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September 20, 2023

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Re: Tax Opinion regarding the tax treatment of certain charitable deductions of Volcanic Ash and other minerals ("Minerals") for AGAMEMNON LLC (hereinafter "Company") and its proposed partnership Series LLC members (hereinafter "Series Partners"), collectively referred as the "Donor" which contemplates making a donation to a 501 (c)(3) charity.

BACKGROUND

It is our understanding, as communicated to us by company representatives and confirmed by our research, that there is a global shortage of fertilizers throughout the world which causes food shortages and in turn higher prices generally. As a result, there is a call for fertilizer innovations and alternatives which enhance the "nutrition per acre" capabilities of various countries. This idea is reflected in the announcement by the Biden Administration of $500 million in grants geared towards increasing the fertilizer production in the United States, thus combating rising prices (for fertilizer) to farmers and diversifying the choice of farmers worldwide, to promote a secure and sustainable world economy.

It is evident that the war in Ukraine is having a major impact on the global supply of agricultural fertilizers and potentially undermining food security around the world. Russia and Belarus were two of the world's largest sources of mineral fertilizers but after the invasion of Ukraine in February of 2022, many nations including the United States and the European Union (EU) imposed sanctions on these countries The World Economic Forum 2023 in its Global Risk Report ranked a looming food supply crisis as one of the top four threats facing the world.

It is well recognized that Volcanic Ash contains dozens of minerals, including magnesium, calcium, sodium, sulfur, copper, iron, zinc, quartz, cristobalite and tridymite, and that these minerals thus make it a multi-nutrient soil amendment alternative or enhancement to traditional fertilizer. It is also used in toothpaste, cosmetics, skin creams and in a multitude of other ways. [1]

Scope of this Opinion

This opinion is based upon the following assumptions:

1. That the documents given to us in connection with this opinion are true, accurate and complete and reflect the actual proposed transaction and that there are no other understandings among principals not otherwise disclosed.
2. That there have been no changes or modifications in or to the documents that have been referenced herein and relied upon which would materially impact or affect this opinion, either before or after the opinion is dated.
3. That for purposes of this opinion we *do not consider* the validity or accuracy of the appraisals provided to us by the Company or its principals. The representations in the appraisals concerning fair market value of the Minerals as charitable contributions are solely the province of the appraisers retained by the Company.
4. That the Company and Donor of the Minerals has held the Minerals not as inventory, but as a capital asset for investment, and that such Minerals are considered personal property when donated to the charity.
5. That the Donor does not own the charity and that the transactions between the Donor and the charity are at arm's length. Furthermore, that there are no other arrangements, whether verbal or written with any party, related or unrelated to the donor or principals involved which indicate that the dealings with the charity are not at arms length and fully disclosed.

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[1] Williams, Matt "What are the benefits of Volcanoes?" Universe Today 2018, 12-18

6. The Donor meets the long-term holding period requirement for a capital gain donation. The Donor's long term holding period per section IRC 1223 (2) refers to assets held over one year, including the holding period of the assets in the hands of the contributing partner. That the Donor is not receiving any compensation by the partnership, or any party related to this transaction that would influence whether or not the donor should make or not make the charitable contribution planned herein.
7. That all entities are in good standing and authorized to entered into this agreement.
8. That the Donor is contributing all its interest in the described Minerals thus conveyed with no reservation of rights or other conditions or restrictions on use.
9. The receiving charity has agreed to use the minerals for its related purposes for a period of 3 years before any disposition of the donation, so that the Donors do not have to recapture the donation.
10. That the Donee charity meets the qualification test under IRC 170 as a IRC 501 s(c)(3) as a qualified entity and that the charity concurs with assumptions contained herein with respect to its limitations and use of materials as required by law and further will file all lawful and required forms acknowledging same.
11. That this opinion relates only to the charitable contribution of Volcanic Ash and its endemic minerals therein as described in the appraisal report and not other assets mentioned in this opinion that may be considered for acquisition and contribution at some later date.
12. This opinion does not cover non-tax matters, structure of the Agamemnon LLC partnership and amendments thereto, securities laws[2] or other operational matters that do not directly relate to the tax issues addressed in this opinion. Investors are advised to consult with their own advisors concerning such matters and to make inquiry of the Managing Member concerning such matters.

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[2] Investors in this proposed partnership should be "accredited investors" only with in the purview of the Securities Act of 1933 and regulation D thereof and agree that they have consulted their own advisors with respect to the propriety of this investment and have not relied upon any representations contained herein rather express or implied.

Structure of the Transaction

As we understand the transaction, Agamemnon LLC as the contributing partner has contributed Volcanic Ash minerals to the Company/Series partners and perhaps may contribute other assets, such as real property, land lease contracts, mining rights, claims, intellectual property, and or/ other good and valuable assets to the Series Partnership/ Company under IRC Section 1223(2). Furthermore, the Company will at some time likely make charitable contributions of Volcanic Ash (and possibly other assets) to a charity qualifying under IRC 501 (c) (3).[3] This initial and possible subsequent transfers will be made by a deed of gift and the donation will be free, clear and unencumbered. Likewise, any subsequent gift of the product to the charity will be without any requirement that it pay for mining the existing Volcanic Ash and/ or its minerals or be responsible for the transportation cost related to the product. A net charitable contribution would be taken after considering these costs.

Additionally, each investor, through his series LLC shall be entitled to rescind his investment (notwithstanding the intention of the company to make a charitable contribution for 2023) by 12/27/2023, for any reason whatsoever. No investor shall have the right to receive any cash distribution from the company after 12/31/2023, except in the event of the company's liquidation, (unless otherwise directed by the Managing Member) provided that in any event no distributions shall be made for a period of two years after 12/31/2023. At the end of the two-year period, any distributions from the company shall be made at the sole discretion of the Managing Partner, from time to time. As of 12/27/2023 each investor must either consent to their respective Series making the charitable contribution and in that event, each partner, as of 12/31/2023 shall be deemed terminated from the company. If an investor does not consent to making the charitable contribution, that partner thereafter, shall continue as a partner with the company and there shall be allocated to each investor a pro-rate share of the company, to the extent of fifty percent of the company assets in the LLC and each investor thereafter shall have the right to participate in his or her share of the distributions from the company. (at the discretion

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[3] This opinion only relates to the contribution of Volcanic Ash transaction and not the other possible assets that may be contributed to the Series Partnership.

of the Managing Partner). All investors shall form series LLCs in order to participate in the company at the time they make their cash contributions.

The Company anticipates members will make a financial contribution from the Series partners to be used for various investments by the Company. It is anticipated that the Company will enter into an equity lease with Mineral Tech among its ventures, and that it also will continue to invest in real estate, mineral claims, mining claims, equipment and intellectual property.

The charitable contribution by the Donor/or Series will create a charitable deduction which will be allocated among the Series members and its LLC members that subscribe to the Series partnership in proportion to their respective capital contributions. This structure will provide a charitable deduction to its members (limited to 30% of AGI plus carry-over deductions). The net result of this transaction will be to endow the charity with valuable assets that can be put to use immediately and in the long term. The charitable donation is an incentive for the members to participate as Series partners and meet the Company goals of strategic asset stewardship, while contributing to the betterment of society.

We have identified numerous tax issues in connection with transaction which are identified as follows:

*Charitable Purpose of the Transaction***:**

Charitable donations are encouraged by the tax law. Enhanced charitable purposes and activities in many respects relieve the government from obligations that can be undertaken by a qualified charity. Hence, a deduction is allowed for such contributions, based on a variety of complex rules set forth in Section 170 of the Internal Revenue Code and its regulations. Donated assets held for more than one year and that qualify for long term capital gain (and contributed to a qualifying charity) are allowed to be deducted by the Donor (as allocated among the Series members) at the fair market value of the asset, rather than at its cost. Under *Skripak v. Commissioner, 84 T.C.22*, no independent business purpose is necessary to qualify a charitable deduction. As the court stated, "The deduction for charitable contributions provided by Section 170 (of the Internal Revenue Code) is a legislative subsidy for purely personal (as opposed to

business reasons) expenses of a taxpayer." In the *Estelle Morris Trusts v. Commissioner, at 51 T.C. 20, 38-39 (1968)* the court stated that ". . . doctrines such as business purpose and an objective of economic profit are of little, if any, significance in determining whether petitioners have made charitable gifts." Further in in *DeWitt v. United States 383 F. 2d 542 court of appeals 5th Circuit 1967.* the court opined that ". . .a taxpayer's desire to avoid or eliminate taxes by contributing cash or property to charities cannot be used as a basis for disallowing the deduction for that charitable contribution. See also, *Waller v. Commissioner 40 F. 2d 892 Circuit Court of Appeals 5th Circuit 1930.*

In *Weitz vs. Commissioner, T.C. Memo 1989-99* where the taxpayer participated in a tax avoidance program whose sole purpose was to buy medical products at distressed prices and contribute the property for a qualified charity, the court held that "*the taxpayer's lack of any nontax purpose in entering into the transactions was not a deterrent to the taxpayer's entitlement to a charitable contribution deduction" See also,* *Grodt & McKay Realty, Inc. v. Commissioner [Dec. 38,472], 77 T.C. 1221, 1236 (1981).* "*The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether to avoid them, by means which the law permits, cannot be doubted.*" Also, in *Reri Holdings I LLC. V. Commissioner of Internal Revenue* 2014 TC Memo 99. "*Lastly, petitioner notes that, on numerous occasions, the Court has affirmed that a taxpayer who acquires property for the sole purpose of making a charitable contribution is entitled to a section 170 deduction for the contribution.*"

It should be noted that the Internal Revenue Service has been aggressively auditing charitable partnership structures, such as conservation easements and partnerships such as those contemplated by this opinion. As a result, it should be expected that the IRS will most likely audit this partnership and make proposed adjustments concerning a variety of matters that it may consider to be inconsistent with the law and regulations as they are refined and propagated from time to time. Such audits will most likely also involve the individual participants in the partnership and a variety of tax, interest and perhaps penalties may be proposed by IRS as a result of any investment by an interested party. It is not unusual for such disputes to occur and for appeals of IRS positions to take place which can drag on for years. Investors should be aware of the current litigious environment and the possibility of such an audit.

Business Purpose Doctrine:

Although no business purpose must exist to make the charitable contribution from the partnership, a non-tax business purpose must exist to form and take advantage of the partnership form. We do not believe that challenging the choice of which entity to use is a strong argument for the IRS under the business purpose doctrine since IRS has used that argument as a two-edged sword. Therefore, the choice of the partnership form (LLC) would therefore seem safe from IRS attack. Likewise, the fact that the Company is engaged in the leasing of assets, along with investment in other assets, also justifies a partnership form and immunity from the business purpose doctrine since important non-tax purposes are being achieve by the Company. (i.e. limited liability for partners and the organized accumulation of capital for making large investments). Series investors have the benefit of not only receiving a charitable deduction but in benefiting from their capital contributions, (pro-rata) in the partnerships. and on-going success in its leasing and investment ventures. [4]

In the present case, not only is the contribution to charity based solely on a charitable purpose, but the Company has provided a mechanism to enhance its business presence by raising funds from members that may benefit in the future by related investments that indeed have a business and profit motive, unrelated to the charitable contribution itself.

Mineral interest as Capital Assets:

The question arises as to whether the Minerals are capital assets qualifying under IRC Section 1221 for capital gain treatment. [5] The statute concerning the definition of capital assets reads as follows:

26 U.S. Code Section 1221 provides that:

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[4] Under the terms of the Company's operating agreement, investors are prohibited from making partnership withdraws for 2 years from the date of investment. Continuing partners thus, preserve the investment integrity of the partnership. See also, *Cherry v. United States, 264 F. Supp.969 (C.D. Cal. 1967)* and *Bijou Park properties Inc. v. Commissioner, 47 T.C. 207 (1966).*

[5] A factual representation has been made to counsel by the Company that the minerals and real estate thereon have been held for more than one year; thereby qualifying for long term capital gain, if Minerals are in fact capital assets.

(a)IN GENERAL For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

> ***(1)*** *stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;*
> ***(2)*** *property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business; . . ."*

A capital asset includes all kinds of property, movable, immovable, tangible, intangible, fixed or circulating. Thus, land and buildings, plant, machinery, furniture, jewelry, goodwill, tenancy rights, patents, trademarks, shares, debentures, etc. are capital assets.

Generally, real property includes the land, and anything attached to it such as buildings, and under the surface, such as minerals. Minerals can also be conveyed separately from the land by mineral deed or gift. A typical conveyance of land by deed presumptively includes minerals unless specifically reserved by the grantor, as is the case under Utah law, [6] If Minerals are sold by mineral deed separate from the land, they become personal property by being severed.[7] Under such circumstances, it is necessary to determine whether not the personal property is considered inventory (for sale in the ordinary course of business) or is a capital asset. This opinion assumes (as represented to us by the Company) that the original Donor did not sell Minerals as a business on his property and that his real estate was simply held for investment. The Company has also represented this to be accurate with respect to the Company itself. Accordingly, if so, then the contribution of assets by the contributing partner ADDA LLC would be considered a capital asset and if held for more than one year (which has been represented to us) would be considered a long term capital gain asset. In effect, it would be entitled to a fair market deduction when the Company eventually makes the donation to charity notwithstanding the fact that the assets are now considered personal property under Utah law. See IRC Section 1223 (2).

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[6] U.C.A 57-1-1

[7] 26 CFR Section 1.856-10 (relating to REITS)

Tacking of holding period when contributed to partnership:

Section 723 of the Code provides that a partnership's basis in contributed property is generally the contributing partner's adjusted basis in the property.[8] Section 1223 (2) of the Code provides that the partnership's holding period for contributed assets includes the holding period of the assets in the hands of the contributing partner.[9] Therefore, the transfer by ADDA LLC, the contributing partner, to the Company of the Minerals would result in the "tacking" of the holding period to the partnership of the ADDA's basis with no gain being realized.[10] Therefore the holding period of the contributing partner, if over one year, would carry-over to the Company and the Minerals would retain their character as a long term capital gain asset – wherein when the minerals are contributed to the charity; they would be valued at fair market value in order to calculate the charitable deduction. Additionally, under IRC Section 721 (a) such transfers to the contributing partner are tax free, in general. The contributing partner receives a credit to his capital account equal to the fair market value of the contributed property as a new member of the partnership. Since the Company is going to contribute the Minerals to the charity, there is no gain to the partnership under IRC Section 704(c)(1)(A). Likewise, the charitable contributions are allocated among the existing partners on a pro-rata basis. Charitable contributions by partnerships are not deductible in computing the taxable income of the partnership but are taken into account separately by the partners under IRC Section 702(a)(4). Thus, the partnership is a flow-through entity directly to the partners. Generally, a partner in a partnership can only deduct losses to the extent of the partner's tax basis; however, this limitation does not apply to charitable contributions of the partnership (even if such contributions exceed the partners basis under Treas. Reg. Section 1. 704-1(d)(2)). See also, Private Letter Ruling 8405084.

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[8] Except for investment company rules (which don't apply) and any liability relief – which there is none.

[9] Excluding investment company rules under Code section 721 (b), disguised sale adjustments and relief of liabilities.

[10] This again is qualified by the disguised rules and relief of liability rules discussed later.

It is also be noted that in order for tacking to be applied, it is necessary to meet the business purpose rule, (discussed above) and we believe that test is clearly met in the formation, operation and conduct of the Company along with its Series partners.

Disguised Sales of Partnership Property:

The IRS can re-characterize any transaction as a disguised sale under IRC 707 (a)(2)(B). In its simplest form, if a partner transfers property to the partnership and there is a related transfer of money to the partner—then the two transactions together can be considered a disguised sale of property. Therefore, the question may be raised as to whether the initial transfer of assets (Volcanic Ash) by ADDA LLC, constitutes a sale of its property?

The IRS regulations under 1.707-3(b)(2) provides that "among the fact and circumstances that tend to prove the existence of a "disguised sale" of property are the following:

1. The timing and amount of the subsequent transfer are determinable with reasonable certainty at the time of the earlier transfer;
2. The transferor had the legally enforceable right to the subsequent transfer;
3. That any person has made or is legally obligated to make contributions to the partnership in order to permit the partnership to make the transfer of money or other considerations;
4. That any person has agreed to loan money to the partnership to enable the partnership to make the transfer;
5. That the partnership is obligated to incur debt to acquire the money;
6. That the partnership holds money beyond the reasonable needs of the partnership;
7. That the partnership distributions, allocations or control of partnership operations is designed to effect a change in the burdens and benefits of the ownership of property;

The IRS regulations apply a "facts and circumstances test". Under the test of the disguised sale provisions, the transfer of Volcanic Ash does not seem to meet that test, as the facts have been represented to us. First, no money is being received by ADDA LLC for the transfer. Second, distributions in any form are prohibited from being made by the Company

during the first two years after its funding by the Series investors. Third, Series investors are not legally required to make investments in the Company. Fourth, the contributed assets are being transferred to charity for a charitable purpose--not sold by ADDA LLC to the Company. This charitable purpose is uncharacteristic of sale elements.

Therefore, based upon the represented facts, clearly the transfer of assets by ADDA LLC to the Company and its recontribution to charity does not meet the test of a disguised sale. Notwithstanding the Company has restricted any distributions to investors for a period of two years in order to qualify for the "safe harbor" provisions. (applicable to disguised sales)

Limitations of Deductions at the Individual Level:

In the case of charitable contributions allocated to an individual partner of a partnership, the Internal Revenue Code imposes limitations on deductions in any tax year. The deductions for an individual's charitable contributions are limited to prescribed percentages of his contribution base, which is the individual's adjusted gross income without any deduction for net operating loss carrybacks (IRC Section 170(b)(1)(F)).

Since the Minerals contributed to the 501 (c) (3) are tangible personal property, other limitations apply if the deduction is more than the basis in the asset. This is the case of the Company, which sells, trades or otherwise disposes of the property after the year it was contributed but within 3 years of the contribution, and the charity does not provide a written statement such as form 8282 part IV signed by an officer of the organization under penalty of perjury that either: certifies that the property was substantial and related to the organizations purpose, or certifies that its intended use of the property became impossible. This opinion is based upon our understanding that the conditions set forth will be met. Under IRC 26 U. S. Code Section 170 (relating to charitable deductions) limitations are sets forth on the amount of the deduction. Code Section IRC 170 (b)(1)(C) capital gain property is limited to 30% of the taxpayer's AGI for each year, but a carry-over shall be allowed for 5 years to use up the deduction. [11] IRC Section 170(d)(1)(c).

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[11] This deduction is also subject to the further limitation that the contributed property must be related to the purpose of the charitable organization.

Special Allocations under IRC 704 of the Code:

IRC Section 1.702(a)(4) provides that in determining a partner's income tax, each partner shall consider separately the partner's distributive share of the partnership's charitable contributions as defined in IRC 170(c). Charitable contributions by the partnership are not deductible in computing the partnership taxable income (IRC 703(a)(2)(C)). Instead, such items are considered separately by the partners. In essence the partnership is a "flow through" entity and the individual partners, as owners of the entity, pay tax on their distributive share of the entity's taxable income.

Generally, a partner in a partnership can only deduct losses to the extent of the partner's tax basis; however, this limitation only applies to the partner's share of the losses. Separately stated deductions, such as charitable deductions, may be taken in excess of basis. (Treas. Reg. Section 1.704-1(d)(2)). (See footnote 11 also) Additionally, a partner's basis in the partnership interest is reduced by the basis of the contributed property, not by the fair market value of the contributed asset. (Revenue Ruling 96-11, (1996-4 CB28). (See also footnote 11)

In the case at hand, it is envisioned that the individual Series partners[12] will have allocated to them under IRC 704 their share of the charitable contributions. An allocation contained in a partnership agreement is valid under IRC Section 704 (b) if it has "substantial economic effect". For an allocation to be *substantial*, there must be a "reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the

[12] The new members admitted to the partnership, through the series LLCs will contribute cash ,which will allow the partnership to conduct investment activities that enhance their partnership values. The contribution of this cash is material to the future profitability of the partnership and therefore they will have a portion of the charitable contribution allocated to them in consideration of such contribution.

partners from the partnership, independent of the tax consequences". (Treas Regs. Section 1.704-1(b)(2)(iii)(a). [13]

In the case of a charitable contribution at the partnership level, the outside basis of the partner in the contributing partnership is reduced by the inside basis of the asset donated.[14]

In the current situation, the partner is allowing the assets to be contributed to charity but not the cash. The capital raised along with any ensuing charitable contribution enables the partnership to pursue strategies which should increase, eventually, the dollar amount ultimately to be received by the partners. It would then appear that the special allocation of a charitable deduction would not violate the requirement for the transaction to have "substantial economic effect".

Conclusion

Subject to the conditions, limitations, and assumptions stated herein, it is more likely than not that the Company is entitled to realize, and the IRS will allow, the Company to realize, a charitable contribution deduction if the Fair Market Value of the donated Minerals is reasonable. The charitable donation would be allocated among the respective partners as required by law.

This opinion is based upon an analysis of the material tax aspects of this transaction as of the date herein. We give no opinion concerning the application of future law to future facts, given

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[13] An allocation has a substantial economic effect only if throughout the full term of the partnership, (i) the partnership agreement provides for the determination and maintenance of the partners' capital accounts in accordance with the rules of Treas. Reg Section 1.704(b)(2)(iv) relating to the capital account requirement; and (ii) upon liquidation of the partnership, liquidating distributions are required in all cases to be made in accordance with the positive capital account balances. And (iii) if a partner has a deficit balance in his capital account following the liquidation of his interest in the partnership, the partner is unconditionally required to restore the amount of the deficit. In the case of the charitable contributions at the partnership level, the partners' capital accounts are reduced by the basis of the asset in the hands of the partnership and not by the fair market value. So, there would be no deficit balance that would have to be addressed at liquidation.

[14] IRC 704 (d) added by The Tax Cuts and Jobs Act of 2017 adds a new Section 704(d)(3)(A). This section provides that the charitable contributions and foreign taxes are taken into account under the basis limitation rules, thereby putting those items on par with other losses and as a result, limiting the benefit of such items by a partner's outside basis. New Section 704(d)(3)(A) provides that, in the case of a charitable contribution of built-in gain property (i.e. Property where the fair market value exceeds its basis), the excess amount is not limited by outside basis. These changes apply to partnership taxable years beginning after 12/31/2017. This new rule means that for charitable contributions of appreciated property, the amount allocable to the partners will effectively be split into two parts, one equaling the property's built in gain amount, the other the property's basis. The deduction for the built in gain portion neither reduces the partner's basis nor is subject to limitation under Section 704D (as under prior law. However, the part reflecting the property's basis is limited by Section 704 (d).

that they both may change. This opinion is limited to and may be relied upon solely by the Company. Anyone relying on this opinion is advised that there is no assurance that IRS will agree with it.

Sincerely yours,

Peter W. Guyon Esq.