200326040

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAR 31 2003

Contact Person:

Identification Number:

Uniform Issue List: 664.03-02
4941.04-00

Telephone Number:

T:EO: B2

LEGEND:
C =
D =
M =
N =
P =
Q =
S =
T =
V =
a =

Dear Sir or Madam:

We have considered your letters dated September 25, 2001, and September 12, 2002, in which you requested rulings under sections 4941 and 664 of the Internal Revenue Code (the "Code") with respect to the formation of, and transactions involving, a split interest trust described in section 4947(a)(2) as more fully set forth below.

Facts:

According to the information provided, N, a subchapter S corporation under section 1361 of the Code will establish M, a net income charitable remainder unitrust with make-up provisions (NIMCRUT). M would be a split interest trust described in section 4947(a)(2) of the Code. D would be the sole operating trustee of M. N would be the sole income beneficiary of M for a term not to exceed 20 years. The two remainder beneficiaries of M would be S and T, although N would have the right to designate one or more other qualified charities as the remainder beneficiaries.

D holds all of the voting control of N. The principal business of N is to own and operate 35 residential condominium units ("Units") in P.

P is a condominium of 54 Units governed by a board of trustees under a condominium

trust (the "P Trust"). One of the three current trustees is C. C is the spouse of a child of D.

C is the president and sole director of Q. C owns all of the issued and outstanding stock, and holds all of the voting control, of Q. Q manages commercial and residential real estate. Q is the property manager of P. Q also provides property management services to N in connection with the individual Units N owns.

D and N want to contribute the value of approximately half of the Units owned by N to M as a charitable contribution. To that end, N proposes to transfer 18 Units to an LLC (the "LLC"). In exchange for the 18 Units (the "LLC Units"), the LLC will issue 98% of its membership units to N. N will then transfer its interest in the LLC to M. M provides that, upon M's sale of half of the LLC Units, M, a NIMCRUT, will convert to a standard charitable remainder unitrust.

M will own 98% of the voting control of the LLC. D represents that M can require the LLC to sell the LLC Units at any time. D represents that the ownership of the LLC interest does not restrict the investment of M's assets in a way that will prevent the trustees from investing M's assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of its assets.

D represents that, under V law, the individual members of a limited liability company are not personally liable for the debts and liabilities of the company solely by reason of being a member or acting as a manger of the limited liability company. D further represents that, under V law, each member of a V limited liability company is obligated to contribute to the limited liability company only the amount of cash or property promised.

The other member of the LLC will be Q. Q will contribute cash to the LLC in exchange for the remaining 2% interest in the LLC. Q will be the managing member of the LLC.

Under the LLC agreement (the "LLC Operating Agreement"), none of the members will have any personal liability with respect to any LLC debts, obligations, or liabilities. Each member will share in all debts, obligations, and liabilities in proportion to its percentage interest in the LLC only to the extent of its capital interest. In connection with the assignment of the 98% LLC interest to M, N will indemnify and hold M harmless from and against all expenses, losses, and payments or obligations which might arise as a result of M's ownership of its LLC interest.

Q currently manages the Units for N under a management agreement. Under that agreement, Q provides leasing services to N. Q also has the exclusive authority to enter into contracts for utilities and other services that Q deems necessary or desirable in the operation of the Units. Q establishes annual budgets, collects and disburses funds on behalf of N, and maintains adequate books, records, and reports of its activities.

In consideration for these services, Q receives a monthly management fee of a% of gross monthly collections from rents from the Units. N is obligated to keep and maintain comprehensive general liability insurance, to include Q as an additional insured under the policy, and to defend and hold Q and its officers, directors, and affiliates harmless from and against all liabilities arising out of or relating to the property or the leasing, management,

operations, maintenance, repair, or use of the property.

Under the proposed management agreement (the "N Management Agreement"), Q would continue to provide services to N as provided under its current management agreement with respect to the Units owned by N.

Under its current arrangement with P, Q provides P with the following services: collection and accounting of condominium fees; monitoring and approving payment of condominium expenses and charges of third party vendors and contractors; hiring and supervising of third-party vendors for landscaping, mowing, cleaning of common areas, and major repairs to common areas; minor grounds cleanup and pickup; and, minor maintenance and repairs of the common areas and snow removal. Q charges P a monthly management fee. P currently insures Q as an additional insured under its general liability policy.

Q would enter into a written contract with P (the "P Management Agreement") to provide the same services it now provides to P. Under such agreement, P would pay third party vendors directly for services hired and supervised by Q. P would continue to reimburse Q for the services of its employees in performing minor grounds cleanup, minor maintenance and repairs of common areas, and snow removal.

C would continue to serve as a trustee of P. As a trustee of P, C receives no monetary compensation, however the P Trust provides for indemnification of its trustees and officers from liability.

Q would enter into a written contract with the LLC (the "LLC Management Agreement") to provide management services such as: collection and accounting for condominium fees; monitoring and approving payment of condominium expenses and charges of third party vendors and contractors; and, hiring and supervising third-party vendors for landscaping, mowing, cleaning of common areas, grounds pick-up, and major repairs to common areas. Maintenance and repairs of the LLC Units would be performed by third-party vendors, or by employees of the LLC other than C. Under the agreement, the LLC would undertake to insure Q and to indemnify Q and hold it harmless from and against any and all liabilities arising out of Q's management of the LLC Units.

Rulings Requested:

You have requested the following rulings:

1. The LLC Management Agreement will not constitute a prohibited act of self-dealing within the meaning of section 4941 of Code, provided that the compensation paid by the LLC to Q is not excessive.

2. The P Management Agreement will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code, provided that the compensation paid by P to Q is not excessive.

3. The LLC Operating Agreement between M as non-managing member and Q as managing member will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code, provided that Q is paid its proportionate share of the profits of the LLC.

4. The payment of condominium common area charges by the LLC to P in proportion to the interest of the LLC in the common areas of P will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code, provided that the compensation paid to Q by P under the P Management Agreement is not excessive and provided that the amount of the common area charges assessed by P are not excessive.

5. The service by C as Trustee of P, and P's coverage of C's potential liability as Trustee with insurance, will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code.

6. The payment of condominium fees by the LLC to P in proportion to the interest of the LLC in the common areas of P will not constitute payments of amounts to or for the use of any person by M in violation of section 1.664-3(a)(4) of the regulations.

7. The proposed gift by N to M will not result in a violation of section 1.664-1(a)(3) of the regulations.

8. The proposed gift by N to M will not result in a violation of section 1.664-3(a)(4) of the regulations.

Law:

Section 4947(a)(2) of the Internal Revenue Code provides that, in the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522, section 4941 (relating to taxes on self-dealing) shall apply as if such trust were a private foundation.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1) of the Code provides that the term "self-dealing" means any direct or indirect (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (B) lending of money or other extension of credit between a private foundation and a disqualified person; (C) furnishing of goods, services, or facilities between a private foundation and a disqualified person; (D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; and (E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 4946(a)(1) of the Code provides that the term "disqualified person" means, with respect to a private foundation, a person who is (A) a substantial contributor to the foundation; (B) a foundation manager; (C) an owner of more than 20 percent of (i) the total combined voting power of a corporation, (ii) the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation; (D) a member of the family of any individual described in (A), (B), or (C); (E) a corporation of which persons described in (A), (B), (C), or (D) own more than 35 percent of the total combined voting power; (F) a partnership in which persons described in (A), (B), (C), or (D) own more than 35 percent of the profits interest; and (G) a trust or estate in which persons described in (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest.

Section 4946(a)(2) of the Code provides that, for purposes of section 4946(a)(1), the term "substantial contributor" means a person who is described in section 507(d)(2).

Section 507(d)(2) of the Code provides that, in the case of a trust, the term "substantial contributor" means the creator of the trust.

Section 4946(d) of the Code provides that, for purposes of section 4946(a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Section 53.4941(d)-1(b)(1) of the Foundation and Similar Excise Taxes Regulations (the "regulations") provides that the term "indirect self-dealing" shall not include any transaction described in section 53.4941(d)-2 between a disqualified person and an organization controlled by a private foundation (within the meaning of section 53.4941(d)-1(b)(5)) if (i) the transaction results from a business relationship which was established before such transaction constituted an act of self-dealing, (ii) the transaction was at least as favorable to the organization controlled by the foundation as an arm's-length transaction with an unrelated person, and (iii) the organization controlled by the foundation could have engaged in the transaction with someone other than a disqualified person only at a severe economic handicap to such organization.

Section 53.4941(d)-1(b)(4) of the regulations provides that a transaction between a private foundation and an organization which is not controlled by the foundation, and which is not described in section 4946(a)(1)(E), (F), or (G) because persons described in section 4946(a)(1)(A), (B), (C), or (D) own no more than 35 percent of the total combined voting power or profits or beneficial interest of such organization, shall not be treated as an indirect act of self-dealing between the foundation and such disqualified persons solely because of the ownership interest of such persons in such organization.

Section 53.4941(d)-1(b)(5) of the regulations provides that an organization is controlled by a private foundation if the foundation or one or more of its foundation managers may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction which if engaged in with the private foundation would constitute self-dealing. Similarly, an organization is controlled by a private foundation in the case of such a transaction between the organization and a disqualified person, if such disqualified person, together with one or more persons who are disqualified persons by reason of such a person's relationship

(within the meaning of section 4946(a)(1)(C) through (G)) to such disqualified person, may, only by aggregating their votes or positions of authority with that of the foundation, require the organization to engage in such a transaction. The "controlled" organization need not be a private foundation. An organization will be considered to be controlled by a private foundation or by a private foundation and disqualified persons if such persons are able, in fact, to control the organization (even if their aggregate voting power is less than 50 percent of the total voting power of the organization's governing body) or if one or more of such persons has the right to exercise veto power over the actions of such organization relevant to any potential acts of self-dealing.

Section 53.4941(d)-1(b)(7) of the regulations provides that the term "indirect self-dealing" shall not include a transaction involving one or more disqualified persons to which a private foundation is not a party, in any case in which the private foundation, by reason of section 4941(d)(2), could itself engage in such a transaction. Thus, for example, even if a private foundation has control of a corporation, the corporation may pay to a disqualified person reasonable compensation for personal services.

Section 4941(d)(2)(E) of the Code provides that the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

Section 53.4941(d)-3(c)(1) of the regulations provides that under section 4941(d)(2)(E) the payment of compensation (and the payment or reimbursement of expenses, including reasonable advances for expenses anticipated in the immediate future) by a private foundation to a disqualified person for the performance of personal services which are reasonable and necessary to carry out the exempt purpose of the private foundation shall not be an act of self-dealing if such compensation (or payment or reimbursement) is not excessive. The term "personal services" includes the services of a broker serving as agent for the private foundation, but not the services of a dealer who buys from the private foundation as principal and resells to third parties.

Section 53.4941(d)-3(c)(2) of the regulations provides examples of "personal services" for purposes of section 53.4941(d)-3(c)(1). These include legal services, investment counseling services, and general banking services.

In John W. Madden, Jr., et al. v. Comm'r, 74 T.C.M. (CCH) 440 (1997), one of the questions before the Tax Court was whether general maintenance, janitorial, and custodial services provided by a disqualified person to the private foundation museum were of the same character as those services discussed in the examples in the regulations and could therefore be deemed to be "personal services." After citing the legislative history of section 4941, the Court noted that it was the intent of Congress that any exceptions to the self-dealing transaction rules should be construed narrowly. The Court concluded that general maintenance, janitorial, and custodial services were different in nature from the professional and managerial services found in the examples in the regulations and, therefore, would not meet the definition of "personal

services."

Section 664(c) of the Code provides that a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by subtitle A, unless such trust, for such year, has unrelated business taxable income within the meaning of section 512, determined as if part III of subchapter F applied to such trust.

Section 664(d)(2) of the Code sets forth the requirements to be a charitable remainder unitrust. Section 664(d)(2)(A) provides that the unitrust amount must be paid to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals.

Section 1.664-1(a)(3) of the Income Tax Regulations provides that a trust is not a charitable remainder trust if the provisions of the trust include a provision which restricts the trustee from investing the trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

Section 1.664-3(a)(3)(i) of the regulations provides that the unitrust amount must be payable to or for the use of a named person or persons, at least one of which is not an organization described in section 170(c) of the Code.

Section 1.664-3(a)(5)(i) of the regulations provides that the period for which the unitrust amount is payable begins with the first year of the charitable trust and continues either for the life of lives of the named individual or for a term of years not to exceed 20 years. Only an individual or an organization described in section 170(c) of the Code may receive an amount for the life of an individual.

Section 1.664-3(a)(4) of the regulations provides that no amount other than the unitrust interest may be paid to or for the use of any person other than an organization described in section 170(c) of the Code. An amount is not paid to or for the use of any person other than an organization described in section 170(c) if the amount is transferred for full and adequate consideration. The trust may not be subject to a power to invade, alter, amend, or revoke for the beneficial use of a person other than an organization described in section 170(c).

There is nothing is section 664 of the Code or the underlying regulations that would prohibit an S corporation from being a permissible donor to an otherwise qualified charitable remainder unitrust.

Section 7701(a)(1) of the Code defines a person to include a trust, estate, partnership, association, company, or corporation.

Analysis:

Issue 1. Whether the LLC Management Agreement between Q and the LLC will constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code.

C is a disqualified person with respect to M because C is the spouse of a child of D, who, in turn, is a "foundation manager" of M and an owner of more than 20 percent of the total combined voting power of N which is a substantial contributor to M.

Q is a disqualified person with respect to M because C, a disqualified person, owns more than 35 percent of the total combined voting power of Q.

The LLC is a "controlled organization" because M has a 98% ownership interest in the LLC and may require the LLC to engage in a transaction which if engaged in by M would constitute self-dealing.

M is an exempt organization by virtue of section 664(c). It is designed under the statutory provision to provide a lifetime income or unitrust payment to the lifetime beneficiary, and to provide a remainder distribution to one or more qualified charities. As such, it is the duty of the trustee to operate and maintain the trust's property in such a way as to provide income and to maintain the value of the trust's property so that it will not deteriorate or dissipate. If the property owned indirectly by M is real estate, property management services are essential to maintain trust income and to preserve trust assets.

Under the LLC Management Agreement, Q will provide the following services: (1) collection and accounting for condominium fees; (2) monitoring and approving payment of condominium expenses and charges for third-party vendors and contractors; and (3) hiring and supervising of third-party vendors for landscaping, mowing, cleaning of common areas, grounds pick-up, and major repairs to common areas. Such services constitute professional and managerial services with respect to the management of real property. As such, they fall within the exception to the self-dealing rules for "personal services" described in section 4941(d)(2)(E) of the Code

The LLC Management Agreement excludes from the compensation to be paid to Q all maintenance, janitorial, and custodial services. Instead, Q's duties under the contract are to hire, manage, and supervise the services of other third-party contractors for maintenance, janitorial, and custodial services, all of which are to be paid directly by the LLC to persons who are not "disqualified persons" under section 4946 of the Code.

The LLC Management Agreement also includes a provision which requires the LLC to include Q on its general liability insurance and which would call for the indemnification of Q by the LLC under certain circumstances. These provisions are consistent with provisions that would be permitted if provided for a foundation manager, as reimbursement for expenses under section 53.4941(d)-2(f)(3) through (8) of the regulations. Consequently, they should be permitted as reimbursement for reasonable expenses necessary to carry out the exempt purposes of M and not excessive under section 4941(d)(2)(E) of the Code.

Accordingly, the LLC Management Agreement will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code, provided that the compensation paid by the LLC to Q is not excessive, because the services to be provided are professional and managerial in nature and are necessary to carry out the exempt purposes of M within the meaning of section 53.4941(d)-3(c)(1) of the regulations.

Issue 2. Whether the P Management Agreement will constitute a prohibited act of self-dealing within the meaning of Section 4941 of the Code.

The P Management Agreement will not constitute an act of self-dealing under section 4941 because P is neither a disqualified person within the meaning of section 4946(a) of the Code, nor is it controlled by M within the meaning of section 53.4941(d)-1(b)(5) of the regulations for purposes of transactions between Q and P.

P is not a disqualified person because it is not a substantial contributor to M and no person who is a substantial contributor to M, a manager of M, or any family member will hold more than 35 percent of the beneficial interest in P after N transfers the 18 Units to the LLC and N assigns its LLC interest to M.

P would be controlled by M, for purposes of transactions between P and Q, only if Q, together with one or more persons who are disqualified persons by reason of their relationship to Q (within the meaning of sections 4946(a)(1)(C) through (G)) may, only by aggregating their votes or positions with that of M, require P to engage in such transaction.

Q and M, as the only members of the LLC (after N assigns its LLC interest to M), would control only 18 out of the 54 Units of P. Since P is a condominium trust, and since voting in elections of trustees and other matters is done on the basis of percentage of condominium ownership held by Unit owners, M would not control P. Therefore, the P Management Agreement is not an act of self-dealing within the meaning of section 4941 of the Code.

Issue 3. Whether the LLC Operating Agreement between M as non-managing member and Q as managing member constitutes a prohibited act of self-dealing within the meaning of section 4941 of the Code.

The services of Q as managing member of the LLC are essential to carrying out the purposes of M, i.e., to provide income and preserve principal for its beneficiaries. Such services are principally managerial in nature and therefore constitute "personal services" under section 4941(d)(2)(E) of the Code. As managing member, Q will receive only its proportionate share of the income and profits of the LLC. Assuming that any compensation is not excessive, Q's services are reasonable and necessary to carry out the exempt purposes of M, and, consequently, the LLC Operating Agreement between M and Q will not constitute a prohibited act of self dealing within the meaning of section 4941 of the Code, provided that Q is paid no more than its proportionate share of the profits of the LLC.

Issue 4. Whether the payment of condominium area charges by the LLC to P constitutes a prohibited act of self-dealing within the meaning of section 4941 of the Code.

The payment of condominium fees by the LLC to P does not constitute a payment subject to tax under section 4941 of the Code because neither the LLC nor P will be a disqualified person with respect to M. P is a trust. As such, P would be a disqualified person under section 4946(a)(1)(E) only if substantial contributors, foundation managers, 20% owners of corporations, partnerships or trusts which are substantial contributors, or family members of substantial contributors own more than 35% of the beneficial interest of P. P is not a disqualified person it is not a substantial contributor and because no person who is a substantial contributor to M, a manager of M, or any family member will hold more than 35 percent of the beneficial interest in P after N transfers the 18 Units to the LLC and N assigns its LLC interest to M.

Similarly, the LLC would be a disqualified person under section 4946(a)(1)(F) of the Code only if substantial contributors, foundation managers, 20% owners of corporations, partnerships or trusts which are substantial contributors, or family members of substantial contributors own more than 35% of the profits interest of the LLC. The LLC is not a disqualified person because no person who is a substantial contributor to M, a manager of M, or any family member will hold more than 35 percent of the LLC after N transfers the 18 Units to the LLC and N assigns its LLC interest to M. Therefore, the payment of condominium area charges by the LLC to P will not constitute a prohibited act of self-dealing under section 4941 of the Code.

Issue 5. Whether the services of C as Trustee of P constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code.

The services of C as Trustee of P will not constitute an act of self-dealing under section 4941 because P is neither a disqualified person within the meaning of section 4946(a) of the Code, nor is it controlled by M within the meaning of section 53.4941(d)-1(b)(5) of the regulations for purposes of transactions C and P.

P is not a disqualified person because no person who is a substantial contributor to M, a manager of M, or any family member will hold more than 35 percent of the beneficial interest in P after N transfers the 18 Units to the LLC and N assigns its LLC interest to M.

P would be controlled by M, in the case of a transaction between P and C, only if C, together with one or more persons who are disqualified persons by reason of their relationship to C (within the meaning of sections 4946(a)(1)(C) through (G)) may, only by aggregating their votes or positions with that of M, require P to engage in such transaction.

Q is the only "person" that is a disqualified person because of its relationship with C. Therefore P is controlled by M for purposes of a transaction between C and P only if C, Q, and M, by aggregating their votes or positions require P to engage in a transaction with C. After the transfer of the 18 Units from N to the LLC and N's assignment of its LLC interest to M, Q and M, as the only members of the LLC, would control the votes of only 18 out of the 54 Units of P. Since P is a condominium trust, and since voting in elections of trustees and other matters is

done on the basis of percentage of condominium ownership held by Unit owners, M would not control P. Therefore, any transaction between C and P is not an act of self-dealing within the meaning of section 4941 of the Code.

Issue 6. Whether the payment of fees by the LLC to P in proportion to the interest of the LLC in the common areas of P will constitute payment of amounts to or for the use of any person by the M in violation of section 1.664-3(a)(4) of the regulations.

In the present situation, M provides that the unitrust amount is payable for a term of 20 years. Because the term of M is a term of years not to exceed 20 years, the recipient of the unitrust amount may be any person or persons, including a corporation, so long as at least one such person is not a charitable organization. Thus, N is a permissible recipient of the unitrust interest.

If the amounts assessed by the P trustees represent full and adequate consideration for the maintenance of the LLC's interest in the common areas of the condominiums, the payment of condominium fees by the LLC to P in proportion to the interest of the LLC in the common areas of P will not constitute payments of amounts to or for the use of any person by M. Therefore, if such payments represent full and adequate consideration, such payments will not violate section 1.664-3(a)(4) of the regulations.

Issue 7. Whether the proposed gift by N to M will result in a violation of section 1.664-1(a)(3) of the regulations.

If M holds a controlling interest in the LLC and, therefore, M can require the LLC to sell the LLC Units at any time, the gift by N to M will not restrict the investment of M's assets in a way that will prevent the trustees from investing M's assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of its assets. Therefore, if M can require the LLC to sell the LLC units at any time, the gift by N to M will not violate section 1.664-1(a)(3) of the regulations.

Issue 8. Whether the proposed gift by N to M will result in a violation of section 1.664-3(a)(4) of the regulations.

If, under V law, the individual members of a limited liability company are not personally liable for the debts and liabilities of the company solely by reason of being a member or acting as a manager of the limited liability company, and if N remains liable for any obligation arising under the partnership agreement for which M might otherwise be liable, the gift by N to M will not violate section 1.664-3(a)(4) of the regulations.

Conclusion:

Accordingly, based solely on the facts submitted and the representations made, we rule that:

1. The LLC Management Agreement between Q and the LLC will not constitute a

prohibited act of self-dealing within the meaning of section 4941 of the Code, provided that the compensation paid by the LLC to Q is not excessive, because the services to be provided are essentially professional and managerial in nature and essential to the exempt purposes of M.

2. The P Management Agreement between Q and P will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code because P is neither a disqualified person with respect to M nor is it controlled by M for purposes of any transaction between Q and P.

3. The LLC Operating Agreement between M as non-managing member and Q as managing member will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code, provided that Q is paid no more than its proportionate share of the profits of the LLC, assuming that such compensation is not excessive, because the services are reasonable and necessary to the carrying on of M's exempt purposes.

4. The payment of condominium common area charges by the LLC to P in proportion to the interest of the LLC in the common areas of P will not constitute a prohibited act of self-dealing under section 4941of the Code because neither the LLC nor P is a disqualified person with respect to M.

5. The service by C as trustee of P will not constitute a prohibited act of self-dealing within the meaning of section 4941 of the Code because P is neither a disqualified person with respect to M nor is it controlled by M for purposes of any transactions between C and P.

6. If amounts assessed by the P trustees represent full and adequate consideration for the maintenance of the LLC's interest in the common areas of the condominiums, the payment of condominium fees by the LLC to P in proportion to the interest of the LLC in the common areas of P will not violate section 1.664-3(a)(4) of the regulations.

7. If M can require the LLC to sell the LLC units at any time, the proposed gift by N to M will not violate section 1.664-1(a)(3) of the regulations.

8. If, under V law, the individual members of a limited liability company are not personally liable for the debts and liabilities of the company solely by reason of being a member or acting as a manager of the limited liability company, and if N remains liable for any obligation arising under the partnership agreement for which M might otherwise be liable, the gift by N to M will not violate section 1.664-3(a)(4) of the regulations.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code. This ruling does not purport to rule on any issues not specifically addressed.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative. You should keep a copy of this letter in your permanent records.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be cited as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2