee the indebtedness of the other two companies nor will any co-borrow.
- Step 4: The General Partnership will contribute all of its interest in the Controlled 1 Segment of Business A, the assets of the Controlled 1 Division, and

certain individual properties to General Partnership Controlled 1 (“GP Controlled 1”), a newly formed State A general partnership (“the GP Controlled 1 Contribution”). Distributing and the General Partnership will be released from all legal obligations under the applicable loan documents secured by real property conveyed to GP Controlled 1 in the GP Controlled 1 Contribution. General Partnership will distribute the general partnership interest in GP Controlled 1 to the General Partnership’s partners in proportion to their partnership interests in the General Partnership (the “General Partnership Division”). The General Partnership Division will qualify as a tax-free “assets-over form” division under Treas. Reg. § 1.708-1(d)(3)(i). As a result of the General Partnership Division, the General Partnership (now GP Controlled 2) will retain its d percent interest in LLC1, the properties associated with the Controlled 2 Segment of Business A, and the assets of the Controlled 2 Division. Following the General Partnership Division (and prior to Distributing’s contribution of its partnership interests of GP Controlled 1 and GP Controlled 2 in Steps 5 and 6), GP Controlled 1 and GP Controlled 2 will be owned a percent by Distributing and b percent by Shareholder A.

- Step 5: In connection with the Proposed Transaction, Distributing will contribute to Controlled 1 the following: (i) the Controlled 1 Segment of Business A and the Controlled 1 Development Project, (ii) Distributing’s a percent of GP Controlled 1, (iii) the remaining assets and liabilities of the Controlled 1 Division, and (iv) cash, in exchange for all the Series A and Series B common stock of Controlled 1. (The “Controlled 1 Contribution.”)
- Step 6: In connection with the Proposed Transaction, Distributing will contribute to Controlled 2 the following: (i) the Controlled 2 Segment of Business A, (ii) Distributing’s a percent interest in GP Controlled 2, (iii) the remaining assets and liabilities of the Controlled 2 Division, and (iv) cash, in exchange for all the Series A and Series B common stock of Controlled 2. (The “Controlled 2 Contribution”.)
- Step 7: Any obligations (not otherwise settled or resolved in other steps) that would result in obligations between Distributing and Controlled 1, on the one hand, and between Distributing and Controlled 2, on the other hand, immediately following the Proposed Transaction will be settled in cash, except for certain obligations under the Transaction Agreements.
- Step 8: Distributing will distribute all of the Controlled 1 Series A and Series B stock: (i) to Shareholder D, Shareholder F, and Shareholder G in exchange for all of their Distributing Series A and Series B shares, (ii) to Grantor Trust 7 in exchange for all of its Distributing Series B shares; (iii) to Grantor Trust 3 in exchange for all of its Distributing Series A shares; and (iv) as applicable, in exchange for a portion of Shareholder A and

Shareholder B's Distributing Series A and Series B shares held in Revocable Trust 1 ("Controlled 1 Split-Off").

- Step 9: Distributing will distribute all of the Controlled 2 Series A and Series B stock: (i) to Shareholder E, Shareholder H, Shareholder I, and Shareholder J in exchange for all of their Distributing Series A and Series B shares; (ii) to Grantor Trust 6 in exchange for all of its Distributing Series B shares; (iii) to Grantor Trust 8 in exchange for all of its Distributing Series A and Series B shares, and (iv) as applicable, in exchange for a portion of Shareholder A and Shareholder B's Distributing Series A and Series B shares held in Revocable Trust 1 ("Controlled 2 Split-Off"; together with the Controlled 1 Split-Off, the "Split-Off Transactions").
- Step 10: Distributing and Controlled 2 will enter into a Transitional Agreement for fair market value using arms-length terms that will last no more than t months. Distributing, Controlled 1, and Controlled 2 will enter into a Separate Agreement to periodically rent specified properties for fair market value using arms-length terms.

### **Representations**

With respect to the Distribution, except as set forth below, Distributing has made all the representations in Section 3 of the Appendix to Rev. Proc. 2017-52, 2017-41 I.R.B. 283 in the form set forth therein.

Distributing has not made the following representations, which do not apply to the Proposed Transaction:

Representations 5, 6, 19, 20, 24, 25, 35, 36, 37, 38, 39, and 40.

Distributing has made the following alternative representations set forth in Section 3 of the Appendix to Rev. Proc. 2017-52:

Representations 3(a), 8(a), 11(a), 15(a), 22(a), 31(a), and 41(b).

Distributing has made the following representations pursuant to Rev. Proc. 2018-53:

Representation 1. Distributing is in substance the obligor of each Distributing Debt that will be assumed or satisfied.

Representation 2. No holder of Distributing Debt that will be assumed or satisfied is a person related to Distributing or Controlled 1 or Controlled 2 within the meaning of section 267(b) or section 707(b)(1) (Related Person).

Representation 3. The holder of Distributing Debt that will be assumed or satisfied will not hold the debt for the benefit of Distributing, Controlled 1, Controlled 2, or any Related Person.

Representation 4. With the exception of New Debt 1, New Debt 2, New Debt 3, and New Debt 4, Distributing incurred Distributing Debt that will be assumed or satisfied (a) before the request for any relevant ruling is submitted, and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in § 1.355-7(h)(10)) of the Divisive Reorganization or a similar transaction, (ii) the date of the entry by Distributing into a binding agreement to engage in the Divisive Reorganization or a similar transaction, and (iii) the date of approval of the Divisive Reorganization or a similar transaction by the board of directors of Distributing. A portion of the proceeds of each of New Debt 1 and New Debt 2 will be used in Controlled 2's business. The remaining proceeds of New Debt 1 and New Debt 2, and all of the proceeds of New Debt 3 and New Debt 4, were used to satisfy other Distributing Debt that was incurred no later than the time described in this representation.

Representation 5. The total adjusted issue price of the Distributing Debt that will be assumed or satisfied by Controlled 1 and Controlled 2 does not exceed the historic average of the total adjusted issue price of (a) Distributing Debt owed to persons other than Related Persons and (b) obligations that are evidenced by Non-contingent Debt Instruments and are owed by other members of Distributing's separate affiliated group (within the meaning of § 355(b)(3)(B)) to persons other than Related Persons.

Representation 6: Not applicable. There will be no delayed satisfaction of Distributing Debt.

Representation 7: Distributing will not replace any Distributing Debt that will be assumed or satisfied by Controlled 1 and Controlled 2 with previously committed borrowing, other than borrowing in the ordinary course of business pursuant to a revolving credit agreement or similar arrangement.

Distributing has made the following additional representations:

- (1) The General Partnership Division qualifies as a tax-free "assets-over form" division under Treas. Reg. § 1.708-1(d)(3)(i).
- (2) Shareholder A will continue to be treated as the owner of the Distributing Series A shares that he transfers to Grantor Trust 1, Grantor Trust 2, and Grantor Trust 3 for Federal income tax purposes under sections 671-679.
- (3) Shareholder B will continue to be treated as the owner of the Distributing Series B shares that she transfers to Grantor Trust 4, Grantor Trust 5,

Grantor Trust 6, and Grantor Trust 7 for Federal income tax purposes under sections 671-679.

- (4) Shareholder A and Shareholder B will continue to be treated as the owners of the shares transferred to or held by Revocable Trust 1 for Federal income tax purposes under sections 671-679.
- (5) Shareholder E will continue to be treated as the owner of the Distributing Series A shares and Series B shares that she transfers to Grantor Trust 8 for Federal income tax purposes under sections 671-679.

### **Rulings**

Based solely on the information submitted and the representations made, we rule as follows:

#### Controlled 1

1. The Controlled 1 Contribution followed by the Controlled 1 Split-Off will qualify as a “reorganization” with the meaning of section 368(a)(1)(D). Distributing and Controlled 1 will each be a “party to the reorganization” within the meaning of section 368(b).
2. Distributing will recognize no gain or loss on the Controlled 1 Contribution. Sections 357(a) and 361(a).
3. Controlled 1 will recognize no gain or loss on the Controlled 1 Contribution. Section 1032(a).
4. Controlled 1’s basis in each asset received in the Controlled 1 Contribution will be the same as the basis of that asset in the hands of Distributing immediately prior to the Controlled 1 Contribution. Section 362(b).
5. Controlled 1’s holding period in each asset received in the Controlled 1 Contribution will include the period during which Distributing held such asset. Section 1223(2).
6. Distributing will recognize no gain or loss on the Controlled 1 Split-Off. Section 361(c)(1).
7. The Controlled 1 shareholders will recognize no gain or loss on the receipt of the stock of Controlled 1 in the Controlled 1 Split-Off. Section 355(a).
8. The basis of the Controlled 1 stock in the hands of the Controlled 1 shareholders immediately after the Controlled 1 Split-Off will be the same as the basis of the

Distributing stock held by the Controlled 1 shareholders immediately before the Controlled 1 Split-Off. Section 358(a)(1).

9. The Controlled 1 shareholders' holding period of the Controlled 1 stock received in the Controlled 1 Split-Off will include the holding period of the Controlled 1 shareholders' Distributing stock exchanged, provided that the Controlled 1 shareholders hold such Distributing stock as a capital asset on the date of the Controlled 1 Split-Off. Section 1223(1).
10. Earnings and profits will be allocated between Distributing and Controlled 1 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).

### Controlled 2

11. The Controlled 2 Contribution followed by the Controlled 2 Split-Off will qualify as a "reorganization" with the meaning of section 368(a)(1)(D). Distributing and Controlled 2 will each be a "party to the reorganization" within the meaning of section 368(b).
12. Distributing will recognize no gain or loss on the Controlled 2 Contribution. Sections 357(a) and 361(a).
13. Controlled 2 will recognize no gain or loss on the Controlled 2 Contribution. Section 1032(a).
14. Controlled 2's basis in each asset received in the Controlled 2 Contribution will be the same as the basis of that asset in the hands of Distributing immediately prior to the Controlled 2 Contribution. Section 362(b).
15. Controlled 2's holding period in each asset received in the Controlled 2 Contribution will include the period during which Distributing held such asset. Section 1223(2).
16. Distributing will recognize no gain or loss on the Controlled 2 Split-Off. Section 361(c)(1).
17. The Controlled 2 shareholders will recognize no gain or loss on the receipt of the stock of Controlled 2 in the Controlled 2 Split-Off. Section 355(a).
18. The basis of the Controlled 2 stock in the hands of the Controlled 2 shareholders immediately after the Controlled 2 Split-Off will be the same as the basis of the Distributing stock held by the Controlled 2 shareholders immediately before the Controlled 2 Split-Off. Section 358(a)(1).

19. The Controlled 2 shareholders' holding period of the Controlled 2 stock received in the Controlled 2 Split-Off will include the holding period of the Controlled 2 shareholders' Distributing stock exchanged, provided that the Controlled 2 shareholders hold such Distributing stock as a capital asset on the date of the Controlled 2 Split-Off. Section 1223(1).
20. Earnings and profits will be allocated between Distributing and Controlled 2 in accordance with section 312(h) and Treas. Reg. § 1.312-10(a).
21. Payments made by and between Distributing and Controlled 1 and Distributing and Controlled 2 under the Transaction Agreements regarding liabilities, indemnities, or other obligations that (i) relate to periods ending on or before the Split-Off Transactions, and (ii) do not become fixed or ascertainable until after the Split-Off Transactions, will be treated as occurring immediately before the Split-Off Transactions. See *Arrowsmith v. Comm'r*, 344 U.S. 6, 8 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transactions under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically addressed by this letter.

### **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 of the letter ruling.

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

Sincerely,

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Susan E. Massey  
Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: