

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of  
CONTERRA WIRELESS BROADBAND,  
LLC (U7057C) and CUB PARENT, Inc.,  
and EAGLECREST CUB GP Inc. and  
DRADEN INVESTORS, LLC For Expedited  
Approval to Transfer Indirect Control of  
Conterra Wireless Broadband, LLC  
Pursuant to California Public Utilities Code  
Section 854(a).

Application 20-07-019

**DECISION AUTHORIZING TRANSFER OF INDIRECT CONTROL OF  
CONTERRA WIRELESS BROADBAND, LLC****Summary**

This decision grants the unopposed joint application of Conterra Wireless Broadband, LLC (U7057C) (Conterra), CUB Parent, Inc., EagleCrest CUB GP Inc. (EagleCrest CUB GP), and Draden Investors, LLC (APG US), filed on July 27, 2020, for approval of the indirect transfer of control of Conterra to Transferees APG US/EagleCrest CUB GP pursuant to California Public Utilities (Pub. Util.) Code Section 854(a).

This proceeding is closed.

## 1. Procedural Background

On July 27, 2020, the Joint Applicants Conterra Wireless Broadband, LLC (U7057C) (Conterra), CUB Parent, Inc., (CUB Parent or Transferor), EagleCrest CUB GP Inc., (EagleCrest CUB GP), and Draden Investors, LLC (APG US) (APG US together with EagleCrest CUB GP are hereinafter referred to as Transferees) filed Application (A.) 20-07-019 (Application) seeking approval to transfer indirect control of Conterra to the Transferees, (the Proposed Transaction). Notice of the application was published in the California Public Utility Commission's (Commission) Daily Calendar on July 30, 2021. The application is unopposed.

The assigned Administrative Law Judge (ALJ) held a prehearing conference on January 29, 2021 to discuss the issues of law and fact, to determine the need for hearing and to set the schedule for resolving the matter.

The assigned Commissioner issued a Scoping Memorandum and Ruling on March 22, 2021.

## 2. Parties to the Transaction

Conterra, a North Carolina limited liability company, is a direct wholly-owned subsidiary of Conterra Ultra Broadband, LLC, which, in turn, is a direct wholly-owned subsidiary of Conterra Ultra Broadband Holdings, Inc., (CUB Holdings). CUB Holdings is a direct wholly-owned subsidiary of CUB Parent.<sup>1</sup>

Conterra received a Certificate of Public Convenience and Necessity (CPCN) to provide: a) limited facilities-based local exchange services pursuant to authority granted in Decision (D.) 07-12-013. Conterra's authority was expanded to full facilities-based authority in the existing service territories of

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<sup>1</sup> Application at 5-6.

AT&T, Verizon, Citizens, and SureWest in D.15-04-012.<sup>2</sup> Pursuant to its CPCN, Conterra provides two product and service packages in California: 1) cellular backhaul transport; and 2) access networks and broadband networks for grades K-12, healthcare, and government entities.<sup>3</sup>

Conterra is headquartered at 2101 Rexford Road, Suite 200E, Charlotte, North Carolina 28211.<sup>4</sup>

CUB Parent is a Delaware corporation.<sup>5</sup> CUB Parent is majority owned by CSC CUB Holdings, LP (CSC CUB Holdings), which was formed for the purpose of holding Court Square Capital Partners' investment in CUB Parent.<sup>6</sup> CUB Parent has no operations in California.

CUB Parent does not provide telecommunications services on its own.<sup>7</sup> CUB Parent is a holding company and parent of Conterra and other operating subsidiaries that are authorized competitive telecommunications providers in several states.<sup>8</sup>

CUB Parent headquartered at 2101 Rexford Road, Suite 200E, Charlotte, North Carolina 28211.<sup>9</sup>

EagleCrest CUB GP (one of the two Transferees) is a corporation organized under the laws of Delaware.<sup>10</sup> EagleCrest CUB GP has no operations in

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<sup>2</sup> Application at 7.

<sup>3</sup> *Ibid.*

<sup>4</sup> Application at 3.

<sup>5</sup> Application at 6.

<sup>6</sup> *Ibid.*

<sup>7</sup> Application at 7.

<sup>8</sup> *Ibid.*

<sup>9</sup> Application at 3.

<sup>10</sup> Application at 6.

California. EagleCrest CUB GP does not provide telecommunications services on its own.<sup>11</sup> EagleCrest CUB GP is the general partner of EagleCrest Cub LP and will be, upon consummation of the Proposed Transaction, general partner of CSC CUB Holdings.<sup>12</sup> EagleCrest CUB GP is headquartered at 145 King Street West, Suite 1500, Toronto, Ontario M5H 1J8, Canada.<sup>13</sup>

APG US (the second of the two Transferees) is a limited liability company organized under the laws of Delaware.<sup>14</sup> APG US has no operations in California and does not provide telecommunications services on its own.<sup>15</sup> APG US is a special-purpose vehicle formed for the purpose of the Proposed Transaction.<sup>16</sup>

APG US is headquartered at 666 Third Avenue, Second Floor, New York, New York 10017.<sup>17</sup>

### **3. Proposed Transaction**

The Joint Applicants' proposed transaction will be accomplished through a series of transactions to be finalized following the satisfaction of various closing conditions as described in the Application.<sup>18</sup> In addition, Exhibit C to the Application, entitled "Current and Post-Transaction Organization Charts", has been included as Appendix A to this Proposed Decision to provide a visual diagram of the details surrounding the Proposed Transaction.

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<sup>11</sup> Application at 7.

<sup>12</sup> *Ibid.*

<sup>13</sup> Application at 3.

<sup>14</sup> Application at 7.

<sup>15</sup> Application at 8.

<sup>16</sup> *Ibid.*

<sup>17</sup> Application at 3.

<sup>18</sup> Application at 8-10, Section 7, "DESCRIPTION OF THE TRANSACTION (Rule 3.6(b)-(d) and (f))." (*See also* Exhibit C to the Application, which provides the corporate structure both before and after consummation of the Proposed Transaction.)

Upon consummation of the Proposed Transaction, EagleCrest CUB GP and APG US will be the ultimate owners of Conterra through a transfer of equity interests in Conterra's parent, CUB Parent. However, Conterra will continue to be 100-percent indirectly owned<sup>19</sup> and controlled by CUB Parent.<sup>20</sup>

#### **4. Jurisdiction**

California Pub. Util. Code § 851 *et seq.* provides broad Commission authority to approve transfers of control which involve public utilities operating within California, as is requested in this proceeding. Pub. Util. Code § 854(a), which is applicable here,<sup>21</sup> states:

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute. (Pub. Util. Code § 854(a).)

After the transfer of control is completed, the Commission will retain the same regulatory authority over the CPCN holder that it currently possesses.

#### **5. Standard of Review**

Joint Applicants seek approval of the transaction pursuant to Pub. Util. Code § 854(a), which requires Commission authorization before a public utility company may “merge, acquire, or control either directly or indirectly any public

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<sup>19</sup> Indirect ownership means an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

<sup>20</sup> Application at 10.

<sup>21</sup> Pub. Util. Code §§ 854 (b) and (c) are not applicable to this proceeding because none of the Joint Applicants have gross annual California revenues in excess of \$500 million.

utility organized and doing business in this state....” The purpose of this and related code sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the proposal and to take such action, as a condition of transfer, as the public interest may require.<sup>22</sup> Absent prior Commission approval, Pub. Util. Code § 854(a) provides that the transaction is “void and of no effect.”

The Commission has broad discretion under Pub. Util. Code § 854(a) to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest. The primary question in a transfer of control proceeding under Pub. Util. Code § 854(a) is whether the transaction will be in the public interest. When the acquiring individual or company which does not have a CPCN seeks to acquire control of a company that possesses a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking the type of CPCN held by the company being acquired.

## **6. CPCN Criteria**

### **6.1. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide full facilities-based competitive local exchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm’s start-up expenses.<sup>23</sup> An applicant must also demonstrate that it has sufficient additional resources to cover all deposits

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<sup>22</sup> See San Jose Water Co. (1916) 10 CRC 56.

<sup>23</sup> The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.<sup>24</sup> Acceptable forms of financial documentation include an audited balance sheet and income statements demonstrating sufficient cash flow or, in the alternative, one of several other cash equivalent financial instruments.<sup>25</sup> Transferees satisfy this requirement with the funding shown in Exhibit F of this application.<sup>26</sup>

## **6.2. Technical Qualifications**

An acquiring entity must also make a reasonable showing of technical expertise in telecommunications or a related business. The indirect transfer of control of Conterra to EagleCrest CUB GP and APG US will result in a change in the ultimate ownership of Conterra. However, Conterra will continue to be 100% owned and controlled by CUB Parent.<sup>27</sup>

As required, Joint Applicants attested that no affiliate, officer, director, partner, agent or owner (directly or indirectly) of more than 10% of acquiring company, or any person acting in management capacity for that company, has:

- (a) held one of these positions with a company that filed for bankruptcy;
- (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others;
- (c) been convicted of a felony;

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<sup>24</sup> The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

<sup>25</sup> See D.95-12-056, Appendix C (applicable to CLEC applications) and D.91-10-041, Appendix A (applicable to NDIEC applications) as modified by D.13-05-035.

<sup>26</sup> Exhibit F was submitted confidentially.

<sup>27</sup> Application at 10. See also Application Exhibit C.

- (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency;
- (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction;
- (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000 *et seq.*, §§ 17200 *et seq.*, or §§ 17500 *et seq.* of the California Business and Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or
- (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or
- (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.<sup>28</sup>

Also, to the best of Joint Applicants' knowledge, neither Joint Applicants nor any affiliate, officer, director, partner, or owner of more than 10% of Joint Applicants, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.<sup>29</sup>

Joint Applicants have satisfied the Commission's technical expertise requirement.

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<sup>28</sup> These certifications are required by D.13-05-035, Ordering Paragraph 14.

<sup>29</sup> *Id.*



### **6.3. California Environmental Quality Act (CEQA)**

In circumstances where telecommunications providers seek to construct or install facilities, CEQA requires the Commission to act as the designated lead agency, and to assess the potential environmental impact of the project<sup>30</sup> to ensure that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

The indirect transfer of control that is the subject of this application proposes no new construction and requests no authority for future construction; it is merely a “paper transaction,” with no potential to have any significant impact on the environment.<sup>31</sup> Accordingly, the application is exempt from review under CEQA. Joint Applicants must submit a new application should they propose construction of facilities other than those within the full facilities-based authority granted previously by the Commission in D.15-04-012.

## **7. Discussion**

As discussed above, EagleCrest CUB GP and APG US meet the requirements for the Commission to grant CPCN authority to provide full facilities-based local exchange telecommunication services.<sup>32</sup>

In addition, we find that the transfer of indirect control of Conterra to EagleCrest CUB GP and APG US will not be adverse to the public interest. The transaction will 1) provide Conterra with access to the financial expertise of EagleCrest CUB GP and APG US; 2) permit Conterra to continue to provide

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<sup>30</sup> A project is defined as any “activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (See California Public Resources Code, Section 21065.)

<sup>31</sup> See Application at 14, and footnote 13 citing D.06-02-033 and other Commission cases involving transfers of control which were deemed exempt from review under CEQA.

<sup>32</sup> D.15-04-12 granted Conterra the authority to expand its existing CPCN to include full facilities-based telecommunication services.

robust communications solutions to its customers; and 3) promote competition among telecommunications providers, without resulting in any adverse impact to Conterra's customers. Furthermore, the transfer of indirect control of Conterra to EagleCrest CUB GP and APG US will not have an adverse effect on competition in the markets for intrastate or interstate telecommunications services as EagleCrest CUB GP and APG US do not offer or provide telecommunications services in California. We therefore grant the application pursuant to Pub. Util. Code § 854(a).

### **8. Motions for Confidential Treatment**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure (Rule), Joint Applicants filed two Motions for Leave to File Confidential Materials Under Seal for Exhibit D (Transaction Agreement), Exhibit E (Financial Statements of CUB Holdings and Transferor), Exhibit F (Financial Statements of Transferee), and Exhibit G (Projected Balance Sheet in Lieu of Pro Forma). Joint Applicants represent that the information is sensitive, and that disclosure of financial information could place them at an unfair business disadvantage. We have granted similar requests in the past and do so here.

### **9. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

### **10. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Suman Mathews is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Conterra is a North Carolina limited liability company.
2. Conterra was issued a CPCN in D.07-12-013 (U7057C) to provide limited facilities-based local exchange services.
3. Conterra's authority was expanded to full facilities-based authority in the existing service territories of AT&T, Verizon, Citizens, and SureWest in D.15-04-012.
4. CUB Parent is a Delaware corporation and does not provide telecommunications services on its own. CUB Parent has no operations in California.
5. EagleCrest CUB GP is a corporation organized under the laws of Delaware and does not provide telecommunications services on its own. EagleCrest CUB GP has no operations in California.
6. APG US is a limited liability company organized under the laws of Delaware and does not provide telecommunications services on its own. APG US has no operations in California and is a special-purpose vehicle formed for the purpose of the Proposed Transaction.
7. Application 20-07-019 was filed on July 27, 2020. The application seeks authorization to transfer indirect control of Conterra to EagleCrest CUB GP and APG US. Following the transfer, Conterra would continue to operate pursuant to its CPCN. The proposed change in control would not result in a transfer of Conterra's CPCN to a new entity.
8. Notice of the Application appeared in the Daily Calendar on July 30, 2021. No protests were filed.
9. No party to the proposed transaction has gross annual California revenues in excess of \$500 million.

10. Because the proposed transfer of control is a parent-level transaction, a) customers will experience no changes in day-to-day operations of Conterra; b) the transaction will be transparent to customers of Conterra; and c) the Commission jurisdiction over Conterra will be the same.

11. The proposed transaction will not result in any changes to the services provided by Conterra or to rates, terms, or conditions of service.

12. The proposed transaction will not have an adverse impact on competition in the marketplace.

13. The proposed transaction will not have an adverse impact on the public interest.

14. The proposed transaction will have no significant effect on the environment.

15. The proposed transaction will not have an adverse impact on safety.

16. Joint Applicants have filed financial documents under seal showing they meet the Commission's financial requirements for a CPCN.

17. Pursuant to Commission Rules of Practice and Procedure 11.4, Joint Applicants filed a motion for leave to file confidential material contained in Exhibits D, E, F, and G to the July 27, 2020 Application under seal.

18. Applicants have met the requirements for a transfer of a CPCN pursuant to Public Utilities Code Section § 854(a).

### **Conclusions of Law**

1. Public Utilities Code Section § 854(a) provides that no person or corporation shall merge, acquire, or directly or indirectly control a public utility organized and doing business in California without first securing authorization from the Commission.

2. The proposed transaction constitutes a change of control within the meaning of Public Utilities Code Section § 854(a).
3. Public Utilities Code Section § 854(b) and (c) do not apply to this transaction.
4. The standard to determine if a transfer of control should be granted under Pub. Util. Code Section § 854(a) is whether the transaction would be “adverse to the public interest.”
5. In a request for a transfer of control, the prospective owner must satisfy the same requirements as those imposed on the CPCN holder. The two major criteria are financial resources and managerial and technical expertise.
6. Joint Applicants have met the Commission’s requirements for approval of the transfer of control applicable to the proposed transaction.
7. Contrerra should continue to be bound by the terms and conditions imposed on it when its CPCN was granted in D.07-12-013 and its authority was expanded in D.15-04-012.
8. This transfer does not require CEQA review because there is no possibility that the transaction will have a significant adverse impact on the environment.
9. The Joint Applicants’ motion for leave to file Exhibits D, E, F, and G to the Application under seal should be granted in accordance with Ordering Paragraph 3 of this Decision.
10. Evidentiary hearings are not necessary.
11. This decision should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The transfer of indirect control of Conterra to the Transferees, EagleCrest CUB GP and APG US, upon the terms and conditions set forth in the Application is approved.
2. The motion of Joint Applicants to file Exhibits D, E, F, and G to the Application under seal is granted subject to Ordering Paragraph 3.
3. The designated confidential materials referenced in Ordering Paragraph 2, above, shall remain under seal for three years after the date of this order. During this three-year period, the confidential materials shall remain under seal and not be accessible or disclosed to persons other than the Commissioners and Commission staff except on further order or ruling of the Commission, the assigned Administrative Law Judge, or the designated Law and Motion Judge at the time of such ruling. If any interested party believes it is necessary for any of this information to remain under seal longer than three years, that party shall file a new motion stating the justification of further withholding the information from public inspection. The motion shall be filed at least 30 days before expiration of the instant order.
4. Application 20-07-019 is closed.

This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**ATTACHMENT A**

**Current and Post-Transaction Organization Charts  
(as provided in Application 20-07-019, Exhibit C)**



**FILED**

07/27/20  
04:59 PM

**A2007019**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of

CONTERRA WIRELESS BROADBAND, LLC  
(U7057C)  
and

CUB PARENT, Inc.,

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DRADEN INVESTORS, LLC

For Expedited Approval to Transfer Indirect Control of  
Conterra Wireless Broadband, LLC Pursuant to  
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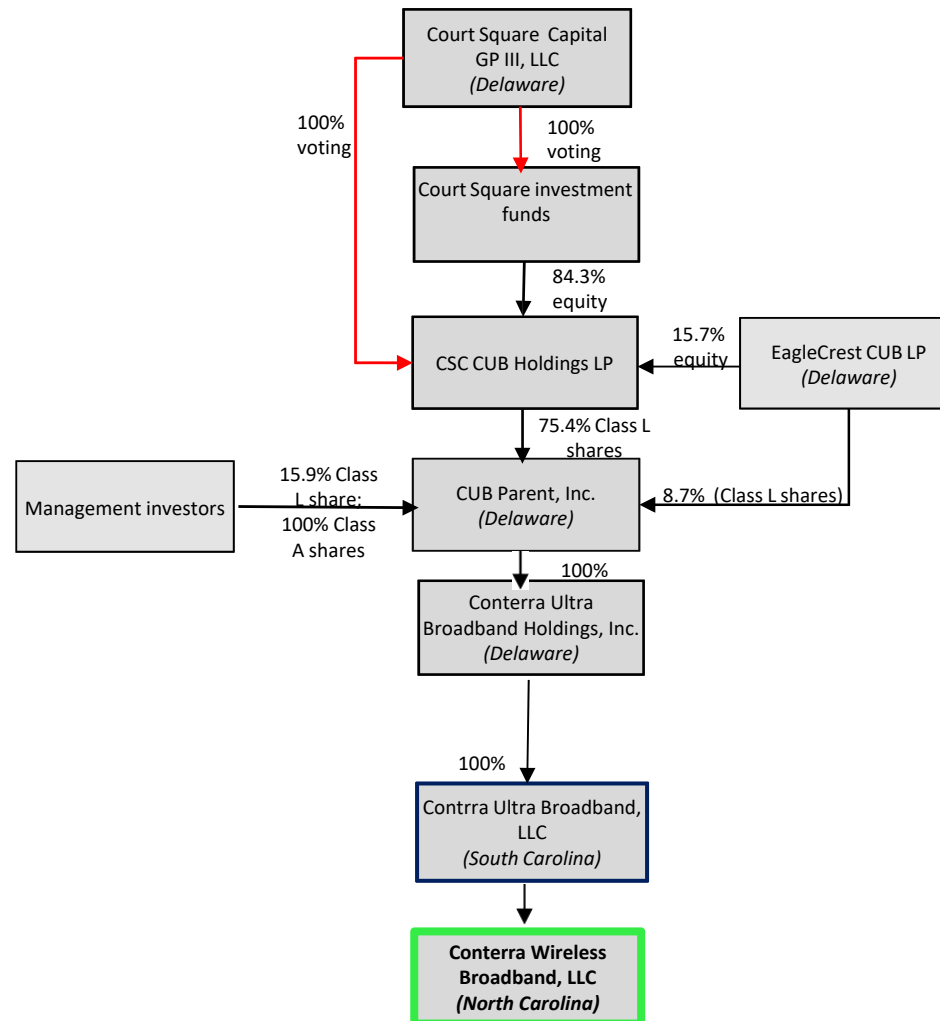
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**EXHIBIT C**

**Current and Post-Transaction Organization Charts**



### CUB PARENT, INC. PRE-CLOSE OWNERSHIP STRUCTURE



All interests are voting and equity unless otherwise stated; GP interests stated as voting interests; LP interests stated as economic interests.

Red arrows reflect GP or other control.

The CPUC-regulated entity is in the green box.

Other operating subsidiaries of CUB Parent, Inc. that do not hold authorizations in California have been omitted.

## CUB PARENT, INC. POST-CLOSE OWNERSHIP STRUCTURE

