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Legend

Parent =

Sub 1 =

Sub 2 =

LossCo =

LLC =

LLC Sub =

REIT 1 =

REIT 2 =

a =
b =
c =
d =
e =
f =
g =
State A =

Dear :

This letter responds to your August 20, 2013 request for rulings, submitted by your authorized representatives, on certain federal income tax consequences of a series of proposed transactions (the "Proposed Transaction"). The information submitted in that letter and subsequent correspondence is summarized below.

FACTS

Parent is the common parent of an affiliated group that files a consolidated federal income tax return (the "Parent Group"). Among the subsidiaries in the Parent Group are Sub 1 and LossCo. LossCo has been a member of the Parent Group since its formation, and will remain in the Parent Group until the Share Sale (defined below). Parent owns all of the single class of Sub 1 and LossCo stock outstanding. Sub 1 owns all of the outstanding stock in Sub 2.

REIT 1 is a member of Parent's controlled group within the meaning of section 267(f)(1). REIT 1 owns all of the interests in LLC, a limited liability company disregarded as a separate entity for federal income tax purposes. LLC, in turn, owns all of the stock of LLC Sub, a corporation for federal income tax purposes.

REIT 1 owns a percent of the common stock of REIT 2. Sub 1, through a wholly-owned domestic subsidiary, owns the remaining b percent of the common stock of REIT 2. Sub 2 owns c percent and individuals own the remaining d percent of the Class A REIT

2 preferred stock. LossCo owns all of Class B REIT 2 preferred stock. REIT 1 and REIT 2 have elected under section 856(c) to be treated as real estate investment trusts for federal income tax purposes.

LossCo, in addition to owning the Class B preferred stock of REIT 2, owns trust preferred securities in two limited liability companies classified as partnerships for federal income tax purposes under § 301.7701-3(b)(1)(i). The common equity interests of these two entities are held by Sub 1. LossCo does not own shares in any member of the Parent Group.

PROPOSED TRANSACTION

The following steps constitute the Proposed Transaction contemplated by Parent:

- (i) Parent will contribute e percent of the stock of LossCo to Sub 1 for no consideration (the "Contribution").
- (ii) Sub 1 will transfer the e percent interest in LossCo received in the Contribution (the "Transferred Shares") to REIT 1 in exchange for REIT 1 nonqualified preferred stock (the "NQPS") having a fair market value approximately equal to the value of the Transferred Shares (the "Share Sale"). As a result of the Share Sale, the Parent Group will only hold the f percent of LossCo stock held by Parent and, consequently, LossCo will cease to be a member of the Parent Group.
- (iii) At least one day after the Share Sale, it is expected that Parent and REIT 1, as the shareholders of LossCo, will consider adopting a plan to liquidate LossCo under the laws of State A (the "Liquidation Plan").
- (iv) If the Liquidation Plan is adopted, LossCo will liquidate pursuant to the Liquidation Plan, distributing all of its Class B preferred shares of REIT 2, trust preferred securities, and cash on a pro rata basis, with Parent receiving f percent and REIT 1 receiving e percent of each of the LossCo assets (the "Liquidation").
- (v) REIT 1 will contribute to LLC, and LLC will in turn contribute to LLC Sub, all of the trust preferred securities received by REIT 1 in the Liquidation (the "TPS Transfer").

REPRESENTATIONS

Share Sale

- (a) The Parent Group will treat the Contribution as subject to section 351(a).
- (b) The NQPS qualifies as nonqualified preferred stock within the meaning of section 351(g).

- (c) The fair market value of the Transferred Shares will approximately equal the fair market value of the NQPS.
- (d) Sub 1 will retain the NQPS it receives in the Share Sale.
- (e) Following the Share Sale: (i) REIT 1 will become the legal owner of the Transferred Shares; (ii) the Share Sale will be duly recorded on the records of LossCo; (iii) REIT 1 will have complete dominion and control over the Transferred Shares; (iv) REIT 1 will have the right to vote on all shareholder resolutions with respect to the Transferred Shares; (v) the Transferred Shares will provide REIT 1 the right to its proportionate share of current distributions; (vi) the Transferred Shares will provide REIT 1 the right to its proportionate share of the net assets of LossCo if LossCo were to liquidate; and (vii) REIT 1 will not hold itself out as owning the Transferred Shares as an agent, trustee, or nominee (or in any similar role) for another person.
- (f) To the extent that any share of LossCo stock held by Parent or Sub 1 prior to the Share Sale is a loss share within the meaning of § 1.1502-36(f)(7), Parent and Sub 1 will adjust their bases in their LossCo stock to the extent required by § 1.1502-36(b) and (c). LossCo will reduce its tax attributes (including its basis in subsidiaries) to the extent required by § 1.1502-36(d). No election will be made pursuant to § 1.1502-36(d)(6) to reduce basis in the Transferred Shares or to reattribute any attributes of LossCo to Parent (or any combination of the two).

Liquidation

- (g) No person or persons with authority to authorize or direct the Liquidation will provide the authorization or direction until after the Share Sale.
- (h) No property will have been contributed to LossCo as part of a plan a principal purpose of which is to recognize a loss by Parent or REIT 1 with respect to that property in connection with the Liquidation.
- (i) For at least two years preceding the Share Sale, no corporation: (i) merged or will merge with LossCo; or (ii) liquidated or will liquidate into LossCo.
- (j) No liabilities of LossCo will be cancelled, forgiven, or discounted in connection with the Proposed Transaction.
- (k) Prior to the Liquidation, no assets of LossCo were or will be distributed in kind, transferred, or sold to Parent, Sub 1, or REIT 1, except for: (i) transactions occurring in the ordinary course of business; and (ii) transactions occurring more than three years prior to the Liquidation.

- (l) No distribution of assets representing earned but unreported income will be made by LossCo to its shareholders in the Liquidation.
- (m) Other than the Contribution, the Share Sale, and the TPS Transfer, the Liquidation will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation of any of the businesses or assets of LossCo, if persons that held, directly or indirectly, more than 20 percent in value of the LossCo stock also hold, directly or indirectly, more than 20 percent in value of the stock in the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rule of section 318(a) as modified by section 304(c)(3).
- (n) At the time of the Liquidation, the assets of LossCo that will be contributed to LLC Sub in the TPS Transfer will constitute less than 9 percent of the total assets of LossCo by value.
- (o) Immediately before the adoption of the Liquidation Plan and also immediately before the Liquidation, the aggregate fair market value of LossCo's assets will exceed the total amount of its liabilities and the liabilities to which any of its assets are subject.
- (p) There is no plan or intention: (i) to liquidate or merge REIT 1 with or into another corporation; or (ii) to cause REIT 1 to become a member of the Parent Group.
- (q) At the time of the Share Sale, the sum of LossCo's net operating loss and capital loss carryforwards, deferred deductions, money, and basis in assets other than money, reduced by the amount of LossCo's liabilities, will equal the Parent Group's aggregate basis in the LossCo stock.
- (r) LossCo will not control (within the meaning of section 368(c)), and will not be deemed to control, any corporation immediately before the Liquidation.
- (s) No part of the consideration to be distributed in the Liquidation will be received by a shareholder of LossCo as a creditor, employee, or in any capacity other than that of a shareholder of LossCo.
- (t) All transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Liquidation have been fully disclosed.

RULINGS

Based solely on the information submitted and the representations set forth above, and provided that: (i) the consideration transferred by each party to the Share Sale will be solely in exchange for the consideration received; and (ii) no part of the consideration to

be distributed in the Liquidation will be received by a shareholder of LossCo as a creditor, employee, or in any capacity other than that of a shareholder of LossCo, we rule as follows:

Share Sale

- (1) Section 1001 will apply to the Share Sale.
- (2) Sub 1 will account for a loss, if any, on the Share Sale under the rules of section 267(f) and the regulations thereunder, after taking into account § 1.1502-36.
- (3) Parent, Sub 1, and LossCo must make all adjustments required by § 1.1502-36, to the extent applicable, immediately before LossCo ceases to be a member of the Parent Group. § 1.1502-36(a)(3)(i) and (f)(10)(i)(B).

Liquidation

- (4) The Liquidation will be treated as a complete liquidation of LossCo under section 331.
- (5) Parent and REIT 1 will each recognize gain or loss with respect to its LossCo shares in an amount equal to the difference between the fair market value of the property distributed to the shareholder and the recipient shareholder's adjusted basis in its LossCo shares. § 1001(a).
- (6) Under § 1.267(f)-1(c)(1)(iv), Sub 1 will not take into account any loss on the Transferred Shares at the time of the Liquidation, except to the extent required under the principles of § 1.1502-13(c) to offset gain recognized by REIT 1 on the Liquidation that is attributable to an increase in the value of the Transferred Shares between the time of the Share Sale and the Liquidation.
- (7) Any loss recognized by Parent or REIT 1 under section 331 in connection with the complete liquidation of LossCo will not be disallowed or deferred under section 267(f)(2). § 267(a)(1).
- (8) Gain or loss will be recognized by LossCo in connection with the distribution of its property in the Liquidation in an amount equal to the difference between the fair market value of the property on the date of distribution (or, if greater, the amount of any LossCo liabilities to which the property is subject) and its adjusted basis in the property (after application of § 1.1502-36(d), to the extent applicable, immediately before LossCo ceases to be a member of the Parent Group in the Share Sale). The gain or loss will be computed on a property-by-property basis, and losses will be taken into account under the rules of section 336(d).
- (9) Any loss recognized by LossCo under section 336(a) will not be disallowed or deferred under section 267(f)(2). § 267(a)(1).

CAVEATS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the Proposed Transaction under other provisions of the Code and regulations or the treatment of any conditions existing at the time or as a result of the Proposed Transaction that are not specifically covered by the rulings.

PROCEDURAL STATEMENTS

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

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

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

Sincerely,

Lawrence M. Axelrod

Lawrence M. Axelrod
Special Counsel to the Associate Chief Counsel
(Corporate)