

July 31, 2019

**BY HAND DELIVERY**

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The Honorable Charles E. Grassley  
Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20515

The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, D.C. 20515

Dear Chairman Grassley and Ranking Member Wyden,

On behalf of our client, Andrew Kyle Carney, this letter and attachment (including attached Appendix A) further respond to your March 27 letter, requesting that Mr. Carney provide information and documents to the U.S. Senate, Committee on Finance (the "Committee") regarding certain syndicated conservation easement transactions.

Consistent with our discussions with Committee staff, today's submission supplements our previous productions and responds, in whole or in part, to Question 2, 4, 7, 11, and 12, with information and documents that were identified after a reasonable search and review. The documents are submitted on an encrypted CD, labeled "CARNEY," and bear the sequential bates range CARNEY-SFC-0010189 to CARNEY-SFC-00012643. We are providing the password for the CD under separate cover. As agreed with Committee staff, our review remains ongoing. This submission is the fourth in our rolling production, and we appreciate the additional time for Mr. Carney to respond to your letter. We will supplement today's submission as our review continues.

In responding to the Committee's Questions, Mr. Carney has in good faith tried to be as accurate and responsive as possible within the time frame set for responses, consistent with our discussions with your staff, and based on Mr. Carney's understanding of the terms used in the Committee's questions. This response is the product of reasonable efforts to identify, collect, and review potentially responsive information and, as such, reflects Mr. Carney's current information and belief. The representations herein are based on reasonably available information and are not intended to, and do not, capture all information related to the requested transactions, nor are they an exhaustive description of the transactions discussed. Where information contained in a document contains personally identifiable information (*e.g.*, social security/tax identification numbers or bank account information), we have redacted that information accordingly. In providing this response to the

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Committee's questions, Mr. Carney does not waive, nor does he intended to waive, any of his rights or privileges that may be applicable with respect to this inquiry by the Committee.

This response may contain confidential information provided to the Committee pursuant to your request as Chairman and Ranking Member of the Committee and pursuant to Rule XXIX of the Standing Rules of the Senate. Accordingly, all documents submitted have been marked with the legend "CONFIDENTIAL TREATMENT REQUESTED PURSUANT TO SENATE RULE XXIX." Given the sensitivity of this information, we respectfully request advance notice of any contemplated disclosure of information submitted to the Committee, and a reasonable opportunity to object prior to any disclosure.

Please do not hesitate to contact me at [REDACTED] should you or your staff have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel F. Donovan", with a stylized flourish at the end.

Daniel Donovan

Attachment

## **APPENDIX A**

### **ANDREW KYLE CARNEY'S FOURTH SUBMISSION IN RESPONSE TO COMMITTEE REQUESTS DATED MARCH 27, 2019**

- Question 2:** For each entity from which you distributed to investors tax deductions from the contribution of real property or easements to charity, please provide:
- a. The date(s) the partnership or pass-through entity(s) was formed,
  - b. The date(s) the partnership or pass-through entity(s) acquired the real property and the cost(s) of acquiring the real property involved,
  - c. A description of the real property as recorded in local land and real property tax records,
  - d. The dates that interests in the partnership or pass-through entity(s) were sold to each of the investors,
  - e. The date(s) conservation easements on the real property were granted,
  - f. The 501(c)(3) organization to which the real property or easements were contributed,
  - g. The total amount of deductions allocated and the tax years in which they were allocated,
  - h. The total number of investors in each entity, and
  - i. The total equity investments by all of the partners to the entity.

Please provide copies of all promotional materials provided to investors, or any other communications made prior to an investor's participation in the transaction, including but not limited to presentations, memoranda, letters, emails, and notes, however formal or informal, describing the investment opportunities or the amount of tax benefits expected as a result of or potential result of the investment.

**Response:** Mr. Carney previously submitted a spreadsheet (CARNEY-SFC\_00000001) and documents (CARNEY-SFC-00000968 to CARNEY-SFC-00003324, and CARNEY-SFC-00008908 to CARNEY-SFC-0009638). Supplementing that response, Mr. Carney submits the enclosed documents (CARNEY-SFC-00010189 to CARNEY-SFC-00010304). These materials comprise vesting deeds, membership unit purchase agreements, and related closing documents for some of the identified transactions. Mr. Carney may supplement today's submission as our review continues.

- Question 4:** For all entities responsive to Question #2, please provide copies of all appraisals (or other statements of value) for each contribution, regardless of whether the appraisals were final copies, that were provided to investors, or were used to support the value of a charitable deduction under 26 U.S.C. 170.

**Response:** Mr. Carney previously submitted documents (CARNEY-SFC-00003325 to CARNEY-SFC-00007153) in response to this question. Supplementing that response, Mr. Carney submits the enclosed documents (CARNEY-SFC-00010305 to CARNEY-

SFC-00012122). These materials comprise restricted appraisal reports, which may have been provided to investors depending on the specific related transaction. (CARNEY-SFC-00000968 to CARNEY-SFC-00003324). Mr. Carney may supplement today's submission as our review continues.

**Question 7: Did you provide investors with any instructions or guidance as to how to comply with federal or state tax law, whether prior to an investor's entering into the transaction or subsequent to it, including the filing of federal or state tax returns?**

**Please provide copies of all such instructions and guidance as to how investors might comply with federal and state tax law as well as federal and state tax-return filing requirements.**

Response: Mr. Carney submits the enclosed documents (CARNEY-SFC-SFC-00012123 to CARNEY-SFC-00012194) in response to this request. These materials comprise Form 8283's and supporting documentation. We will supplement this submission as our review continues.

**Question 9: Under Federal tax law, individuals designated as material advisors to any reportable transaction must file Form 8918 to disclose certain information about the reportable transaction. A material advisor must also maintain a list identifying each entity or individual to whom the advisor was a material advisor to a reportable transaction**

- a. Did you file the Form 8918 with the IRS for each transaction identified in IRS Notice 2017-10?**
- b. Did you file with the IRS any protective disclosures in response to IRS Notice 2017-10?**
- c. Did you maintain an investor list as required by law?**
- d. Please provide all copies of Form 8918 for each transaction.**
- e. Please provide all copies of your investor lists for each transaction, including the names and addresses of each investor.**

Response: Mr. Carney previously provided a written response and submitted materials in response to Request 9(a), (b), and (d). Supplementing that response, Mr. Carney submits the enclosed spreadsheets (CARNEY-SFC-00012195 to CARNEY-SFC-00012206) in response to (c) and (e) of this request. These spreadsheets are copies of the investor lists, including names and addresses, for each transaction, which Mr. Carney maintained pursuant to Treas. Reg. 301.6112-1.

**Question 11: To the extent not provided in response to the questions above, please provide copies of all organizational documents for the entities responsive to Question #2, meeting minutes for such entities, all formal or informal documentation relating to the relationship between such entities and their investors, all SEC filings for such entities, and all communications with any state- or local-**

**government agency or official regarding such entities or their associated syndicated conservation easement transactions.**

Response: Mr. Carney submits the enclosed documents (CARNEY-SFC-00012207 to CARNEY-SFC-00012642) in response to this request. These materials include various organizational documents, such as management agreements, amendments to operating agreements, membership unit purchase agreements, member certificates and registers, and documentation relating to federal and state securities filings. We will supplement today's submission as our review continues.

**Question 12: For each investment transaction separately provide the percentages and amounts of the total of partners' investment was:**

- a. Charged or otherwise retained by (i) you, and (ii) by each non-partner in the entity, as compensation, commission, or fees,**
- b. Retained as audit or contingency reserves, and**
- c. Retained or contributed to a tax-exempt entity to provide for maintenance of the real property or easement held by the tax-exempt entity that received the contribution**

Response: Mr. Carney submits the enclosed spreadsheet (CARNEY-SFC-00012643) in response to this request. This spreadsheet provides the numbers and percentages requested above.

\* \* \*

**Andrew Kyle Carney**  
**Response to Request #12**

	Project	a.(%)	a. (Total Amount)	b.(%)	b. (Total Amount)	c.(%)	c. (Total Amount)
1	Brushy Hollow Investments, LLC	44.66%	\$ 842,330.10	0.00%	\$ -	1.59%	\$ 30,000.00
2	Cherokee 389 Investments, LLC	19.81%	\$ 277,675.00	0.00%	\$ -	1.78%	\$ 25,000.00
3	Cub Creek Preserve Investments, LLC	35.52%	\$ 1,151,657.00	0.00%	\$ -	1.23%	\$ 40,000.00
4	Dry Mill Creek Investments, LLC	34.15%	\$ 958,539.00	0.00%	\$ -	1.43%	\$ 40,000.00
5	Ginn Creek Investments, LLC	21.73%	\$ 580,753.00	0.00%	\$ -	1.12%	\$ 30,000.00
6	Little Pumpkin Creek Investors, LLC	15.69%	\$ 582,439.00	0.00%	\$ -	0.81%	\$ 30,000.00
7	Little Pumpkin Creek North Investments, LLC	14.49%	\$ 578,813.00	0.00%	\$ -	0.75%	\$ 30,000.00
8	Rabbit Bar Point Investments, LLC	3.95%	\$ 135,015.00	0.00%	\$ -	0.73%	\$ 25,000.00
9	River Ridge Retreat Investments, LLC	23.09%	\$ 766,633.00	0.00%	\$ -	0.75%	\$ 25,000.00
10	Roan Creek Investments, LLC	50.44%	\$ 1,469,354.00	3.45%	\$ 100,000.00	1.38%	\$ 40,000.00
11	Storey Hollow Investments, LLC	50.44%	\$ 1,026,077.00	0.00%	\$ -	1.47%	\$ 30,000.00
12	Tom's Mountain Creek Investments, LLC	5.17%	\$ 98,800.00	0.00%	\$ -	1.57%	\$ 30,000.00

Key:

- a. What percentage and amount of the total investment was charged or otherwise retained by you and any non-partner in the entity as compensation, commissions, or fees?
- b. What percentage and amount of the total investment was retained as an audit or contingency reserve?
- What percentage and amount of the total investment was retained or contributed to a tax-exempt
- c. entity to provide for maintenance of the real property or easement held by the tax-exempt entity that received the contribution?

**Andrew Kyle Carney**  
**Response to Request #12**  
**Workpaper**

	Brushy Hollow	Cherokee 389	Cub Creek	Dry Mill Creek	Ginn Creek	Little Pumpkin Creek	Little Pumpkin Creek North	Rabbit Bar Point	River Ridge Retreat	Roan Creek	Storey Hollow	Toms Mountain Creek
<b>Compensation, Commissions, or Fees</b>												
Legal & Professional Fees	\$ 50,000.00	\$ 50,675.00	\$ 55,000.00	\$ 50,000.00	\$ 60,209.00	\$ 50,288.00	\$ 50,360.00	\$ -	\$ 46,733.00	\$ 50,000.00	\$ 50,000.00	\$ 57,500.00
Management Fees	\$ 773,130.10	\$ 157,700.00	\$ 1,071,400.00	\$ 877,650.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ -	\$ 650,000.00	\$ 1,368,500.00	\$ 956,630.00	\$ -
Appraisal Fees	\$ 16,000.00	\$ 20,000.00	\$ 8,000.00	\$ 16,000.00	\$ 15,000.00	\$ 18,000.00	\$ 15,000.00	\$ 20,000.00	\$ 20,000.00	\$ 18,000.00	\$ 16,000.00	\$ 14,000.00
Professional Fees	\$ 3,200.00	\$ -	\$ 17,257.00	\$ 14,889.00	\$ 5,544.00	\$ 14,151.00	\$ 13,453.00	\$ 65,134.00	\$ 32,854.00	\$ 3,447.00	\$ 27,300.00	\$ 27,300.00
Land Trust Fees	\$ -	\$ 49,300.00	\$ -					\$ 49,881.00	\$ 49,900.00			\$ -
Total:	\$ 842,330.10	\$ 277,675.00	\$ 1,151,657.00	\$ 958,539.00	\$ 580,753.00	\$ 582,439.00	\$ 578,813.00	\$ 135,015.00	\$ 766,633.00	\$ 1,469,354.00	\$ 1,026,077.00	\$ 98,800.00
<b>Audit, Contingency Reserves</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000.00	\$ -	\$ -
<b>Stewardship Contribution to Conservancy</b>	\$ 30,000.00	\$ 25,000.00	\$ 40,000.00	\$ 40,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 25,000.00	\$ 25,000.00	\$ 40,000.00	\$ 30,000.00	\$ 30,000.00
<b>Total Investment (Capital Raise)</b>	\$ 1,885,950.00	\$ 1,401,400.00	\$ 3,242,250.00	\$ 2,806,650.00	\$ 2,673,000.00	\$ 3,712,500.00	\$ 3,994,650.00	\$ 3,420,450.00	\$ 3,319,965.00	\$ 2,900,700.00	\$ 2,034,450.00	\$ 1,910,700.00
a. %Comp/Comm/Fees	44.66%	19.81%	35.52%	34.15%	21.73%	15.69%	14.49%	3.95%	23.09%	50.66%	50.44%	5.17%
b. %ContReserve	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	3.45%	0.00%	0.00%
c. %Stewardship	1.59%	1.78%	1.23%	1.43%	1.12%	0.81%	0.75%	0.73%	0.75%	1.38%	1.47%	1.57%