

May 20, 2022

***VIA US MAIL and EFILING***

Attorney General Ken Paxton  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, TX 78711-2548

Re: Public Information Request (“PIR”) from Bruce Measom of Harbor Companies to  
UTIMCO regarding confidential information related to Canyon Partners and its  
portfolio companies  
OAG File ID #953759

Dear Attorney General Paxton:

My firm represents Canyon Partners LLC, including its affiliates Canyon Partners Real Estate LLC, Canpartners Realty Holding Company IV LLC, Canyon Capital Realty Advisors LLC, Canyon-Johnson Urban Communities Fund (collectively, “Canyon Partners” or the “Company”). This brief is submitted on behalf of the Company to object to the public disclosure of certain confidential information that was submitted to the University of Texas/Texas A&M Investment Management Company (“UTIMCO”).<sup>1</sup> The confidential information in question is the subject of a Public Information Request (“PIR” or the “Request”) made by Bruce Measom of Harbor Companies (“Requestor”), requesting documents and communications related to Canyon Partners and various of Canyon Partners’ funds in which UTIMCO has invested. *See Exhibit A.* Canyon Partners objects to the disclosure of the Confidential Information requested as described herein.<sup>2</sup>

Your Office assigned OAG File ID #953759 to the Request. Canyon Partners is an interested third party entitled to submit a response to your Office to raise and explain the applicability of exceptions to disclosure under the Texas Public Information Act (the “Act”) as it

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<sup>1</sup> This letter brief is being provided to your Office on the condition that the exhibits attached remain confidential. We request the opportunity to redact the confidential information contained herein should your Office deem that any portion of this brief and/or any portion of the exhibits may be subject to public disclosure.

<sup>2</sup> The “Confidential Information” discussed in this Letter Brief includes the representative documents attached as Exhibit B as well as the entire set of documents UTIMCO deems responsive to the Request. In particular, three of the documents attached to UTIMCO’s brief (Exhibits F4, F11, and F26) have been identified by UTIMCO as “internal notes and analyses.” Canyon Partners’ arguments apply equally to UTIMCO’s internal analyses attached to the objection to disclosure filed by UTIMCO that, while not created by Canyon Partners, include and analyze confidential information obtained directly from Canyon Partners. Because Canyon Partners is not privy to these analyses, they are not attached to this letter brief. Canyon Partners requests all such documents containing information that was provided by Canyon Partners to UTIMCO be withheld.

relates to the Company's confidential information.<sup>3</sup> This brief is being submitted within the time frame provided for under the Act.<sup>4</sup>

### **A. Factual Background<sup>5</sup>**

Canyon Partners is a global, value-oriented, alternative asset manager that employs a variety of event-driven and distressed strategies across a broad spectrum of asset classes, including corporate credit, equities, and securitized products.<sup>6</sup> The Company maintains a broad menu of investment options and focuses on securities characterized by complexity, transitioning buyer bases, events, restructurings, and other forms of disruption that can disconnect prices from fundamental value.<sup>7</sup> Canyon Partners was founded in 1990 and has spent the past 32 years investing in real estate and securities across various sectors through numerous discretionary investment funds. The Company raises its investment funds from accredited and qualified investors, like UTIMCO, who commit capital in such funds as "limited partners" to leverage the networks and industry knowledge of the Company's general partners who source, evaluate, and negotiate investments in distressed companies with long-term potential to restabilize and provide high returns.

UTIMCO is the investment advisor to the Board of Regents of The University of Texas System ("Board of Regents") pursuant to a master investment management services agreement. As investment advisor, UTIMCO has complete authority to act for the Board of Regents in the investment of certain funds under the control and management of the Board of Regents. UTIMCO has invested in certain of the Company's funds as a limited partner on behalf of the Board of Regents.

As part of UTIMCO's investment process and due diligence, Canyon Partners has submitted extensive and detailed information about its track record, financials and performance of its investments. This information includes confidential details about its personnel, partners, investment strategies, and performance. It also includes detailed and confidential information about the Company's investments and their business plans. It is industry standard that investment firms must maintain confidentiality of such information, and the standard contracts between portfolio companies and investors include confidentiality obligations. Additionally, Canyon Partners and UTIMCO operate under a Limited Partnership Agreement and Subscription Agreement that contain confidentiality provisions that apply to the Confidential Information.<sup>8</sup>

The Request seeks the types of information provided by Canyon Partners to UTIMCO described above, including emails, letters, investor updates, non-performing loan advisories,

<sup>3</sup> See TEX. GOV'T CODE § 552.305.

<sup>4</sup> Greenberg Traurig confirmed by telephone and letter dated April 29, 2022 that your Office would extend the time for submitting a brief until May 20, 2022. See TEX. GOV'T CODE § 552.305.

<sup>5</sup> The factual statements in this letter brief are supported by the verification attached as Exhibit C.

<sup>6</sup> <https://www.canyonpartners.com/strategies/flagship/>

<sup>7</sup> <https://www.canyonpartners.com/strategies/flagship/>

<sup>8</sup> See Exhibit B14 at 56.

notices of default, default letters, and investment summaries.<sup>9</sup> Because this information is highly confidential and subject to multiple layers of confidentiality agreements, Canyon Partners objects to disclosure of this information.

**B. The Confidential Information is excepted from disclosure because it contains due-diligence and financial-reporting information submitted by a private investment fund to a governmental body.**

The Confidential Information falls squarely within the Act’s exception for investing information. The Act provides that “all information prepared or provided by a private investment fund and held by a governmental body . . . is confidential and excepted from [disclosure],” subject to certain exceptions not applicable here.<sup>10</sup> Additionally, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund” is confidential under the Act.<sup>11</sup> Canyon Partners adopts and incorporates herein UTIMCO’s arguments related to Section 552.143.

The Confidential Information meets this exception precisely. Canyon Partners prepared most of the Confidential Information, as demonstrated by its letterhead and email addresses on communications,<sup>12</sup> its logo on presentation slides,<sup>13</sup> and its name and logo on other documents.<sup>14</sup> Other documents were prepared by Canyon Partners’ independent auditors and provided to UTIMCO by Canyon Partners.<sup>15</sup> Because Canyon Partners is a private investment fund and UTIMCO, a governmental body, holds the information, Section 552.143(a) applies, and the Confidential Information is not subject to disclosure.

Additionally, much of the Confidential Information falls in the enumerated categories in Section 552.143(b). It includes diligence information, including reviews and analyses that are being maintained by UTIMCO, a governmental body, and it has not been publicly released. Thus, the Confidential Information is also excepted from disclosure by Section 143(b).

The Confidential Information does not fall under any exceptions to Section 552.143. Certain information related to investments must be disclosed pursuant to Section 552.0225. Those categories center around the governmental body’s investment and basic fund information, such as the name of the fund, the date on which the fund was established, the amounts of the entity’s investment and commitment, the value and internal rate of return for the entity’s interest, etc.<sup>16</sup> As

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<sup>9</sup> Exhibit A (Request).

<sup>10</sup> See TEX. GOV’T CODE § 552.143(a). The Confidential Information in this matter is substantially similar to that which you determined was confidential pursuant to Section 552.143 in OR2021-34143 (Dec. 3, 2021).

<sup>11</sup> *Id.* § 552.143(b).

<sup>12</sup> See, e.g., Exhibits B12, 18, 19, 27.

<sup>13</sup> See, e.g., Exhibits B7, 21.

<sup>14</sup> See, e.g., Exhibit B3.

<sup>15</sup> See, e.g., Exhibit B25.

<sup>16</sup> TEX. GOV’T CODE § 552.0225(b).

UTIMCO has indicated in its own brief, that public information is contained in reports that have already been disclosed to Requestor.

**C. The Confidential Information is excepted from disclosure because it contains trade secrets and confidential commercial/financial information.**

**1. Trade Secrets and proprietary commercial/financial information are excepted from disclosure.**

The Confidential Information includes the Company's trade secrets that are protected from public disclosure by the Act. In 2019, the Texas Legislature amended Section 552.110 of the Texas Government Code.<sup>17</sup> The legislation created a definition in statute for what constitutes a "trade secret." The legislation provides, in part:

*(a) ... "trade secret" means all forms and types of information, including business scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however, stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:*

*(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and*

*(2) the information derives from independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.*

*(b) Except as provided by Section 552.0222, information is excepted from the requirement of Section 552.021 if it is demonstrated based on specific factual evidence that the information is a trade secret.*

The new definition does not have any court cases that have interpreted its meaning to date. As a result, the provision must be interpreted using the words of the statute.<sup>18</sup> Under the plain text of the statute, the Company may provide specific factual evidence of what information constitutes its trade secrets.

Additionally, Section 552.110(c) protects from disclosure "commercial or financial information for which it is demonstrated based on specific evidence that disclosure would cause substantial competitive harm to" the Company.

**2. Proprietary commercial and financial information, disclosure of which would cause substantial competitive harm, is excepted from disclosure.**

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<sup>17</sup> See Senate Bill 943, 86th Legislature (2019).

<sup>18</sup> TEX. CODE CONSTRUCTION ACT.

Note: This page contains redactions and Canyon Partners News Inc. is not privy to the redacted language.

The Confidential Information—both documents and communications created by Canyon Partners and UTIMCO’s internal analyses of Canyon Partners’ information—contains [REDACTED]

[REDACTED] This trade secret information must be exempted from disclosure under the Act because (1) Canyon Partners has taken reasonable measures to keep the information secret and (2) the information derives independent economic value from not being generally known to others who can obtain economic value from the disclosure or use of the information.<sup>20</sup> For the same reasons, disclosure of the information, which contains commercial and financial information, would cause substantial competitive harm to Canyon Partners and its portfolio companies.

This Confidential Information must be kept confidential because Canyon Partners derives independent economic value from the information not being generally known to others who can obtain economic value from the disclosure or use of the information. Specifically, the Confidential Information reflects Canyon Partners’ internal investing strategy and performance that competing funds would benefit from knowing, as well as [REDACTED]

The documents contain information including confidential and proprietary investment strategies developed by Canyon Partners that allow it to [REDACTED]

They contain information about the Company’s [REDACTED]

The Confidential Information also includes highly sensitive information about the Company’s [REDACTED]

<sup>19</sup> See TEX. GOV’T CODE § 552.110(a).

<sup>20</sup> *Id.* § 552.110(a)(1)–(2).

<sup>21</sup> See Exhibit B3 at 12.



As such, the Confidential Information is not publicly known and is not intended to be shared publicly. Canyon Partners takes reasonable measures to keep the Confidential Information secret. The Company uses internal controls such as limiting access to certain document folders to only those with a need to know the information to access it. The Company also uses two-factor authentication for its document management and email systems to prevent external access to its Confidential Information. UTIMCO agreed to keep this information confidential in the Limited Partnership Agreement, which provides that limited partners (including UTIMCO) receive confidential information conditioned on an agreement that the information will be confidential and not become publicly available and that the information contains valuable trade secrets that must be maintained in strict confidence.<sup>23</sup>

Because the Confidential Information also contains information about the Company's portfolio companies, securities, and other investments that is highly sensitive and must be kept confidential, in addition to the confidentiality provision in the Limited Partnership Agreement, this information is further protected by confidentiality provisions in agreements between Canyon Partners and each of its portfolio companies, securities, and other investments. Common-law principles also protect the information provided by these companies to Canyon Partners and included in the Confidential Information. As the lead investor serving on their boards, Canyon Partners owes fiduciary duties to the companies and must maintain confidentiality of their information.

#### **D. Conclusion**

The Confidential Information in Exhibit B falls within the exceptions to public disclosure set forth under Sections 552.143 and 552.110 of the Act and must not be disclosed. It is confidential as a matter of law because it is information provided by a private investment fund and held by a governmental body. Moreover, this information is highly confidential and excepted from disclosure as trade secrets and proprietary commercial/financial information. We respectfully

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<sup>22</sup> See Exhibit B6.

<sup>23</sup> See Exhibit B14 at 56.

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request a favorable decision or prompt notice of any adverse decision by your Office in this matter so that Canyon Partners will have sufficient time within which to take appropriate legal action to protect the Confidential Information. If your Office approves the disclosure of any of the Confidential Information referenced in this letter and attached, in part, in Exhibit B, we request an opportunity to review and respond prior to the disclosure of the information so that we may take additional steps allowed under the Act to protect the information.

Thank you for your consideration of these comments submitted on behalf of Canyon Partners. If you have any questions regarding this letter, please feel free to contact me at [REDACTED]

Enclosures

cc: UTIMCO  
Bruce Measom (redacted and without enclosures)