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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16182

In the Matter of

PAUL EDWARD "ED" LLOYD, JR., CPA

Respondent.

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RESPONDENT'S RESPONSE AND REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CASES

TABLE OF STATUTES

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Respondent Paul Edward "Ed" Lloyd, Jr., CPA offers this brief in reply to the Enforcement Division's Principal and Response Brief.

I. ARGUMENT REGARDING DIVISION'S PRINCIPAL BRIEF

A. THE TRANSACTIONS DID NOT INVOLVE THE PURCHASE OR SALE OF A SECURITY.

Despite the Division's erroneous interpretation of applicable case law, the conservation easement transactions at issue did not involve the purchase or sale of a security. Perhaps most importantly, the Forest Conservation 2011 ("FC 2011") and Forest Conservation 2012 II ("FC 2012 II") transactions were not at issue during the hearing, and any decision regarding the purchase or sale of a security during such transactions would be premature and inappropriate.

1. A tax benefit is not a profit.

The Division is correct in that, of the different types of securities listed in the Securities Act, the conservation easement transactions most resemble that of an investment contract. An investment contract is a "scheme [that] involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301, 66 S. Ct. 1100, 1104 (1946).

The Division correctly notes that the "touchstone" of the analysis into whether an instrument is a security under the Securities Acts is "the substance rather than the form of the transaction, with an emphasis on economic reality." *Id.* However, the Division fails to practice what it preaches and instead focused on the structure and/or form of the transaction rather than the economic reality of what the participants and sellers alike actually expected to occur.

In *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852, 95 S. Ct. 2051, 2060 (1975), the court stated that the term "profits" as interpreted by the Supreme Court has been found to be, for example, "capital appreciation resulting from the development of the initial investment . . . or a participation in earnings resulting from the use of investors' funds." *Id.* Put simply, profits are income; one must make money in some form in order to obtain a profit. Thus, in a true investment contract, "the investor is attracted solely by the prospects of a return on his investment." *Id.*

In *United Housing*, individuals purchased shares of stock in a state subsidized and supervised nonprofit housing cooperative in order to lease an apartment. When monthly rental charges increased substantially, the residents alleged violations of the antifraud provisions of the Securities Act and the Exchange Act ("Securities Acts"). The plaintiffs argued that the portion of the monthly rent that was attributable to the interest on the mortgage was deductible and that, in and of itself, was a profit, turning the transaction into an investment contract.

The court first noted that they must examine the "substance" or "economic realities" of the transaction "rather than the names that may have been employed by the parties." *Id.* at 851-52, 95 S. Ct. at 2060. In other words, even though Mr. Lloyd may

have used the term "security" when circulating the questionnaire for determining whether the participants were accredited investors, and even though the offering indicated "securities" were being sold, that does not mean the membership units were a "security" within the meaning of the Securities Acts. You can call an apple a television, but that does not mean you can watch *Friends* reruns on it. Consequently, the court must examine the economic reality of the transaction to determine whether it was in fact a security.

The *United Housing* court determined that there is "no basis in law for the view that the payment of interest, with its consequent deductibility for tax purposes, constitutes income or profits" and that "[t]hese tax benefits are nothing more than that which is available to any homeowner who pays interest on his mortgage." *Id.* at 855, 95 S. Ct. at 2062. The court further explained that no expectation of profit accompanied the shares of stock. The investors "were attracted solely by the prospect of acquiring a place to live, and not by financial returns on their investments." *Id.* at 855, 95 S. Ct. at 2060. Thus, a tax deduction is not a "profit" so as to turn the vehicle for obtaining the deduction into a security.

The *United Housing* opinion on tax deductions as profits was also applied in *Randall v. Loftsgaarden*, 478 U.S. 647, 106 S. Ct. 3143 (1986). In *Randall*, plaintiffs recovered the amount of consideration paid for limited partnership units as a result of harm caused by misleading statements contained in the prospectus. Defendants argued that the recovery should be offset by the tax benefits received by plaintiffs as a result of their investments.

The *Randall* court stated that "[u]nlike payments in cash or property received by virtue of ownership of a security . . . the 'receipt' of tax deductions or credits is not itself a taxable event, for the investor has received no money or other 'income' within the meaning of the Internal Revenue Code." *Id.* at 657, 106 S. Ct. at 3149. Citing the *United Housing* case as analogous, the *Randall* court held that the tax deductions plaintiffs were entitled to take because of their partnership interests did not "constitute income or profits." *Id.* at 657, 106 S. Ct. at 3150.

Likewise, citing both *United Housing* and *Randall*, the court in *Newmyer v. Philatelic Leasing, Ltd.*, 888 F.2d 385, 394 (1989) stated: "We agree that there cannot be an investment contract without some hope of profits produced by the efforts of others, and we agree also that *tax benefits alone cannot satisfy the profit requirement*" (emphasis added).

The Division's reliance on the dicta in *Newmyer* is erroneous. (Division's Br. 25-26.) *Newmyer* held that ". . . there cannot be an investment contract without some hope of profits produced by the efforts of others, and we agree also that tax benefits alone cannot satisfy the profit requirement." *Id.* The court then explained that they could not rule out the possibility that the investors hoped to realize a profit "in the true sense of the term."

The *Newmyer* court noted that the appraisals indicated "there [was] a reasonable likelihood that sales from the exploitation of the Stamp Masters will be sufficient to pay all the Notes and to generate profits to the Lessee." *Id.* Additionally, the offering summary made a great deal of the popularity of stamp collecting, indicating that there was indeed the chance of a lucrative venture once the stamps were created and

available for sale. *Id.* In other words, there was a plan in place from the very beginning to sell the stamps, and it was clear from the Offering Summary. That is a profit in the truest sense of the word. The goal was to use the leased machines to manufacture the stamps and then sell them. Thus, the court did not say that a material question of fact existed as to whether an investment contract might exist because of the expected *tax* benefit; the court said that an investment contract might exist because of the *money*, i.e. profits, that would have been earned by selling the stamps.

Thus, both *Randall* and *Newmyer* indicate that the purchase of membership interests in an LLC for the purpose of obtaining a charitable tax deduction does not qualify as a security because there was no expectation of profits. The transaction at issue must at least provide the expectation of an effect on the individual's income.

Based on the profit analysis of *United Housing*, *Randall*, and *Newmyer*, a tax benefit is not a profit. There was no expected or realized profit from the conservation easement transactions. Thus, the conservation easement transactions did not involve the purchase or sale of a security because a tax benefit is not a profit.

2. The transactions did not involve the purchase or sale of a security because there was no expectation of a profit.

In determining whether a security exists, the court will also look to both the terms of the offering and the participants' subjective intent in entering into the transaction. In *Teague v. Bakker*, 139 F.3d 892 (1998), plaintiffs assigned error to a jury instruction that stated that "[i]f the investors were attracted primarily by the prospect of acquiring use and not [by] financial returns on their investment there is no security" after the jury determined that the real estate interest at issue was not a security.

The court first stated that the "subjective intention of a given purchaser cannot control whether something is a 'security,' else some might have purchased securities while others did not. The proper focuses of the inquiry are on the transaction itself and the manner in which it is offered." *Id.* However, the court then went on to say that "the subjective feeling of the vast majority of purchasers is very likely the feeling the seller objectively intended to produce." *Id.* The court held that the jury instruction was sufficient because it informed the jury that "it was to determine whether consumption or investment was the dominant theme of the transaction." *Id.* In other words, the court looked at the economic reality of the transaction.

Similarly, in *Rice v. Branigar Organization, Inc.*, 922 F.2d 788 (1991), the court examined the economic reality behind the purchase of lots in a housing development and non-equity memberships in a country club. The court noted that people buy lots in a development "primarily to use them, not to derive profits from the entrepreneurial efforts of the developers." *Id.* at 790-91. Likewise, memberships in country clubs are purchased to use the club's facilities. Again, the court looked at the end result to determine the reasoning for the purchase.

Here, the Division notes that there was a "*possibility*" of a profit from development of the land and explains that the offerings included investment proposals as well as conservation proposals (emphasis added). (Division's Br. 24.) However, the Division fails to mention that the conservation easement proposal was the recommended proposal. The Piney Cumberland Holdings (hereinafter "PCH") offering summary makes the following statement: "The Manager intends to propose to the Members that they consider causing the Property Entity to encumber the Property by

conveying a Conservation Easement to a Qualified Organization at some point in the future." (*See* Excerpts from Offering Summary attached as Exhibit 1.)

In fact, the Offering Summary included an opinion letter submitted by the Sirote law firm discussing the legal tax considerations for the conservation easement transaction. (*See* Ex. 1.) The opinion letter focuses entirely on conservation easements and the law applicable to same. Of course, the opinion letter noted that nothing was set in stone at that point in time, but the attorney made no recommendations as to the development possibility. It is clear that development was not on the minds of anyone involved in the offering, nor was it on the minds of the FC 2012 participants

Moreover, all communications taking place between Mr. Lloyd and Strategic Financial Alliance ("SFA") were in regards to an opportunity to participate in a conservation easement, not buy property for development. Indeed, the initial email from Nancy Zak's assistant, James Jowers, dated November 9, 2012, indicated that the potential tax deductions (or "multiples") had already been configured at 4.25 times the investment and noted that for that tax year, "conservation easement deductions [could] be used to reduce your AGI from all sources by 30%." (*See* Jowers' Email attached as Exhibit 2.) Additionally, the Notice of Manager's Determination to Pursue Conservation Proposal was dated December 28, 2011, which is the same date that Mr. Lloyd wired the money to PCH to purchase the membership units. (*See* Manager's Notice attached as Exhibit 3.) Clearly, there was no intention whatsoever to pursue the development of the property rather than a conservation easement

The Offering Summary does contain various clauses which remind the prospective participants that the company was under no obligation to choose the conservation easement route, so it was theoretically possible that the development option could have been chosen. However, this was merely boilerplate language. At no point did anyone involved in the PCH transaction, seller or participant, indicate that there was any possibility of choosing the development route.

In short, the Division ignores the fact that there is a vast difference between the theoretical *possibility* of a profit and the *expectation* of a profit. Determining the expectation of the members of Forest Conservation requires a subjective analysis, not a hypothetical, objective analysis. The members of FC 2012 sought a tax deduction, not an increase in their yearly income. Each person *expected* to receive a tax benefit, and SFA/PCH *expected* to offer a tax benefit. (*See* Ex. 4.) Again, as the *Teague* court pointed out, "the subjective feeling of the vast majority of purchasers is likely the feeling the seller objectively intended to produce."

The economic reality of the conservation easement transactions is that they were simply a vehicle for obtaining a charitable tax deduction, which is not a "profit." There were no dividends, and there was no appreciation in value of the participants' membership interests. Both the sellers of the membership units and the participants viewed the transaction as an opportunity to donate a conservation easement for tax purposes. At no time did anyone involved in the transaction contemplate a pecuniary return on their contribution created by the efforts of another. In any event, Mr. Lloyd did not offer investment in the land entities. He offered only membership interests in the

three Forest Conservation entities, which clearly were sold (and purchased) only to obtain a one-time tax deduction.

3. The transactions did not involve the purchase or sale of a security because the participants did not rely on the managerial efforts of others.

In *United Housing*, the Supreme Court relaxed the requirement that profits be derived "solely" from the efforts of others and instead stated that profits should be "derived from the entrepreneurial or managerial efforts of others." This was not a case where the participants relied on a management company to farm oranges or print stamps. The value of the land is what it is. There is no way for the land entities, SFA, or Respondent to cultivate the tax benefit provided to the participants. They simply were not responsible for the outcome in that respect, which is akin to the holding in *Sunshine Kitchens v. Alanthus Corp.*, 403 F. Supp. 719 (1975).

Sunshine Kitchens held that the purchasing and lease-back of computers which promised favorable tax benefits did not meet the expectation of profits to be derived from the efforts of others requirement under *Howey* because "[t]he real effect of the transaction had nothing to do with [the management company's] expertise; it was controlled solely by [the purchaser's] income level" and their "own accounting procedures" because the tax benefit required only that the transaction show a loss. *Id.* at 722.

Here, the value of the tax benefit to participants had absolutely nothing to do with the managerial efforts of the land entities, SFA, or Respondent, and that investment contract element is not met. The land value speaks for itself. Respondent's handling of

the paperwork had no effect whatsoever on the tax benefit received. Thus, there is no profit from the managerial efforts of others and therefore no investment contract.

B. RESPONDENT WAS NOT SELLING AWAY BECAUSE THERE WAS NO PURCHASE OR SALE OF A SECURITY.

As the Division noted, "The term 'broker' means any person engaged in the business of effecting *transactions in securities* for the account of others" (emphasis added). 15 U.S.C. § 78c (2014). As discussed above, there was no purchase or sale of a security during the conservation easement transactions. It is true that Respondent was an associated person of a broker-dealer because he was a registered representative of LPL Financial, LLC. However, because there was no security, there was no selling away.

C. THERE IS NO EVIDENCE THAT RESPONDENT VIOLATED THE ANTI-FRAUD PROVISIONS OF THE SECURITIES ACTS.

As discussed in Section II of this brief, the FC 2012 transaction did not involve the purchase or sale of a security and therefore cannot be a violation of the Securities Acts. In addition, there is no evidence that Mr. Lloyd violated the anti-fraud provisions of the Securities Acts.

1. Respondent did not misappropriate client funds because the three participants at issue were members of Forest Conservation 2012, LLC, their funds were in fact used to purchase interests in Piney Cumberland Holdings, LLC, and each member of FC 2012, LLC was aware that their contribution amount included Respondent's fee.

All three of the participants whose names were left off of the original Operating Agreement were in fact members of the LLC under the Wyoming LLC Act as stated in the report from Tom Long and as noted in the Amended Operating Agreement. (*See* Ex. 5.) The failure to update the investor paperwork with SFA does not negate the valid

membership in FC 2012 as each of the three participants at issue is in fact an accredited investor.

Additionally, the Enforcement Division stated that "Wyoming Law allows for LLC *records filed with the state* to be corrected 'if at the time of filing the record contained inaccurate information or was defectively signed' Wyo. Stat. Ann. § 17-29-206 (2010) (emphasis added). (Division's Br. 32.) The Division then goes on to say that the Wyoming Law does not "condone after-the-fact corrections or implied readings of an LLC operating agreement to conceal a fraud" and that "the provision of fraudulent information to the state in LLC filings is grounds for the deeming of the LLC as defunct, transacting business without authority, and in forfeiture of its articles of organization. Wyo. Stat. Ann. § 17-29-705(c) (2010). (Division's Br. 32.) However, the Division is either ignorant of Wyoming LLC law or willfully misrepresenting it.

The Division incorrectly lumps operating agreements in with the category of documents that must be filed with the state. In fact, there is no requirement that operating agreements be filed with the State of Wyoming, and Respondent did not do so. Indeed, to argue anything to the contrary is preposterous given that an operating agreement does not even have to be in writing; it can be oral or even "implied from the facts and circumstances of the parties." (*See* Ex. 5.)

Moreover, the original operating agreement was not "fraudulent;" it contained a clerical error which was corrected. Despite his intentions, Respondent never removed Mr. Carson's funds from the FC 2012, LLC bank account; consequently, Mr. Carson was still, in fact, a member of FC 2012, LLC and entitled to be listed as such on the

Amended Operating Agreement. This issue was explained quite succinctly in the expert report by Tom Long in which he stated:

> The statutory requirements for a person to become a member of an LLC are set forth in Wyo. Stat. § 17-29-401. There are alternative methods for the same to be accomplished, at least two of which have been fulfilled by each of the Allegedly Omitted Members[1], i.e. their membership is provided in the Operating Agreement and their membership has been consented to by all of the other members of the LLC. In my opinion, the SEC is mistaken as a matter of law insofar as it has concluded that the Allegedly Omitted Members are not members; those three gentlemen are members of the LLC as a matter of Wyoming law.

(*See* Ex. 5.) Thus, there is no violation of § 17-29-705(c).

Mr. Lloyd does not dispute the fact that a scrivener's error occurred when he inadvertently left off the names of Brown, Carson, and Malloy in the Operating Agreement. He also does not dispute the fact that the paperwork with SFA was not revised to reflect the changes made to the membership of FC 2012, LLC. However, these mistakes do not amount to fraud, and they do not change the fact that each person was in fact a member of the LLC. Once Mr. Lloyd became aware of these issues, he took the necessary steps to correct his mistake, and each member of the FC 2012, LLC specifically ratified these actions in the Amended Operating Agreement. (*See* Ex. 5.)

Respondent deposited a total of $649,302.00, including his contribution of $16,802.00, into the FC 2012, LLC bank account. (*See* Ex. 6.) This amount included the $150,000.00 contributed by Brown, Carson, and Malloy. Of that $649,302.00, $105,750.00 constituted Respondent's tax service fee of which each member of FC

[1] The "Allegedly Omitted Members" are Mr. Brown, Mr. Carson, and Mr. Malloy.

2012 was well aware prior to making their contribution.[2] (*See* Exs. 4 and 5.) Mr. Lloyd wired $543,552.00 ($649,302.00 minus the $105,750.00 in fees) from the FC 2012, LLC bank account to Piney Cumberland Holdings, LLC ("PCH") on December 7, 2012. (*See* Ex. 7.) Checks totaling $105,750.00 were then written to various accounts controlled by Mr. Lloyd and his wife as payment for his tax planning services. (*See* Ex. 8).

For these reasons, Carson, Brown, and Malloy were members of the LLC, and their funds were in fact placed into the FC 2012, LLC bank account and used to purchase the interests in PCH. Each member of FC 2012, LLC received exactly what they paid for, and there was nothing improper about the transaction. Thus, there was no misappropriation of their funds.

Moreover, there is absolutely no evidence that Mr. Lloyd diverted $130,000.00 or misappropriated any client funds, for that matter. The Division continues to beat the proverbial dead horse and argue that Respondent stole $130,000 from Brown, Carson, and Malloy despite Judge Eliot's ruling that there is simply no evidence to support this claim.

The Division argues that the checks issued to Respondent's and his wife's businesses totaling $105,750 and his "inflated" personal contribution of $24,250 total the $130,000 stolen from Brown, Carson, and Malloy. However, Respondent explained at the hearing that his personal contribution is always a "plug." (T. 1020: 16-24.) Put simply, the FC 2012, LLC was allowed a certain amount of units to purchase, which

[2] The Enforcement Division's assumption that just because Mr. Lloyd had to explain the process of the conservation easement to his clients again over a year after the transaction took place necessarily means that they did not know they paid a fee for his services is absurd. Mr. Lloyd is not in the habit of working for free, and his clients are well aware of that fact. Indeed, the Participants' Affidavits specifically note that they were aware that Mr. Lloyd charged a fee that was part of their contribution amount.

required a sum certain. Once his clients made their contributions, Respondent contributed the difference needed to reach the sum certain. Thus, the amount available for his contribution fluctuated as monies were contributed by Respondent's clients, and it was only set once the clients' funds were collected.

Respondent received a K-1 reflecting his percentage of ownership based on his *actual* contribution of $16,802.00. (Ex. 9.) His contribution amount was never "fraudulently inflated;" his membership interest in the LLC was the percentage based on $16,802.00. Thus, the Division's theory that Carson, Brown, and Malloy's $130,000 transformed into checks to the Respondent and his inflated personal contribution falls flat when one admits that Respondent did not take a percentage based on the $24,250 amount; his percentage was based off of the $16,802.00 check he contributed. Consequently, the numbers do not "[match] to the penny."

There is ample evidence that the FC 2012 participants knew that their contribution amounts included Mr. Lloyd's fee, (*See* Ex. 4), and the Wyoming LLC Act makes it clear that each of the three individuals at issue were in fact members of the FC 2012, LLC (*See* Ex. 5). Consequently, Respondent did not misappropriate any client funds.

2. Respondent did not use tax documents to "cover up his scheme."

Once again, the Division blatantly ignores the undisputed facts of this case to the point of absurdity. The Division argues that Respondent issued Schedule K-1s to the FC 2012, LLC members in May 2013 two months after the OCIE exam of his office, implying that Respondent only issued the K-1s because he was under the gun, so to

speak. This allegation is an outright farce. The K-1 for Forest Conservation 2012, LLC was not issued until May 2013. (T. 887:10-888:6.) There was, quite literally, no way for Respondent to have issued the individual K-1s sooner than he did.

Moreover, the Division also appears to argue that the only reason Respondent issued K-1s was to cover up his alleged misappropriation of client funds, which is nothing short of ridiculous. FC 2012 was the *second* conservation easement transaction in which a majority of the members participated; they were well aware of how this process worked. Additionally, Carson, Brown, and Malloy understood the process and knew that they would receive a tax deduction for their participation. Had they not in fact received that deduction, Respondent would have immediately been "outed," so to speak. It is completely illogical to argue that Respondent intended to outright steal their money.

D. THERE IS NO EVIDENCE THAT RESPONDENT COMMITTED A PRIMARY VIOLATION OF THE INVESTMENT ADVISERS ACT.

Sections 206(1), (2), and (4) of the IAA of 1940 provide that it is unlawful:

> [F]or any investment adviser . . . (1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client . . . (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

15 U.S.C. § 80b-6 (2014). In order to be charged with a primary violation of Section 206, the individual must be an "investment adviser." *Russell W. Stein*, Securities Exchange Act of 1934 Release No. 47504, 2003 WL 1125746, at *3 (Mar. 14, 2003). "'Persons associated with investment advisers' must be charged as aiders and abettors." *Id.*

"Section 206 is an anti-fraud provision and applies only to 'investment advisers.'" *Kaufman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 464 F. Supp. 528, 537 (D. Md. 1978); *Hall v. Paine, Webber, Jackson & Curtis, Inc.*, No. 82 CIV. 2840 (DNE), 1984 WL 812, at *2 (S.D.N.Y. Aug. 27, 1984). The Definitions section of the IAA defines an "investment adviser" as:

> any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

15 U.S.C. 80b-2(11).

1. Respondent was an associated person of an investment adviser and could not commit a primary violation of Sections 206(1), (2), or (4).

Stein involved an administrative proceeding against Stein for failing to disclose a potential conflict of interest to his employer and his employer's clients, among other alleged violations. *Stein*, 2003 WL 1125746. The SEC argued that Stein's conduct violated Sections 206(1) and (2) of the IAA. *Id.* Stein was a registered representative with Merrill Lynch ("ML"), a broker-dealer and investment adviser. He marketed and managed an investment consulting service and assisted institutional funds with investment manager searches. *Id.* at *1. Stein allegedly advised ML's clients to select a particular investment manager, ACF, which hired the Dover Company, owned by Stein's friend, to solicit new business for ACF. Dover received retainer and referral fees for any advisory fees ACF collected from clients solicited by Dover. *Id.* at *2.

Dover offered hunting and fishing incentives to ACF and its clients organized by Mayfair Services, a company owned by Stein's son, which was funded initially by loans

from Stein to his son. *Id.* at *3. Stein also loaned money to his friend who owned the Dover company. *Id.* at *2. Both Stein's friend and his son were able to pay back the loans he made to them by virtue of the business he directed their way through the Dover and Mayfair companies, and Stein did not disclose any of these potential conflicts of interest to ML. *Id.* at 3.

The SEC charged Stein as a "primary violator" of Section 206 of the IAA because he did not disclose this alleged conflict between his personal interests and those of ML's clients. *Id.* In upholding the ALJ's dismissal of the Section 206 charges, the Commission noted that "Section 206 applies by its terms only to investment advisers, rather than associated persons of investment advisers." *Id.* Therefore, "[o]nly investment advisers can be charged with primary liability pursuant to Section 206, and 'persons associated with investment advisers' must be charged as aiders and abettors." *Id.*

In this case, Respondent was charged with primary violations of Section 206 (1), (2), and (4). In 2012 at the time of the conservation easement transaction, Respondent was a registered representative of LPL Financial. By definition, he was a "person associated with an investment adviser," which includes ". . . any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser." 15 U.S.C. § 80b-2(a)(17) (2014). He quite literally could not be an "investment adviser" for purposes of the IAA both based on the definitions above as well as the *Stein* holding, and he could not commit a primary violation of Section 206.

Stein makes it clear that Section 206 is only applicable to investment advisers,

and Respondent was not an investment adviser; he was an associated person of an investment adviser. For that reason, Respondent could not, and did not, commit a primary violation of Sections 206(1), (2), or (4).

2. In the alternative, Respondent did not commit a primary violation of Sections 206(1), (2), or (4) because he was not acting as an investment adviser and is excluded from the IAA pursuant to 15 U.S.C. 80b-2(a)(11).

In the alternative, even if Respondent was deemed to be an investment adviser, he did not violate Section 206 because he was not acting as an investment adviser during the FC 2012 transaction. Respondent, and the participants who testified, noted that this was a tax saving technique used with Respondent's tax clients. That four of them were investment advisory clients does not change the nature of the transaction. This technique used to obtain a charitable deduction is no different than donating money to Goodwill. That is precisely why all communications utilized Respondent's Ed Lloyd & Associates email address and letterhead instead of Lloyd Wealth Management. Respondent provided this service with his tax planning "hat" on, not his investment advisor hat.

Furthermore, absent evidence that Respondent received compensation specifically in return for providing investment advice to investors, he was not an investment adviser within the meaning of the IAA. *See Luzerne Cnty. Ret. Bd. v. Makowski*, 627 F. Supp. 2d 506, 573 (M.D. Pa. 2007).

In addition to the fact that Respondent does not fall within the definition of an investment adviser within the IAA, the definitions section of the IAA specifically creates an exception to this definition for "any lawyer, accountant, engineer, or teacher whose

performance of such services is solely incidental to the practice of his profession." 15 U.S.C. 80b-2(11). *See Abrahamson v. Fleschner,* C.A.2 (N.Y.) 1977, 568 F.2d 862, certiorari denied 98 S.Ct. 2236, 436 U.S. 905, 56 L.Ed.2d 403, certiorari denied 98 S.Ct. 2253, 436 U.S. 913, 56 L.Ed.2d 414; *see also Kaufman*, 464 F. Supp. at 537. During the FC 2012 transaction, Respondent was acting as a CPA within a tax planning transaction, putting him squarely within the accountant exception. The Division must establish by more than conclusory allegations that Respondent was an investment adviser, and it failed to do so. *Polera v. Altorfer, Podesta, Woolard and Co.*, 503 F. Supp. 116, 119 (N.D. Ill. 1980).

3. In the alternative, Respondent did not commit any acts sufficient to establish a primary violation of 206(1), (2), or (4).

SEC v. DiBella, 584 F.3d 533 (2d Cir. 2009) was an appeal of a district court jury trial of an enforcement action brought by the SEC against a State Senator, DiBella, and the Senator's business, North Cove Ventures, LLC, alleging the defendants aided and abetted violations of §10(b) and Rule 10b-5 by the Connecticut State Treasurer as well as the aiding and abetting a violation of the IAA by an investment firm and its chairman.

DiBella held that "any transaction that functions or otherwise results in a fraud is punishable" under the IAA, including negligent acts. *S.E.C. v. DiBella,* No. Civ. 304CV1342EBB, 2005 WL 3215899, at *8 (D. Conn. Nov. 29, 2005) explained that a primary violation of Section 206(2) of the IAA, and, effectively, by extension Section 206(1), need not be "in connection with" the provision of investment advice. The *DiBella* decisions apply this analysis to activities that took place outside of the advisory

relationship and conclude that liability is in fact possible in specific circumstances.[3] However, the Division did not prove all of the requirements for a primary violation of Sections 206(1), (2), or (4).

Moreover, there also cannot be a violation of Sections 206(1) and (2) because there was no fraud upon a client or prospective client. If anything, Respondent's actions affected SFA; they did not affect the four investment advisory clients. SFA wanted the accredited investor paperwork, which was not required, as discussed *supra*, and the lack of paperwork did not change the fact that the three individuals at issue were still members of FC 2012, LLC. The members of FC 2012, LLC were entitled to the tax deduction that FC 2012, LLC earned, as per Wyoming state law. *See* Wyo. Stat. Ann. § 17-29-401 (2010) (stating that the operating agreement for an LLC may be oral or implied).

i. Respondent did not commit a primary violation of 206(1).

Respondent did not violate 206(1) because he does not meet the statutory requirements for a 206(1) violation. *See* statute cited *supra*. In order to violate Section 206, one must be an investment adviser for the purposes of the act. *See* definition of "investment adviser" *supra*.

At the time of the transaction, Respondent was a registered CPA providing a tax planning vehicle for his clients. The fees associated with the FC 2012 transaction were

[3] It is worth nothing that both *DiBella* decisions apply this analysis in the context of aider and abettor liability, which was not plead in the OIP nor is it applicable based on the specific facts of the case. The elements of an aiding and abetting claim are (1) the existence of an independent wrongful act, (2) knowledge by the aider and of that wrongful act, and (3) substantial assistance in effecting that wrongful act. *Kaufman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 464 F. Supp. 528, 535 (D. Md. 1978) (internal citations omitted). *SEC v. DiBella* specifically states that the government must prove "the existence of a securities law violation by the primary (as opposed to the aiding and abetting) party." *DiBella* 584 F.3d at 566. Furthermore, scienter must also be shown. *Kaufman*, 464 F. Supp. at 535. (internal citations omitted). Respondent cannot be held liable as an aider and abettor for his own actions.

related to the tax planning vehicle. Moreover, each participant who testified or provided an affidavit indicated they knew there was a fee related to the tax planning work. (Powell 618:10-15; Losby 939:1-13; Brown 964:18-965:12; Hooks 1060:1-16, 1063:13-1064:3, 1066:8-1067:2, 1073:17-1074:9; Branch 1088:10-1090:7; Price 1107:1-1108:11, 1116:19-1117:14; Goss 1129:11-1132:14, 1156:17-1157:6, 1163:20-1165:4; Hall 1171:1-1173:23; Admitted Portions of Resp. Ex. 39.)

ii. Respondent did not commit a primary violation of 206(2).

A violation of § 206(2) requires the following: (1) the Defendant is an investment adviser; (2) the Defendant used the mails or any other means or instrumentality of interstate commerce, directly or indirectly; (3) to make a misstatement or omission of material fact to a client or prospective client; and (4) the Defendant acted negligently." *Morris v. Wachovia Sec., Inc.*, 277 F. Supp. 2d 622, 644 (E.D. Va. 2003).

As discussed *supra*, Respondent was not acting as an investment adviser. Furthermore, § 206(2) requires a misstatement or omission of material fact to a client or prospective client. The only misstatement made to any person was Respondent's statement to Zak at SFA. Zak was not a client or prospective client. Additionally, there is no evidence in the record to support the Division's claim that Carson, Brown, and Malloy were prospective advisory clients. (Division's Br. 36.)

Additionally, the Division's argument that Respondent made misrepresentations to FC 2012, LLC and that the entity was a "client" are mistaken. FC 2012, LLC was merely a tool used to pool the participants' funds so that they could collectively amass the necessary subscription amount. FC 2012, LLC was not Respondent's "client" for purposes of the Securities Acts or the IAA.

iii. Respondent did not commit a primary violation of 206(4).

As discussed *supra*, Respondent was not acting as an investment adviser. Furthermore, as the transaction was a tax planning vehicle, created by Respondent in his role as a CPA, Respondent is specifically excluded from the definition of investment adviser. 15 U.S.C. §80b-2(a)(11) (2014). *See Abrahamson,* 568 F.2d at 871. As Respondent was not subject to the IAA in his role as a CPA in this transaction, he has not committed a primary violation of § 206(4).

Even if Respondent was found to have been acting as an investment adviser, FC 2012, LLC does not meet the definition of an investment company as alleged by the Division. (Division's Br. 37.) No one involved in the FC 2012 transaction, Respondent or participant, indicated they were engaging in the business of investing, reinvesting, or trading in securities, and there is no evidence in the record to support such a claim. Everyone involved was on the same page: the conservation easement was merely a vessel for obtaining a tax deduction. Thus, Respondent did not commit a primary violation of 206(4).

E. DISGORGEMENT OF ANY FUNDS RELATIVE TO FOREST CONSERVATION 2011 or 2012 II IS INAPPROPRIATE AS IS AN ASSOCIATIONAL BAR.

Respondent maintains the arguments made in his Brief In Support of Petition for Review that the disgorgement calculation was erroneous. Additionally, the Division's request for disgorgement of $197,280 is inappropriate.

As discussed above, Respondent was not acting as an unregistered broker dealer and selling away because there was no security involved. Respondent acted in his capacity as a tax planner when advising his clients as to the conservation easement transactions. As such, there is no basis for disgorgement relative to the FC 2011 and FC 2012 II transactions.

Additionally, again, the Division seeks to hold Respondent liable for misappropriating the $130,000 contributed by Brown, Carson, and Malloy when there is no evidence to support such a claim. The money was used to purchase ownership interests in PCH, and each of the named participants received a K-1 reflecting their percentage of the tax deduction available that was proportionate to their individual contributions.

If any disgorgement is ordered, it should be the fees attributable to Brown, Carson, and Malloy: $20,500. There were numerous ways for the transaction to have gone through without the participation of these three participants, as discussed in Respondent's Brief In Support of Petition for Review. Consequently, the Division's request for disgorgement of $197,280 is erroneous and should be denied.

Furthermore, the Division continues to allege that Respondent fabricated a "story" that he was entitled to the advisory fees he charged. However, it is clear from the record that Respondent charged his clients a fee for his tax planning services relative to the conservation easement transactions in 2011 and during the second 2012 transaction. It is preposterous to argue that Respondent suddenly provided the exact same services to his clients in the FC 2012 transaction free of charge. Respondent is not in the habit of working for free, and his clients are well aware of that fact. Thus, to argue that an associational bar is appropriate because of Respondent's cover-up, (i.e., his completion of correct K-1s that accurately reflect each participant's percentage of ownership in the LLC and give each client precisely what they expected to receive), is ludicrous.

An associational bar only serves to punish Respondent in the public eye and will follow him professionally for the rest of his career. Respondent is no longer licensed to work in the securities industry. It is illogical to now implement such a harsh penalty when no clients were harmed and the risk of future violations is practically nihil given Respondent's expired licenses.

II. ARGUMENT REGARDING THE DIVISION'S RESPONSE TO RESPONDENT'S PRINCIPAL BRIEF

The Division's response to Respondent's principal brief made no new arguments. Additionally, it misrepresents the facts and evidence discussed at length in Respondent's principal brief. All errors of law and fact were previously addressed in this brief as well as in Respondent's principal brief, and Respondent refers the Commission to same.

III. CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Commission reversed the Initial Decision issued by ALJ Elliot on July 27, 2015.

This the 28 day of December, 2015.

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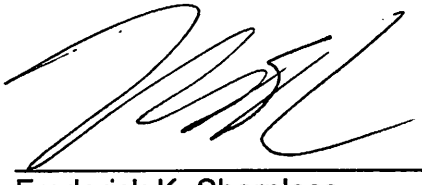
CERTIFICATE OF COMPLIANCE

The signature of respondent's attorney below certifies that, in compliance with the requirements of Securities Exchange Commission Rule 154(c), the word count for the **RESPONDENT'S RESPONSE AND REPLY BRIEF** filed with the Securities and Exchange Commission on December 28, 2015, contains a total of 6,826 words, as reported by the word processing program used to prepare the respondent's brief and motion.

This the 28 day of December, 2015.



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CERTIFICATE OF SERVICE

I certify that the **RESPONDENT'S RESPONSE AND REPLY BRIEF** was served upon the parties to this action as follows::

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
Via email and US mail

Mr. Robert F. Schroeder
Mr. Brian Basinger
Securities and Exchange Commission
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Mr. Brent J. Fields (Original & 3 copies)
(***via fax (202) 772-9324 and Original & 3 copies by US Mail***)
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This the 29 day of December, 2015.

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the classification of any transaction as a reportable transaction. Each prospective Member should consult with his or her own tax advisor regarding the disclosure requirements resulting from an investment in the Company.

Investors are urged to consult with their tax advisors regarding the tax consequences of purchasing Units prior to making an investment

The Conservation Easement

Current Intention

The Manager intends to propose to the Members that they consider causing the Property Entity to encumber the Property by conveying a Conservation Easement to a Qualified Organization at some point in the future. However, the Manager may determine the Investment Proposal is the best alternative for the Property Entity and/or the Company. Further, neither the Company nor the Property Entity is under any legal obligation to encumber or otherwise cause the encumbrance of the Property with a Conservation Easement, and the Members are under no legal obligation to approve the encumbrance of the Property with a Conservation Easement.

Specific Requirements Under Code and Regulations

The charitable contribution deduction allowed under Section 170(h) of the Code represents a particular and specific type of the charitable contributions for which deductions are more generally allowed. In the case of a Conservation Easement, the Property Entity, as the grantor, is permitted to retain and reserve certain rights that are not inconsistent with the conservation purposes which such a Conservation Easement is intended to serve. As such, the federal tax deduction for a qualified conservation easement constitutes a limited exception to the more general rule restricting charitable contributions of partial interests in property. It is important for prospective Members to be aware that the Property Entity's proposed Conservation Easement with respect to the Property must meet the specific requirements outlined in the Code and Regulations in order for the Property Entity, and ultimately the Company, to successfully claim and sustain any Contribution Deduction.

Nature of Restrictions

Any Conservation Easement would impose substantial restrictions granted in perpetuity on the uses which may be made of the Property. Such restrictions would be enforceable under the terms of the Tennessee Conservation Easement Act of 1981, T.C.A §§ 66-9-301 to 66-9-309.

The following covenants and restrictions are among the limitations which likely would be applicable to the Property in perpetuity in the event that the Property Entity encumbers it with a Conservation Easement: (1) the Property could not be used for any residence or for any commercial, institutional, or industrial purpose or purposes; (2) the nature of any structures which may be built on the Property would be severely limited; (3) the cutting, removal or destruction of living trees would be restricted but not prohibited; (4) signage, billboards or outdoor advertising structures would be limited; (5) filling, excavation, surface mining, drilling, dumping and material changes in the topography would be precluded; (6) generally no livestock grazing on the Property would be allowed, but some small scale agricultural use would be permitted, and; (7) any other use or activity, not expressly reserved under the Conservation Easement, which would be inconsistent with or materially threaten the conservation purposes would be prohibited. While certain rights would be reserved to the Property Entity under the Conservation Easement which are considered to be consistent with the conservation purposes, the Property Entity, or future owners of the Property, would be required to notify the Qualified Organization as defined below in writing before exercising any such rights, and the Qualified Organization must be satisfied that the proposed use or activity will have no material adverse effect on the conservation purposes or on the significant environmental features of the Property established under the reports, plans, photographs, documentation and exhibits assembled by the Qualified Organization which describe the Property's present significant ecological and scenic features.

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October 15, 2012

Mr. Arthur J. ("Jimmy") Goolsby, Jr.
Manager
Piney Cumberland Holdings, LLC
817 College Street
Spencer, Tennessee 38585

Re: Opinion Letter Regarding Certain Material Federal Income Tax Aspects of the Subject Transactions

THIS OPINION WAS DRAFTED TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTION(S) OR MATTER(S) ADDRESSED IN THE OPINION, AND EACH INVESTOR SHOULD SEEK ADVICE BASED ON THE INVESTOR'S CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

Dear Manager:

We have acted as counsel to Piney Cumberland Holdings, LLC, a Tennessee limited liability company (the "Company"), in connection with the following transactions (collectively the "Subject Transactions"): (a) the formation of the Company, for the purpose of the proposed offer and sale by the Company (the "Offering") of common units of membership interest in the Company ("Units") to certain investors (the "Investors") in a private securities offering intended to qualify under Rule 506 of Regulation D, 17 C.F.R. Reg. §230.506, adopted under the Securities Act of 1933, as amended, pursuant to that certain Confidential Private Offering Summary – Piney Cumberland Holdings, LLC, dated October [•], 2012, and the other documents and exhibits attached thereto (collectively, the "Offering Memorandum"); (b) the purchase (the "Purchase") by the Company of certain of the outstanding membership interests in Piney Cumberland Resources, LLC, a Tennessee limited liability company (the "Property Entity") owned by (i) Jeffrey A. Pettit, an individual resident of the state of Tennessee ("Mr. Pettit"), who currently owns 95% of the issued and outstanding units in the Property Entity and (ii) Tonya K. Pettit, an individual resident of the state of Tennessee ("Mrs. Pettit" and, together with Mr. Pettit, the "Sellers"), who currently owns 5% of the units in the Property Entity; (c) the redemption (the "Redemption") by the Company of certain Class A Units and Class B Units of membership interest in the Company from the current members of the Company; and (d) the potential contribution by the Property Entity of a conservation easement (the "Conservation

Easement") to Foothills Land Conservancy ("FLC") over that certain real property described herein on Exhibit A (the "Property") that is owned by the Property Entity.

It is important to note that, subsequent to and independent of the closing of the Offering and the Purchase, the Property Entity may hold the Property for investment and potential future sale to one or more third party developers, deliver the Conservation Easement to FLC or to another qualified organization which would be intended to constitute a qualified conservation contribution, as described in Section 170(h) of the Internal Revenue Code of 1986, as amended, (the "Code") and the Treasury Regulations (the "Regulations") with respect to all or a portion of the Property, or do any other activity consistent with its ownership of the Property. It is our understanding that while the Company and Property Entity have discussed potential terms for the Conservation Easement with FLC, no definitive agreements have been entered into with FLC or any other qualified organization or otherwise signed. Further, there are no contractual obligations that require the Property Entity to grant the Conservation Easement or take any other specific action with respect to the Property. The activities engaged in by the Property Entity, relating to the Property or otherwise, are within the discretion of the members of the Property Entity (the "Members") pursuant to the governance provisions of the Operating Agreement of the Property Entity (the "Property Entity Operating Agreement"), and, indirectly, pursuant to the governance provisions of the Operating Agreement of the Company (the "Company Operating Agreement").

We have been requested by the Company to deliver this legal opinion (this "Opinion") in furtherance of the Subject Transactions. Our opinions stated herein are based upon our interpretation of the relevant provisions of the Code, Regulations (including Temporary and Proposed Regulations) promulgated there under, existing judicial decisions, and current administrative rulings and procedures issued by the Internal Revenue Service (the "IRS"), all of which are subject to change, with or without retroactive application, by legislation, administrative action and judicial decision, which changes might alter our Opinion. Our Opinion has no binding effect or official status, and only represents our professional judgment. No assurance can be given that the conclusions reached herein will be sustained by judicial review if challenged by the IRS. Moreover, the tax treatment of a particular transaction and resulting tax attributes will depend not only upon general legal principles but also upon various factual matters related to the individual taxpayer. Consequently, while we are able to give our Opinion with respect to the general treatment of the Subject Transactions described herein and resulting tax attributes, the effects to an individual taxpayer will be heavily dependent upon the taxpayer's tax situation.

There are certain factual determinations that must be made when evaluating whether a proposed conservation easement contribution will qualify for a deduction under the Code and Regulations, and certain limitations on the use of such deductions are specific to each individual taxpayer. Such factual determinations are beyond the scope of this Opinion. Where applicable, we have indicated the factual assumptions and legal documents upon which we have relied, and upon which this Opinion is based.

I. PROPOSED TRANSACTION STRUCTURE.

(a) The Investors will contribute cash to the Company in exchange for Common Units in the Company pursuant to the form of Subscription and Suitability Agreement (the "Contribution Agreement") attached to the Offering Memorandum.

(b) The Company will effect the Purchase for cash pursuant to that certain Membership Interest Purchase Agreement dated as of October [•], 2012 and attached to the Offering Memorandum (the "MIPA").

(c) Following the closing of the Offering and Purchase, the Company will own a minimum of 95.204040% of the Membership Interests and a maximum of 95.959596% of the Membership Interests, and the remaining Property Entity Membership Interests, in each case, will be owned in the aggregate by the Sellers, and a minimum of 97.68% ownership interest in the Company on a fully diluted basis and a maximum of 99% ownership interest in the Company on a fully diluted basis will be owned by the Investors.

(d) After the foregoing actions have occurred, it is contemplated that Jeffery A. Pettit, a member of the Company and the Property Entity, and the manager of the Property Entity, and Arthur J. ("Jimmy") Goolsby, Jr., the manager of the Company (the "Manager"), will recommend to the Members that the Property Entity encumber the Property by granting the Conservation Easement to FLC.

(e) If approved by a majority of the Members based upon their relative Membership Interest ownership at such time, with the decision of the Company as the majority member of the Property Entity to be made by a majority of the Investors, the Property Entity will grant the Conservation Easement to FLC. Upon execution, delivery and recordation of the Conservation Easement, the Property Entity will claim a contribution deduction (the "Contribution Deduction") pursuant to Code Sections 170(a) and (h) in an amount equal to the fair market value of the Conservation Easement. Based on the status of the Property Entity as a partnership for federal income tax purposes, the Contribution Deduction will be allocated to the Members (including the Company) under the terms and conditions of the Property Entity Operating Agreement and the applicable provisions of Subchapter K of the Code, and, based on the status of the Company as a partnership for federal income tax purposes, the Contribution Deduction received by the Company will be allocated to the Investors under the terms and conditions of the Company Operating Agreement and the applicable provisions of Subchapter K of the Code.

II. COVERED OPINIONS.

Treasury Department Circular 230 ("Circular 230") provides certain requirements that must be met when delivering a tax opinion letter that is deemed to be a "covered opinion." Covered opinions are written advice, which may be in the form of electronic communications, concerning one or more "federal tax issues" arising from: (1) a transaction that is the same as or substantially similar to a transaction determined by the IRS to be a tax avoidance transaction and identified in published guidance as a "listed transaction"; (2) any

partnership, other entity, or investment plan or arrangement the "principal purpose" of which is the avoidance or evasion of any federal tax; (3) any partnership, other entity, or plan or arrangement that has as "a significant purpose" the avoidance or evasion of federal tax if the written advice is (a) a "reliance opinion," (b) a "marketed opinion," (c) subject to conditions of confidentiality, or (d) subject to contractual protection.

The "principal purpose" of a partnership, other entity, or investment plan or arrangement is the avoidance or evasion of any tax imposed by the Code if that purpose exceeds any other purpose. A principal purpose is not deemed to avoid or evade tax, however, if the partnership, entity, plan, or arrangement has as its purpose the claiming of tax benefits in a manner consistent with the Code and Congressional purpose. A partnership, entity, plan, or arrangement may have a significant purpose of avoidance or evasion of tax even if it does not have the principal purpose of avoidance or evasion of tax.

A "reliance opinion" is defined in Circular 230 as written advice that concludes at a confidence level of more likely than not (*i.e.*, greater than 50% likelihood) that one or more significant federal tax issues would be resolved in the taxpayer's favor. A "marketed opinion" is defined in Circular 230 as written advice where the practitioner knows or has reason to know that the advice will be used or referred to by a person other than the practitioner (or an associated person), in promoting, marketing, or recommending a partnership or other entity, or an investment plan or arrangement, to another taxpayer. It is likely that this letter meets the requirements of both a reliance opinion and a marketed opinion.

Circular 230 requires the practitioner, with respect to a covered opinion, to: (1) determine the facts; (2) relate the facts to the law; (3) evaluate all of the significant federal tax issues and reach a conclusion with respect to each such issue; and (4) reach an overall conclusion regarding the tax treatment of the transaction.

The general rule is that the opinion should consider all significant federal tax issues, unless the opinion is a limited scope opinion. This opinion does not constitute a limited scope opinion. Reasonable efforts must be used to identify facts, including those that relate to future events if the transaction is proposed or prospective, and determine which facts are relevant. A federal tax issue is a question concerning the federal tax treatment of an item of income, gain, loss, deduction, or credit, the existence or absence of a taxable transfer of property, or the value of property for federal tax purposes. A federal tax issue is significant for purposes of a covered opinion if the IRS has a reasonable basis for a successful challenge and its resolution could have a significant impact, whether beneficial or adverse and under any reasonably foreseeable circumstance, on the overall federal tax treatment of the transaction or matter at issue in the opinion.

A reliance opinion must conclude that the taxpayer will prevail on the merits with respect to each significant federal tax issue considered in the opinion, at a confidence level of at least more likely than not, and describe the reasons for the conclusions, including the facts and analysis supporting the conclusions. In a marketed opinion, a conclusion must be reached that the

taxpayer will prevail on the merits at a confidence level of at least more likely than not with respect to each significant federal tax issue addressed in the opinion. If a more likely than not conclusion cannot be reached for each significant tax issue in the opinion, the marketed opinion cannot be issued.

The purpose of this Opinion is to provide the Company and its Members our opinion concerning the material federal income tax aspects of the proposed Subject Transactions. In light of Holding's use of this Opinion in promoting the Offering, this Opinion has been prepared in accordance with the requirements for a marketed opinion.

III. DISCLOSURE REQUIREMENTS.

Section 6111 of the Code requires each "material advisor" with respect to any "reportable transaction" to make a return in a form prescribed by the Secretary setting forth information identifying and describing the transaction and any potential tax benefits expected to result from it, together with such other information as the Secretary may prescribe.

(a) Reportable Transaction.

(1) General Rule. Under Code Section 6111(a), a "reportable transaction" is any transaction for which information is required in a return or a statement because the transaction is of a type which the Secretary (of the Treasury) determines as having a potential for tax avoidance or evasion. Sections 6111(b)(2) and 6707A(c) of the Code and Sections 1.6011-4(b), 301.6112-1(b)(2) and (c)(2) of the Regulations will apply for purposes of determining whether a transaction is a reportable transaction. For this purpose, a "transaction" includes all of the factual elements relevant to the expected tax treatment of any investment, entity, plan, or an arrangement, and includes any series of steps carried out as part of a plan."[1]

We bring to your attention IRS Notice 2007-72 (August 14, 2007), wherein the IRS issued a "transaction of interest" which contains characteristics that some may argue bears some potential similarity to the Subject Transactions. As noted below, it is our view that the transaction described in IRS Notice 2007-72 is not similar to, and is distinguishable from, the Subject Transactions for purposes of applying the "reportable transaction" principles. IRS Notice 2007-72 describes the following transaction:

> *Advisor owns all of the membership interests in a limited liability company (LLC) that directly or indirectly owns real property (other than a personal residence as defined in § 1.170A-7(b)(3)) that may be subject to a long-term lease. Advisor and Taxpayer enter into an agreement under the terms of which Advisor continues to own the membership interests in LLC for a term of years (the Initial Member Interest), and Taxpayer purchases the successor member interest in LLC (the Successor Member*

[1] Treas. Reg. § 1.6011-4(b)(1).

> *Interest), which entitles Taxpayer to own all of the membership interests in LLC upon the expiration of the term of years. In some variations of this transaction, Taxpayer may hold the Successor Member Interest through another entity, such as a single member limited liability company. Further, the agreement may refer to the Successor Member Interest as a remainder interest.*
>
> *After holding the Successor Member Interest for more than one year (in order to treat the interest as long-term capital gain property), Taxpayer transfers the Successor Member Interest to an organization described in § 170(c) (Charity).*
>
> *Taxpayer claims the value of the Successor Member Interest to be an amount that is significantly higher than Taxpayer's purchase price (for example, an amount that is a multiple of Taxpayer's purchase price and exceeds normal appreciation). Taxpayer claims a charitable contribution deduction under § 170 based on this higher amount. Taxpayer reaches this value by taking into account an appraisal obtained by or on behalf of Advisor or Taxpayer of the fee interest in the underlying real property and the § 7520 valuation tables.*

Should the Subject Transactions be determined to fit within the parameters of the "transaction of interest" outlined in Notice 2007-72, the Subject Transactions would constitute, as a result, a "reportable transaction", and subject to the requirements of Section 6111(a). Based upon our comparison of the Subject Transactions and the transaction of interest outlined in Notice of 2007-72, it is our opinion that it is more likely than not that the Subject Transactions do not fit within the description of such transaction, and that the Subject Transactions "are not expected to obtain the same or similar types of tax consequences" as the transaction outlined in the Notice, nor are the Subject Transactions "factually similar or based on the same or similar tax strategy" as the transaction outlined in the Notice. For instance, the Subject Transactions involve a situation in which Investors in the Company have an actual economic investment and undivided interest in the Company from the date of their investment. Moreover, while it is possible that the Investors will receive a charitable contribution deduction in excess of their investment in the Company, the valuation of the Conservation Easement will be based on an appraisal performed in compliance with specific Regulatory guidance issued by the IRS concerning the methodology of valuing such property.

(2) Conclusions. In view of the foregoing, it does not appear that the Subject Transactions should be considered a reportable transaction for purposes of Code Section 6111. However, given the factual nature of the determination of whether the Subject Transactions will be considered a reportable transaction for purposes of Code Section 6111, and the significant penalties that might apply if the Subject Transactions is determined to be such a reportable transaction, it would be advisable for each Seller or Investor addressed herein to consult with his or her own individual tax advisors regarding the applicability of the above referenced requirements on their

obligations, including their obligation to attach IRS Form 8886 to tax returns filed by such members with respect to the Subject Transactions.

(b) Economic Substance.

(1) General Rule. Under Code Section 7701(o), "certain transactions to which the doctrine applies" must satisfy both an objective and subjective test in order for the transactions to be respected for tax purposes. Under Code Sections 6662(b)(6) and 6662(i), a strict liability penalty equal to 20-percent of the amount of understated tax will be applied to a transaction which is found to lack economic substance. The penalty is increased to 40-percent of the underpayment if there is a nondisclosure of a noneconomic substance transaction. There is no reasonable cause exception to the penalties imposed under Code Sections 6662(b)(6) and 6662(i), so reliance on a tax opinion will not provide a taxpayer with a defense to the penalties imposed by these statutes.

(2) Conclusions. There have been no cases reported in which a contribution of a conservation easement was determined to be a transaction "to which the doctrine applies." Accordingly there have been no instances in which a contribution of a conservation easement was found not to have economic substance.[2] Moreover, by granting a conservation easement (should the Property Entity elect to do so), a taxpayer is giving up a real and substantial interest in property, thereby engaging in an actual economic transaction. In view of the foregoing, and as further discussed below, it is our conclusion that, more likely than not, the Subject Transactions do not lack economic substance under Code Section 7701(o) of the Code.

IV. DOCUMENTS REVIEWED.

In reaching the opinions stated herein, we have reviewed the following documents:

(a) The Offering Memorandum and the other documents and exhibits attached thereto;

(b) The preliminary appraisal (the "Preliminary Appraisal") performed by Claud Clark, III, SRA (the "Appraiser"), which we understand will be updated and developed into a complete appraisal performed in accordance with the Code and Regulations prior to the date of the proposed contribution of the Conservation Easement (if it occurs) and which will have an issue and effective date within sixty (60) days of any such contribution of the Conservation

[2] In *Historic Boardwalk Hall, LLC v. Commissioner*, 136 T.C. No. 1 (2011), which was subsequently reversed by the United States Court of Appeals for the Third Circuit, the Tax Court held that, in the context of the rehabilitation tax credit under I.R.C. § 47, the lack of a pre-tax profit potential is not necessarily determinative that a transaction lacks economic substance. Although the case applied pre-Section 7701(o) law and involved the allocation of a tax credit (as opposed to a charitable deduction) among partnership members, the Tax Court's determination that a pre-tax profit is not a prerequisite to satisfying the economic substance test provides some support for the conclusion that the Subject Transactions do not violate I.R.C. § 7701(o). Although the Third Circuit Court of Appeals reversed the Tax Court's decision, the Third Circuit did not base its opinion on the economic substance doctrine.

Easement (the completed appraisal, which we have assumed based on representations by the Appraiser will be provided as described above, is referred to herein as the "Final Appraisal");

(c) The form of Deed of Conservation Easement that would grant and convey the proposed Conservation Easement to FLC (the "Conservation Easement Deed");

(d) The Determination Letter recognizing the tax exempt status of FLC (the "Determination Letter");

(e) Form 990 for FLC for its 2011 fiscal year (the "Form 990");

(f) The Attorney's Certificate of Title (the "Title Opinion") dated as of August 28, 2012, prepared by the law firm of Looney, Looney & Chadwell, PLLC;

(g) The Articles of Organization of the Property Entity and the Property Entity Operating Agreement (collectively, the "Property Entity Documents");

(h) The Articles of Organization of the Company and the Company Operating Agreement (collectively, the "Company Entity Documents");

(i) Various deeds, bills of sale, assignments, assumption agreements, consents and other documents identified to our satisfaction effecting the Offering and Purchase;

(j) The letter from the accountant for the Property Entity describing that the Property has been accounted for as investment property since it was acquired by the Property Entity (the "Capital Gain Letter");

(k) The Reliance Letter from the Manager, on behalf of the Property Entity and the Company, to Sirote & Permutt, P.C. (the "Reliance Letter"); and

(l) A draft of that certain Conservation Easement Baseline Documentation Report prepared by FLC with respect to the Property (the "Baseline Report").

(m) The mineral interests opinion letter dated August 28, 2012 from the law firm of Looney, Looney & Chadwell, PLLC, opining with respect to the severance of the mineral interests from the Property ("Mineral Rights Opinion"); and

(n) The Mineral Rights Option Agreement for the purchase of the mineral rights for the Property from the current owner thereof, which Agreement is in full force and effect and will be closed upon by the Property Entity prior to the grant of any Conservation Easement for the acquisition by the Property Entity of all of the mineral rights associated with the Property (the "Mineral Rights Option Agreement").

In reaching the opinions stated herein we have relied on the above referenced documents, and other documents referenced herein, and have relied upon the authenticity of these documents, and where applicable (i) on their due authorization, execution and delivery, (ii) on the accuracy

and completeness of the documents provided to us, (iii) that no act has occurred rendering any document to be invalid, revoked or ineffective, and (iv) that forms and drafts of documents presented to us have been or will be executed in substantially the same form as presented.

V. ASSUMPTIONS.

The opinions expressed herein are subject to the assumptions listed within this Opinion, including:

(a) Based on the representations in the Reliance Letter and the Capital Gain Letter the Property is a capital asset in the hands of the Property Entity, and a sale of the Property after the date hereof would result in long-term capital gain to the Property Entity.

(b) Based on the Determination Letter and the representations and documents provided by FLC in connection with the proposed grant of the Conservation Easement (the "Easement Documentation"), FLC is a qualified organization as defined in Code Section 170(h)(3).

(c) Based on the Baseline Report, representations and recitals in the Conservation Easement Deed and the Reliance Letter, the Conservation Easement will qualify under Code Section 170(h)(2) as a Qualified Real Property Interest and will be considered to have been contributed exclusively for conservation purposes, as defined in Code Sections 170(h)(4)(ii) and / or 170(h)(4)(iii).

(d) Based on the Preliminary Appraisal, our past dealings and knowledge of the Appraiser, and representations made by the Appraiser, the Final Appraisal will constitute a Qualified Appraisal under Treas. Reg. §1.170A-13(c).

(e) Based on the Preliminary Appraisal, representations and assertions by the Appraiser, and the Reliance Letter, any enhancement in value which will occur to any and all property owned by a Member or any other person entitled to a deduction or tax benefit attributable to the Conservation Easement, or any person related thereto, shall be properly accounted for in the Final Appraisal.

(f) Based on the Reliance Letter and representations by FLC, FLC will issue a timely, complete and accurate letter ("Acknowledgement Letter") acknowledging the receipt of the Conservation Easement that satisfies the requirements of Code Section 170(f)(8).

(g) Based on the Reliance Letter, the Property Entity and the Members will timely file accurate and complete IRS Forms 8283 with respect to the contribution of the Conservation Easement.

(h) Based on the conclusions reached in the Mineral Rights Opinion and the rights granted to the Property Entity for acquisition of the mineral rights to the Property set forth in the Mineral Rights Option Agreement, which rights the Manager of the Property has stated will be exercised prior to any grant of a Conservation Easement, the Property Entity should own all of

the applicable mineral rights to the Property such that there current severance from the Property shall have no adverse effect on the Conservation Easement.

VI. CERTAIN QUALIFICATIONS AND LIMITATIONS.

No opinion is given herein as to the tax consequences to the Company, the Investors or any other Member with respect to any material or significant tax issue which is determined at the individual level and which is dependent upon such Member's or Investor's particular financial or tax circumstances or the state and local tax consequences to the Member or Investors. Further, no opinion is given with respect to the tax effects of any transactions regarding the Property Entity or the Property that may occur after the closing of the Offering and Purchase, such as the granting of the Conservation Easement, or the sale or development of the Property, other than as specifically set forth herein. For purposes of this Opinion, we have also relied and based our interpretation on pertinent provisions of the Code, Regulations (including Temporary and Proposed Regulations) promulgated thereunder, existing judicial decisions, and current administrative rulings and procedures issued by the IRS, all of which are subject to change, with or without retroactive application, by legislation, administrative action and judicial decision. Any changes in the facts assumed hereunder or in the Code or Regulations made subsequent to the date of this Opinion could materially affect the statements made herein and have adverse effects on the income tax consequences of an investment in the Company. This Opinion is strictly subject to all of the terms, conditions and limitations set forth herein. Further, this Opinion is directed to current and future members of the Company who are citizens of the United States. Foreign, state or local tax consequences also are not addressed here.

In rendering this Opinion, we have considered and attempted to follow the guidelines of Circular 230. Our opinion addresses each material tax issue that involves a reasonable possibility of challenge by the IRS for which a legal opinion can be given at this time; however, it should be noted that this Opinion is not a representation or a guarantee that the tax results opined to herein will be achieved. This Opinion has no binding effect or official status of any kind, and no assurance can be given that the conclusions reached in this Opinion would be sustained by a Court if contested by the IRS.

FOR PURPOSES OF OUR OPINION, ANY STATEMENT THAT IT IS "MORE LIKELY THAN NOT" THAT ANY TAX POSITION WILL BE SUSTAINED, MEANS THAT, IN OUR JUDGMENT, AT LEAST A 51% CHANCE OF PREVAILING EXISTS IF THE IRS WERE TO CHALLENGE THE ALLOWABILITY OF SUCH TAX POSITION AND THAT CHALLENGE WERE TO BE LITIGATED AND JUDICIALLY DECIDED.

VII. OPINIONS REGARDING PARTNERSHIP STATUS, CONTRIBUTION, PURCHASE AND ALLOCATION OF THE CHARITABLE DEDUCTION.

A. PARTNERSHIP STATUS FOR THE PROPERTY ENTITY

The availability of the income tax attributes of the Property Entity to its current and future Members depends upon the classification of the Property Entity as a "partnership" for federal income tax purposes and not as an "association taxable as a corporation." In the event that the Property Entity were considered an association taxable as a corporation, then its income and losses as well as any separately stated partnership items would not flow through or be allocated to its Members. If the Property Entity were treated as an association taxable as a corporation, all deductions would be deductible to the Property Entity on its own federal income tax return and would not flow through, or be allocated, to its Members, including the Company, and the Property Entity may be subject to a corporate level of taxation.

The Property Entity was formed as a Tennessee limited liability company. It is contemplated that the Property Entity has had and will have at least two (2) members before and after the closing of the Offering, Purchase, and Redemption. A partnership is defined in Code Section 761 as a "syndicate, group, pool, joint venture, or other incorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not . . . a corporation or a trust or estate." Although not explicitly stated in the definition of partnership, Code Section 761 requires an entity treated as a partnership for federal income tax purposes to consist of at least two partners.

The Property Entity is a business entity that is not classified as a corporation and is considered a "domestic eligible entity" under the Regulations classifying business entities. Treas. Reg. §301.7701-3. Under Treas. Reg. §301.7701-3, a domestic eligible entity that has two or more owners will automatically qualify for "partnership" tax classification status, unless the entity desires to change its classification by electing to be classified as an association taxable as a corporation for federal income tax purposes. Based upon statements contained in the Reliance Letter, it is our understanding that: (i) the Property Entity has at least two members, (ii) the Property Entity has not filed an election under Treas. Reg. §301.7701-3 to be treated as an association taxable as a corporation, (iii) the Property Entity is anticipated to have at least two members after the closing of the Offering, Purchase, and Redemption, and (iv) the filing of an election under Treas. Reg. §301.7701-3 for the Property Entity to be treated as an association taxable as a corporation is not contemplated.

Based upon the foregoing, it is our opinion that, more likely than not, the Property Entity will be classified as a "partnership" and not as an "association taxable as a corporation" for federal income tax purposes if such issue were challenged by the IRS, litigated, and judicially decided. The remaining summary of federal income tax consequences in this Opinion assumes that the Property Entity will be classified as a "partnership" for federal income tax purposes.

Accordingly, if, as anticipated, the Property Entity is treated as a partnership for federal income tax purposes, it will not be treated as a separate taxable entity subject to federal income tax, but

instead the Members of the Property Entity would be required to report on such Members' federal income returns for each year a distributive share of such entity's income, gain, loss, deduction or credit for that year.

B. PARTNERSHIP STATUS FOR THE COMPANY

The availability of the income tax attributes of the Company to the Investors similarly depends upon the classification of the Company as a "partnership" for federal income tax purposes and not as an "association taxable as a corporation." In the event that the Company were considered an association taxable as a corporation, then its income and losses as well as any separately stated partnership items would not flow through or be allocated to the Investors. If the Company were treated as an association taxable as a corporation, all deductions would be deductible to the Company on its own federal income tax return and would not flow through, or be allocated, to the Investors, and the Company may be subject to a corporate level of taxation.

The Company was formed as a Tennessee limited liability company. It is contemplated that the Company will have at least two (2) members before and after the closing of the Offering. A partnership is defined in Code Section 761 as a "syndicate, group, pool, joint venture, or other incorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not . . . a corporation or a trust or estate." Although not explicitly stated in the definition of partnership, Code Section 761 requires an entity treated as a partnership for federal income tax purposes to consist of at least two partners.

The Company is a business entity that is not classified as a corporation and is considered a "domestic eligible entity" under the Regulations classifying business entities. Treas. Reg. §301.7701-3. Under Treas. Reg. §301.7701-3, a domestic eligible entity that has two or more owners will automatically qualify for "partnership" tax classification status, unless the entity desires to change its classification by electing to be classified as an association taxable as a corporation for federal income tax purposes. Based upon statements contained in the Reliance Letter, it is our understanding that: (i) the Company has not filed an election under Treas. Reg. §301.7701-3 to be treated as an association taxable as a corporation, (ii) the Company is anticipated to have at least two members after the closing of the Offering, and (iii) the filing of an election under Treas. Reg. §301.7701-3 for the Company to be treated as an association taxable as a corporation is not contemplated.

Based upon the foregoing, it is our opinion that, more likely than not, the Company will be classified as a "partnership" and not as an "association taxable as a corporation" for federal income tax purposes if such issue were challenged by the IRS, litigated, and judicially decided. The remaining summary of federal income tax consequences in this Opinion assumes that the Company will be classified as a "partnership" for federal income tax purposes.

Accordingly, if, as anticipated, the Company is treated as a partnership for federal income tax purposes, it will not be treated as a separate taxable entity subject to federal income tax, but instead the Investors would be required to report on such Investor's federal income returns for

each year a distributive share of the Company's income, gain, loss, deduction or credit for that year.

C. PARTNERSHIP CONTRIBUTION AND PURCHASE

Section 708(b)(1)(B) of the Code provides that the taxable year of a partnership shall terminate if within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits. Based on our review of the Property Entity Documents, the Contribution Agreement, and the MIPA, and subject to the accuracy thereof, we have determined that, subject to the factual assumptions described herein, it is more likely than not that the contribution by the Investors of money to the Company at the Closing of the Offering and the simultaneous closing of the Purchase pursuant to the MIPA shall constitute a sale of Membership Interests for purposes of the termination of the taxable year of the Property Entity pursuant to Section 708(b)(1)(B) of the Code.

D. PARTNERSHIP ANTI-ABUSE RULES

The Regulations under Code Section 701 contains an anti-abuse rule which clarify that the IRS has the authority to recast partnership transactions to more accurately reflect the underlying economic arrangement of the partners if it concludes that the transaction attempts to use the partnership in a manner inconsistent with the intent of subchapter K.[3]

The rule clarifies that subchapter K is intended to permit taxpayers to conduct joint business activities, including investment activities, through a flexible economic arrangement without incurring an entity-level income tax. However, this intent encompasses three requirements: (1) the partnership must be bona fide and each partnership transaction or series of related transactions must be entered into for a substantial business purpose; (2) the form of each partnership transaction must be respected under substance over form principles; and (3) the tax consequences under subchapter K to each partner, of partnership operations and of transactions between the partner and the partnership, must accurately reflect the partners' economic agreement and clearly reflect each partner's income.[4]

Additionally, in order for a partnership transaction to be respected, the partnership and partners must apply the provisions of subchapter K and the accompanying regulations in a manner that is consistent with the intent of subchapter K, as that intent is described under the three requirements.[5] If a partnership is formed or availed of in connection with a transaction a principal purpose of which is to substantially reduce the present value of the partners' aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K, the IRS can recast the transaction as appropriate to achieve tax results that are consistent with the intent of

[3] Treas. Reg. § 1.701-2.

[4] Treas. Reg. § 1.701-2(a).

[5] Treas. Reg. §1.701-2(b).

subchapter K, taking into account all the facts and circumstances. This may occur even if the transaction falls within the literal words of a particular statutory or regulatory provision.

Whether a partnership is formed or availed of with a principal purpose to reduce substantially the present value of the partners' aggregate federal tax liability in a manner inconsistent with the intent of subchapter K is determined based on all of the facts and circumstances. This includes a comparison of the purported business purpose for a transaction and the claimed tax benefits resulting from the transaction.[6] The regulations provide a number of factors to consider in making this determination, but specifies that the factors are illustrative only and that the weight to be given any one factor (whether listed or not) depends on all of the facts and circumstances; the presence or absence of any factor does not create a presumption that the transaction is abusive.[7] The factors include:[8]

(1) whether the present value of the partners' aggregate federal tax liability is substantially less than it would be if the partners owned the partnership's assets and conducted the partnership activities directly;

(2) whether the present value of the partners' aggregate federal tax liability is substantially less than it would be if purportedly separate transactions that are designed to achieve a particular end result are integrated and treated as steps in a single transaction;

(3) whether one or more partners who are integral to the claimed tax results either have a nominal interest in the partnership, are substantially protected from any risk of loss from the partnership's activities, or have little or no participation in the profits from the partnership's activities other than a preferred return that is in the nature of a payment for the use of capital;

(4) whether substantially all of the partners (measured by numbers or interests in the partnership) are related, directly or indirectly, to one another;

(5) whether partnership items are allocated in compliance with the literal language of the regulations governing the partners' distributive shares, but with results that are inconsistent with the purpose of the applicable statutory and regulatory provisions;

(6) whether the benefits and burdens of ownership of property nominally contributed to the partnership are in substantial part retained (directly or indirectly) by the contributing partner or a related party; and

(7) whether the benefits and burdens of ownership of partnership property are in substantial part shifted (directly or indirectly) to the distributee partner before or after the property is actually distributed to the distributee partner (or a related party) .

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[6] Treas. Reg. § 1.701-2(c).

[7] *See, e.g.*, CCA 200613031.

[8] Treas. Reg. § 1.701-2(c).

The application of the above referenced factors is set forth in a series of examples found in the Regulations. We have reviewed these examples and have determined that none of the examples are similar to the Subject Transactions. Based upon the rights of the Members and the Property Entity as set forth in the Offering Documents, the Investors, Sellers and the Property Entity should be viewed as entering into the Subject Transactions with a real and bona fide intent to making a profit. For example, in lieu of granting of the Conservation Easement, the Property Entity may instead choose to lease, develop, sell or otherwise transact business with respect to the Property for the purpose of producing profits for the benefit of the Property Entity and the Members. There is no indication that the Property Entity is utilizing the rules of Subchapter K in a manner inconsistent with the intent of the rules.

Moreover, should the Property Entity and the Members decide to make a charitable contribution of the Conservation Easement, the Property Entity and the Members will be forfeiting its right to develop the Property. Such a contribution would have a material economic impact on the Property Entity, its assets, and the value of the members' investment in the Property Entity. The deduction attributable to the Conservation Easement will flow-through to the Members (including the Company) in a manner consistent with the intent of Subchapter K, and the deduction attributable to the Conservation Easement that flows through to the Company will flow-through to the Investors in a manner consistent with the intent of Subchapter K.

The Tax Court case, *Historic Boardwalk Hall, LLC v. Commissioner,* 136 T.C. No. 1 (2011), demonstrates some potential arguments the IRS might make regarding the partnership anti-abuse rules in a context analogous, in some respects, to the Subject Transaction.

In *Historic Boardwalk Hall, LLC*, a partnership was formed for the purpose of allowing an investor to utilize tax credits[9] generated by a partnership which were attributable to historic rehabilitation development undergone by the partnership. The Service argued that the allocation of the tax credits to the investor should be disallowed on three alternative grounds relating to the partnership anti-abuse rules: (1) the transaction, in substance, was akin to a selling of the tax credits to the investor; (2) the partnership was a "sham" and that the investor, who only joined the partnership to obtain the tax credits, was never a real partner, and (3) the property giving rise to the tax credits was never substantively transferred to the partnership.

The Tax Court rejected the IRS's arguments in *Historic Boardwalk Hall, LLC*, finding that the partnership structure utilized by the parties to allocate the tax credits to the investor was appropriate based, in large part, on the legislative history applicable to the tax credit provision. Specifically, the Tax Court found that the lack of a significant pre-tax profit potential for the investor was not determinative of the legitimacy of the partnership structure because Congress intended the tax credit at issue to encourage investors to participate in transactions which would, absent the tax credit, lack profit potential. Accordingly, the Tax Court determined that using a partnership structure for the purpose of transferring tax credits to an investor was not, under the facts, impermissible.

[9] The tax credits at issue in the case were federal historic rehabilitation tax credits available under I.R.C. § 47.

The IRS appealed the Tax Court's decision in *Historic Boardwalk Hall, LLC* to the Court of Appeals for the Third Circuit.[10] The Third Circuit reversed the Tax Court's decision, determining that the investor in the transaction was not a bona fide partner in Historic Boardwalk, LLC. As a result, the investor was not allowed to utilize the tax credits allocated to it under the partnership agreement.

Although the facts of *Historic Boardwalk Hall, LLC* are clearly distinguishable from the Subject Transactions, the decision of the Tax Court and the Third Circuit's reversal of that decision provide some insight into how the courts might analyze the Subject Transactions. First, the Tax Court's decision provides some support for the position that the Subject Transactions do not violate the partnership anti-abuse regulations. Specifically, although *Historic Boardwalk Hall, LLC* involved a type of tax credit which was described by the Tax Court as intended by Congress to facilitate such investment activity (whereas the Subject Transactions involve the allocation of charitable deductions), the Tax Court's recognition that the legitimacy of a partnership structure does not depend on the presence of a pre-tax profit motivation is supportive of the Subject Transactions.[11] For instance, if it is ultimately determined by a court that the Investors are participating in the Subject Transactions for the sole purpose of obtaining the charitable deduction attributable to the Conservation Easement (in the event the Property Entity elects to grant the Conservation Easement), the lack of a pre-tax profit motivation for the Investors will not necessarily violate the partnership anti-abuse regulations under the rationale provided by the Tax Court in *Historic Boardwalk Hall, LLC*.

Under the "Golsen Rule," which was established in the Tax Court decision *Golsen v. Commissioner*, 54 TC 742 (1970), the Tax Court will follow a decision of the Circuit Court of Appeals to which the case could be appealed. Therefore, the Third Circuit's opinion in *Historic Boardwalk, LLC* will be followed by all courts, including the Tax Court, when an appeal would be to the Court of Appeals to the Third Circuit. Moreover, an appellate court's decision to reverse the Tax Court's decision might, in certain instances, inform the analysis applied by the Tax Court even in future cases not governed by the Golsen Rule. Accordingly, the Third Circuit's decision has some relevance to the Subject Transactions.

The Third Circuit determined that the investor in *Historic Boardwalk, LLC* should not be treated as a bona fide partner because the investor did not have a "meaningful stake in the success or failure of the partnership." In so holding, the Third Circuit focused primarily on the following facts:

- For a variety of reasons, including a "tax benefit guaranty," the court determined the investor had no meaningful downside risk in the partnership and that the investor was

[10] *See Historic Boardwalk, LLC v. Commissioner*, Case No. 11-1832 (August 27, 2012).

[11] Congress' use of Section 47 to encourage investment activity is analogous to its use of Section 170(h) to encourage the use of conservation easements to set aside important property to protect various conservation purposes.

"for all intents and purposes, certain to recoup the contributions it had made" to the partnership.

- The investor lacked meaningful upside potential in the profits of the partnership because the investor would only participate in partnership profits in the unlikely event certain primary payments were made by the partnership, leaving little potential for investor profit.

Unlike the facts in *Historic Boardwalk, LLC*, the Subject Transactions do not involve any type of tax benefit guaranty assuring the Investors that they will receive the tax benefits attributable to a conservation easement donation on the Property. Moreover, should the Member's decide to cause the Property Entity to hold the property for appreciation or develop the Property, the Investors would each recognize their proportional share of the profits (or losses) attributable to such development activity, with no limitation on the upside (or downside) potential to the Investor's.

Based upon the foregoing, it is our opinion that, more likely than not, the Partnership Anti-Abuse Rules will not alter the federal tax treatment of the Subject Transaction.

E. ECONOMIC SUBSTANCE.

Under Code Section 7701(o), "certain transactions to which the [economic substance] doctrine applies" must satisfy both an objective and subjective test in order for the transactions to be respected for tax purposes. Under Code Section 6662(b)(6) a strict liability penalty equal to 20-percent of the amount of understated tax will be applied to a transaction which is found to lack economic substance. Under Code Section 6662(i) the penalty is increased to 40-percent of the underpayment if the there is a nondisclosure of a noneconomic substance transaction. There is no reasonable cause exception to the penalties imposed under Code Sections 6662(b)(6) and 6662(i), so reliance on a tax opinion will not provide a taxpayer with a defense to the penalties imposed by the statutes.

In order for a transaction to be subject to the requirements of Section 7701(o), the transaction must be the type of "transaction to which the economic substance doctrine applies." In the case of an individual, this means the transaction must be entered into in connection with a "trade or business or an activity engaged in for the production of income."[12] However, when making the determination as to whether a transaction is subject to Section 7701, the term "transaction" includes a series of transactions.[13]

If a transaction is subject to the economic substance analysis, the transaction will only be deemed to have economic substance if the transaction (or series of transactions when viewed together) satisfy a two-prong test: (1) the transaction changes the taxpayer's economic position in a meaningful way (apart from federal income tax effects) and (2) the taxpayer has a substantial

[12] I.R.C. § 7701(o)(5)(B).

[13] I.R.C. § 7701(o)(5)(C).

purpose (apart from federal income tax effects) for entering into the transaction. For purposes of the Code, the term "economic substance doctrine" means the common law economic substance doctrine, and prior common law guidance is controlling.[14]

It is more likely than not that the Subject Transactions will not violate the economic substance transaction doctrine under Section 7701(o). First, based on our review of the Operating Agreement for both the Property Entity and the Company, the Members (including the Company, and, indirectly, the Investors) have the right to operate the Property Entity in a manner which could deliver a pre-tax economic benefit to the Members. Specifically, the Members could decide to cause the Property Entity to develop the Property in a manner consistent with the Property Entity's highest and best use as set forth in the Appraisal. Alternatively, the Members could decide to cause the Property Entity to hold the Property in order to realize appreciation in the value of the Property. The Members may also decide to cause the Property Entity to encumber a portion of the Property, or the entire Property, with a conservation easement. By entering into the Subject Transactions, the Members (including the Investors, indirectly) have, considering their ability to engage in profit-seeking activities in the form of the Property Entity, both (1) entered into a transaction that changes the Members' (including the Investors, indirectly) economic position in a meaningful way and (2) have a substantial purpose (apart from federal income tax effects) for entering into the Subject Transactions.

Should the Members, and with respect to the Company, the Investors, decide, following the closing of the Offering, Purchase and Redemption, to cause the Property Entity to grant a conservation easement on the Property, it is possible that the IRS could challenge the grant of the Conservation Easement on the grounds that the Subject Transactions coupled with the ultimate grant of the Conservation Easement lack economic substance. However, we have determined that it is more likely than not that the grant of a conservation easement by the Property Entity would not be "transaction to which the doctrine applies" because, in the case of individuals, new section 7701(o) applies only to transactions entered into in connection with a trade or business or activities engaged in for the production of income; a charitable contribution does not fit within this standard. Moreover, if the Subject Transactions, including the grant of the Conservation Easement, are viewed together as part of a larger transaction which constitutes a trade or business, it is more likely than not that the Subject Transactions will be found to satisfy the two part test set forth in Section 7701(o). Specifically, if the Subject Transactions are viewed in their entirety, several grounds exist to support a finding that the Subject Transactions have both economic substance and a business purpose. Specifically, the Property Entity can generate profits through the operation of the Property, even if it is encumbered by a conservation easement.

Finally, the application of the second prong of the two-prong test provided for under Section 7701(o), i.e., that "taxpayer [must have] a substantial purpose (apart from federal income tax effects) for entering into the transaction", has conceivably been limited by *Historic Boardwalk Hall, LLC v. Commissioner.* In the case pre-Section 7701(o), the Tax Court stated, in the context

[14] Section 7701 states that the determination of whether the economic substance doctrine is relevant to a transaction will be made in the same manner as if the section had never been enacted.

of Section 47 rehabilitation tax credits, that absence of a pre-tax motivation for entering into a transaction is not necessarily determinative that a transaction lacks economic substance. Although the Third Circuit Court of Appeals reversed the Tax Court's decision, the Third Circuit did so on grounds other than the economic substance doctrine.

Based on the foregoing, it is more likely than not that Section 7701(o) shall not apply to the Subject Transaction.

F. ALLOCATION OF CHARITABLE DEDUCTION.

When a partnership is terminated pursuant to Code Section 708(b)(1)(B), there is a deemed transfer of the assets from the "old" partnership to the "new" partnership, followed by a transfer of the interests in the new partnership to the partners of the old partnership (an "assets-over" transaction).[15] There is normally no recognition of gain or loss on the deemed contribution and distribution under this provision.[16] This deemed contribution and distribution results in a transferred basis and tacked holding period in the assets of the "new" partnership. There is no revaluation of capital accounts.[17]

Upon the occurrence of a termination of a partnership pursuant to Code Section 708(b)(1)(B), the partnership's taxable year closes with respect to all partners on the date the partnership terminates.[18] Separate partnership returns are required for the periods before and after termination under Code Section 708(b)(1)(B).[19]

Code Section 704 describes the allocation of income, loss, deduction and credit among the partners of a partnership. In general, the partnership agreement (and in the case of a limited liability company, the operating agreement) governs the allocation of such items. In general, charitable contributions made by a partnership are allocated among the partners based upon their relative interests in the partnership and constitute separately stated items.[20] The basis limitations in Code Section 704(d)[21] and the "at-risk" rules[22] do not apply to charitable contributions.

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[15] Treas. Reg. § 1.708-1(b)(4).

[16] *See* IRC §§ 721, 731.

[17] Treas. Reg. §§ 1.704-1(B)(2)(iv)(f) and 1.704-3(a)(2); *see also* T.D. 8717, 62 Fed. Reg. 25,498-99 (May 9, 1997).

[18] Treas. Reg. § 1.708-1(b)(3).

[19] Treas. Reg. § 1.708-1(b)(3) and (4); Notice 2001-5, 2001-1 C.B. 327 (both terminating and new partnership file short period returns; both use the same employer identification number); *see also* FSA 200132009.

[20] *See* IRC § 702(a)(4).

[21] Treas. Reg. § 1.704-1(d)(2) and PLR 8405084.

[22] Prop. Treas. Reg. § 1.465-13.

Based upon our review of the Contribution Agreement, the MIPA, the Redemption Agreement, and the Property Entity and the Company Operating Agreements, we have determined that, subject to the factual assumptions described herein, it is more likely than not that:

1. The simultaneous closing of the Offering and the Purchase shall constitute a termination of the partnership within the meaning of Code Section 708(b)(1)(B).

2. The holding period, adjusted basis and character of the assets of the Property Entity (including the Property) are unaffected as a result of this termination of the Property Entity pursuant to Code Section 708(b)(1)(B).

3. Because the Conservation Easement would be granted to FLC after the termination of the Property Entity under Code Section 708(b)(1)(B), the charitable deduction attributable to the Conservation Easement will appear on the short-year partnership tax return (Form 1065) for that period of 2012 following the closing of the Subject Transactions.

4. Pursuant to the terms of the Property Entity Operating Agreement and Code Sections 702 and 704 and the Regulations promulgated thereunder, the charitable deduction attributable to the Conservation Easement will be allocated among the Members (including the Company) pursuant to relative ownership interest in the Property Entity (i.e., relative Membership Interest ownership in the Property Entity during the short-period tax return following the closing of the Purchase) and no portion of the charitable deduction shall be allocable to the members of the Property Entity for the portion of the taxable year occurring prior to the closing of the Offering and Purchase. Moreover, the portion of the charitable deduction allocable to the Company will be allocated to the Investors pursuant to their relative ownership in the Company (i.e., relative Unit ownership in the Company during the short-period tax return following the closing of the Offering).

VIII. OPINIONS AND ASSUMPTIONS REGARDING QUALIFICATION FOR DEDUCTION.

A donation of a conservation easement constitutes a contribution of less than the donor's entire interest in property (referred to as a "partial interest"). Under Code Section 170(f)(3), the donation of a partial interest does not entitle the donor to a charitable contribution deduction unless the donor can establish the partial interest satisfies one of the exceptions under Code Section 170(f)(3)(B).

One of the exceptions for contributions of partial interests under Code Section 170(f)(3)(B) is the donation of a "qualified conservation contribution."[23] Code Section 170(h), and the Regulations promulgated thereunder, provide the requirements which must be met in order for a contribution to qualify as a "qualified conservation contribution" entitling the donor to a deduction under Code Section 170(a). These requirements as they relate to the Subject Transactions are addressed below.

[23] I.R.C. § 170(f)(3)(B)(iii).

A. QUALIFIED DONEE.

In order to be entitled to a charitable deduction for a contribution of a conservation easement, a donor must establish that the donee of the contribution is a "qualified donee" under the Code and Regulations. A qualified donee is defined under the Regulations as a donee that meets the following requirements:

1. The donee is a governmental agency or a qualified public charitable organization.[24]

2. The donee has a commitment to protect the conservation purposes of the donation.[25]

3. The donee must "have the resources to enforce the restrictions."[26]

Based on our review of the Determination Letter and the Form 990 for FLC, we have determined that, subject to the factual assumptions described below, it is more likely than not that FLC is a qualified donee for purposes of the Code and the Regulations.

First, as outlined in the Determination Letter, FLC is qualified public charitable organization under Code Section 501(c)(3).

Second, although the determination of whether FLC is committed to protecting the conservation purposes outlined in the Conservation Easement Deed requires a factual determination beyond the scope of this Opinion, based on the operating history of FLC and the representations made by FLC, it appears that FLC has the means and is committed to protecting the conservation purposes outlined in the Conservation Easement Deed and enforcing the terms of the Conservation Easement.

Finally, based on the Form 990, it appears that FLC has the resources to enforce the restrictions contained in the Conservation Easement Deed.

B. CONSERVATION PURPOSE.

In order to be entitled to a deduction for the donation of a conservation easement, it must be established that the conservation easement meets one of four different "conservation purposes."[27] However, while this is a question of fact that is only determinable by a court of proper jurisdiction, we have outlined below the conservation purposes that FLC has represented, in the Conservation Easement Deed, that the Conservation Easement accomplishes.

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[24] Treas. Reg. § 1.170A-14(c)(1)(i)-(iv).

[25] Treas. Reg. § 1.170A-14(c)(1).

[26] *Id.*

[27] I.R.C. § 170(h)(4)(A).

Relatively Natural Habitat. In order for an easement to qualify under Code Section 170(h)(4)(A)(ii) as protecting a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems, a conservation easement must protect a "significant" habitat.[28]

FLC has represented in the Conservation Easement Deed that the Conservation Easement will protect a significant relatively natural habitat of fish, wildlife, or plants, or similar ecosystem as is described by Treas. Reg. §1.170A-14(d)(3)(ii).

Open Space. In order for an easement to qualify under Code Section 170(h)(4)(iii) as preserving open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, an open space conservation easement must yield a "significant" public benefit.[29]

FLC has stated in the Conservation Easement Deed that the conservation purposes which are expected to be served if a Conservation Easement is granted with respect to the Property would include (1) Preservation of the viewshed from the Fall Creek Falls State Park for the scenic enjoyment of the general public, which will yield a significant public benefit; (2) Protection of a relatively natural habitat for fish, wildlife, plants, and the ecosystems in which they function which will yield a significant public benefit; (3) Preservation of open space (including farm land and forest land) for the scenic and other enjoyment, and for the education of the general public, pursuant to clearly delineated government conservation policies which provide a significant public benefit.

Based on the Baseline Report and representations in the Conservation Easement Deed, it is more likely than not that the Conservation Easement satisfies the conservation purpose requirement of Code Section 170(h)(1)(C).

C. CONSERVATION EASEMENT DEED.

The Property Entity will effect the conveyance of the Conservation Easement to FLC through the execution of the Conservation Easement Deed. Based on our review of the Conservation Easement Deed, we are of the opinion that that it will effectively convey the Conservation Easement. However, in order to secure the tax benefits described herein in calendar year 2012, *inter alia*, the Conservation Easement Deed must be fully executed and recorded in the Van Buren County, Tennessee Probate Courts on or before December 31, 2012.

D. RESERVATION OF RIGHTS AND BASELINE REPORT.

The Property Entity intends to reserve certain rights, which are outlined within the Conservation Easement Deed (including without limitation Article 3 of the Conservation Easement Deed). While it is permissible for a taxpayer to reserve certain rights, a taxpayer cannot reserve rights

[28] Treas. Reg. § 1.170A-14(d)(3)(i).

[29] I.R.C. § 170(h)(4)(A)(iii)(flush language). Treas. Reg. § 1.170A-14(d)(4)(iv)(A).

which would either: (1) interfere with the conservation purpose of a donation to such an extent that the conservation purpose will be negated or (2) prevent the conservation easement from being perpetual. Additionally, in instances where a taxpayer reserves certain rights the exercise of which might impair the conservation interests associated with the property, the donor must provide the donee with certain baseline documentation regarding the condition of the property at the time of the donation.[30] These items, as they relate to the Subject Transactions, are addressed below.

Conservation Purpose. Because the existence of a qualified "conservation purpose" is a factual determination, we cannot opine as to whether the rights that the Property Entity has reserved will negate the conservation purpose of the Conservation Easement. We note, however, that FLC, in the Conservation Easement Deed and the Baseline Report, has indicated its belief that there is conservation purpose.

Perpetuity. Based on the nature of the rights reserved, we are of the opinion that it is more likely than not that the reservations included in the Conservation Easement Deed will not prevent the Conservation Easement from being perpetual or being solely for conservation purposes.

Baseline Documentation. Baseline documentation must be obtained prior to the grant of the Conservation Easement and must provide certain information regarding the condition of the Property at the time of the donation. Although the Regulations do not clearly identify what items are required to be in the documentation, the Regulations do state that the following items should be included in the documentation:

1. The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;[31]

2. A map of the area drawn to scale showing all existing man-made improvements or incursions and natural species on the property;[32]

3. A contemporaneous aerial photograph of the property;[33]

4. On-site photographs taken at appropriate locations on the property;[34]

5. The condition of any protected property;[35] and

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[30] Treas. Reg. § 1.170A-14(g)(5)(i).

[31] Treas. Reg. § 1.170A-14(g)(5)(i)(A).

[32] Treas. Reg. § 1.170A-14(g)(5)(i)(B).

[33] Treas. Reg. § 1.170A-14(g)(5)(i)(C).

[34] Treas. Reg. § 1.170A-14(g)(5)(i)(D).

[35] *Id.*

6. A statement signed by the donor and a representative of the donee clearly referencing the documentation and stating that the baseline documentation is accurate.[36]

We have reviewed the Baseline Report and the representations set forth and incorporated in the Conservation Easement Deed and are of the opinion that it is more likely than not that the Baseline Report will meet the requirements of baseline documentation, as provided by the Code and Regulations.

E. CONTEMPORANEOUS WRITTEN ACKNOWLEDGEMENT.

In order to be entitled to a charitable deduction for the contribution of a conservation easement, a taxpayer must receive a contemporaneous written acknowledgement from the donee of the conservation easement that meets the following requirements:[37]

1. The acknowledgement must be in writing.

2. The acknowledgement from the qualified organization must also include the following information: (i) if cash was contributed (for example the amount of any endowment), the amount of such cash contribution; (ii) whether the qualified organization gave the taxpayer any goods or services as a result of the contribution; and (iii) a description and good faith estimate of the value of goods and services delivered by the qualified organization to the taxpayer.

3. The acknowledgement from qualified organization must be obtained by the taxpayer from the donee on or before the earlier of: (i) the date the taxpayer's tax return is filed or (ii) the due date of the tax return, including extensions.

Based on representations on the Reliance Letter, representations by FLC and our knowledge of the past practices of FLC, we believe it is reasonable to assume that FLC will provide an Acknowledgment Letter to the Property Entity satisfactory to meet the requirements of Code Section 170(f)(8).

F. FORM 8283.

In order to be entitled to a charitable deduction for the contribution of a conservation easement, a taxpayer must complete, and attach to its tax return in the year of the contribution, IRS Form 8283.[38]

It is the taxpayer's responsibility to file IRS Form 8283 if the amount of the deduction for all non-cash charitable contributions is more than $500. In the case of individuals, the IRS Form 8283 will be an attachment to the taxpayer's IRS Form 1040 for the year in which the charitable

[36] *Id.* This statement is required in all baseline documentation.

[37] I.R.C. § 170(f)(8).

[38] Treas. Reg. § 1.170A-13(b)(2)(ii); Announcement 90-25, 1990-8 I.R.B. 25.

contributions were made. Although some components of IRS Form 8283 require the signature of the qualified appraiser and the qualified organization to which the contribution will be made, ultimately, it is the taxpayer's responsibility to ensure that such Form is properly completed.

The Property Entity has represented in the Reliance Letter that it will file a complete, accurate and timely IRS Form 8283 with respect to the Conservation Easement contribution if granted. Additionally, the Reliance Letter states that the Property Entity will inform and assist the Members in timely and accurately completing their individual Forms 8283 and including them with their tax returns. Based on these representations, we believe it is reasonable to assume that the requirements pertaining to the filing of IRS Form 8283 will be satisfied.

G. THE "QUALIFIED" APPRAISAL.

The value of a conservation easement must be established and documented by a "qualified appraisal" in order to entitle the donor to a deduction for the contribution. There are two primary legal issues regarding appraisals of conservation easements: (a) whether the appraisal meets the technical elements required in order for the appraisal to be a "qualified appraisal" under the Code and Regulations; and (b) whether the appraisal substantiates the value of the conservation easement claimed by the donor.

1. The Technical Requirements.

The Regulations require that, in the context of a contribution of greater than $5,000, a taxpayer must do all of the following:[39]

a) Obtain a qualified appraisal for such property contributed.

b) Attach a fully completed appraisal summary to the tax return on which the deduction for the contribution is first claimed (or reported) by the donor. If the taxpayer's deduction related to the qualified conservation contribution exceeds $500,000, a copy of the full qualified appraisal must be attached to the IRS Form 8283 provided with the taxpayer's tax return.

c) Maintain records containing certain required information.[40]

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[39] Treas. Reg. § 1.170A-13(c)(2)(i).

[40] The information required is listed in Treas. Reg. §1.170A-13(b)(2)(ii) and consists of the following: (1) the name and address of the donee organization to which the contribution was made; (2) the date and location of the contribution; (3) a description of the property in detail reasonable under the circumstances (including the value of the property); (4) the fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser; and (5) the terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or other disposition of the property contributed. Finally, if the property contributed consists of ordinary income property (for example, if it was not held for a year or more prior to the donation of the easement or does

A qualified appraisal is defined in Treas. Reg. §1.170A-13(c)(3), which provides the appraisal report must:

a) Relate to an appraisal made not earlier than 60 days before the date of contribution of the appraised property.[41]

b) Be prepared, signed, and dated by a qualified appraiser.[42]

c) Include all information that is required to be included in a qualified appraisal (as described in the Regulations).[43]

d) Not involve a prohibited appraisal fee.[44]

e) Finally, Code Section 170(f)(11)(E)(i)(I) requires that an appraisal must comply with generally accepted appraisal standards (defined as Uniform Standard of Professional Appraisal Practice ("USPAP").[45]

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not constitute a capital asset within the meaning of Code Section 1221), or if less than the entire interest in the property is contributed in the same year, the Regulations require additional information regarding the contribution.

[41] Treas. Reg. § 1.170A-13(c)(3)(i)(A).

[42] Treas. Reg. § 1.170A-13(c)(3)(i)(B).

[43] Treas. Reg. § 1.170A-13(c)(3)(i)(C). Section 1.170A-13(c)(3)(i)(C)(ii) of the Regulations requires the appraisal to include: (1) a description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed; (2) the date (or expected date) of contribution to the donee; (3) the terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed; (4) the name, address, and the identifying number of the qualified appraiser; and, if the qualified appraiser is an employee, the name of his employer; (5) the qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations; (6) a statement that the appraisal was prepared for income tax purposes; (7) the date (or dates) on which the property was appraised; (8) the appraised fair market value of the property on the date (or expected date) of contribution; (9) the method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and (10) the specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

[44] Treas. Reg. § 1.170A-13(c)(3)(i)(D). Treasury Regulation section 1.170A-13(c)(6) lists the requirements pertaining to appraisal fees.

[45] Treas. Reg. § 1.170A-(f)(11)(E)(i) (as amended in 2006). The term "generally accepted appraisal standards" refers to the substance and principles of the Uniform Standards of Professional Appraisal Practice. Notice 2006-96.

We have reviewed the Preliminary Appraisal, have had several discussions with the Appraiser regarding the Final Appraisal, have reflected on our numerous other dealings with the Appraiser, and have determined, subject to the validity of the statements and representations made by the Appraiser, that the Final Appraisal will, more likely than not, comply with technical requirements listed above in order to constitute a "qualified appraisal." Because the value of the Property Entity's contribution, as set forth in the Preliminary Appraisal, is greater than $500,000, the Property Entity will need to attach a full and correct copy of the Final Appraisal to its IRS Form 1065 when the form is filed.

2. Substantiation of Value.

The value of the Conservation Easement, as set forth in the Preliminary Appraisal, involves a subjective determination by the Appraiser as to the value of the Conservation Easement. Accordingly, we cannot opine on whether the value determined in the Preliminary Appraisal accurately reflects the fair market value of the Conservation Easement.

H. THE "QUALIFIED" APPRAISER.

The value of a conservation easement must be established in an appraisal which is performed by a "qualified appraiser" in order to entitle the donor to a deduction for the contribution. The Code and Regulations require the individual performing the Appraisal of the Conservation Easement to meet the following requirements:[46]

1. The appraiser has earned an appraisal designation from a recognized professional appraiser organization[47] or has otherwise satisfied minimum education and experience requirements set forth in regulations prescribed by the Secretary.[48]

2. The appraiser regularly performs appraisals for which he receives compensation.

3. The individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal.[49]

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[46] Code Section 170(f)(11)(E)(ii).

[47] Notice 2006-96, 2006-46 I.R.B. 902, §3.03(1) provides that an appraisal designation from a recognized appraisal organization is sufficient to satisfy this requirement if it relates to valuing the type of property for which the appraisal is performed.

[48] For returns filed after October 19, 2006, the minimum education and experience requirements depend upon the type of property to which an appraisal relates. For real property appraisals, the appraiser must be licensed or certified for the type of property being appraised in the state in which the real property is located. *See* Notice 2006-96, Code Section 3.03(b)(ii).

[49] The appraiser is required to make a designation in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued. *See* Notice 2006-96, 2006-46 I.R.B. 902, Code Section 3.03(2).

4. The individual has not been prohibited from practicing before the IRS by the Secretary under 31 USC §330(c) at any time during the three-year period ending on the date of the appraisal.

Although we cannot opine on the credibility of the Appraiser, we can opine that the Appraiser is, based on his representations, our past dealings with the Appraiser, the representation set forth in the Preliminary Appraisal, and based on the assumption the above referenced requirements and statement will be satisfied in the Final Appraisal, a qualified appraiser for purposes of the Code and Regulations.

I. SUBORDINATION AGREEMENT.

No deduction will be permitted for a conservation easement which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the donee to enforce the conservation purposes of the gift in perpetuity.[50] Any mortgage subordination agreement should be recorded prior to the date on which the conservation easement is granted.

Because it is a requirement of the closing of the Offering that all outstanding mortgages on the property be fully paid off and satisfied at closing, no subordination agreements will be necessary.

J. LONG-TERM CAPITAL GAIN PROPERTY.

The Code states that a taxpayer's charitable contribution shall be reduced by the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer for its fair market value.[51] This rule, in essence, reduces a taxpayer's contribution deduction to the taxpayer's basis in the property contributed (or encumbered) if the sale of the property would not yield long-term capital gain.

There are several scenarios which can result in the application of Code Section 170(e). The most common scenarios involve: (1) a taxpayer that holds property, which in the hands of the taxpayer, is considered inventory; and (2) a taxpayer that does not have a more than one year holding period in the property transferred or encumbered by a conservation easement.

Based on the representations made in the Reliance Letter and the Capital Gain Letter and the representations and warranties given in the MIPA , and subject to the accuracy thereof, it is our opinion that the value of the Conservation Easement donation will not be reduced under Code Section 170(e).

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[50] *See* Treas. Reg. § 1.170A-14(g)(2).

[51] Code Section 170(e).

K. OTHER POTENTIALLY MATERIAL TAX ISSUES.

In addition to certain tax issues and items already noted within this Opinion, the following tax issues could be considered to be material to the Subject Transactions, but we are unable to express any opinion with respect thereto for the reasons stated. In general, such issues are not susceptible to an opinion because the resolution of such issues are (i) inherently factual matters on which no legal opinion can be made, (ii) dependent upon facts that do not currently exist, or (iii) dependent upon certain financial or other characteristics of an individual Investor.

(a) **Amount of Charitable Contribution Deduction**. Under Code Section 170, the amount of any Contribution Deduction resulting from the Conservation Easement will be the fair market value of the Conservation Easement. Treas. Reg. §1.170A-14(h)(3) provides rules governing the valuation of qualified conservation easements under Code Section 170(h). In the case of the Conservation Easement, there is, according to the Appraisal, no substantial record of any sales of comparable easement rights. Therefore, the fair market value of the perpetual conservation restriction represented by the Conservation Easement is the difference between the fair market value of the Property before granting the Conservation Easement and its fair market value after the Conservation Easement is granted, and after subtracting the value of any enhancement to the value of certain other property. Due to the subjective, factual nature of the valuation issues involved, we are unable to express any opinion as to the fair market value of the Conservation Easement.

(b) **State and Local Taxes.** The Property is situated in the State of Tennessee; however, Investors may be residents of other states. Accordingly, an investment in the Offering may impose an obligation to file annual tax returns in more than one state or locality. In addition, the various states require partnerships or entities taxable as partnerships to withhold and pay state income taxes owed by nonresident partners, relating to income-producing properties located in such states. Some states or localities may also impose income, franchise, gross receipts or similar taxes on partnerships as entities regardless of the federal tax classification status of the entity. Finally, some states provide State-level tax benefits attributable to donation of conservation easements, the benefits of which are governed by State and local authority and guidance.

This opinion does not make any attempt to summarize the state and local tax consequences related to the Subject Transactions nor give any opinion with respect thereto. Each Investor is advised to consult their own accounting and/or legal counsel for assistance with respect to any particular state or local tax that may affect them.

L. AGGREGATE OPINION.

It is our opinion that it is more likely than not that, if the Conservation Easement is contributed to FLC, each Member (including the Company) will be entitled to a charitable contribution

deduction based upon their Property Entity allocable share[52] of the "fair market value" of the Conservation Easement as described herein. It is also our opinion that it is more likely than not that, the portion of the charitable contribution deduction allocated to the Company will in turn be allocated to the Investors based upon their relative Unit ownership interest in the Company for the portion of the taxable year following the closing of the Offering and the Purchase. We do not, and are not qualified to, opine that the value determined by the Appraisal is, in fact, the correct fair market value of the Conservation Easement, but it is our opinion that the Appraisal meets the technical requirements of a "qualified appraisal" legally sufficient to support the fair market value of such a deduction.

We have determined that it is more likely than not that a penalty shall not apply under Section 6662 or Section 6662A as a result of an understatement of tax attributable to either (i) negligence or disregard of rules or Regulations, or (ii) any substantial understatement of income tax. Additionally, although the value of the Conservation Easement involves a subjective determination by the Appraiser to which we cannot opine, we have determined that it is more likely than not that, based on the representations set forth in the Reliance Letter, the Property Entity has relied in good faith on the value set forth in the Appraisal, and that it is more likely than not that a substantial valuation penalty will not apply to the Subject Transactions.[53]

This Opinion may not be relied upon by any other party or for any other purpose whatsoever without prior written consent. We express no opinion, and none should be inferred, regarding any matter not expressly provided herein. Our Opinion is rendered as of the date hereof, and we assume no responsibility for revising it to take into account any occurrences or changed circumstances.

Very truly yours,

Sirote & Permutt, P.C.

SIROTE & PERMUTT, P.C.

RAL/lc

[52] Based on their relative Membership Interest ownership in the Company for the portion of the Company's taxable year following the termination of the Company under Code Section 708(b)(1)(B), as described above.

[53] If it is determined by a court of proper jurisdiction that the claimed value of the Conservation Easement is 150% or more of the correct value, a gross valuation penalty will be applicable. *See* I.R.C. § 6662(h). Reliance on a qualified appraisal will not constitute reasonable cause for purposes of avoiding such a penalty. *See* I.R.C. § 6664(c)(3). Because we express no opinion as to the correct value of the Conservation Easement, the application of a gross valuation penalty is an issue to which we cannot opine.

Ed Lloyd CPA, PFS, CTC

From:	James Jowers <jjowers@thesfa.net>
Sent:	Friday, November 09, 2012 10:41 AM
To:	ed@elcpa.com; Nancy Zak
Subject:	FW: Piney Cumberland PPM - #128 Forest Conservation 2012 & Ed Lloyd
Attachments:	128 Forest Conservation 2012 - Ed Lloyd - Piney Cumberland PPM.pdf; #02-Piney Cumberland Holdings-Execution Documents Package.pdf; #03-SFA - Additional Disclosures for DPP Programs.pdf; #04-SFA - Client Acknowledgement for Tax-Legal Advice.pdf

Ed,

Here is our latest offering and the associated forms that need to be completed to go with it. This one offers potential tax deductions 4.25 times your investment. Please have you and your CPA review the offering carefully as it goes into detail about the opportunity, risks, etc.

We are available to answer your questions either at our office or after-hours via mobile, and to help with your completion of the forms. We can also guide your CPA in the current factors to consider in determining the amount of your investment. For example, this year, conservation easement deductions can be used to reduce your AGI from all sources by 30%.

PRINT #2, #3 and #4, return the forms via fax to 888-506-2732 or via email to nzak@thesfa.net.

Best Regards,

James Jowers
Assistant to Nancy Zak

SFA
The Strategic Financial Alliance, Inc.
2200 Century Parkway, Suite 500
Atlanta, GA 30345
O| 770-345-9457
F| 888-506-2732
E| jjowers@thesfa.net

Exhibit 2
Respondent's Reply & Response Brief

To: Members of Piney Cumberland Resources, LLC

From: The Manager of Piney Cumberland Resources, LLC
Arthur J. Goolsby

Date: December 13, 2012

NOTICE OF MANAGER'S DETERMINATION TO PURSUE CONSERVATION PROPOSAL

Pursuant to Article XIII of the Operating Agreement of Piney Cumberland Resources, LLC, a Tennessee Limited Liability Company (the "Company") (defined terms used herein shall have the meaning ascribed thereto in the Operating Agreement), the Manager of the Company, having reviewed and analyzed the Investment Proposal and the Conservation Proposal, copies of which are attached hereto and incorporated by reference hereby, has determined that it is in the best interests of the Company and its Members that the Company pursue the Conservation Proposal. Accordingly, the Manager hereby recommends to the Members that they approve the Conservation Proposal as soon as possible to permit the Manager to implement the Conservation Proposal during 2012. Accordingly, by this Notice, the Manager hereby recommends that the Company pursue the Conservation Proposal.

The Manager can not pursue the Conservation Proposal during calendar year 2012 without the approval of a Majority of the Members. For a Conservation Easement to be granted during 2012, a Conservation Easement would have to be approved by a Majority of the Members and recorded of record by December 30, 2012. **The Manager would like to receive your response no later than Tuesday, December 18, 2012, however.** If the Manager has not timely received approvals from the Majority to allow the Manager to pursue the Conservation Proposal in 2012, the Manager will evaluate other options for the Property and communicate a further proposal during 2013.

If you wish to accept or reject the Conservation Proposal, please do so by indicating so on the Election of Member included herewith, sign where indicated and e-mail or fax the signed document to the Manager of the Company, with a copy to Ivan Killen, at the contact information set forth below:

To the Manager:			**With a Copy To:**	
	Arthur J. Goolsby			Ivan Killen
Fax:	(478) 742-0409		Fax:	(678) 954-4043
E-mail:	[redacted]		**E-mail:**	**ikillen@ecovestcap.com**

YOUR PROMPT ATTENTION TO THIS MATTER IS EXTREMELY IMPORTANT

Exhibit 3
Respondent's Reply & Response Brief

PINEY CUMBERLAND RESOURCES, LLC

CONSERVATION PROPOSAL

In General: Piney Cumberland Resources, LLC (the "Subsidiary") owns property (the "Property") which could potentially produce significant income tax benefits if it is permanently preserved through the recording of a conservation easement. This summary explores the structure, economic potential and projected returns for this conservation strategy (the "Conservation Strategy").

Location: The Property is located outside the city limits of Spencer, Tennessee, in a moderately diverse rural area that is used for residential development and agriculture. It is close to Fall Creek Falls State Park in Van Buren County Tennessee, one hour and fifteen minutes from Nashville, Knoxville, and Chattanooga. Primary access to the Property is from Tennessee Highway 30. The University of Tennessee is located in Knoxville, Tennessee, approximately 40 miles from the Property.

Property: The Property consists of ±439.86 acres of vacant land comprised of gently sloping and rolling terrain. The overall access and frontage of the Property is excellent as it fronts a state highway. Fall Creek Falls State Park adjoins the Property's west side, thus allowing access to the park.

The Area: The Cumberland Plateau continues to experience significant economic growth despite the current economic climate. The Property's local economy has its foundation in the Chattanooga Area, which is undergoing continuing expansion. Completion of a Global Alstom factory and the opening of a Volkswagen manufacturing facility have created a strong real estate market as many new jobs in the area have positioned people to move or consider moving to the area because of such job placement and other available opportunities.

The Cumberland Plateau has become a favorite choice of residents in the surrounding area for their resort second homes. In addition, several successful national marketing campaigns have resulted in significant world-wide demand for Tennessee mountain and lake property, especially in the Plateau region. Economic growth and demand for property are supported in the area by a number of favorable factors. Tennessee has no state income tax, very low real estate taxes, low utility bills and low construction costs. Insurance rates are also below the national average. There are no personal property taxes. Well-distanced from the hurricane concerns of the southeast and Gulf coasts, middle Tennessee's weather is generally considered very moderate. You can enjoy the beauty and recreation of all four seasons while escaping the frigid winters of the north and the scorching summers of the south. With less than 12 inches of annual snowfall, there's just enough winter for a family to enjoy the occasional beauty of a snow-kissed landscape and a cozy evening in front of their fireplace.

What is a Conservation Easement?: Conservation easements provide for the preservation of property by permanently restricting development, commercial, industrial and other intrusive uses on the protected property. Typically used by landowners to permanently preserve existing natural environments and agricultural uses, conservation easements are a private action taken on private land that creates a legally enforceable land preservation agreement between a landowner and a qualified land protection organization such as a land trust that is empowered and willing to enforce such agreement. Following the recording of a conservation easement, the existing owner of the land remains the owner, and the property can be bought and sold. Use of the property, however, is permanently restricted by the terms of the easement. Donors who follow the requirements set forth in §170(h) of the Internal Revenue Code may be eligible for a federal income tax deduction equal to the value of their donation. The value of the easement donation, as determined by a qualified

appraiser, equals the difference between the fair market value of the property before and after the easement takes effect. Conservation easements are considered by the IRS to be charitable contributions, and the easement must satisfy one or more of the IRS' criteria for conservation purpose to qualify for the special tax incentives.

US & State Income Tax Benefits: Current federal tax law limits the available charitable contribution deduction for calendar year 2012 relating to conservation easements to 30% of an individual's contribution base or 10% of a corporation's taxable income (subject to certain adjustments) for such year. Any excess deductions can be carried forward for up to an additional five years. In addition to the federal tax consequences described above, prospective Members should consider potential state and local tax consequences of the Conservation Strategy. Each prospective Member is advised to consult his own tax advisor for advice as to any state and local taxes that may be applicable to him which may be affected by the implementation of the Conservation Strategy.

Conservation Strategy: The Conservation Strategy involves the grant of a conservation easement to restrict forever the future development of portions of the Property. This easement would extinguish certain development rights in perpetuity, restricting future use to agricultural endeavors, passive recreation and certain other reserved rights defined within the Conservation Easement. A proposed easement has been generally accepted by a qualified land trust, which will regularly monitor the Property to enforce the easement once it is executed.

Conservation Purposes: In order to qualify to receive the tax benefits associated with a conservation easement, a property must demonstrate sufficient conservation purposes. The Property offers numerous conservation purposes including preservation of natural habitats and open space which provides scenic enjoyment to the general public and yields a significant public benefit. These purposes are documented in a Baseline Documentation Report as well as Conservation Easement documents prepared by the land trust.

Member Benefits: If approved by the Members and implemented by the Company, the Conservation Strategy will afford Members the right to receive allocated tax benefits in proportion to their respective ownership for the tax year in which such easement is granted without regard to subsequent dilution. These tax benefits will be proportionately allocated to the Members of the Company via a Form 1065 Schedule K-1 as a Charitable Contribution to a Qualified Organization.

Member Risks: If approved by the Members and implemented by the Company, the Conservation Strategy will have some risks associated with it. The primary risk is that of an audit with an adverse or negotiated settlement that could result in the elimination or potential reduction in value of the income tax deduction. Certain material risks associated with the grant by the Company of a Conservation Easement are set forth in the Offering Summary that was previously provided to all Members. Please review these risk factors in connection with your decision to permit the Company to pursue the Conservation Strategy. Additionally, the placement of the easement will remove the development rights and encumber the Property, limiting the ability of Piney Cumberland Resources, LLC to generate meaningful returns other than the income tax deductions.

Appraised Deduction Value: As discussed in the Offering Summary, the tax benefits of the conservation donation have been estimated in a conservation appraisal by a "qualified appraiser". A full copy of the appraisal is available upon request. An example of the economic impact of the granting of a conservation easement on the Property is also provided at the end of this proposal.

In estimating the fair market value of property, the appraiser must take into account not only the current use of the property, but also its highest and best use. A property's highest and best use is the highest and most profitable use for which it is adaptable and needed or likely to be needed in the reasonably near future. The highest and best use can be any realistic, objective potential use of the property. As a general rule, if no substantial record of market-place sales is available to use as a meaningful or valid comparison, the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction (CFR § 1.170A-14(h)(3)(i)).

Use & Management: If a conservation easement is granted on the Property, the Manager will establish rules and regulations for the use of the Property by Members, which may include recreational opportunities, subject to any other commitments that may encumber the Property. The Manager may elect to lease the property for timber, hunting or other allowed uses under the Conservation Easement. If a conservation easement is executed on the Property, the Subsidiary Operating Agreement provides that after four years the Manager may elect to dispose of the Property via donation to another charitable organization, or via a sale at a price reflecting the diminished value of the Property. This action would likely lead to the dissolution of the Company.

Holding Costs: A working capital and reserve fund has been established as defined in the Offering Summary of approximately $238,495. These funds are believed to be sufficient to carry the Property through the granting of a conservation easement and for a passive holding period subsequent to the grant. Costs expected to be incurred in the execution of this strategy include a stewardship contribution, appraisal costs, project management expenses, minor property improvements, property taxes, accounting and insurance.

Potential Economic Effects for Members of Piney Cumberland Resources, LLC

Property Location:		Van Buren County, Tennessee
Net Conservation Area:		± 439.86 Acres
Net Conservation value per Appraisal		$10,132,000
Net Conservation value per acre		$23,035
Total federal income tax deduction		**$10,132,000**
- Piney Cumberland Holdings, LLC	(95.959596%)	$9,722,626
- Jeffrey A. Pettit	(3.838384%)	$388,905
- Tonya K. Pettit	(0.202020%)	$20,469

Potential Economic Effects for Members of Piney Cumberland Holdings, LLC

Federal income tax deduction per Unit of Ownership	**$10,132**

AFFIDAVIT OF GARY S. APPEL

I, Gary S. Appel, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about seven years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 20, 2011, I wrote a check to "Ed Lloyd & Associates" in the amount of $36,750.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

11. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. In November 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $30,000.00, a copy of which is attached hereto as Exhibit B.

13. I was aware that my contribution amount would include Ed Lloyd's fee.

14. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $30,000.00 in November 2012.

15. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

Exhibit 4
Respondent's Reply & Response Brief

16. I am very satisfied with Ed Lloyd's tax planning and preparations services.

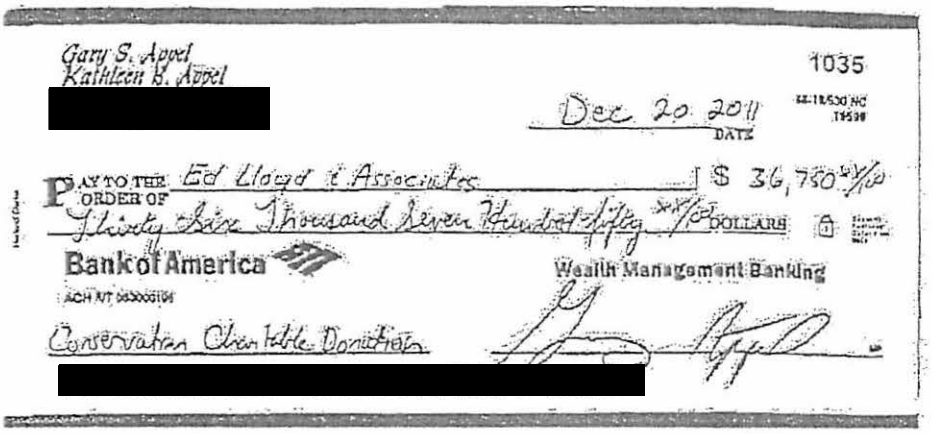
FURTHER THE AFFIANT SAYETH NOT.

Gary S. Appel

Sworn to and subscribed before me
This 10th day of January, 2015

Notary Public

My Commission Expires:
June 22, 2019



Gary S. Appel
Kathleen B. Appel
[redacted]

1035

Dec 20 2011
DATE

PAY TO THE ORDER OF Ed Lloyd & Associates $ 36,750.00

Thirty Six Thousand Seven Hundred Fifty ** DOLLARS

Bank of America
ACH RT [redacted]

Wealth Management Banking

Conservation Charitable Donation

[redacted]

[redacted]

[redacted]

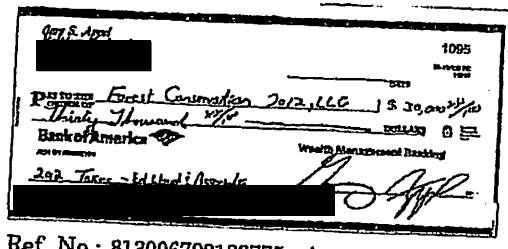
[redacted]

Exhibit A
Affidavit of
Gary S. Appel

SEC-BBT-E-0003406

SEC-Defense-000007265

Exhibit B
Affidavit of
Gary S. Appel



Ref. No.: 813006792133775 Amount: 30,000.00

AFFIDAVIT OF RAYMOND R. BOULEY

I, Raymond R. Bouley, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about four years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 27, 2011, I wrote a check to "Ed Lloyd & Associates" in the amount of $32,250.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that Ed Lloyd would receive a fee for his services in researching, preparing, and facilitating the contribution to the conservation easement.

10. On June 6, 2012, I wrote a separate check to "Ed Lloyd & Associates" in the amount of $5,000.00 for Ed Lloyd's fee, a copy of which is attached hereto as Exhibit B.

11. I received a Schedule K-1 indicating my contribution and my resulting tax deduction.

12. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. On November 15, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $32,500.00, a copy of which is attached hereto as Exhibit C.

14. I was aware that my contribution amount for this transaction would include Ed Lloyd's fee.

15. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $32,500.00 on November 15, 2012.

16. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

17. In 2013, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

18. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

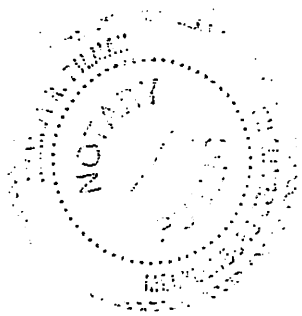
Raymond R. Bouley

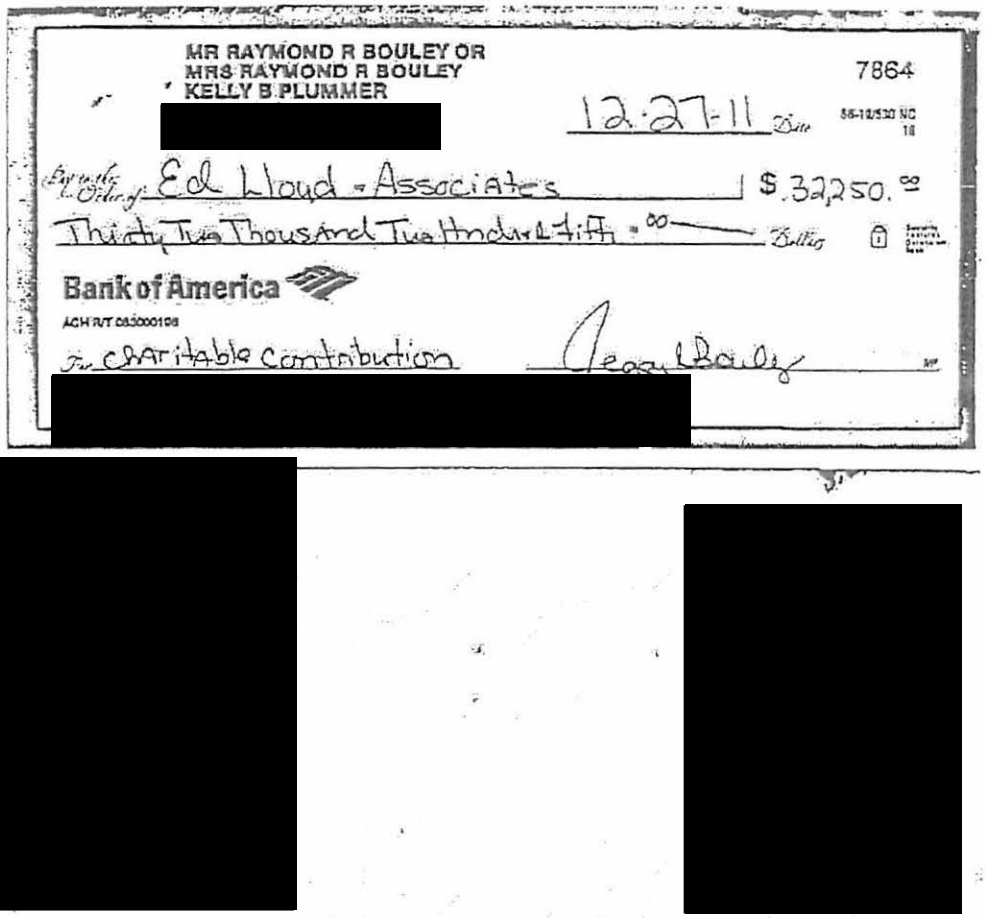
Raymond R. Bouley

Sworn to and subscribed before me
This 30th day of December, 2014

Amanda R Bellmer
Notary Public

My Commission Expires:
June 22, 2019





MR RAYMOND R BOULEY OR
MRS RAYMOND R BOULEY
KELLY B PLUMMER

[redacted]

7864

12-27-11

Pay to the Order of Ed Lloud - Associates $ 32,250.00

Thirty Two Thousand Two Hundred Fifty and 00/100 Dollars

Bank of America

ACH R/T 053000196

For charitable contribution Jean Bouley

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
Raymond R. Bouley

7045883396

[redacted]

MR RAYMOND R BOULEY OR
MARY S BOULEY
KELLY B PLUMMER

7983

[redacted]

12-12-12

Pay to the order of Ed Lloyd + Associates $ 5000.00

Five Thousand + 00

Bank of America

ACH R/T 053000196

Jeanne Bouley

[redacted]

Amanda

[redacted]

[redacted]

[redacted]

Exhibit B
Affidavit of
Raymond R. Bouley

MR RAYMOND R BOULEY OR
MARY S BOULEY
KELLY B PLUMMER
[redacted]

8077
68-18/530 MC
52473

11/15/12

Pay to the order of Forest Conservation 2012, LLC $ 32,500.00
thirty two thousand Five hundred dollars + 00/100 —

Bank of America

ACH R/T 053000196

For Lloyd. Raymond R. Bouley

[redacted]

[redacted]

Exhibit C
Affidavit of
Raymond R. Bouley

AFFIDAVIT OF VERNON R. BRANCH

I, Vernon R. Branch, having been duly sworn do hereby depose and state the following:

1. I am a resident of Raleigh, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about six years.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On November 12, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $40,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $40,000.00 on November 12, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Vernon R. Branch

Sworn to and subscribed before me
This 15th day of December, 2014

Notary Public

My Commission Expires:
12/1/2018

ROBERT O. CRAWFORD III NOTARY PUBLIC WAKE COUNTY, N.C.

GRETA S BRANCH
VERNON R BRANCH
[redacted]

Playful Pals

411

86-21/530 10504
9221336418

Nov 12, 2012 Date

Pay to the Order of Forest Conservation 2012, LLC — $ 40,000.00

Forty Thousand & 00/100 Dollars

Wells Fargo Bank, N.A.
North Carolina
wellsfargo.com

For [redacted]

Greta S Branch

[redacted]

Exhibit A
Affidavit of
Vernon R. Branch

AFFIDAVIT OF JAMES R. CARSON

I, James R. Carson, having been duly sworn do hereby depose and state the following:

1. I am a resident of Fort Mill, South Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for ten years.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On November 30, 2012, I wrote a check to "Forest Conservation 2012 LLC" in the amount of $30,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $30,000.00 on November 30, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2013, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

James R. Carson

Sworn to and subscribed before me
This 6 day of January, 2015

Notary Public

My Commission Expires:
DEC. 11, 2017

KIRBY WEST
Notary Public
Cabarrus Co., North Carolina
My Commission Expires Dec. 11, 2017

JAMES R CARSON III
KIRSTEN L CARSON
[redacted]

2502
63-27/831 FL
11084

11-30-12
Date

Pay to the Order of Forest Conservation 2012 LLC $ 30,000 00

Thirty Thousand and 00/100 Dollars

Bank of America

Wealth Management Banking

ACH R/T 053100277

For Conservation - 2012

Kirsten Carson

[redacted]

[redacted]

AFFIDAVIT OF JARRETT W. CLAY

I, Jarrett W. Clay, having been duly sworn do hereby depose and state the following:

1. I am a resident of Greensboro, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about three to four years.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On September 28, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $45,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $45,000.00 on September 28, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. I also contributed to conservation easements in 2013 and 2014 with the assistance, guidance, and tax advice of Ed Lloyd.

14. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Jarrett W. Clay

Sworn to and subscribed before me
This 14th day of January, 2015

Notary Public

My Commission Expires:
10/13/2018

LINDSAY C. CASEBIER NOTARY PUBLIC GUILFORD COUNTY, NC

JARRETT W CLAY
JAMIE N CLAY
[redacted]

5178
56-21/530 10482
101020188133

9/28/12
Date

Pay to the Order of Trust Conservation 2912, LLC | $45,000.00
Forty five thousand & 00/100 Dollars

Wells Fargo Bank, N.A.
North Carolina
wellsfargo.com

For [redacted] Jamie N. Clay

[redacted]

[redacted]

Exhibit A
Affidavit of
Jarrett W. Clay

AFFIDAVIT OF JESSE GARRETT

I, Jesse Garrett, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I was a tax client of Ed Lloyd & Associates, Inc. in 2011 and 2012.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. In November 2012, I wrote a check to Forest Conservation 2012, LLC in the amount of $30,000.00.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $30,000.00 in November 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

FURTHER THE AFFIANT SAYETH NOT.

Jesse Garrett

Sworn to and subscribed before me
This 8th day of January, 2015

Notary Public

My Commission Expires:
June 22, 2019

NOTARY PUBLIC

AFFIDAVIT OF TIMOTHY K. GOSS

I, Timothy K. Goss, having been duly sworn do hereby depose and state the following:

1. I am a resident of Waxhaw, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about eight years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 21, 2011, I wrote a check to "Ed Lloyd & Assoc." in the amount of $36,750.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

11. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. On November 19, 2012, I wrote a check to "Forest Conservation 2012" in the amount of $35,000.00, a copy of which is attached hereto as Exhibit B.

13. I was aware that my contribution amount would include Ed Lloyd's fee.

14. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $35,000.00 on November 19, 2012.

15. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

16. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

17. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

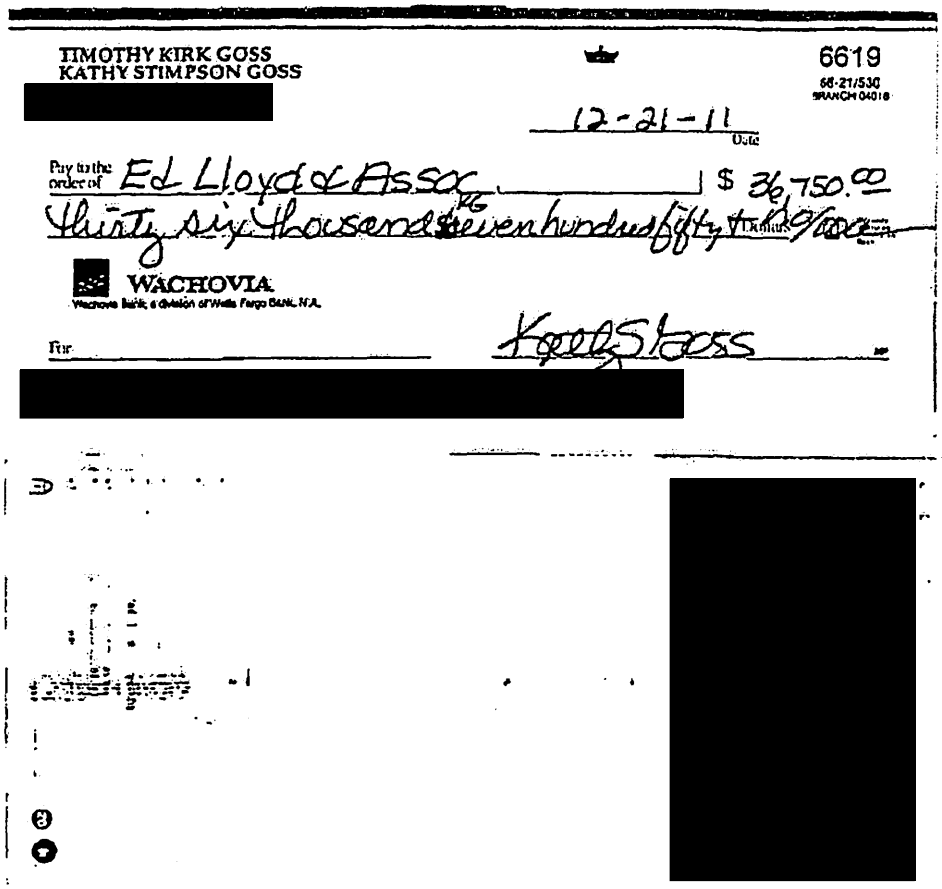
Timothy K. Goss

Sworn to and subscribed before me
This 11 day of December, 2014

Notary Public

My Commission Expires:
10-13-19

ASHLEY HAMMOND
NOTARY PUBLIC
Union County, North Carolina
My Commission Expires 10/13/2019



TIMOTHY KIRK GOSS
KATHY STIMPSON GOSS
[redacted]

6619
56-21/530
BRANCH 04018

12-21-11
Date

Pay to the order of Ed Lloyd & Assoc $ 36,750.00

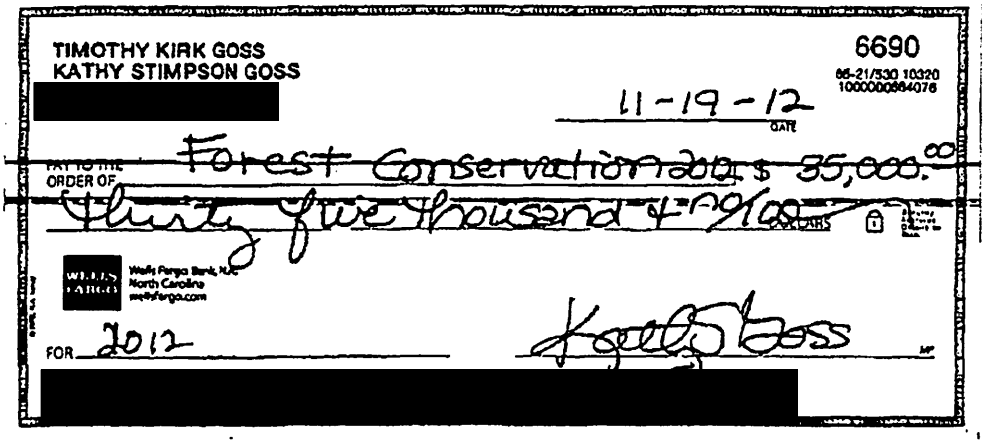
Thirty six Thousand Seven hundred fifty and 00/100 Dollars

WACHOVIA
Wachovia Bank, a division of Wells Fargo BANK, N.A.

For [redacted] Kathy Stoss

[redacted]

Exhibit A
Affidavit of
Timothy K. Goss



TIMOTHY KIRK GOSS
KATHY STIMPSON GOSS
[redacted]

6690
65-21/530 10320
1000000864076

11-19-12
DATE

PAY TO THE ORDER OF Forest Conservation Trust $ 35,000.00

Thirty five thousand 4-00/100 DOLLARS

Wells Fargo Bank, N.A.
North Carolina
wellsfargo.com

FOR 2012

Kathy Goss

[redacted]

[redacted]

Exhibit B
Affidavit of
Timothy K. Goss

AFFIDAVIT OF DENNIS J. HALL

I, Dennis J. Hall, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about three years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 20, 2011, I wrote a check to "Ed Lloyd & Associates, PLLC" in the amount of $32,250.00, a copy of which is attached hereto as Exhibit A.

9. On November 17, 2011, I wrote a separate check to "Ed Lloyd & Associates, PLLC" in the amount of $4,500.00 for Ed Lloyd's fee, a copy of which is attached hereto as Exhibit B.

10. I received a Schedule K-1 indicating my contribution and my resulting tax deduction.

11. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. On November 12, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $27,500.00, a copy of which is attached hereto as Exhibit C.

13. I was aware that my contribution amount would include Ed Lloyd's fee.

14. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $27,500.00 on November 12, 2012.

15. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

16. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Dennis J. Hall

Affirmed
~~Sworn~~ to and subscribed before me
This ____ day of December, 2014

Notary Public

My Commission Expires:
Sept. 17th 2019

SEAN SCRATCH
NOTARY PUBLIC
My Commission Expires
September 17, 2019
GASTON COUNTY, NC

7614

HALL ARCHITECTS, INC.

[redacted]

WACHOVIA BANK, N.A.
56-21-530

12/20/2011

PAY TO THE ORDER OF Ed Lloyd & Associates, PLLC

$ **32,250.00

Thirty-Two Thousand Two Hundred Fifty and 00/100********** DOLLARS

Ed Lloyd & Associates, PLLC

[redacted]

MEMO Conservation deduction

AUTHORIZED SIGNATURE

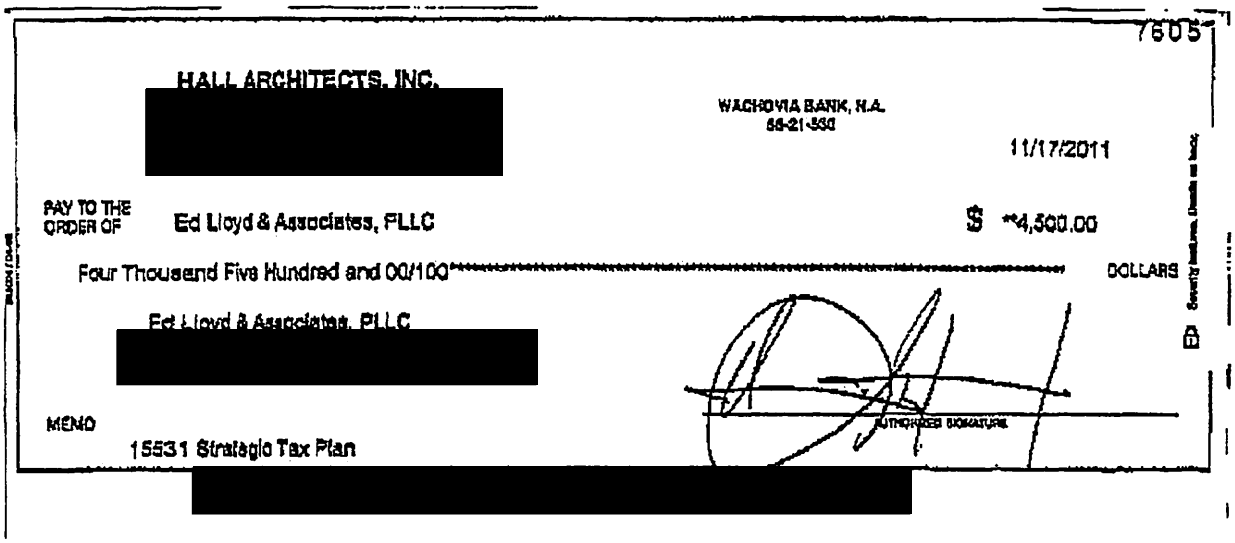
Security features. Details on back.

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
Dennis J. Hall



7605

HALL ARCHITECTS, INC.
[redacted]

WACHOVIA BANK, N.A.
56-21-530

11/17/2011

PAY TO THE ORDER OF Ed Lloyd & Associates, PLLC

$ **4,500.00

Four Thousand Five Hundred and 00/100********** DOLLARS

Ed Lloyd & Associates, PLLC
[redacted]

AUTHORIZED SIGNATURE

MEMO 15531 Strategic Tax Plan

[redacted]

[redacted]

[redacted]

[redacted]

Exhibit B
Affidavit of
Dennis J. Hall

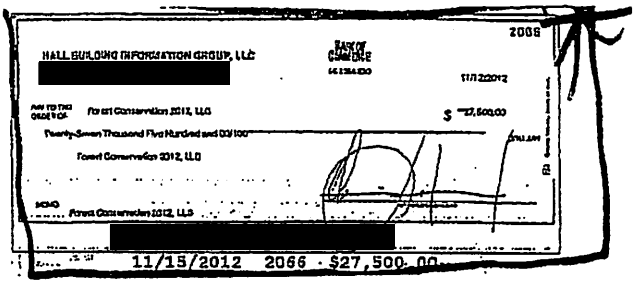


Exhibit C
Affidavit of
Dennis J. Hall

DH 00016

AFFIDAVIT OF ASHLEY S. HOOKS

I, Ashley S. Hooks, having been duly sworn do hereby depose and state the following:

1. I am a resident of Marietta, Georgia, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about three years.

3. In 2012, I learned about the possibility of making a charitable contribution toward a conservation easement from a co-worker, a strategy the co-worker learned of through Ed Lloyd.

4. I spoke with Ed Lloyd, and he stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On November 20, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $35,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $35,000.00 on November 20, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2013, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Ashley S. Hooks

Sworn to and subscribed before me
This 23 day of December, 2014

Notary Public

My Commission Expires:
10 · 6 · 2018

NEKI SHAH
NOTARY PUBLIC
COBB COUNTY, GEORGIA
MY COMMISSION EXPIRES OCTOBER 6, 2018

ASHLEY SHAWN HOOKS
[redacted]

1140
56-162/531
BRANCH 30003

11-30-12
Date

Pay to the Order of FOREST CONSERVATION 2012, LLC $ 35,000.00

THIRTY FIVE THOUSAND DOLLARS AND 00/100 Dollars

WACHOVIA
Wachovia Bank, a division of Wells Fargo Bank, N.A.

For [redacted]

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
Ashley S. Hooks

AFFIDAVIT OF JAMES J. JONES

I, James J. Jones, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for over ten years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 22, 2011, I wrote a check to "Ed Lloyd & Associates" in the amount of $32,250.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that Ed Lloyd would receive a fee for his services in researching, preparing, and facilitating the contribution to the conservation easement.

10. On December 14, 2011, I wrote a separate check to Ed Lloyd & Associates in the amount of $5,000.00 for Ed Lloyd's fee, a copy of which is attached hereto as Exhibit B.

11. I received a Schedule K-1 indicating my contribution and my resulting tax deduction.

12. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

James J. Jones

Sworn to and subscribed before me
This 31 day of December, 2014

Notary Public

My Commission Expires:
October 09 2018

DEREK FUNDERBURK
NOTARY PUBLIC
UNION COUNTY, NC
My Commission Expires 10-09-18

JAMES J. JONES, LLC

[redacted]

1460

Date 12/20/11

Pay to the Order of Ed Lloyd Associates $ 32,350.00

Thirty two thousand two hundred fifty and 00/100 Dollars

Bank of America

ACH RT 053000196

For [redacted]

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
James J. Jones

SEC-BBT-E-0003411

SEC-Defense-000007270

[redacted]

JAMES J. JONES, LLC
[redacted]

1459

Date 12/14/11

66-19/530 NC
28

Pay to the Order of Ed Lloyd & Associates $ 5000 00/100

Five Thousand and 00/100 Dollars

Bank of America

ACH R/T 053000196

For CPA work

[redacted]

[redacted]

[redacted]

[redacted]

Electronic Endorsements:

[redacted]

Exhibit B
Affidavit of
James J. Jones

AFFIDAVIT OF STEVEN M. KEZMAN

I, Steven M. Kezman, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for many years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement that would provide an overall tax savings to me.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate. Ed provided law firm opinion letters supporting this tax deduction.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. Ed Lloyd indicated this tax stategy is allowed by laws passed in the U.S. Congress.

7. I had no expectation of receiving any profit or return other than a legal tax deduction.

8. On December 23, 2011, I wrote a check to "Ed Lloyd & Associates PLLC" in the amount of $26,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

11. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. On November 26, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $22,500.00, a copy of which is attached hereto as Exhibit B.

13. I was aware that my contribution amount would include Ed Lloyd's fee.

14. I understood that I became a member of Forest Conservation 2012, LLC once I wrote a check for $22,500.00 on November 26, 2012 and expected no assumption of any liabilty and expecting only a legal tax deduction .

15. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

16. So far, I have been satisfied with Ed Lloyd's tax planning and tax preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Steven M. Kezman

Sworn to and subscribed before me
This ___ day of December, 2014

Notary Public

My Commission Expires: 9-29-15

NICHOLAS J CANADAS
NOTARY PUBLIC
COMMISSION EXPIRES SEPT. 29, 2015
CABARRUS COUNTY, N.C.

STEVEN MICHAEL KEZMAN
AMY C KEZMAN
[redacted]

1026
67-98/532

12/23/11
Date

Pay to the Order of Ed Lloyd & Associates PLLC $ 26,000.00

Twenty-Six Thousand & No/100 Dollars

NCBT North Carolina Bank and Trust
NCBT, A Division of SCBT, N.A.
www.NCBTonline.com
1-877-277-2185
Charlotte, NC

MAD MONEY CHECKING

For Partnership in Conservation Donation

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
Steven M. Kezman

STEVEN MICHAEL KEZMAN
AMY C KEZMAN
[redacted]

1042
87-98/532

11/26/12
Date

Pay to the Order of Forrest Conservation 2012, LLC $ 22,500.00

Twenty-Two Thousand Five Hundred Dollars

NCBT NORTH CAROLINA BANK AND TRUST® www.NCBTonline.com 1-877-277-2185 Charlotte, NC
NCBT, A Division of SCBT, N.A.

MAD MONEY CHECKING

For [redacted]

[redacted]

Exhibit B
Affidavit of
Steven M. Kezman

AFFIDAVIT OF MICHAEL KNIGHT

I, Michael Knight, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. since March of 2012.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On November 29, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $30,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $30,000.00 on November 29, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Michael Knight

Sworn to and subscribed before me
This 13th day of January, 2015
Amanda R Kibler
Notary Public

My Commission Expires:
June 22, 2019

MICHAEL KNIGHT
[redacted]

7030

DATE 11/29/12

PAY TO THE ORDER OF Forest Conservation 2012, LLC $ 30,000 00

Thirty- thousand and 00/100's DOLLARS

Allegacy. Premium Account

MEMO MIKE KNIGHT

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
Michael Knight

AFFIDAVIT OF MARK S. LOSBY

I, Mark S. Losby, having been duly sworn do hereby depose and state the following:

1. I am a resident of Irmo, South Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. since 2012.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On November 13, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $40,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $40,000.00 on November 13, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Mark S. Losby

Sworn to and subscribed before me
This 19th day of December, 2014

Notary Public

My Commission Expires:
05-09-2021

MARK S LOSBY
SARAH KAE LOSBY
[redacted]

1191

11/13/12
DATE

PAY TO THE ORDER OF Forest Conservation 2012, LLC $ 40,000.00

forty-thousand and no/100 DOLLARS

SCBT
www.SCBTonline.com
SCBT, N.A.
Irmo, SC 29063

MAD MONEY CHECKING

FOR [redacted]

[redacted]

Exhibit A
Affidavit of
Mark S. Losby

AFFIDAVIT OF KYLE MARTEL

I, Kyle Martel, having been duly sworn do hereby depose and state the following:

1. I am a resident of Tampa, Florida, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. since December of 2011.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 18, 2012, I wrote a check to "Forest Conservation 2012 II, LLC" in the amount of $50,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012 II, LLC once I wrote a check for $50,000.00 on December 18, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. I also contributed to conservation easements in 2013 and 2014 with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Kyle Martel

Sworn to and subscribed before me
This 15 day of January, 2015

Bernadette J. Hogsett
Notary Public

My Commission Expires:
08/16/2015

BERNADETTE J. HOGSETT
Notary Public - State of Florida
My Comm. Expires Aug 16, 2015
Commission # EE 106024

KYLE MARTEL
DEANNE MARTEL
[redacted]

1072
63-643/670
BRANCH 00518

12/18/12. Date

Pay to the Order of FOREST CONSERVATION 2012 II, LLC $ 50,000

FIFTY THOUSAND Dollars

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

For CHARITABLE CONTRIBUTION LAND EASEMENT PRESERVATION

[redacted]

deposit only

Exhibit A
Affidavit of
Kyle Martel

AFFIDAVIT OF WILLIAM MITCHELL

I, William Mitchell, having been duly sworn do hereby depose and state the following:

1. I am a resident of Spartanburg, South Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about ten years.

3. In 2011, I learned about the possibility of making a charitable contribution toward a conservation easement from a co-worker, a strategy the co-worker learned of through Ed Lloyd.

4. I spoke with Ed Lloyd, and he stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 20, 2011, I wrote a check to "Ed Lloyd & Assoc." in the amount of $36,750.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

11. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. On December 3, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $35,000.00, a copy of which is attached hereto as Exhibit B.

13. I was aware that my contribution amount would include Ed Lloyd's fee.

14. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $35,000.00 on December 3, 2012.

15. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

16. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

17. I am very satisfied with Ed Lloyd's tax planning and preparations services.

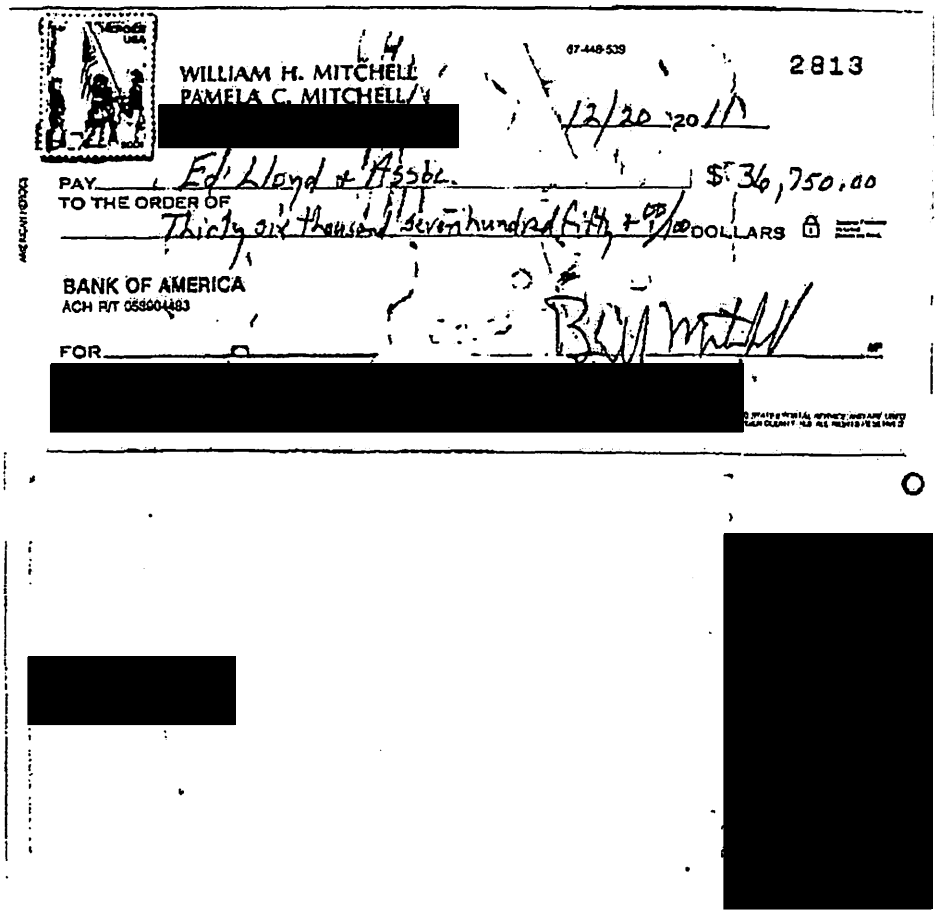
FURTHER THE AFFIANT SAYETH NOT.

William Mitchell

Sworn to and subscribed before me
This 12 day of December, 2014

Notary Public

My Commission Expires:
10/7/2023



WILLIAM H. MITCHELL
PAMELA C. MITCHELL
[redacted]

67-448-539

2813

12/20 20 11

PAY TO THE ORDER OF Ed Lloyd & Assoc. $ 36,750.00

Thirty six thousand seven hundred fifty + 00/100 DOLLARS

BANK OF AMERICA
ACH R/T 053000483

FOR [redacted]

[redacted]

[redacted]

[redacted]

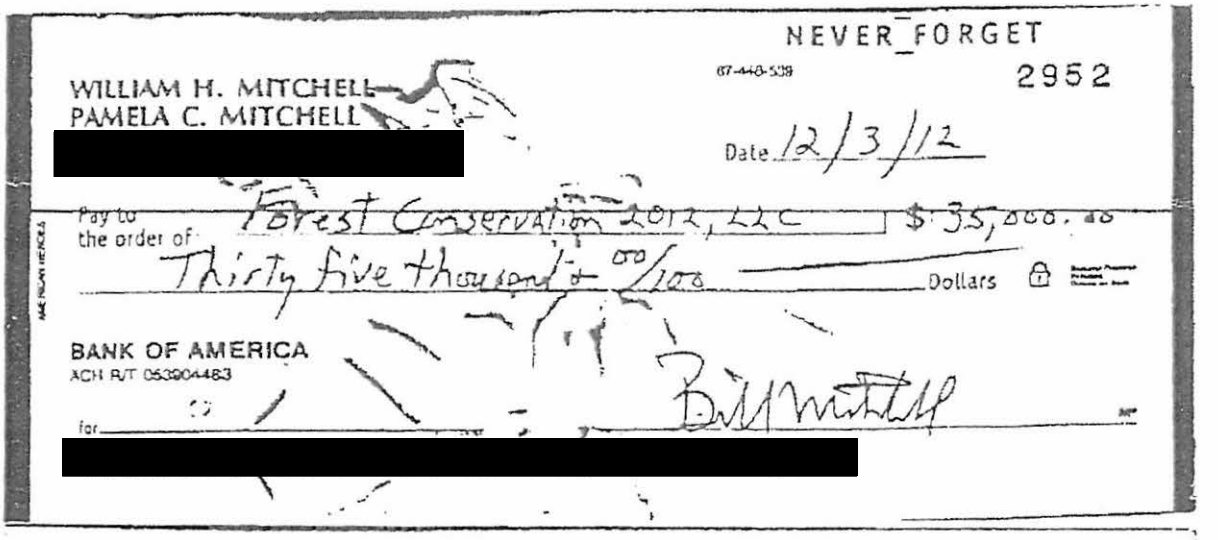
Exhibit A
Affidavit of
William Mitchell

SEC-BBT-E-0003403

SEC-Defense-000007262

Bank of America

Capture Date: 12/03/2012 Sequence #: 7092058298



NEVER FORGET

07-448-538

2952

WILLIAM H. MITCHELL
PAMELA C. MITCHELL
[redacted]

Date 12/3/12

Pay to the order of Forest Conservation 2012, LLC $ 35,000.00

Thirty five thousand + 00/100 Dollars

BANK OF AMERICA
ACH R/T 053904483

for [redacted]

[redacted]

Electronic Endorsements

[redacted]

Exhibit B
Affidavit of
William Mitchell

AFFIDAVIT OF GREGORY M. ORR

I, Gregory M. Orr, having been duly sworn do hereby depose and state the following:

1. I am a resident of Winston-Salem, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. since 2002.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 18, 2012, I wrote a check to "Forest Conservation 2012 II, LLC" in the amount of $20,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012 II, LLC once I wrote a check for $20,000.00 on December 18, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Gregory M. Orr

Sworn to and subscribed before me
This 23 day of December, 2014

Notary Public

My Commission Expires:
1-29-18

JENNIFER ANN ALLRED NOTARY PUBLIC FORSYTH COUNTY, NC My Commission Expires 01-29-18

GREGORY MICHAEL ORR
[redacted]

2534
55-21/530
BRANCH 18020

12/18/2012
Date

Pay to the order of Forest Conservation 2012 II, LLC | $20,000.00
Twsnty Thousand and ——— 00/100 Dollars

WACHOVIA
Wachovia Bank, N.A. until March 20, 2010
Wachovia Bank, a division of Wells Fargo Bank, N.A. effective March 20, 2010
For Contribution

⑆053000219⑆ 1010260205029⑈ 2534

[redacted]

Deposit only

AFFIDAVIT OF SHAUN E. ORR

I, Shaun E. Orr, having been duly sworn do hereby depose and state the following:

1. I am a resident of Mooresville, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about 13 years.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 15, 2012, I wrote a check to "Forest Conservation 2012" in the amount of $20,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012 II, LLC once I wrote a check for $20,000.00 on December 15, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Shaun E. Orr

Sworn to and subscribed before me
This 12th day of ~~December, 2014~~ January 2015

Amanda R. Pilma
Notary Public

My Commission Expires:
June 22, 2019

AMANDA R. PILMAN
NOTARY
PUBLIC
IREDELL COUNTY, NC

KATHLEEN D. ORR
SHAUN E. ORR
[redacted]

56-7704/2531

1898

DATE Dec 15, 2012

PAY TO THE ORDER OF Forest Conservation 2012 $ 20,000 00/100

Twenty-thousand 00/100 DOLLARS

State Employees' Credit Union
Mooresville, North Carolina

115

MEMO

[redacted]

[redacted]

[redacted]

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

[redacted]

Exhibit A
Affidavit of
Shaun E. Orr

AFFIDAVIT OF LESLIE S. POWELL

I, Leslie S. Powell, having been duly sworn do hereby depose and state the following:

1. I am a resident of Mooresville, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about three years.

3. In 2011, I learned about the possibility of making a charitable contribution toward a conservation easement from a neighbor, a strategy the neighbor learned of through Ed Lloyd.

4. I spoke with Ed Lloyd, and he stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 20, 2011, I wrote a check to "Ed Lloyd Associates PLLC" in the amount of $47,500.00, a copy of which is attached hereto as Exhibit A.

9. On December 23, 2011, I wrote another check to "Ed Lloyd LLC" in the amount of $32,250.00, a copy of which is attached hereto as Exhibit B, for a total contribution amount of $79,750.00.

10. I was aware that my contribution amount would include Ed Lloyd's fee.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. On September 25, 2012, I wrote a check to "Forest Conservation 2012" in the amount of $60,000.00, a copy of which is attached hereto as Exhibit C.

14. I was aware that my contribution amount would include Ed Lloyd's fee.

15. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $60,000.00 on September 25, 2012.

16. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

17. In 2013, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

18. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

19. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Leslie S. Powell

Sworn to and subscribed before me
This 3 day of ~~December, 2014~~ January, 2015 (KD)

Notary Public

My Commission Expires: My Commission Expires April 22, 2019

Amount: $47,500.00 Sequence Number: [redacted]

Account: [redacted] Capture Date: 12/23/2011

[redacted] Check Number: 101

LESLIE S POWELL
SUSAN L POWELL
[redacted]

LMA Account 101

Dec 20th 2011 87-178/843

Pay to the order of Ed Lloyd Associates PLLC $ 47,500

Forty Seven Thousand and 500 Dollars

Merrill Lynch

Bank of America

For Conservation LLC [redacted]

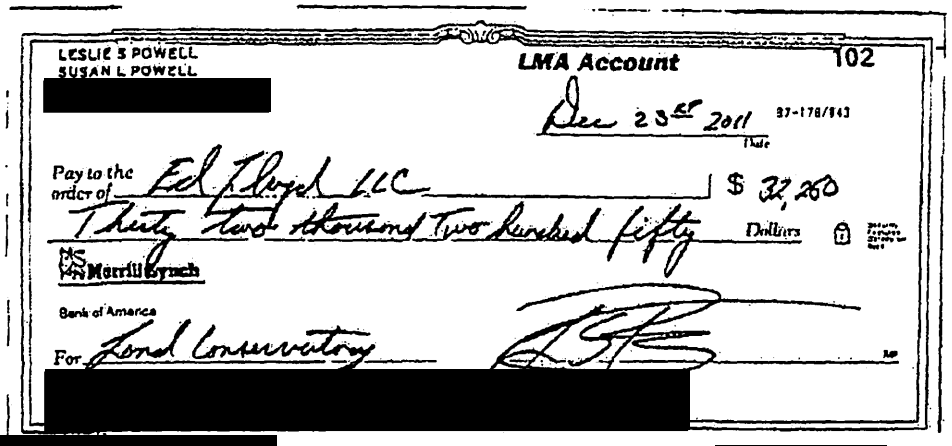
[redacted]

[redacted]

Electronic Endorsements:

[redacted]

Exhibit A
Affidavit of
Leslie S. Powell



LESLIE S POWELL
SUSAN L POWELL
[redacted]

LMA Account 102

Dec 23rd 2011 97-178/843
Date

Pay to the order of Ed Lloyd LLC $ 32,250

Thirty Two Thousand Two Hundred fifty Dollars

Merrill Lynch

Bank of America

For Land Conservatory

[redacted]

[redacted]

[redacted]

[redacted]

Exhibit B
Affidavit of
Leslie S. Powell

SEC-BBT-E-0003413

SEC-Defense-000007272

LESLIE S POWELL
SUSAN L POWELL
[redacted]

LMA Account 103

Sept 25 2012 (Date) 87-176/843

Pay to the order of Forest Conservation 2012 $ 60,000

Sixty Thousand and 00/100 Dollars

MS Merrill Lynch

Bank of America

For FOREST CONSERVATION 12

[redacted]

[redacted]

For Deposit Only

[redacted]

Exhibit C
Affidavit of
Leslie S. Powell

AFFIDAVIT OF LARRY PRICE

I, Larry Price, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for more than ten years.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 19, 2011, I wrote a check to "Ed Lloyd & Associates" in the amount of $36,750.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

11. In 2012, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. On November 12, 2012, I wrote a check to "Forest Conservation 2012, LLC" in the amount of $40,000.00, a copy of which is attached hereto as Exhibit B.

13. I was aware that my contribution amount would include Ed Lloyd's fee.

14. I was aware that I became a member of Forest Conservation 2012, LLC once I wrote a check for $40,000.00 on November 12, 2012.

15. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

16. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

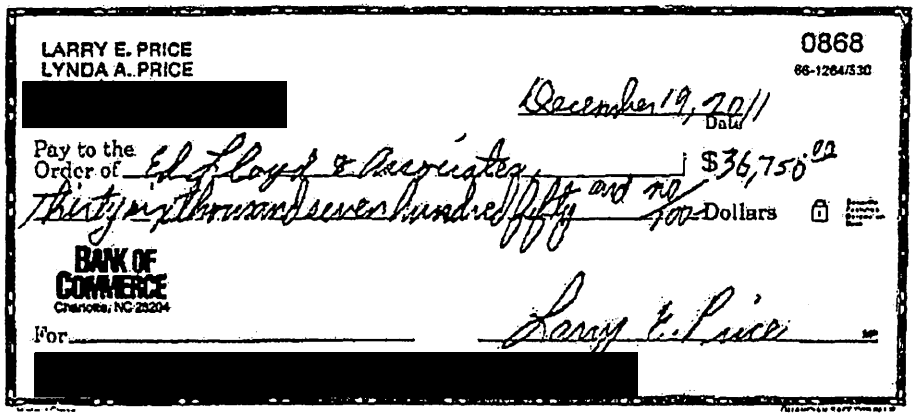
Larry Price

Sworn to and subscribed before me
This 12 day of December, 2014

Crystal Lytle
Notary Public

My Commission Expires:
April 18, 2015

CRYSTAL LYTLE
Notary Public
Mecklenburg County
North Carolina
My Commission Expires Apr 18, 2015



LARRY E. PRICE
LYNDA A. PRICE
[redacted]

0868
66-1264/530

December 19, 2011
Date

Pay to the Order of Ed Floyd & Associates $36,750.00

Thirty six thousand seven hundred fifty and no/100 Dollars

BANK OF COMMERCE
Charlotte, NC 28204

For [redacted]

Larry E. Price

[redacted]

[redacted]

Exhibit A
Affidavit of
Larry Price

SEC-BBT-E-0003405

SEC-Defense-000007264

AFFIDAVIT OF ROBERT SHELLEY

I, Robert Shelley, having been duly sworn do hereby depose and state the following:

1. I am a resident of Waxhaw, North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for about five years.

3. In 2012, I learned about the possibility of making a charitable contribution toward a conservation easement from a third party.

4. I spoke with Ed Lloyd, and he stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 20, 2012, I wrote a check to "Forest Conservation, LLC" in the amount of $25,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012 II, LLC once I wrote a check for $25,000.00 on December 20, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

Robert Shelley

Sworn to and subscribed before me
This 14th day of January, 2015

Notary Public

My Commission Expires:
June 22, 2019

NOTARY PUBLIC

ROBERT G SHELLEY
NICOLE D SHELLEY
[redacted]

2421

12/20/12 Date

Pay to the order of Facest Conservation LLC $25000.00

Twenty five thousand and 00/100 Dollars

Bank of America

For 2012 Robert G. Shelley

[redacted]

[redacted]

Exhibit A
Affidavit of
Robert Shelley

AFFIDAVIT OF JOHN M. SMITH

I, John M. Smith, having been duly sworn do hereby depose and state the following:

1. I am a resident of Elgin, South Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. for the past four years.

3. In 2012, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 14, 2012, I wrote a check to "Forest Conservation 2012 II, LLC" in the amount of $35,000.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I was aware that I became a member of Forest Conservation 2012 II, LLC once I wrote a check for $35,000.00 on December 14, 2012.

11. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

12. In 2013, I contributed to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

13. In 2014, I am contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

14. I am very satisfied with Ed Lloyd's tax planning and preparations services.

FURTHER THE AFFIANT SAYETH NOT.

John M. Smith

John M. Smith

Sworn to and subscribed before me
This 29 day of December, 2014

Notary Public

My Commission Expires:
2/21/24

JOHN MARK SMITH
[redacted]

1086
87-604/539
BRANCH 121

12/14/12
DATE

PAY TO THE ORDER OF Forest Conservation 2012 II, LLC $ 35,000.00

Thirty five Thousand and 00/100 DOLLARS

First Citizens

FOR Conservation

[redacted]

[redacted]

[redacted]

Deposit only

Exhibit A
Affidavit of
John M. Smith

AFFIDAVIT OF BRUCE WILLETTE

I, Bruce Willette, having been duly sworn do hereby depose and state the following:

1. I am a resident of Charlotte North Carolina, over 18 years of age, competent to make this Affidavit, and do so of my own personal knowledge.

2. I have been a tax client of Ed Lloyd & Associates, Inc. since 1996.

3. In 2011, I was approached by Ed Lloyd about the possibility of making a charitable contribution toward a conservation easement.

4. Ed Lloyd stated that I would receive a tax deduction based upon my contribution amount if I decided to participate.

5. Ed Lloyd clearly indicated to me that any contribution would solely be for a tax benefit.

6. I knew that I would only receive a tax deduction for my contribution.

7. I had no expectation of receiving any profit or return other than a tax deduction.

8. On December 22, 2011, I wrote a check to "Ed Lloyd & Assoc." in the amount of $36,750.00, a copy of which is attached hereto as Exhibit A.

9. I was aware that my contribution amount would include Ed Lloyd's fee.

10. I received a Schedule K-1 indicating my contribution minus Ed Lloyd's fee and my resulting tax deduction.

11. In 2014, I am considering contributing to another conservation easement with the assistance, guidance, and tax advice of Ed Lloyd.

12. I am very satisfied with Ed Lloyd's tax planning and preparations services.

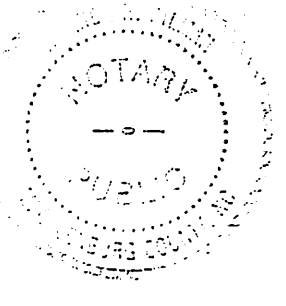
FURTHER THE AFFIANT SAYETH NOT.

Bruce Willette

Sworn to and subscribed before me
This 30th day of December, 2014

Notary Public

My Commission Expires:
June 22, 2019



BRUCE R WILLETTE
ANNE R WILLETTE
[redacted]

1307
56-21/530
1010(38675309

12/22/14
Date

Pay to the Order of Ed Lloyd Assoc $ 36,750.00

Thirty six thousand seven fifty and no/100 Dollars

WELLS FARGO Wells Fargo Bank, N.A. North Carolina wellsfargo.com

For [redacted] BRW

[redacted]

[redacted]

[redacted]

Exhibit A
Affidavit of
Bruce Willette

SEC-BBT-E-0003410

SEC-Defense-000007269

2120 Carey Avenue, Suite 300
Cheyenne, WY 82001
P.O. Box 87
Cheyenne, WY 82003
307-635-0710
307-635-0413 (fax)
www.lrw-law.com

LONG REIMER WINEGAR

LONG | REIMER | WINEGAR | BEPPLER LLP

THOMAS N. LONG
PARTNER

ADMITTED IN WY & WA
tlong@lrw-law.com

WITH ATTORNEYS ADMITTED IN
WY CO UT CA ID NE ND & WA

January 15, 2015

Mr. Frederick Sharpless
VIA EMAIL: fks@sharpless-stavola.com

Re: *In the Matter of Paul Edward "Ed" Lloyd, Jr., CPA*, SEC Administrative Proceeding File No. 3-16182

Dear Mr. Sharpless:

I am furnishing this letter to you in connection with the above-referenced matter (the "SEC Proceeding"). You have engaged me to consider issues of Wyoming law that are involved in the SEC Proceeding. I understand that you represent Mr. Lloyd in the matter and will be utilizing my opinions in his defense.

DOCUMENTS REVIEWED

In connection with this letter, you have supplied me, and I have reviewed, copies of the following documents:

1. Order Instituting Administrative and Cease – and – Desist Proceedings which is undated but apparently was entered in order to commence the SEC Proceeding.

2. Answer and Motion of Paul Edward "Ed" Lloyd, Jr., CPA dated October 22, 2014.

3. Operating Agreement of Forest Conservation 2012, LLC (the "LLC") dated and executed effective as of December 7, 2012 (the "Initial Operating Agreement").

4. The Amendment and Correction to Operating Agreement of Forest Conservation 2012, LLC (the "Amended Operating Agreement") executed by eighteen (18) members of the LLC dated to be effective December 7, 2012. The Amended Operating Agreement and the Initial Operating Agreement are hereinafter sometimes referred to as the "Operating Agreement."

5. Schedule K-1s for the year 2012 issued by the LLC to various members, including to Christopher R. Brown ("Brown"), James R. Carson ("Carson") and Michael T. Malloy ("Malloy").

6. Checks payable to the LLC drawn upon bank accounts owned by Brown, Carson, Malloy and their wives.

7. An Affidavit of Carson dated January 8, 2015.

8. Affidavits similar to the Carson Affidavit from several of the other members of the LLC.

The items listed above are the only documents I have considered in connection with the SEC Proceeding and the transactions described therein. In connection with my opinion, as to any matters of fact, I am relying on the above-referenced documents and those facts which are further set forth below.

RELEVANT FACTS

The following facts have been brought to my attention by or on behalf of Paul Edward Lloyd, Jr.:

1. Mr. Lloyd communicated with Messrs. Brown, Carson and Malloy (the "Allegedly Omitted Members") regarding the opportunity for the Allegedly Omitted Members to become members of the LLC, and each of the Allegedly Omitted Members verbally agreed with Mr. Lloyd to become members, and Mr. Lloyd on behalf of the LLC verbally agreed to accept them as members.

2. Each of the Allegedly Omitted Members paid cash consideration in exchange for their acquisition of a membership interest in the LLC.

3. Each of the Allegedly Omitted Members received all reports and communications provided by the LLC and by Mr. Lloyd to the other fifteen (15) members of the LLC with respect to their tax reporting and in response to their questions.

4. In particular, each of the Allegedly Omitted Members received a Schedule K-1 from the LLC indicating their proportionate share of all income, loss, expense, deduction, gain and other tax consequences attributable to the LLC, and each such K-1 was timely received and was transferred to the Allegedly Omitted Members at the same time as appropriate K-1s were transmitted by the LLC to the other fifteen (15) members

of the LLC. Each K-1 reflects each member's percentage interest in the capital of the LLC in an amount equal to the percentage set forth in Exhibit "C" to the Amended Operating Agreement as the "Percentage After Fee."

5. Upon discovery of the omission of the Allegedly Omitted Members from the schedule of members attached to the Initial Operating Agreement, the Amended Operating Agreement was prepared by Mr. Lloyd and each of the Allegedly Omitted Members executed the same confirming their acquisition of a membership interest in the LLC effective as of December 7, 2012. At the same time, each of the other fifteen (15) members of the LLC similarly confirmed their own admission and the admission of the Allegedly Omitted Members as members of the LLC by executing the Amended Operating Agreement.

6. The Amended Operating Agreement was executed at some point in time after December 7, 2012 and was dated back in time to the date of December 7, 2012. As of December 7, 2012, each of the Allegedly Omitted Members and the fifteen (15) other members of the LLC had agreed to acquisition of a membership interest in the LLC, had agreed to the membership of the seventeen (17) other members, and had transferred consideration to the LLC in exchange their membership.

7. The backdating of the Amended Operating Agreement was not intended by any of the eighteen (18) parties signatory thereto to defraud any third party, deprive any third party of rights that may have otherwise accrued, or alter the agreement otherwise then understood among the eighteen (18) signatories.

8. Each of the Allegedly Omitted Members has claimed a deduction on the 2012 Form 1040 submitted by each of the Allegedly Omitted Members to the Internal Revenue Service, reflecting their appropriate proportionate share of the pass-through of the charitable contribution deductions attributable to each, and each has thereby obtained the tax benefit upon which each and in exchange for which each had agreed to become a member of the LLC.

9. There was no condition to membership set forth in the Operating Agreement of the LLC, nor verbal agreement between or among any of the manager, members or Allegedly Omitted Members, that as a condition precedent to membership any member be required to complete any documentation for, or receive approval from, any third party or governmental organization.

10. There was no condition to membership set forth in the Operating Agreement of the LLC, nor verbal agreement between or among any of the manager, members or Allegedly Omitted Members, that as a condition precedent to membership there be a disclosure to any third party of any information with respect to any specific member.

11. None of the Allegedly Omitted Members dissociated from the LLC at any time relevant to the transactions involved in the SEC Proceeding.

ASSUMPTIONS

For purposes of this opinion, and with your permission, I have assumed the following without independent verification:

1. The genuineness of all signatures on the documents reviewed by me;

2. The exact conformity with the executed originals of all documents submitted to me as photostatic, telefacsimile, or electronic copies, with no subsequent material amendments or modifications thereto or subsequent mandatory agreements, written or verbal, of having been made;

3. The legal capacity of the individual signatories to the Amended Operating Agreement; and

4. The compliance of the transactions described in the SEC Proceeding with tax and other laws not otherwise involved in the SEC Proceeding.

Except as may be expressly provided otherwise herein, this opinion is governed by and shall be interpreted in accordance with the ABA Business Section "Accord" Regarding Third-Party Opinions, to the extent the same may be applicable to situations such as this opinion with respect to the SEC Proceeding. As a consequence of the application of the Accord, my opinion is subject to qualifications, exceptions, definitions, and limitations, all as more particularly described in the Accord, and my opinion should be read in conjunction therewith.

OPINION

I have examined the laws of the State of Wyoming in my consideration of the opinions expressed below. My examination has been limited to only current laws of general applicability to transactions of the nature described in the SEC Proceeding,

excluding local laws and regulations, and laws or regulations not published in a manner generally available to practicing attorneys. My opinions are primarily based upon the Wyoming limited Liability Company Act and upon the common law of the State of Wyoming with respect to contracts. Based solely on the foregoing and subject to the assumptions, exceptions, qualifications and limitations set forth in this letter, I am of the opinion that Messrs. Brown, Carson and Malloy, the Allegedly Omitted Members, were members of the LLC at all times relevant to the matters described in the SEC Proceeding.

ANALYSIS

Under the Wyoming Limited Liability Company Act, an LLC's operating agreement is just that, an agreement. It is to be judged under basic contract law. An LLC has broad authority to adopt whatever provisions it may wish in its operating agreement, provided that it does not eliminate the contractual obligation of good faith and fair dealing nor adopt any of the other prohibited provisions described in Wyo. Stat. § 17-29-110(c). This contractual nature of an LLC has been recognized both by the Wyoming Supreme Court, *Lieberman v. Wyoming.com LLC,* 82 P.3d 274 (Wyo. 2004), and in the relevant literature, Rogers, *Business Organizations – Staying Afloat with a Hole in the Wyoming LLC Act; Default Rules in a Contractual LLC World,* 5 Wyo. L. Rev. 351 (2005); Cottam *et al., The 2010 Wyoming Limited Liability Company Act; a Uniform Recipe with Wyoming "Home Cooking,"* 11 Wyo. L. Rev. 49 (2011). As is the case with other contractual arrangements, the Wyoming Limited Liability Company Act recognizes that an operating agreement may be based upon the verbal agreement of the members, Wyo. Stat. § 17-29-102(a)(xiv). An operating agreement can be oral, can be set forth in one or more writings, can be implied from the facts and circumstances of the parties, or can be determined based upon any combination thereof, *Id.*

The concern of the SEC appears to arise from its belief that the Allegedly Omitted Members were not actually members of the LLC. However, each of the Allegedly Omitted Members paid a consideration for their membership interest, received a benefit in the form of a tax deduction as the expected result of their membership in the LLC, and executed the amendment to the operating agreement affirming their membership in the LLC pursuant to the provisions of the Initial Operating Agreement. Although the documentation establishing the membership in the LLC of the Allegedly Omitted Members may not have been executed in writing at or prior to the time of their contributions to the LLC or their receipt of the bargained-for benefits from the LLC, such "backdating" does not invalidate the written documentation nor render it something that can be lightly overlooked.

The "backdating" that is represented by the amendment to the operating agreement simply memorializes all material events that did indeed occur with respect to the Allegedly Omitted Members to the same full extent and effect as had occurred with the fifteen other members of the LLC. Nothing in the amendment to the operating agreement purports to represent that it was actually signed on the "effective" date of December 7, 2012 that is described in the document, and some courts would refrain from using the term "back dating" to describe this after-the-fact written memorialization, *Moore v. Commissioner*, 93 T.C.M. (CCH 1275) (2007). The courts have certainly recognized the effective date of documents that were created after the fact in order to memorialize a prior agreement, *United States v. Micke*, 859 F.2d 473 (7th Cir. 1988). Wyoming is located in the 10th Circuit, which also has acknowledged that back dating of documents, including corporate documents is "not necessarily illegal," *U.S. v. Gordon*, 710 F.3d 1124 (10th Cir. 2013), *citing United States v. Reyes*, 577 F.3d 1069 (9th Cir. 2009). Where, as here, the backdating reflected the date on which a matter had been agreed, then the court would determine that "the backdating was legitimate . . ." *Micke, supra.* at 478. The government itself has acknowledged the legitimacy of written documentation dated prior to the date of execution which memorializes a prior event. In fact, the government has affirmatively argued that a back dated document indeed memorialized a prior event and that the effective date of the agreed event should be governed by the back dated document, *Moore v. Commissioner, supra* at 283. To the extent the SEC Proceeding is based upon a contention that the three Allegedly Omitted Members were not members of the LLC, it has no foundation in and is contrary to Wyoming law.

The statutory requirements for a person to become a member of an LLC are set forth in Wyo. Stat. § 17-29-401. There are alternative methods for the same to be accomplished, at least two of which have been fulfilled by each of the Allegedly Omitted Members, i.e. their membership is provided in the Operating Agreement and their membership has been consented to by all of the other members of the LLC. In my opinion, the SEC is mistaken as a matter of law insofar as it has concluded that the Allegedly Omitted Members are not members; those three gentlemen are members of the LLC as a matter of Wyoming law.

QUALIFICATIONS

The foregoing opinion is subject to the following qualifications:

(i) My opinion is limited to the present effect of the internal laws of the state of Wyoming which are generally applicable to transactions of the nature described in the SEC Proceeding. I expressly note that my opinion does not address any of the following legal issues: securities laws and regulations; taxation laws and regulations; fraudulent transfer and conveyance, bankruptcy, moratorium and similar laws involving adequacy of consideration and/or insolvency; and criminal and civil forfeiture laws.

(ii) To the extent the Operating Agreement remains executory in nature, the members', including the Allegedly Omitted Members', rights and remedies, and the validity, binding nature, and enforceability of any of the terms of the Operating Agreement, may be limited or otherwise affected by general principles of equity (regardless of whether enforceability is considered in a proceeding in law or at equity). Without limiting the generality of this observation, I note that Wyoming courts have in the past denied enforcement of various contractual provisions in furtherance of equitable principles involving a duty of good faith and fair dealing, honesty and reasonableness, unconscionability, materiality, commercial impracticability, and other factual circumstances leading a court to find enforcement to be inequitable.

(iii) To the extent the Operating Agreement remains executory in nature, the members', including the Allegedly Omitted Members', rights and remedies, and the validity, binding nature, and enforceability of any of the terms of the Operating Agreement, may be limited or otherwise affected by the effect of general rules of contract law and/or tort law that:

a. Provide that where less than all of an agreement is unenforceable, the balance is enforceable only when the unenforceable portion is not an essential part of the agreed exchange;

b. Limit the recovery of damages to the extent the aggrieved party could have avoided damages by reasonable efforts; and

c. Permit a party who has materially failed to render or offer performance the opportunity to cure such failure prior to the time the applicable performance condition can no longer occur.

(iv) The opinions expressed herein are strictly limited to the matters stated herein and no other opinions may be implied. Without limiting the generality of the foregoing, I specifically advise that I express no opinion as to:

a. Title to any property of LLC; or

b. The accuracy of any description of assets or property used in the Operating Agreement or documents filed or submitted in connection with the SEC Proceeding.

(v) I have prepared this letter for you in connection with the SEC Proceeding, and it shall not be used for any other purpose or relied upon by any other party without my permission.

The opinions expressed above are rendered as of the date of this letter and are based on the information provided as noted above. I expressly disclaim any obligation to update this letter or otherwise to advise you of any matters (including, but not limited to, any subsequently enacted, published or reported laws, rules, regulations or judicial decisions having retroactive effect) which may come to my attention after the date of this letter and which affect any of the opinions expressed in this letter.

Very truly yours,

LONG REIMER WINEGAR BEPPLER LLP

BY: THOMAS N. LONG

TNL:jip

THOMAS N. LONG

Email: tlong@lrw-law.com

The senior member of Long Reimer Winegar Beppler LLP, Mr. Long is widely recognized as an outstanding practitioner with expertise in tax, estate, commercial, property and business organization law.

Education and Licensure: Mr. Long graduated magna cum laude with degrees in Economics and Political Science from the University of Wyoming in 1972, and received his J.D. degree at Harvard Law School in 1976. Mr. Long has been admitted to practice in the U.S. Tax Court since 1981. He is licensed to practice law in the states of Washington and Wyoming.

From Chambers and Partners: *"Thomas Long is commended by sources as a 'great business lawyer' for 'tax and estate planning in particular.' He also focuses on business structure and real estate matters."*

Community Service: Mr. Long served as commissioner of the Cheyenne Housing Authority for seventeen years through 2012, a director of the Cheyenne Regional Medical Center Foundation, and served by appointment of the Wyoming Supreme Court as a member of the Lawyer Mentoring Program Implementation Board, having previously co-chaired the Wyoming State Bar Association Mentoring Committee with partner Natalie Winegar. Mr. Long previously served on committees involved in the revision of the Wyoming Business Corporation Act and Wyoming Limited Liability Company Act.

Memberships and Professorships: Mr. Long is a fellow of the American College of Trust and Estate Counsel (state chairman 1998-2003), a fellow of the American College of Tax Counsel, a member of the Society of Trust and Estate Practitioners and a member of Phi Beta Kappa. Mr. Long served as an Adjunct Professor of Law (Gift and Estate Taxation) at the University of Wyoming College of Law in 1982, and has regularly provided guest lectures since that time.

Speaking Engagements: Mr. Long has made presentations on behalf of ALI-ABA, ACTEC, the Wyoming and Colorado Bar Associations and other organizations. Mr. Long's recent speaking engagements include:

- Wyoming Philanthropy Days, Trusted Advisors and Professionals Seminar, May 22, 2014, "Navigating the Frontier: Philanthropic Planning and Beyond"
- Denver Estate Planning Council, November 21, 2013, "Simple Solutions To Common Problems: What Should Be In Your Bag Of Tricks"
- 2012 Society of Trust and Estate Practitioners, September 22, 2012, "A Comparative Analysis of U.S. Trust and PTC Situs States"
- 2011 Wyoming State Bar Convention, September 15, 2011, "Wealth Preservation and Planning for Business Entities, Individuals and Trusts Having a Situs in Wyoming"
- 2011 University of Wyoming College of Law, September 10, 2011, "Putting Wyoming's New LLC Statute to Work for You and Your Client"
- 2010 Wyoming State Bar Convention, September 16, 2010 "The Wyoming Limited Liability Company Act"
- 2010 NAIFA Wyoming, April 20, 2010, "Irrevocable Trusts Holding Life Insurance Policies"
- 2009 Wyoming State Bar Convention, September 16, 2009, "2009 Amendments to Wyoming Business Corporation Act"
- 2009 Colorado Bar Association 23rd Biennial Advanced Estate Planning Symposium, September 10, 2009, "Domestic Asset Protection: Choice of Entity and Choice of Techniques"
- 2008 Wyoming State Bar Convention, September 10, 2008, "Irrevocable Trusts"

Published Articles:

- "The 2010 Wyoming Limited Liability Company Act," 11 Wyo. L.Rev. 49 (2011)

- "Continuance and Transfer: Transnational Change of Corporate Domicile Under Wyoming Law," XXIII Land and Water Law Review 445 (1988)

Practice Areas:

- Business Planning
- Estate Planning
- Oil & Gas / Natural Resource
- Probate & Trust Administration
- Situs Planning
- Tax

Amendment and Correction to Operating Agreement of Forest Conservation 2012, LLC

The undersigned, being all the members of Forest Conservation 2012, do enter into the following ratification, amendment and correction of the Operating Agreement of Forest Conservation 2012 dated December 7, 2012.

Whereas, Forest Conservation 2012, LLC is a Wyoming Limited Liability Company organized under the laws to the State of Wyoming, and;

Whereas, Forest Conservation 2012 LLC was organized by Paul Edward Lloyd, Jr. by filing Articles of Organization with the Wyoming Secretary of State on February 20, 2012; and

Whereas, Paul Edward Lloyd, Jr., the organizer and sole initial member, caused to be prepared an operating agreement for Forest Conservation 2012, LLC dated March 16, 2012, and caused it to be revised December 7, 2012, a copy of which is attached to this amendment as Exhibit "A,"; and

Whereas, Wyoming Statute 17-29-111(c) provides that

> One (1) person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

and Paul Edward Lloyd, Jr. did so assent to the Operating Agreement attached as Exhibit A; and

Whereas, Wyoming Statute 17-29-102(a)(xiv) defines an operating agreement to be:

> (xiv) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in W.S. 17-29-110(a). The term includes the agreement as amended or restated;

and

Whereas, in preparing the revision of December 7, 2012, Paul Edward Lloyd, Jr., caused to be attached schedules of interests and percentages that, through a scriveners error, omitted the names of three members and misstated percentages as of that date; and

Whereas, after each member's capital contribution a tax service fee was paid on behalf of that member in the amounts set forth on schedule 'C," which fee was paid to Ed Lloyd & Associates, PLLC, and which fee was the subject of a special allocation to each member's capital account; and

Whereas, following the payment of the tax service fee and the special allocations, each member's percentage interest was as stated on the Schedule attached as Exhibit "C"; and

Whereas, in preparing the 1065 Income tax return and Schedules K-1 for Forest Conservation 2012, LLC, capital percentages and memberships were correctly stated as those from the Schedule Exhibit "C"; and

Whereas, the members of Forest Conservation 2012 LLC wish to ratify and confirm the Operating Agreement, and to correct the scrivener's error by replacing the erroneous schedules of December 7, 2012 with the schedules attached as Exhibit "B" (as of December 7, 2012) and Exhibit "C" (at all times after payment of the fee);

Now, therefore, the undersigned, being all the members of Forest Conservation 2012, LLC do take the following action:

1. The Schedules attached as Exhibit B & C to this document are confirmed as the correct statement of members', ownership percentages and capital contributions to Forest Conservation 2012, LLC, effective as of the date of each member's contribution of capital (Exhibit "B,") and after payment of the tax service fees to Ed Lloyd and Associates, PLLC (Exhibit "C"), and the attached are in all respects substituted for the schedules attached to the December 7, 2012 agreement;

2. The election and appointment of Ed Lloyd and sole managing member effective with the formation of Forest Conservation, LLC is ratified and confirmed;

3. All actions of the Organizer and Managing Member, Ed Lloyd are ratified and confirmed through July 8, 2014, including the special allocation of fees as set forth on Exhibit "C," and to the extent that such allocation is not otherwise provided for under Article 6 of the Operating Agreement, the Agreement is amended to permit the Managing member to specially allocate fees paid;

4. In all other respects, the Operating Agreement of December 7, 2012, a copy of which is attached as Exhibit "A," is ratified and confirmed.

Effective December 7, 2012

Gary Appel	Ashley Hooks
Raymond Bouley	Steve Kezman
Vernon Branch	Michael Knight
Christopher Brown	Paul Lloyd
James Carson	Mark Losby
Jarrett Clay	Michael Malloy
Jesse Garrett	William Mitchell
Timothy Gross	Leslie Powell
Dennis Hall	Larry Price

4. In all other respects, the Operating Agreement of December 7, 2012, a copy of which is attached as Exhibit "A," is ratified and confirmed.

Effective December 7, 2012

Gary Appel	Ashley Hooks
Raymond Bouley	Steve Kezman
Vernon Branch	Michael Knight
Christopher Brown	Paul Lloyd
James Carson	Mark Losby
Jarrett Clay	Michael Malloy
Jesse Garrett	William Mitchell
Timothy Gross	Leslie Powell
Dennis Hall	Larry Price

4. In all other respects, the Operating Agreement of December 7, 2012, a copy of which is attached as Exhibit "A," is ratified and confirmed.

Effective December 7, 2012

Gary Appel	Ashley Hooks
Raymond Bouley	Steve Kezman
Vernon Branch	Michael Knight
Christopher Brown	Paul Lloyd
James Carson	Mark Losby
Jarrett Clay	Michael Malloy
Jesse Garrett	William Mitchell
Timothy Gross	Leslie Powell
Dennis Hall	Larry Price

4. In all other respects, the Operating Agreement of December 7, 2012, a copy of which is attached as Exhibit "A," is ratified and confirmed.

Effective December 7, 2012

Gary Appel	Ashley Hooks
Raymond Bouley	Steve Kezman
Vernon Branch	Michael Knight
Christopher Brown	Paul Lloyd
James Carson	Mark Losby
Jarrett Clay	Michael Malloy
Jesse Garrett	William Mitchell
Timothy Gross	Leslie Powell
Dennis Hall	Larry Price

4. In all other respects, the Operating Agreement of December 7, 2012, a copy of which is attached as Exhibit "A," is ratified and confirmed.

Effective December 7, 2012

Gary Appel	Ashley Hooks
Raymond Bouley	Steve Kezman
Vernon Branch	Michael Knight
Christopher Brown	Paul Lloyd
James Carson	Mark Losby
Jarrett Clay	Michael Malloy
Jesse Garrett	William Mitchell
Timothy Gross	Leslie Powell
Dennis Hall	Larry Price

4. In all other respects, the Operating Agreement of December 7, 2012, a copy of which is attached as Exhibit "A," is ratified and confirmed.

Effective December 7, 2012

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Raymond Bouley	Steve Kezman
Vernon Branch	Michael Knight
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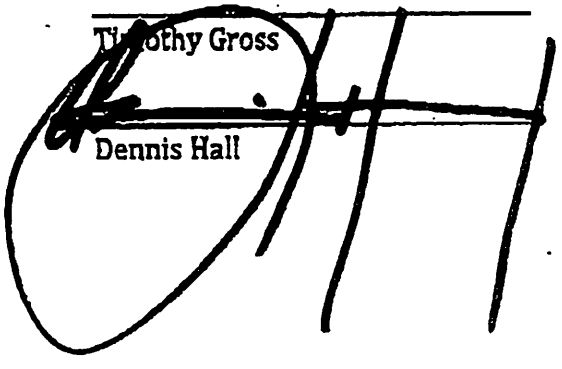

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OPERATING AGREEMENT

of

FOREST CONSERVATION 2012, LLC

(A Wyoming Limited Liability Company)

DATED: March 16, 2012, Revised - December 7, 2012

THE LLC MEMBERSHIP INTEREST REPRESENTED BY THE OPERATING AGREEMENT HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE WYOMING SECURITIES ACT, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE MEMBERSHIP INTEREST IS RESTRICTED

EXHIBIT A

TABLE OF CONTENTS

EXHIBIT A

EXHIBIT A

OPERATING AGREEMENT

OF

FOREST CONSERVATION 2012, LLC

THIS OPERATING AGREEMENT of **FOREST CONSERVATION 2012, LLC** (the "Company"), a limited liability company organized pursuant to the Wyoming Limited Liability Company Act, is executed effective as of the date set forth on the cover page of this Agreement, by and among the Company and the Persons executing this Agreement as the Members and Managers.

ARTICLE I
FORMATION OF THE COMPANY

1.1. *Formation.* The Company was formed on February 20th, 2012, upon the filing of the Articles of Organization of the Company with the Wyoming Secretary of State. In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the rights and obligations of the parties and the administration and termination of the Company shall be governed by this Agreement, the Articles of Organization, and the Act.

1.2. *Name.* The name of the Company is as set forth on the cover page of this Agreement. The Managers may change the name of the Company from time to time as they deem advisable, provided appropriate amendments to this Agreement and the Articles of Organization and necessary filings under the Act are first obtained.

1.3. *Registered Office and Registered Agent.* The Company's registered office within the State of Wyoming and its registered agent at such address shall be as determined from time to time by the Managers.

1.4. *Principal Place of Business.* The principal place of business of the Company within the State of Wyoming shall be at such place or places as the Managers may from time to time deem necessary or advisable.

1.5. *Purposes and Powers.*

(a) The purpose and business of the Company shall be act in any lawful business for which limited liability companies may be organized under the Act.

(b) The Company shall have any and all powers, which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

1.6. *Term.* The Company's existence is perpetual, unless the Company is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

EXHIBIT A

1.7. *Nature of Members' Interests.* The interests of the Members in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company. Neither any Member, nor a successor, representative, or assign of any Member, shall have any right, title, or interest in or to any Company Property owned by the Company or the right to partition any Property owned by the Company.

ARTICLE II
DEFINITIONS

2.1. *Definitions.* The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

"Act" means the Wyoming Limited Liability Company Act, as amended from time to time.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts to which such Member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Adjusted Capital Contributions" means, as of any day, a Member's Capital Contributions adjusted as follows:

(a) Increased by the amount of any Company liabilities which, in connection with Distributions, are assumed by such Member or are secured by any Company Property distributed to such Member, and

(b) Reduced by the amount of cash and the Gross Asset Value of any Company Property distributed to such Member and the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company.

In the event a Member transfers all or any portion of such Member's Membership Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Contribution of the transferor to the extent it relates to the transferred Membership Interest or portion thereof.

"Affiliate" of a specified Person means (i) any Person directly or indirectly controlling, controlled by, or under common control with the specified Person; (ii) any Person owning or controlling ten percent or more of the outstanding voting securities of the specified Person; (iii) any officer, director or partner of the specified Person; or (iv) if the specified Person is an officer, director, or partner, any entity for which the specified Person acts in such capacity.

"Agreement" means this Operating Agreement, as amended from time to time.

"Articles of Organization" means the Articles of Organization of the Company filed with the Secretary of State, as amended or restated from time to time.

"Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with Section 5.5 of this Agreement.

"Capital Contribution" means all contributions of cash or property (valued for this purpose at initial Gross Asset Value) made by a Member or the Member's predecessor in interest.

"Capital Transaction" means any transactions undertaken by the Company or by any entity in which the Company owns an interest, which, were it to generate proceeds, would produce Company Sales Proceeds or Company Refinancing Proceeds.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (and any corresponding provisions of succeeding law).

"Company Cash Flow" for any period means the excess, if any, of (A) the sum of (i) all gross receipts from any source for such period, other than from Company loans, Capital Transactions, and Capital Contributions, and (ii) any funds released by the Company from previously established reserves, over (B) the sum of (i) all cash expenses paid by the Company for such period (including any compensation to the Managers and their Affiliates); (ii) all amounts paid by the Company in such period on account of the amortization of the principal of any debts or liabilities of the Company (including loans from any Member); (iii) capital expenditures of the Company; and (iv) a reasonable reserve for future expenditures as provided by Section 11.3; *provided, however,* that the amounts referred to in (B) (i), (ii), and (iii) above shall be taken into account only to the extent not funded by Capital Contributions, loans or paid out of previously established reserves. Such term shall also include all other funds deemed available for distribution and designated as Company Cash Flow by the Managers.

"Company Minimum Gain" means gain as defined in Treasury Regulations Section 1.704-2(d).

"Company Refinancing Proceeds" means (i) the cash realized from the financing or refinancing of all or any portion of the Property or other Company assets, less the retirement of any related mortgage loans and the payment of all expenses relating to the transaction and a reasonable reserve for future expenditures as provided by Section 11.3 and (ii) the Company's allocable portion of cash realized by an entity in which the Company owns an interest from such entity financing or refinancing all or any portion of such entity's assets, less the retirement of any related mortgage loans

and the payment of all expenses relating to such transaction and a reasonable reserve for future expenditures as provided by Section 11.3.

"*Company Sales Proceeds*" means (i) the cash realized from the sale, exchange, condemnation, casualty, or other disposition of all or any portion of the Property or other Company assets, less the retirement of any related mortgage loans and the payment of all expenses relating to the transaction and a reasonable reserve for future expenditures as provided by Sections 11.3 and (ii) the Company's allocable portion of cash realized by an entity in which the Company owns an interest from the sale, exchange, condemnation, casualty, or other disposition of all or any portion of such entity's assets, less the retirement of any related mortgage loans and the payment of all expenses relating to such transaction and a reasonable reserve for future expenditures as provided by Section 11.3.

"*Depreciation*" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided, however*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers.

"*Disinterested Member*" means a Member who is not related (within the meaning of Section 267(b) of the Code or Section 707(b)(1) of the Code) to either the Member whose Membership Interest is to be transferred as provided in Article VIII or the proposed transferee of such Membership Interest.

"*Distribution*" means any money or other property distributed to a Member with respect to the Member's Membership Interest, but shall not include any payment to a Member for materials or services rendered nor any reimbursement to a Member for expenses permitted in accordance with this Agreement.

"*Domestic Proceeding*" means any divorce, annulment, separation, or similar proceeding.

"*Encumbrance*" means any lien, pledge, encumbrance, collateral assignment, or hypothecation.

"*Fiscal Year*" means an annual accounting period ending December 31 of each year during the term of the Company, unless otherwise specified by the Managers.

"*Gains from Capital Transactions*" means the gains realized by the Company as a result of or upon any sale, exchange, condemnation, or other disposition of capital assets of the Company or any entity in which the Company shall own an interest (which assets shall include Code

Section 1231 assets and all real and personal property) or as a result of or upon the damage to or destruction of such capital assets.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Managers, provided that, if the contributing Member is a Manager, the determination of the fair market value of a contributed asset shall be determined by appraisal;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managers, as of the following times: (i) the acquisition of an additional interest in the Company (other than upon the initial formation of the Company) by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company Property as consideration for an interest in the Company; and (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Managers reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Managers, provided that, if the distributee is a Manager, the determination of the fair market value of the distributed asset shall be determined by appraisal; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subsections (f) of the definition of Profits and Losses herein and 6.11 hereof; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) hereof to the extent the Managers determine that an adjustment pursuant to subsection (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (a), subsection (b), or subsection (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits, Gains from Capital Transactions, or Losses.

"Majority of Managers" means a combination of Managers constituting more than fifty percent (50%) of the number of Managers then elected and qualified.

"Majority in Interest" means a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members.

"Manager" means each Person executing this Agreement as a Manager, any other Person that succeeds such Manager, or any other Person elected to act as Manager of the Company as provided in this Agreement. *"Managers"* refers to such Persons as a group.

"Member" means each Person designated as a member of the Company on Schedule I hereto or any other Person admitted as a member of the Company in accordance with this Agreement or the Act. *"Members"* refers to such Persons as a group.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i).

"Member Nonrecourse Debt" means any nonrecourse debt (for the purposes of Treasury Regulations Section 1.1001-2) of the Company for which any Member bears the "economic risk of loss," within the meaning of Treasury Regulations Section 1.752-2.

"Member Nonrecourse Deductions" means deductions as described in Treasury Regulations Section 1.704-2(i). The amount of Member Nonrecourse Deductions with respect to Member Nonrecourse Debt for any Fiscal Year equals the excess, if any, of (A) the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year, over (B) the aggregate amount of any Distributions during that Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such Distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i).

"Membership Interest" means all of a Member's rights in the Company, including, without limitation, the Member's share of the Profits and Losses of the Company, the right to receive distributions of the Company's assets, any right to vote, and any right to participate in the management of the Company as provided in the Act and this Agreement.

"Nonrecourse Deductions" means deductions as set forth in Treasury Regulations Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a given Fiscal Year equals the excess, if any, of (A) the net increase, if any, in the amount of Company Minimum Gain during such Fiscal Year, over (B) the aggregate amount of any Distributions during such Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Treasury Regulations Section 1.704-2(h).

"Nonrecourse Liability" means any Company liability (or portion thereof) for which no Member bears the "economic risk of loss," within the meaning of Treasury Regulations Section 1.752-2.

"Percentage Interest" means the percentage, which the Capital Contributions of a Member to the Company bears to the Capital Contributions of all Members. The initial Capital Contribution of each Member is set forth opposite such Member's name on Schedule I hereto.

"Person" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.

"Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such year or period (excluding Gains from Capital Transactions), determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition (excluding Gains from Capital Transactions) shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Subsection (ii) or (iii) of the definition of Gross Asset Value hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation set out hereof;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses;

(g) Notwithstanding any other provision of this definition of Profits and Losses, any items, which are specially allocated pursuant to Sections 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11, or 6.12 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11 or 6.12 hereof shall be determined by applying rules analogous to those set forth in Sections (a) through (f) above.

"Property" means (i) any and all property acquired by the Company, real and/or personal (including, without limitation, intangible property) and (ii) any and all of the improvements constructed on any real property.

"Secretary of State" means the Secretary of State of Wyoming.

"Tax Matters Partner" means such Member designated as the "tax matters partner," as that term is defined in the Code and Treasury Regulations.

"Transfer" means sell, assign, transfer, lease, or otherwise dispose of property, including, without limitation, an interest in the Company.

"Treasury Regulations" means the Income Tax Regulations and Temporary Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE III
MANAGEMENT OF THE COMPANY

3.1. *The Managers.* Except as otherwise may be expressly provided in this Agreement, the Articles of Organization, or the Act, all decisions with respect to the management of the business and affairs of the Company shall be made by action of a Majority of the Managers taken at a meeting or evidenced by a written consent executed by a Majority of the Managers. Meetings of the Managers may be held on such terms and after such notice as the Managers may establish. The Managers shall have full and complete authority, power, and discretion to manage and control the business of the Company, to make all decisions regarding those matters, and to perform any and all other acts customary or incident to the management of the Company's business, except only as to those acts as to which approval by the Members is expressly required by the Articles of Organization, this Agreement, the Act, or other applicable law. The Managers may delegate responsibility for the day-to-day management of the Company to any individual Manager or Person retained by the Managers, who shall have and exercise on behalf of the Company all powers and rights necessary or convenient to carry out such management responsibilities.

3.2. *Limitations on Power and Authority of Managers.* Without the consent of all the Members, the Managers shall have no authority to do any of the following:

(a) Any act in contravention of this Agreement;

(b) Any act which would make it impossible to carry on the ordinary business of the Company; or

(c) Possess Property of the Company or assign the Company's rights in specific Property for other than Company purposes.

3.3. *Compensation and Expenses.* The Managers shall not receive any compensation from the Company for serving as Managers, but the Company will reimburse Managers for expenses incurred by the Managers in connection with their service to the Company. Nothing contained in this Section 3.3 is intended to affect the Percentage Interests of Managers who are also Members or the amounts that may be payable to the Managers by reason of their respective Percentage Interests.

3.4. *Indemnification of Managers.* The Company shall indemnify the Managers to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by a Manager upon the approval of the remaining Managers and the receipt by the Company of the signed statement of such Manager agreeing to reimburse the Company for such advance in the event it is ultimately determined that such Manager is not entitled to be indemnified by the Company against such expenses. The provisions of this Section 3.4 shall apply also to any Person to whom the Managers have delegated management authority as provided in Section 3.1, whether or not such Person is a Manager or Member.

3.5. *Limitation on Liability.* No Manager of the Company shall be liable to the Company for monetary damages for an act or omission in such Person's capacity as a Manager, except as provided in the Act for (i) acts or omissions which a Manager knew at the time of the acts or omissions were clearly in conflict with the interests of the Company; (ii) any transaction from which a Manager derived an improper personal benefit; or (iii) acts or omissions occurring prior to the date this provision becomes effective. If the Act is amended to authorize further elimination of or limitations on the liability of Managers, then the liability of the Managers shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of this Section shall not adversely affect the right or protection of a Manager existing at the time of such repeal or modification. The provisions of this Section 3.5 shall apply also to any Person to whom the Managers have delegated management authority as provided in Section 3.1, whether or not such Person is a Manager or Member.

3.6. *Liability for Return of Capital Contribution.* The Managers shall not be liable for the return of the Capital Contributions of the Members, and upon dissolution, the Members shall look solely to the assets of the Company.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF MEMBERS

4.1. *Names and Interests of Members.* The names and Membership Interests of the Members are as reflected in Schedule I attached and incorporated by reference.

4.2. *No Management by Members.* The Members may serve as Managers if duly elected, however, Members may not take part in the management or control of the business, nor transact any business for the Company, nor shall they have power to sign for or to bind the Company unless they are an elected manager.

4.3. *Election of Managers.* The Members shall have the power by the action of a Majority in Interest to elect a Person to serve as a Manager to replace any Manager no longer able to serve in such capacity due to such Manager's death, resignation or the vote of a Majority in Interest of the Members to remove such Manager.

4.4. *Action by Members.* Any action to be taken by the Members under the Act or this Agreement may be taken (i) at a meeting of Members held on such terms, and after such notice as the Managers may establish; *provided, however*, that notice of a meeting of Members must be given to all Members entitled to vote at the meeting at least five (5) days before the date of the meeting or (ii) by written action of a Majority in Interest of the Members; *provided, however*, that any action requiring the consent of all Members under this Agreement, the Act, or other applicable law taken by written action must be signed by all Members. A Member may vote in person or by written proxy filed with the Company before or at the time of the meeting. Notice is not necessary of action proposed by written action, or an approval given by written action, unless specifically required by this Agreement, the Act, or other applicable law. Such written actions must be kept with the records of the Company.

4.5. *Limited Liability.* The Members shall not be required to make any contribution to the capital of the Company except as set forth in Article V, nor shall the Members in their capacity as such be bound by, or personally liable for, any expense, liability, or obligation of the Company except to the extent of their interest in the Company and the obligation to return Distributions made to them under certain circumstances as required by the Act. The Members shall be under no obligation to restore a deficit capital account upon the dissolution of the Company or the liquidation of any of their Membership Interests.

4.6. *Bankruptcy or Incapacity of a Member.* A Member shall cease to have any power as a Member or a Manager, any voting rights or rights of approval hereunder upon death, bankruptcy, insolvency, dissolution, assignment for the benefit of creditors, or legal incapacity; and each Member, its personal representative, estate, or successor upon the occurrence of any such event shall have only the rights, powers, and privileges of a transferee enumerated in Section 8.4 and shall be liable for all obligations of such Member under this Agreement. In no event, however, shall a personal representative or successor become a substitute Member unless the requirements of Section 8.3 are satisfied.

ARTICLE V
CAPITAL CONTRIBUTIONS AND LOANS

5.1. *Initial Capital Contributions.* Contemporaneously with the execution of this Agreement, the Members have each contributed cash to the Company in the respective amounts set forth as the initial Capital Contribution opposite their names on Schedule I attached hereto. All Members must be accredited investors.

5.2. *Additional Funds.* In the event that the Managers determine at any time (or from time to time) that additional funds are required by the Company for or in respect of its business or to pay any of its obligations, expenses, costs, liabilities, or expenditures (including, without limitation, any operating deficits), then the Managers, in their sole discretion, may borrow all or part of such additional funds on behalf of the Company, with interest payable at then-prevailing rates, from one or more of the Managers, Members, or from commercial banks, savings and loan associations, or other commercial lending institutions.

5.3. *Additional Capital Contributions.* If the Managers determine that additional funds are required for the purposes set forth in Section 5.2 of this Agreement and that all or any portion of such additional funds should be contributed to the Company as additional Capital Contributions, the Managers may propose to the Members that the Members make additional Capital Contributions. Upon unanimous agreement of the Members to make such additional Capital Contributions, the Members shall make the necessary additional Capital Contributions to the Company in proportion to their respective Percentage Interests.

5.4. *No Interest on Capital Contributions.* No interest shall be paid on any contribution to the capital of the Company.

5.5. *Capital Accounts.* A Capital Account shall be established for each Member and shall be credited with each Member's initial and any additional Capital Contributions. All contributions of property to the Company by a Member shall be valued and credited to the Member's Capital Account at such property's Gross Asset Value on the date of contribution. All distributions of property to a Member by the Company shall be valued and debited against such Member's Capital Account at such property's Gross Asset Value on the date of distribution. Each Member's Capital Account shall at all times be determined and maintained pursuant to the principles of this Section 5.4 and Treasury Regulations Section 1.704-1(b)(2)(iv). Each Member's Capital Account shall be increased in accordance with such Treasury Regulations by:

(i) The amount of Profits allocated to the Member pursuant to this Agreement;

(ii) The amount of all Gains from Capital Transactions allocated to the Member pursuant to this Agreement; and

(iii) The amount of any Company liabilities assumed by the Member or which any Company Property secures by distributed to such Member.

Each Member's capital account shall be decreased in accordance with such Treasury Regulations by:

(i) The amount of Losses allocated to the Member pursuant to this Agreement;

(ii) The amount of Company Cash Flow distributed to the Member pursuant to this Agreement;

(iii) The amount of Company Sales Proceeds and Company Refinancing Proceeds distributed to the Member pursuant to this Agreement; and

(iv) The amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

In addition, each Member's Capital Account shall be subject to such other adjustments as may be required in order to comply with the capital account maintenance requirements of Section 704(b) of the Code. In the event that the Managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed in order to comply with such Treasury Regulations, the Managers may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member upon dissolution of the Company. The Managers also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

ARTICLE VI
ALLOCATIONS, ELECTIONS, AND REPORTS

6.1. *Profits and Losses.*

(a) Except as otherwise provided herein, Profits and Losses of the Company and all items of tax credit and tax preference shall be allocated among the Members in accordance with their respective Percentage Interests. In the event the Percentage Interests vary during any Fiscal Year, Profits and Losses and all items of tax credit and tax preference for such Fiscal Year shall be allocated among the Members on a daily basis in accordance with their varying Percentage Interests during the Fiscal Year.

(b) Losses allocated pursuant to this Section 6.1 shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Account Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to this Section 6.1, the limitation set forth in this Section 6.1 shall be applied on a Member by Member basis so as to allocate the maximum possible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

6.2. *Nonrecourse Deductions.* Nonrecourse Deductions shall be allocated among the Members in accordance with their respective Percentage Interests.

6.3. *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

6.4. *Allocations Between Transferor and Transferee.* In the event of the transfer of all or any part of a Member's Membership Interest (in accordance with the provisions of this Agreement) at any time other than at the end of a Fiscal Year, or the admission of a new Member (in accordance with the terms of this Agreement), the transferring Member or new Member's share of the Company's income, gain, loss, deductions, and credits, as computed both for accounting purposes and for federal income tax purposes, shall be allocated between the transferor Member and the transferee Member, or the new Member and the other Members, as the case may be, in the same ratio as the number of days in such Fiscal Year before and after the date of the transfer or admission; *provided, however*, that if there has been a sale or other disposition of the assets of the Company (or any part thereof) during such Fiscal Year, then upon the mutual agreement of all the Members (excluding the new Member and the transferring Member), the Company shall treat the periods before and after the date of the transfer or admission as separate Fiscal Years and allocate the Company's net income, gain, net loss, deductions, and credits for each of such deemed separate Fiscal Years. Notwithstanding the foregoing, the Company's "allocable cash basis items," as that term is used in Section 706(d)(2)(B) of the Code, shall be allocated as required by Section 706(d)(2) of the Code and the Treasury Regulations thereunder.

6.5. *Gains from Capital Transactions.* Gains from Capital Transactions during any Fiscal Year shall be allocated as follows:

(a) First, to those Members whose Capital Accounts immediately prior to the Capital Transaction were negative, in an amount sufficient to increase the Capital Accounts to zero, but in the event sufficient gain is not recognized to do so, then among them pro rata in proportion to their negative Capital Accounts;

(b) Second, to the Members in an amount equal to the difference between the Company Sales Proceeds to be distributed to each of the Members as provided in Section 7.3 and the Capital Accounts of each respective Member as adjusted (if necessary) by paragraph (a) above, but in the event sufficient gain is not recognized to do so, then among the Members in an amount which, when credited to the Capital Accounts of the Members, results in the Members' Capital Accounts' bearing the same ratio to one another as the ratio of the distribution of Company Sales Proceeds to each of the Members, as provided in Section 7.3; and thereafter

(c) Any remaining gain shall be allocated among the Members in accordance with their respective Percentage Interests as of the date of the Capital Transaction giving rise to the gain.

6.6. *Contributed Property.* In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to

the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value at the time of contribution.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

The Managers in any manner that reasonably reflects the purpose and intention of this Agreement shall make any elections or other decisions relating to such allocations. Allocations pursuant to this Section 6.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or Distributions pursuant to any provision of this Agreement.

6.7. *Minimum Gain Chargeback.* If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required for allocation to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f) and 1.704-2(j)(2). This Section 6.7 is intended to comply with the minimum gain chargeback requirement in Treasury Regulation 1.704-2(f) and shall be interpreted consistently therewith.

6.8. *Member Minimum Gain Chargeback.* If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt, as defined in Treasury Regulations Section 1.704-2(i)(4), during any Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (5). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required for allocation to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4). This Section 6.8 is intended to comply with the Member Minimum Gain Chargeback requirement in Treasury Regulations Section 1.704(i)(4) and shall be interpreted consistently therewith.

6.9. *Qualified Income Offset.* If any Member unexpectedly receives an adjustment, allocation, or distribution as described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4) through (6) which causes or increases a deficit capital account balance in such Member's Capital Account (as determined in accordance with such Regulations) items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such

Member as quickly as possible, provided that an allocation pursuant to this Section 6.9 shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VI have been tentatively made as if this Section 6.9 were not in the Agreement. This provision is intended to be a "qualified income offset," as defined in Treasury Regulation Section 1.704-1(b)(2)(ii)(d), such Treasury Regulations being specifically incorporated herein by reference.

6.10. *Gross Income Allocation.* In the event any Member has a deficit Capital Account at the end of any Company Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 6.10 shall be made if and only to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VI have been tentatively made as if this Section 6.10 and Section 6.9 hereof were not in this Agreement.

6.11. *Section 754 Adjustment.* To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a Distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom such Distribution was made in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

6.12. *Curative Allocations.* The allocations set forth in Sections 6.1(b), 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 6.12. Therefore, notwithstanding any other provision of this Article VI (other than the Regulatory Allocations), the Managers shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 6.1(a). In exercising their discretion under this Section 6.12, the Managers shall take into account future Regulatory Allocations under Sections 6.7 and 6.8 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 6.2 and 6.3.

6.13. *Compliance with Treasury Regulations.* The above provisions of this Article VI notwithstanding, it is specifically understood that the Managers may, without the consent of any

Members, make such elections, tax allocations, and adjustments as the Managers deem necessary or appropriate to maintain to the greatest extent possible the validity of the tax allocations set forth in this Agreement, particularly with regard to Treasury Regulations under Code Section 704(b).

6.14. *Tax Withholding.* The Company shall be authorized to pay, on behalf of any Member, any amounts to any federal, state, or local taxing authority, as may be necessary for the Company to comply with tax withholding provisions of the Code or the Wyoming General Statutes or other income tax or revenue laws of any taxing authority. To the extent the Company pays any such amounts that it may be required to pay on behalf of a Member, such amounts shall be treated as a cash Distribution to such Member and shall reduce the amount otherwise distributable to such Member.

ARTICLE VII
DISTRIBUTIONS

7.1. *Company Cash Flow.* The Company Cash Flow for each Fiscal Year, to the extent available, shall be distributed to the Members at such times as are determined by the Managers in accordance with the Members' respective Percentage Interests.

7.2. *Company Refinancing Proceeds.* Company Refinancing Proceeds, to the extent available, shall be distributed to the Members within thirty (30) days of the Capital Transaction giving rise to such proceeds, or earlier in the discretion of the Managers, in accordance with the Members' respective Percentage Interests.

7.3. *Company Sales Proceeds.* Company Sales Proceeds, to the extent available, shall be distributed to the Members within thirty (30) days of the Capital Transaction giving rise to such proceeds, or earlier in the discretion of the Managers, in accordance with the Members' respective Percentage Interests.

7.4. *Distributions in Liquidation.* Upon liquidation of the Company, all of the Company's Property shall be sold as provided in Section 10.2 and Profits and Losses allocated accordingly. Proceeds from the liquidation of the Company shall be distributed in accordance with the provisions of Section 10.2.

7.5. *Limitation upon Distributions.* No Distribution shall be declared and paid if payment of such Distribution would cause the Company to violate any limitation on Distributions provided in the Act.

ARTICLE VIII
TRANSFER OF INTERESTS AND ADMISSION OF MEMBERS

8.1. *Restrictions on Transfer.* Without the prior written consent of a Majority in Interest of the Disinterested Members (which consent may be given or withheld in their sole discretion), (a) no Member may voluntarily or involuntarily Transfer, or create or suffer to exist any Encumbrance against, all or any part of such Member's record or beneficial interest in the Company and (b) no Person may be admitted to the Company as a Member. Except for withdrawals in connection with a Transfer of a Membership Interest permitted by this Agreement, no Member may

EXHIBIT A

withdraw from the Company without the consent of the Majority in Interest of the Disinterested Members.

8.2. *Conditions Precedent to Transfers.* Any purported Transfer or Encumbrance otherwise complying with Section 8.1 will be ineffective until the transferor and transferee of the interest furnish to the Company the instruments and assurances the Managers may request, including, without limitation, if requested, an opinion of counsel satisfactory to the Company that the interest in the Company being Transferred or Encumbered has been registered or is exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities laws. No Transfer or Encumbrance will be effective if it would result in the "termination" of the Company under Section 708 of the Code unless all of the Managers give their prior written consent to the Transfer or Encumbrance. If a Manager is a transferor, the approval required by this Section 8.2 will be the approval of a Majority in Interest of the Disinterested Members.

8.3. *Substituted Members.* No assignee or transferee of a Membership Interest shall be admitted as a substituted Member of the Company unless, in addition to compliance with the conditions set forth in Section 8.2, all of the following conditions are satisfied:

(a) The assignee or transferee has executed and delivered all documents deemed appropriate by the Managers to reflect such Person's admission to the Company and agreement to be bound by this Agreement;

(b) A Majority in Interest of the Disinterested Members shall have consented in writing to such substitution, the granting or denial of which shall be in the sole discretion of such Disinterested Members; and

(c) If requested by the Managers, payment has been made to the Company of all costs and expenses of admitting such transferee or assignee as a substituted Member.

8.4. *Rights of Transferee.* Unless admitted to the Company in accordance with Section 8.3, the transferee of a Membership Interest or a part thereof shall not be entitled to any of the rights, powers, or privileges of its predecessor in interest, except that such transferee shall be entitled to receive and be credited or debited with its proportionate share of Profits, Losses, Gains from Capital Transactions, Company Cash Flow, Company Sales Proceeds, Company Refinancing Proceeds, and Distributions in liquidation.

ARTICLE IX
BUY-SELL

9.1. *Buy-Sell.* Each of the following events shall constitute a "Buy-Sell Event" under this Agreement:

(a) The death, declaration of legal incompetence or dissolution and winding up of a Member;

(b) A judicial determination of the insolvency of any Member;

(c) Any filing of a petition or suit under the bankruptcy laws by or against a Member that is not dismissed within sixty (60) days;

(d) Any purported voluntary or involuntary Transfer or Encumbrance of all or any part of a Member's Membership Interest in a manner not expressly permitted by this Agreement;

(e) Any material breach of this Agreement by a Member, which is not cured within ten (10) days after written notice of such breach, is given to the Member by the Company;

(f) Any instance in which the spouse of a Member commences against a Member, or a Member is named in, a Domestic Proceeding; or

(g) Any withdrawal by a Member from the Company other than as may be expressly permitted by this Agreement.

9.2. *Buy-Sell Notice*. Upon the occurrence of a Buy-Sell Event, the Member to whom such event has occurred (the "Withdrawing Member"), or its executor, administrator, or other legal representative in the event of death or declaration of legal incompetency, shall give notice of the Buy-Sell Event (the "Buy-Sell Notice") to the other Members within ten (10) days after its occurrence. If the Withdrawing Member fails to give the Buy-Sell Notice, any other Member (other than a Withdrawing Member) may give the notice at any time thereafter and by so doing commence the buy-sell procedure provided for in this Article IX.

9.3. *Member's Purchase Option*. Upon the occurrence of a Buy-Sell Event, each of the Members, except the Withdrawing Member and any other Withdrawing Member, shall have an option to purchase (the "Purchase Option") the Withdrawing Member's Membership Interest at Closing on the terms and conditions set forth in this Article IX. This right will be allocated among the Members who elect to purchase (the "Purchasing Members") in the proportion they mutually agree upon, or, in the absence of agreement, in the ratio that each of the Purchasing Member's Percentage Interest bears to the aggregate Percentage Interests of all Purchasing Members. The Purchasing Members must give notice of their election to exercise their Purchase Option to the Withdrawing Member and all other Members within thirty (30) days following delivery of the Buy-Sell Notice.

9.4. *Assignment of Purchase Option*. If, at the occurrence of a Buy-Sell Event, there exist only two (2) then-current Members (including the Withdrawing Member), the Member that is not withdrawing shall have the option during the thirty (30) day period set forth in Section 9.3 to assign all or part of its Purchase Option to any Person other than the Withdrawing Member (the "Purchase Option Assignee") by notifying the Withdrawing Member and the Company of such assignment in writing. After delivery of such notice, the Purchase Option Assignee shall have the option to purchase the Withdrawing Member's Membership Interest (to the extent so assigned) on the same terms and conditions as would apply to the Member from which the Purchase Option was assigned; *provided, however*, that the Purchase Option Assignee shall not have the rights of assignment set forth in this Section 9.4. Notwithstanding any other provision of Article VIII or this Article IX, any Purchase Option Assignee which exercises its Purchase Option, as provided herein, (i) shall only have those rights as specified in Section 8.4 above, (ii) shall not be admitted as a substitute Member

without full compliance with Section 8.3 and (iii) shall be subject to the Buy-Sell restrictions imposed under this Article IX. In the event the Purchase Option Assignee does not exercise the Purchase Option, the Purchase Option Assignee shall have no further rights under this Agreement.

9.5. *Agreement on Valuation.* Unless otherwise agreed in writing by the purchaser(s) and seller within sixty (60) days of the receipt of a Buy-Sell Notice, the purchase price for the Withdrawing Member's Membership Interest shall be determined by a single appraisal of the value of the Withdrawing Member's Membership Interest, as of the date the Buy-Sell Event occurred, made by an appraiser agreed upon by the purchaser(s) and seller, which appraisal shall be final. If the parties cannot agree on a single appraiser, three (3) appraisers, one of which is selected by the purchaser(s), shall determine the purchase price one selected by the seller, and the third selected by the two appraisers. The value determined as of the date of the Buy-Sell Event by a majority of the appraisers will be final. The costs of appraisal shall be borne equally between the purchaser(s) as a group and the seller. The purchase price to be paid for the Withdrawing Member's Membership Interest will be reduced by the amount of any distributions made by the Company to the Withdrawing Member from the date the Buy-Sell Event occurred with respect to the Withdrawing Member to the Closing.

9.6. *Closing.* The closing (the "Closing") of the purchase of any Membership Interest pursuant to this Article IX shall take place on the date agreed upon by the purchaser(s) and seller, but not later than ninety (90) days after the delivery of the Buy-Sell Notice. The purchase price for each Membership Interest being purchased will be payable in full in cash at Closing. The purchase price will bear interest from the date of the occurrence of the Buy-Sell Event until the Closing at an interest rate equal to the prime rate of interest charged by Wachovia Bank, N.A., last published prior to the occurrence of the Buy-Sell Event. Upon payment of the purchase price, the Member selling its Membership Interest shall execute and deliver such assignments and other instruments as may be reasonably necessary to evidence and carry out the transfer of its Membership Interest to the purchaser(s). In connection with the sale of any Membership Interest under this Article IX, unless otherwise agreed by the purchaser(s) and seller, the purchaser(s) will assume the seller's allocable portion of Company obligations to the extent related to the transferred interest as well as the seller's individual obligations to the extent related to the transferred interest, other than income tax liabilities of the seller. Notwithstanding any other provision of Article VIII or this Article IX, any transferee, assignee, or purchaser of a Member's interest, as provided herein, shall only have those rights as specified in Section 8.4 above, and shall not be admitted as a substitute Member without full compliance with Section 8.3.

9.7. *Effect of the Rule Against Perpetuities.* Notwithstanding any other provision of this Agreement, all options and rights to purchase or sell created by this Agreement shall expire on the later of (a) twenty-one (21) years after the death of the last remaining child, living as of the date of this Agreement, of any Member who is a member of the Company at the time of its organization, or (b) twenty-one (21) years after the death of the last to die of the individual Members who are members of the Company at the time of its organization.

9.8. *Effect on Withdrawing Member's Interest.* From the date of the occurrence of the Buy-Sell Event to the earlier of (i) ninety (90) days after the delivery of the Buy-Sell Notice, or (ii) the date of the Transfer of the Withdrawing Member's Membership Interest at Closing under this

Article IX, the Percentage Interest represented by the Withdrawing Member's Membership Interest will be excluded from any calculation of aggregate Percentage Interests for purposes of any approval required of Members under this Agreement. Without limiting the generality of any other provision of this Agreement, upon the exercise of the Purchase Option, the Withdrawing Member, without further action, will have no rights in the Company or against the Company, any Member or any Manager other than the right to receive payment for its Membership Interest in accordance with this Article IX.

9.9. *Failure to Exercise Purchase Option.* In the event the Members or Purchase Option Assignee, if any, do not exercise their Purchase Options, the Withdrawing Member or its executor, administrator, or other legal representative in the event of death or declaration of legal incompetency, may transfer its economic rights in the Membership Interest of the Withdrawing Member to any Person; *provided, however* that any transferee of the Withdrawing Member's Membership Interest, as provided herein, (i) shall only have those rights as specified in Section 8.4, (ii) shall not be admitted as a substitute Member without full compliance with Section 8.3 and (iii) shall be subject to the Buy-Sell restrictions imposed under this Article IX.

ARTICLE X
DISSOLUTION AND LIQUIDATION OF THE COMPANY

10.1. *Dissolution Events.* The happening of an event of withdrawal with respect to a Member shall not cause the dissolution of the Company. The Company will only be dissolved upon the happening of any of the following events:

(a) All or substantially all of the assets of the Company are sold, exchanged, or otherwise transferred (unless the Managers notify the Members that they have elected to continue the business of the Company, in which event the Company will continue until the Managers give notice that they elect to dissolve the Company);

(b) All Members sign a document stating their election to dissolve the Company;

(c) The entry of a final judgment, order, or decree of a court of competent jurisdiction adjudicating the Company to be bankrupt and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal;

(d) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.

10.2. *Liquidation.* Upon the happening of any of the events specified in Section 10.1, the Managers, or any liquidating trustee elected by the Members, will commence as promptly as practicable to wind up the Company's affairs unless the Managers or the liquidating trustee (either, the "Liquidator") determines that an immediate liquidation of Company assets would cause undue loss to the Company, in which event the liquidation may be deferred for a time determined by the Liquidator to be appropriate. Assets of the Company may be liquidated or distributed in kind, as the Liquidator determines to be appropriate. The Members will continue to share Company Cash Flow, Profits, and Losses during the period of liquidation in the manner set forth in Articles VI and VII.

The proceeds from liquidation of the Company, including repayment of any debts of Members to the Company, and any Company assets that are not sold in connection with the liquidation will be applied in the following order of priority:

(a) To payment of the debts and satisfaction of the other obligations of the Company, including, without limitation, debts and obligations to Members;

(b) To the establishment of any reserves deemed appropriate by the Liquidator for any liabilities or obligations of the Company, which reserves will be held for the purpose of paying liabilities or obligations and, at the expiration of a period the Liquidator deems appropriate, will be distributed in the manner provided in Section 10.2(c); and thereafter

(c) To the payment to the Members of the positive balances in their respective Capital Accounts, pro rata, in proportion to the positive balances in those Capital Accounts after giving effect to all allocations under Article VI and all Distributions under Article VII for all prior periods, including the period during which the process of liquidation occurs.

10.3. *Articles of Dissolution.* Upon the dissolution and commencement of the winding up of the Company, the Managers shall cause Articles of Dissolution to be executed on behalf of the Company and filed with the Secretary of State, and the Managers shall execute, acknowledge, and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company.

ARTICLE XI
MISCELLANEOUS

11.1. *Other Activities of Members and Managers.* Any Member and its Affiliates and the Manager and its Affiliates may engage in or possess an interest in other business ventures of any nature or description, independently or with others, including, but not limited to, the real estate business in all its phases, which shall include, without limitation, ownership, operation, management, syndication, and development of real property, whether the same are competitive with the activities of the Company, or other otherwise, without having or incurring any obligation to offer any interest in such activities to the Company or any Member and neither the company nor any Member or Manager shall have any rights in or to such independent ventures or the income or profits derived therefrom by virtue of this Agreement.

11.2. *Records.* The records of the Company will be maintained at the Company's principal place of business, or at such other place selected by the Managers, provided that the Company keep at its principal place of business the records required by the Act to be maintained there. Appropriate records in reasonable detail will be maintained to reflect income tax information for the Members. Each Member, at such Member's expense, may inspect and make copies of the records maintained by the Company and may require an audit of the books of account maintained by the Company to be conducted by independent accountants for the Company.

11.3. *Reserves.* The Managers may cause the Company to create reasonable reserve accounts to be used exclusively to fund Company operating deficits and for any other valid Company

purpose. The Managers shall in their sole discretion determine the amount of payments to such reserve accounts.

11.4. *Notices.* The Managers will notify the Members of any change in the name, principal or registered office or registered agent of the Company. Any notice or other communication required by this Agreement must be in writing. Notices and other communications will be deemed to have been given when delivered by hand or dispatched by means of electronic facsimile transmission or nationally recognized air courier, or on the third business day after being deposited in the United States mail, postage prepaid. In each case, notice hereunder shall be addressed to the Member to whom the notice is intended to be given at such Member's address set forth on Schedule I to this Agreement or, in the case of the Company, to its principal place of business. A Member may change its notice address by notice in writing to the Company and to each other Member given in accordance with this Section 11.3.

11.5. *Amendments.* No provision of this Agreement or the Articles of Organization may be amended, nor will any waiver of any term of this Agreement be effective, unless in writing and signed by all Managers and by a Majority in Interest of the Members; *provided, however*, that any provision of this Agreement requiring the consent, approval, or action of more than a Majority in Interest of the Members (or any provision of the Articles of Organization effecting any such provision of this Agreement) may only be amended or waived by a written action signed by all Managers and by Members holding the required percentage of Membership Interests.

11.6. *Additional Documents.* Each party hereto agrees to execute and acknowledge all documents and writings which the Managers may deem necessary or expedient in the creation of the Company and the achievement of its purposes, including, but not limited to, Articles of Organization and any amendments or cancellation thereof.

11.7. *Representations of Members.* Each Member represents and warrants to the Company and every other Member that such it (i) is fully aware of, and is capable of bearing, the risks relating to an investment in the Company; (ii) understands that its interest in the Company has not been registered under the Securities Act or the securities law of any jurisdiction in reliance upon exemptions contained in those laws; and (iii) has acquired its interest in the Company for its own account, with the intention of holding the interest for investment and without any intention of participating directly or indirectly in any redistribution or resale of any portion of the interest in violation of the Securities Act or any applicable law.

11.8. *Domestic Proceeding Disclosure.* Any Member named in a Domestic Proceeding shall disclose in any list of assets compiled in connection with such proceeding a statement to the effect that such Member's Membership Interest in the Company is subject to certain rights of the other Members under the terms of this Agreement.

11.9. *Survival of Rights.* Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

11.10. *Interpretation and Governing Law.* When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and

vice versa. The masculine gender shall include the feminine and neuter. The Article and Section headings or titles shall not define, limit, extend or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be governed and construed in accordance with the laws of the State of Wyoming without giving effect to the conflicts of laws provisions thereof.

11.11. *Severability.* If any provision, sentence, phrase, or word of this Agreement or the application thereof to any Person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to Persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

11.12. *Agreement in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

11.13. *Tax Matters Partner.* For purposes of this Agreement, the Managers shall designate one Member as the Tax Matters Partner as required by the Code and Treasury Regulations.

11.14. *Creditors Not Benefited.* Nothing in this Agreement is intended to benefit any creditor of the Company or of any Member. No creditor of the Company or of any Member will be entitled to require the Managers to solicit or accept any loan or additional capital contribution for the Company or to enforce any right which the Company or any Member may have against a Member, whether arising under this Agreement or otherwise.

IN WITNESS WHEREOF, the undersigned, being all of the Managers and Members of the Company, have caused this Agreement to be duly adopted by the Company and do hereby assume and agree to be bound by and to perform all of the terms and provisions set forth in this Agreement.

FOREST CONSERVATION 2012, LLC

By: _____
Ed Lloyd, Manager

SCHEDULE I - Updated membership as of December 7, 2012

		Ownership
Gary	Appel	5.52%
Ray	Bouley	5.98%
Ray	Branch	7.36%
Jarrett	Clay	8.28%
Jesse	Garrett	5.52%
Tim	Goss	6.44%
Dennis	Hall	5.06%
Ashley	Hooks	6.44%
Steve	Kezman	4.14%
Michael	Knight	5.52%
Ed	Lloyd	7.55%
Mark	Losby	7.36%
Billy	Mitchell	6.44%
Lee	Powell	11.04%
Larry	Price	7.36%
		100.00%

EXHIBIT A

Forest Conservation 2012

	First Name	Last Name	Contribution Received
	LOOK AT ALL OF 2011 MEMBERS		
1	Gary	Appel	30,000
2	Ray	Bouley	32,500
3	Ray	Branch	40,000
4	Jarrett	Clay	45,000
5	Jesse	Garrett	30,000
6	Tim	Goss	35,000
7	Dennis	Hall	27,500
8	Ashley (Shawn)	Hooks	35,000
9	Steve	Kezman	22,500
10	Michael	Knight	30,000
11	Ed	Lloyd	41,052
12	Mark	Losby	40,000
13	Billy	Mitchell	35,000
14	Lee	Powell	60,000
15	Larry	Price	40,000
			543,552

EXHIBIT A

Capital Contribution Including Fee

Gary	Appel	30,000
Raymond	Bouley	32,500
Vernon	Branch	40,000
Christopher	Brown	50,000
James	Carson	30,000
Jarrett	Clay	45,000
Jesse	Garrett	30,000
Timothy	Goss	35,000
Dennis	Hall	27,500
Ashley	Hooks	35,000
Steve	Kezman	22,500
Michael	Knight	30,000
Paul	Lloyd	16,802
Mark	Losby	40,000
Michael	Malloy	50,000
William	Mitchell	35,000
Leslie	Powell	60,000
Larry	Price	40,000
		649,302

EXHIBIT B

Percentage with total contribution including fee

Gary	Appel	4.620346%
Raymond	Bouley	5.005375%
Vernon	Branch	6.160462%
Christopher	Brown	7.700577%
James	Carson	4.620346%
Jarrett	Clay	6.930519%
Jesse	Garrett	4.620346%
Timothy	Goss	5.390404%
Dennis	Hall	4.235317%
Ashley	Hooks	5.390404%
Steven	Kezman	3.465260%
Michael	Knight	4.620346%
Paul	Lloyd	2.587702%
Mark	Losby	6.160462%
Michael	Malloy	7.700577%
William	Mitchell	5.390404%
Leslie	Powell	9.240692%
Larry	Price	6.160461%
		100.000000%

EXHIBIT B

		Percentage After Fee
Gary	Appel	4.507388%
Raymond	Bouley	4.921332%
Vernon	Branch	6.163164%
Christopher	Brown	7.818939%
James	Carson	4.507388%
Jarrett	Clay	6.991051%
Jesse	Garrett	4.507388%
Timothy	Goss	5.335276%
Dennis	Hall	4.093445%
Ashley	Hooks	5.335276%
Steven	Kezman	3.265557%
Michael	Knight	4.507388%
Paul	Lloyd	3.091151%
Mark	Losby	6.163164%
Michael	Malloy	7.818939%
William	Mitchell	5.335276%
Leslie	Powell	9.474714%
Larry	Price	6.163164%
		100.000000%

EXHIBIT C

Capital Account After Fee

		Total	Tax Service Fee	After Fee
Gary	Appel	30,000	5,500	24,500
Ray	Bouley	32,500	5,750	26,750
Ray	Branch	40,000	6,500	33,500
Chris	Brown	50,000	7,500	42,500
James	Carson	30,000	5,500	24,500
Jarrett	Clay	45,000	7,000	38,000
Jessee	Garrett	30,000	5,500	24,500
Tim	Goss	35,000	6,000	29,000
Dennis	Hall	27,500	5,250	22,250
Ashley	Hooks	35,000	6,000	29,000
Steve	Kezman	22,500	4,750	17,750
Michael	Knight	30,000	5,500	24,500
Ed	Lloyd	16,802		16,802
Mark	Losby	40,000	6,500	33,500
Mike	Malloy	50,000	7,500	42,500
Billy	Mitchell	35,000	6,000	29,000
Lee	Powell	60,000	8,500	51,500
Larry	Price	40,000	6,500	33,500
		649,302	105,750	543,552

EXHIBIT C

BB&T

[redacted]
FOREST CONSERVATION 2012 LLC
2816 DOGWOOD AVE
GILLETTE WY 82718-2001

Your account statement

For 12/31/2012

Contact us

BBT.com

(800) BANK-BBT or
(800) 226-5228

■ BUSINESS VALUE [redacted]

Account summary

Your previous balance as of 11/30/2012	[redacted]
Checks	
Other withdrawals, debits and service charges	
Deposits, credits and interest	
Your new balance as of 12/31/2012	

Checks

DATE	CHECK #	AMOUNT($)
12/21	1001	[redacted]

DATE	CHECK #	AMOUNT($)
12/31	1002	[redacted]

DATE	CHECK #	AMOUNT($)
12/31	1003	[redacted]
Total checks		[redacted]

Other withdrawals, debits and service charges

DATE	DESCRIPTION	AMOUNT($)
12/07	OUTGOING WIRE TRANSFER WIRE REF# [redacted]	[redacted]
Total other withdrawals, debits and service charges		

Deposits, credits and interest

DATE	DESCRIPTION	AMOUNT($)
12/03	COUNTER DEPOSIT	[redacted]
12/03	COUNTER DEPOSIT	
12/04	COUNTER DEPOSIT	
12/07	COUNTER DEPOSIT	
Total deposits, credits and interest		

Exhibit 6
Respondent's Reply & Response Brief

[redacted]
FOREST CONSERVATION 2012 LLC
2816 DOGWOOD AVE
GILLETTE WY 82718-2001

Your account statement

For 10/31/2012

Contact us

BBT.com

(800) BANK-BBT or
(800) 226-5228

Give The Perfect Gift!

There's nothing like knowing you've given the perfect gift. With the BB&T Visa® Gift Card, you can be confident your family, friends, clients or employees can purchase whatever they want, whenever they want.

- Available from $25 to $500
- Can be used wherever Visa® is accepted
- Great for any gift giving occasion

Visit BBT.com/giftcard for more information.

Cards are issued by BB&T Financial, FSB, a subsidiary of BB&T Corporation. Member FDIC.

■ BUSINESS VALUE [redacted]

Account summary

Your previous balance as of 09/28/2012	[redacted]
Checks	
Other withdrawals, debits and service charges	
Deposits, credits and interest	
Your new balance as of 10/31/2012	

Deposits, credits and interest

DATE	DESCRIPTION	AMOUNT($)
10/01	COUNTER DEPOSIT	[redacted]
10/01	COUNTER DEPOSIT	
10/04	DEPOSIT	
Total deposits, credits and interest		

BB&T

[redacted]
FOREST CONSERVATION 2012 LLC
2816 DOGWOOD AVE
GILLETTE WY 82718-2001

Your account statement

For 11/30/2012

Contact us

BBT.com

(800) BANK-BBT or
(800) 226-5228

Traveling for Business? Pack Travel Insurance!

Travel is essential to many businesses. Prospects are met. Deals are negotiated. Contracts are signed.

But what if something goes wrong? What if an employee becomes ill and cannot travel? Or all flights are cancelled? Travel mishaps can make a challenging situation seem even worse.

Protect your business development investment with travel insurance, whether it s one key trip or many trips throughout the year.

Visit BBT.com/travel2 today to learn more and get a quote.

▪ BUSINESS VALUE 150 0005201200727

Account summary

Your previous balance as of 10/31/2012	[redacted]
Checks	
Other withdrawals, debits and service charges	
Deposits, credits and interest	
Your new balance as of 11/30/2012	

Checks

DATE	CHECK #	AMOUNT($)
11/30	1000	[redacted]
Total checks		

Deposits, credits and interest

DATE	DESCRIPTION	AMOUNT($)
11/02	COUNTER DEPOSIT	[redacted]
11/14	COUNTER DEPOSIT	
11/14	COUNTER DEPOSIT	
11/14	COUNTER DEPOSIT	
11/15	COUNTER DEPOSIT	
11/19	COUNTER DEPOSIT	
11/20	COUNTER DEPOSIT	
11/26	COUNTER DEPOSIT	
11/26	COUNTER DEPOSIT	
11/27	COUNTER DEPOSIT	

continued

■ BUSINESS VALUE [redacted] (continued)

DATE	DESCRIPTION	AMOUNT(S)
11/30	COUNTER DEPOSIT	[redacted]
Total deposits, credits and interest		[redacted]

BB&T Wire Transfer Operations

[redacted]
FOREST CONSERVATION 2012 LLC
2816 DOGWOOD AVE
GILLETTE WY 82718-2001

We have completed this wire transfer request. Your BB&T account has been debited for the net amount shown below.

****

TRN DATE	20121207	TRN NUM	[redacted]
AMOUNT	[redacted]	ACCOUNT # DDA -	[redacted]
REFERENCE #			
DATE	12/07/2012		
TIME	14:25:39		
ORIGINATOR	FOREST CONSERVATION 2012 LLC 2816 DOGWOOD AVE GILLETTE WY 82718-2001		
BENEFICIARY BANK	TIB THE INDEPENDENT BANKERS BANK		
BENEFICIARY BANK #	[redacted]		
BENEFICIARY NAME	OAK WORTH CAPITAL BANK		
BENEFICIARY ACCOUNT	1021807		
ORIGINATOR TO BENE INFO	FFC PINEY CUMBERLAND HOLDINGS, LLC/ OCB WEALTH MGMT AS ESCROW AGENT/ ACCT# [redacted]		
ORIGINATING BANK INFORMATION			

****

Thank you for banking with BB&T. Please contact your local BB&T financial center or call 1-800-BANK BBT (1-800-226-5228) for questions regarding this wire transfer.

BB&T, Member FDIC.

Exhibit 7
Respondent's Reply & Response Brief

Reference: [redacted]

FOREST CONSERVATION 2012 LLC
8045 COPRORATE CENTER DR. SUITE 100
CHARLOTTE, NC 28226

1000
56-112/531

11/28/12
Date

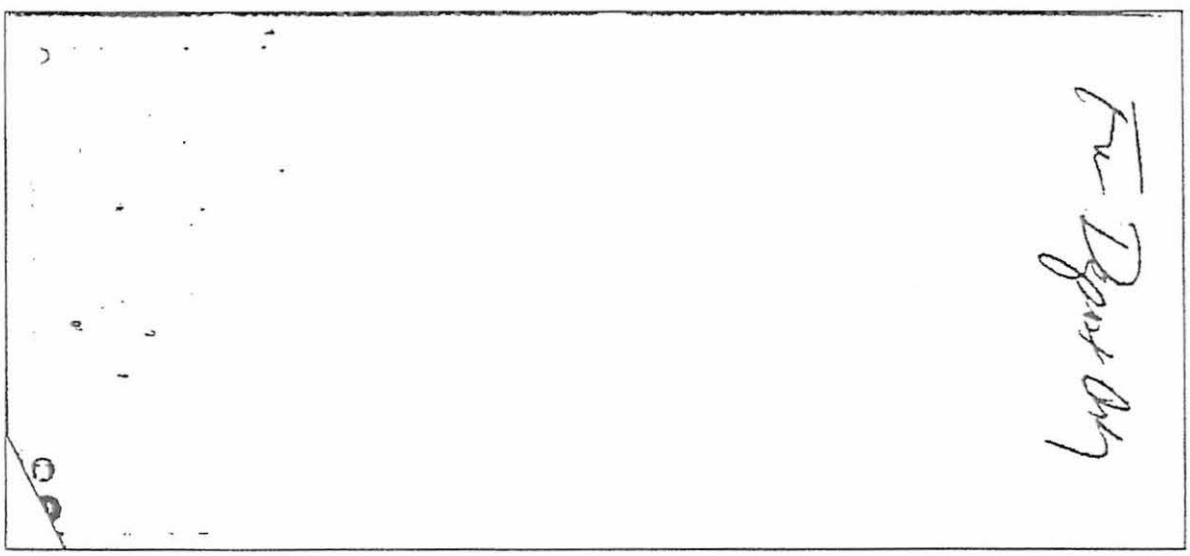
PAY to the order of Corporate Solutions Inc $ 2,000.00

Two Thousand and 00 Dollars

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

For LLC Work Signature [redacted]

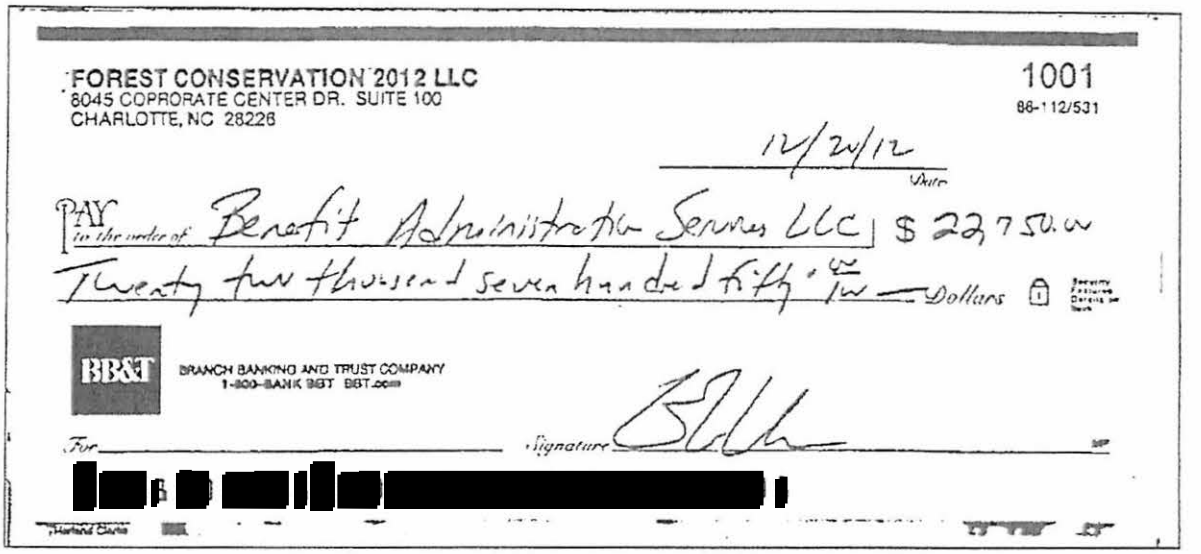
[redacted]



Date	20121130	Account Number	[redacted]
Amount	200000	CR-DR	D
Serial Number	0000001000	Transaction Link	[redacted]

Exhibit 8
Respondent's Reply & Response Brief

Reference: [redacted]



FOREST CONSERVATION 2012 LLC
8045 COPRORATE CENTER DR. SUITE 100
CHARLOTTE, NC 28226

1001
86-112/531

12/24/12
Date

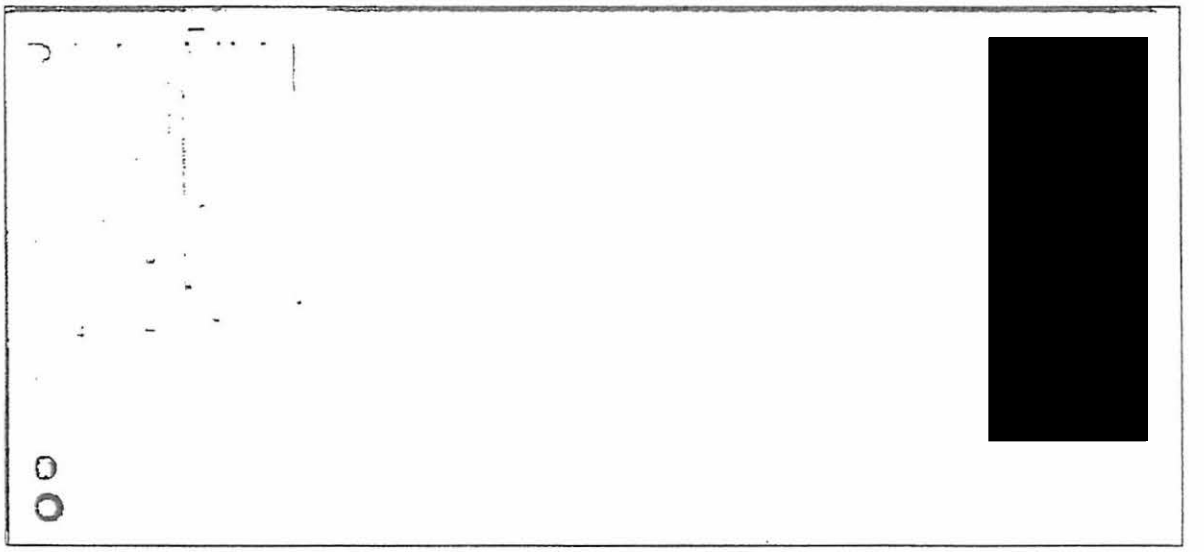
PAY to the order of Benefit Administrative Services LLC $ 22,750.00

Twenty two thousand seven hundred fifty & 00/100 Dollars

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

For [redacted] Signature [signature]

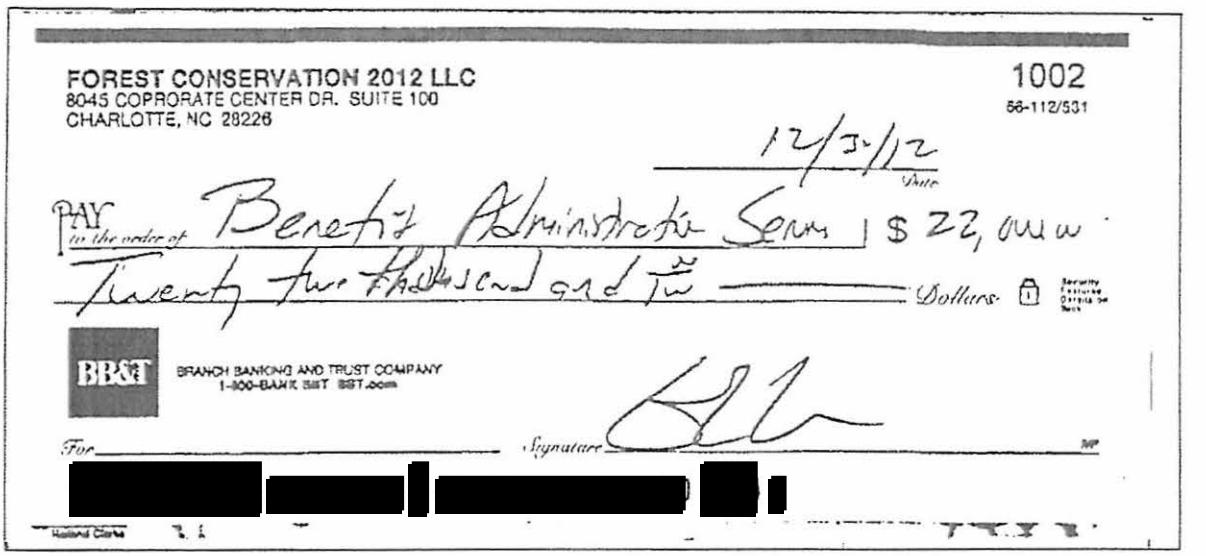
[redacted]



[redacted]

Date	20121221	Account Number	[redacted]
Amount	2275000	CR-DR	D
Serial Number	0000001001	Transaction Link	[redacted]

Reference: [redacted]



FOREST CONSERVATION 2012 LLC
8045 COPRORATE CENTER DR. SUITE 100
CHARLOTTE, NC 28226

1002
56-112/531

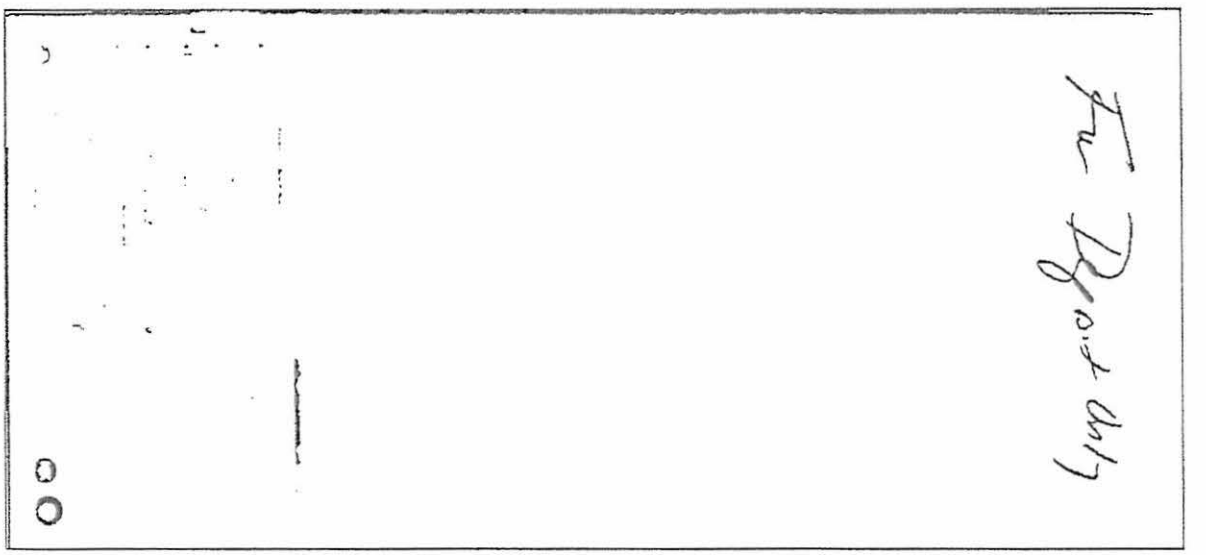
12/31/12
Date

PAY to the order of Benefit Administrative Servs | $ 22,000.00

Twenty Two Thousand and 00 Dollars

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT bbt.com

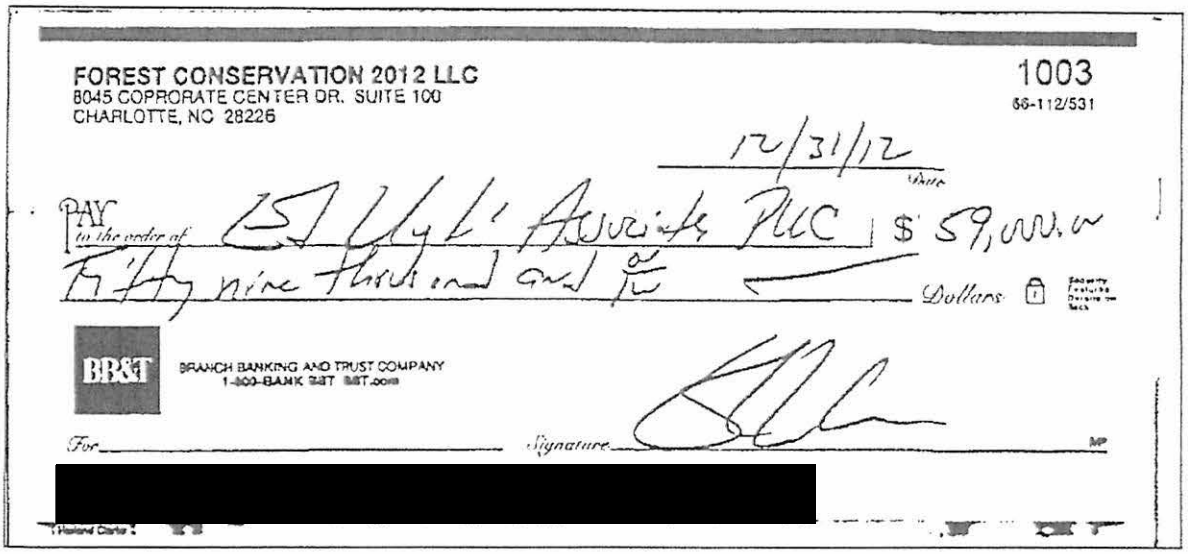
For [redacted] Signature [redacted]



For Deposit Only

Date	20121231	Account Number	[redacted]
Amount	2200000	CR-DR	D
Serial Number	0000001002	Transaction Link	[redacted]

Reference: [redacted]



FOREST CONSERVATION 2012 LLC
8045 COPRORATE CENTER DR. SUITE 100
CHARLOTTE, NC 28226

1003
56-112/531

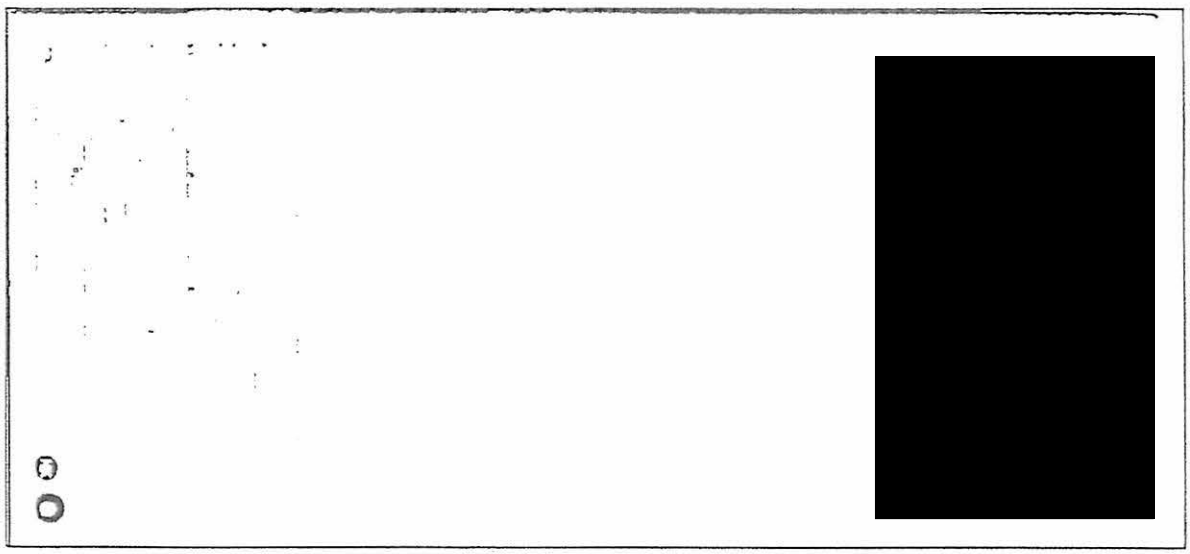
12/31/12
Date

PAY to the order of GJ Gylé Associates PLLC | $ 59,000.00

Fifty nine thousand and 00/100 Dollars

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT bbt.com

For [redacted] Signature



Date	20121231	Account Number	[redacted]
Amount	5900000	CR-DR	D
Serial Number	0000001003	Transaction Link	[redacted]

651112

Partner# 13

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2012

For calendar year 2012, or tax year beginning _____ ending _____

Partner's Share of Income, Deductions, Credits, etc. ▶ See back of form and separate instructions.

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0099

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

[redacted]

Exhibit 9 Respondent's Reply & Response Brief

SHARPLESS STAVOLA

FREDERICK K. SHARPLESS
Attorney at Law
Direct Dial: 336-333-6384
FKS@sharpless-stavola.com

December 28, 2015

Sent via fax (202) 772-9324 and US mail

Mr. Brent J. Fields
Secretary of Commission
Securities and Exchange Commission
100 F Street N.E.
Mail Stop 1090
Washington, DC 20549

Re: In the Matter of Paul Edward "Ed" Lloyd, Jr., CPA; Administrative Proceeding File No. 3-16182; Our File No. 10965

Dear Mr. Fields:

I enclose an original and three copies of the following:

1. *Respondent's Response and Reply Brief*

2. *Exhibits 1-9 to Respondent's Response and Reply Brief*

A copy of each of these documents are being served on opposing counsel and the ALJ via e-mail and US mail, as noted on the Certificate of Service.

Sincerely yours,

Frederick K Sharpless (by WBB)

Frederick K. Sharpless

FKS:lcc
Enclosure
cc: Honorable Cameron Elliot (via e-mail and US mail)
Mr. Robert F. Schroeder/Mr. Brian Basinger (via e-mail and US mail)
Mr. Alex Rue (via e-mail and US mail)
Mr. Woody Webb (via e-mail and US mail)
Mr. Ed Lloyd (via e-mail)