

V I R G I N I A:

IN THE CIRCUIT COURT FOR LOUDOUN COUNTY

JANE PAGE GUNNELL THOMPSON)
240 Knox Avenue)
Aiken, South Carolina 29801)

Plaintiff,)

v.)

THOMAS NELSON GUNNELL,)
As Trustee,)
The Gunnell Family Dynasty Trust)
22959 Carters Farm Lane)
Middleburg, Virginia 20117,)

and)

THOMAS NELSON GUNNELL,)
Individually)
22959 Carters Farm Lane)
Middleburg, Virginia 20117,)

and)

Case No.

GREENFIELDS SPORTING)
CLUB LLC)
A Virginia Limited Liability Company)
Serve: Registered Agent)
Thomas Nelson Gunnell)
42395 RYAN RD STE 112-117,)
PIEDMONT LAW PC,)
ASHBURN, VA, 20148 – 0000)

and)

MIDDLEBURG LAND 1, LLC)
A Virginia Limited Liability Company)
Serve: Registered Agent)
Andrew Hertneky)
42395 RYAN ROAD STE 112-117,)
ASHBURN, VA, 20148 - 0000)

and)
)
MIDDLEBURG LAND 2, LLC)
A Virginia Limited Liability Company)
Serve: Registered Agent)
Andrew Hertneky)
42395 RYAN ROAD STE 112-117,)
ASHBURN, VA, 20148 - 0000)
)

and)
)
TRAVELLER'S REST, LLC)
A Virginia Limited Liability Company)
Serve: Registered Agent)
THOMAS NELSON GUNNELL)
42395 RYAN RD STE 112-117)
ATTN ILENE TOGNINI)
ASHBURN, VA, 20148 - 0000, USA)
)

and)
)
WYCLIFF PROPERTIES, LLC)
A Virginia Limited Liability Company)
Serve: Registered Agent)
William Morgan Benton)
42395 RYAN ROAD STE 112-117,)
ASHBURN, VA, 20148 - 0000)
)

and)
)
JANE RITTENHOUSE GUNNELL)
Serve: Jane Rittenhouse Gunnell)
140 Pine Needle Road, Aiken,)
South Carolina 29803)
)

and)
)
THOMAS AUGUST KERN, Jr.,)
A minor, by and through his Mother)
and next friend Berkeley Cadle Kern)
Serve: Berkeley Cadle Kern, his)
Mother and Next Friend)
41216 Blue Oat Court,)
Aldie, Va. 20105)
Defendants.)

COMPLAINT

(Accounting; Removal of Present Trustee; Appointment of Substitute Trustee; or alternatively, Motion to set Bond; Imposition of Constructive Trust; Damages for Breach of Fiduciary Duty; Negligence; Gross Negligence; Conversion; Injunction; Attorney's Fees)

COMES NOW Plaintiff Jane Page Gunnell Thompson, by counsel, and respectfully submits this Complaint, seeking an accounting, the removal of Thomas Nelson Gunnell as the Trustee of the Gunnell Family Dynasty Trust and the appointment of a substitute Trustee or special fiduciary; or alternatively, that this Court set an appropriate bond if Thomas Nelson Gunnell is not removed; the imposition of a constructive trust; damages for breach of fiduciary duty; negligence; gross negligence; conversion; injunction; attorney's fees; and other equitable relief, as well as awards of compensatory and punitive damages, against Gunnell, as well as relief against five entities that hold legal title to Loudoun County real estate in which plaintiff is an equitable owner, by virtue of her status as trust beneficiary.

Venue and Jurisdiction

This Court has subject matter jurisdiction over this action under the Code of Virginia § 17.1-513, and personal jurisdiction over the defendants under the Code of Virginia § 8.01-328.1(A)(1), (2). Venue is proper under the Code of Virginia § 8.01-262(1) and (4).

Background and Summary

1. This action involves the administration of an inter-vivos irrevocable family trust known as the Gunnell Family Dynasty Trust ("Dynasty Trust"). The Trust was established on May 26, 2009, in the last months of settlor

Virginia Burt Gunnell's life, and it replaced an earlier revocable trust. Virginia Burt Gunnell was the mother of Jane Rittenhouse Gunnell, her only child ("Jane Rittenhouse"). In turn, Jane Rittenhouse had two children, Thomas Nelson Gunnell ("Gunnell") and your Plaintiff, Jane Page Gunnell Thompson ("Thompson"). Gunnell has one son, now just shy of eighteen, from whom he is estranged, whose legal name is now Thomas August Kern, Jr. ("Kern"). The Dynasty Trust replaced an earlier revocable trust, and it appears to have been established at Gunnell's behest. It was established for the benefit of Jane Rittenhouse, Gunnell, Thompson, and Kern.

2. On May 26, 2009, the parties' grandmother, Virginia Burt Gunnell, ("Virginia") age 99, and suffering congestive heart failure as well as other age-related conditions, abruptly altered her estate plan by executing the Dynasty Trust. Under the stated terms of the Dynasty Trust, Gunnell, the sole Trustee, was given "sole and absolute" and "uncontrolled discretion" over her then-\$29,000,000 estate, including the authority to engage in "risky or speculative" investments, even with the entire corpus, with distributions entirely at his sole discretion. It holds Gunnell harmless for all his actions, inactions, and decisions, and purports to divest the beneficiaries of their statutory rights to annual reports and prompt response to requests for information. See attached Exhibit 1, *Trust Agreement for the Gunnell Family Dynasty Trust*.

3. Gunnell has run the Dynasty Trust almost exclusively for his own benefit, treating it as if it were his own private piggy-bank, to the detriment of the other beneficiaries. Under his sole control over the past eleven years,

Gunnell has falsely represented to lenders, business associates, and in Bankruptcy proceedings, that he and he alone was the beneficial owner of the Dynasty Trust real estate assets. He has in fact sold off substantial land holdings from the Dynasty Trust, and he has failed and refused to account for any of these transactions or reveal what he has done with the monies, and Thompson believes that he has spent it, converting it to his own purposes. He has been so secretive that most of what Thompson has been able to learn of his dealings come from publicly-available records, because Gunnell refuses to divulge his dealings or account for his actions.

4. In 2012 Gunnell formed an LLC known as Traveller's Rest, LLC ("Traveller's"), to facilitate an assemblage of contiguous parcels of unimproved real property in Middleburg, Virginia, including Dynasty Trust properties, for the purpose of obtaining entitlements for clusters of residential building lots. It had four members, most of whom were entities largely owned and controlled by Gunnell, as outlined below. Gunnell encumbered the Dynasty Trust properties in order to secure funding for development but failed to accomplish the development and failed to meet the terms of the new obligations. The lenders sought to foreclose and in 2017 Gunnell took Traveler's Rest into Chapter 11 bankruptcy (*In Re: Traveller's Rest, LLC*, Case No. 17-12061-BFK) to stave off the foreclosure. Gunnell then obtained the financial backing of another, Andrew Hertneky, in order to obtain larger loans to further encumber Trust assets and to bring the project out of bankruptcy.

5. In the course of that bankruptcy, Dynasty Trust assets were re-titled into newly-formed corporations including Middleburg Land 1, LLC and Middleburg Land 2, LLC. The bankruptcy schedules and pleadings demonstrate woefully inadequate financial information regarding cash transfers among entities that Gunnell formed, owns, and controls. They further reflect egregious commingling of Trust assets with his own.

6. Gunnell leads an extravagant lifestyle, including owning and operating multiple polo teams, and Thompson believes and avers that he is spending Dynasty Trust monies for his own personal benefit at the rate of around One Million Dollars annually. At the same time he has failed and refused to pay over even the monthly stipend to the other beneficiaries provided for by the terms of the Dynasty Trust of \$5,000 a month. He has not paid over the monthly \$5,000 to Thompson in more than three years, and only sporadically before then.

7. Gunnell has mismanaged the Dynasty Trust assets to an extraordinary degree. He was able to bring the Traveller's Rest project out of bankruptcy only by obtaining substantial further private funding through another, one Andrew Hertneky and by further encumbering Dynasty Trust assets. It is unknown what Mr. Hertneky's 'angel' involvement may cost the Dynasty Trust; but whatever the cost, it appears to have been a direct result of Gunnell's mismanagement. The fact that as Trustee, Gunnell had to seek bankruptcy protection speaks volumes. Gunnell now proposes, a second time,

to use almost the entire remaining Trust corpus for a housing development known as Banbury Cross Reserve. Your Plaintiff Thompson is unaware of many of the particulars of this venture, as Gunnell's financial arrangements remain cloaked in secrecy, and she reasonably fears that allowing the venture to proceed before she is given the opportunity to learn how assets to which she is entitled may be affected may likely result in further losses to the Dynasty Trust.

8. Upon information and belief, Gunnell has wasted between \$7,000,000 and \$10,000,000 of the trust's assets.

Parties

9. Plaintiff Jane Page Gunnell Thompson ("Thompson") is an individual residing at 240 Knox Avenue, Aiken, South Carolina.

10. Thomas Nelson Gunnell ("Gunnell"), Thompson's brother, is an individual residing at 22959 Carters Farm Lane, Middleburg, Virginia. Gunnell serves as the sole Trustee of the Dynasty Trust.

11. Jane Rittenhouse Gunnell ("Rittenhouse") is an individual residing at 140 Pine Needle Road, Aiken, South Carolina. She is the mother of Thompson and Gunnell. No claims are asserted against her, and she is named as a defendant solely because she is a beneficiary of the Dynasty Trust.

12. Thomas August Kern, Jr. ("Kern") is Gunnell's estranged seventeen year-old son. He resides at 41216 Blue Oat Court, Aldie, Va. with his mother and next friend, Berkeley Cadle Kern. No claims are asserted against him, and

he is named as a defendant, by and through his next friend, solely because he is a beneficiary of the Dynasty Trust.

13. Greenfields Sporting Club, LLC ("Greenfields") is a Virginia limited liability company and is the legal owner of 61.2 acres in the Dover area of Loudoun County, on Carter's Farm Lane, Loudoun County PIN 468465456. Recorded in Deed Book 437 at Page 318, this property had been a wholly owned asset of the Bush Hill Development Corporation, which is a Dynasty Trust asset. Greenfields' property includes a polo field, which it utilizes, as a business, doing business under the name, "Kingsland Polo," and formerly doing business as "Banbury Cross Polo." This property is the subject of Instrument Nos. 201209180072309 and 201209180072310. Thompson contends that as a beneficiary of the Dynasty Trust, she is an equitable owner of these properties.

14. Middleburg Land 1, LLC ("Middleburg 1") is a Virginia limited liability company organized in 2017, formed as "Newco 1" in a Chapter 11 proceeding, *In Re: Traveller's Rest, LLC*, United States Bankruptcy Court for the Eastern District of Virginia, Case No. 17-12061-BFK. Under the plan ultimately approved by that court, Middleburg Land 1, LLC is the legal owner of four parcels of 633.6 acres identified above as being legally owned by *Traveller's*. Thompson contends that as a beneficiary of the Dynasty Trust, she is an equitable owner of these properties.

15. Middleburg Land 2, LLC ("*Middleburg 2*") is a Virginia limited liability company which was organized and formed as "Newco 2" in the 2017

Bankruptcy reorganization of *Traveller's*. Middleburg 2 is the legal owner of the 40 acres of the Banbury Cross Farm where Gunnell resides and was not subject to creditors' claims under the bankruptcy reorganization. This 40 acre parcel was assigned Loudoun County PIN 502304353. Thompson contends that as a beneficiary of the Dynasty Trust, she is an equitable owner of these properties.

16. Wycliff Properties, LLC ("*Wycliff*") is a Virginia Limited Liability Company that acquired the 5.77 acre parcel, Loudoun County PIN 502393940, on December 28, 2018. This parcel connects Banbury Cross Farm to Sam Fred Road. The managing member of *Wycliff* is William Morgan Benton, husband of Thompson's mother, Jane Rittenhouse Gunnell. This conveyance was made shortly after the Chapter 11 re-organization was approved by that court and is recorded at a value of \$400,000. Loudoun County assessed no deed transfer tax as a "Non-market sale." Thompson contends that as a beneficiary of the Dynasty Trust, she is an equitable owner of these properties.

Facts

The Dynasty Trust

17. On December 12, 2007, plaintiff's grandmother, Virginia Burt Gunnell, established the *Virginia Burt Gunnell Amended and Restated Revocable Declaration of Trust*. The co-trustees were the Bank of New York, and Virginia, the Settlor. The beneficiaries were the Settlor's daughter, and her descendants: Plaintiff's mother, Jane Rittenhouse Gunnell, and her issue—

plaintiff and defendant, and defendant's son, at age 25. See Exhibit 2, *Virginia Burt Gunnell Amended and Restated Revocable Declaration of Trust*.

18. This Trust contemplates the establishment of a trust at Settlor's death for the benefit of plaintiff, defendant, and defendant's son, in the amount of the allowable generation skipping tax exemption at the time of transfer. The Trustee may invest the corpus as it sees fit and has full discretion on whether to distribute the property, as well as investment income, except that beneficiaries are to receive \$5,000 monthly. Banbury Cross Farm is held in trust for benefit of Gunnell, with expenses paid for by the Trust under certain conditions. This Trust stated that the Trustee may be removed for breach of fiduciary duty and provided for binding arbitration to adjudicate any beneficiary's complaints against the Trustee. The Trust does not define the Trustee's standard of care and does not purport to limit Trustee liability.

19. Sixty-six days before her death, on May 26, 2009, Virginia executed the Dynasty Trust. At the time, it held approximately \$21,000,000 worth of real estate, mostly held by the *Bush Hill Development Corporation*, and between \$6 and \$8 million in various brokerage accounts and stocks.

20. Like its predecessor revocable Trust, the Dynasty Trust provides for the beneficiaries to each receive \$5,000 monthly and provides that Banbury Cross Farm is held in trust for the benefit of Gunnell, with all expenses paid under certain conditions.

21. Unlike its predecessor Trust, where the Bank of New York

served as co-Trustee along with Virginia, under the *Dynasty Trust*, Gunnell is the sole Trustee. And, unlike its predecessor, the Dynasty Trust provides that "the Grantor hereby expressly waives any applicable Prudent Person Rule." In making investments, the Trustee has no duty to diversify, and has no duty to invest so as to produce a "reasonable rate of return," even to the extent that investments fail "to preserve the principal." In his "sole and absolute" and "uncontrolled discretion," Gunnell may make "investments [that] would traditionally be classified as too risky or speculative for trusts," and "the entire Trust may be so invested," even if those investments could not "be legally made by trustees." Nonetheless, the Dynasty Trust was established for the benefit of the beneficiaries, and it is to be administered in their best interests.

22. At termination, also at the Trustee's pleasure, he "is under no obligation to create a plan of distribution," and he has "no duty of impartiality as to the different beneficiaries."

23. Regarding liability, the "Trustee shall not be liable for any loss in value of an investment merely because of the nature of the investment or the degree of risk presented by the investment," but it imposes liability on the Trustee if his procedures in selecting and monitoring the investment are negligent. Whereas the predecessor trust provided that "claims of Trustee malfeasance or negligence would be adjudicated by binding arbitration," the *Dynasty*

Trust provides that Gunnell "shall not be liable for any loss to the Trust Fund," except for by the Trustee's own actual fraud, gross negligence or willful misconduct. It repeats this exculpation on the very last page, directly above the 99-year-old grantor's signature:

The grantor specifically acknowledges that this trust agreement contains exculpatory clauses intended to limit the liability of the Trustee. The Trustee is held harmless for all actions, inactions, decisions, and votes made in his capacity as trustee of the trust fund except for his own actual fraud gross negligence or willful misconduct. The grantor agrees with such provisions of this trust agreement.

24. Here beneficiaries could not, and did not learn of Gunnell's malfeasance, because under the terms of the *Dynasty Trust* "The Trustee is not required to provide a Trustee's report or any other information otherwise required to be furnished under Section 55-548.13 of the Code of Virginia, as amended from time to time."

25. Under Virginia law, only a beneficiary of an irrevocable trust can waive the right to receive, annually, a "report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values." VA Code § 64.2-775 (C). Thompson avers that Gunnell included the purported waiver in furtherance of his scheme of self-dealing, undetected, as she was unaware that the provision is void.

26. Notwithstanding these irregular provisions, a trust's language cannot eliminate "[t]he duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries"

under VA Code § 64.2–703(B)(2), nor his duty of loyalty and impartiality under VA Code § 64.2–785.

Transactions Involving Dynasty Trust Property

27. A week after the Dynasty Trust was created, on June 3, 2009, John Dedon, a Fairfax attorney with Odin, Feldman and Pittleman, PC, drafted a "Crummey Notice," which Gunnell, as Trustee, mailed to the beneficiaries, including Thompson. The Notice identified cash that had been transferred from the *Virginia Burt Gunnell Revocable Declaration of Trust*, into the Dynasty Trust, and sought beneficiaries' election of whether to withdraw up to the current exclusion amount.

28. Within weeks of his appointment as sole Trustee, Gunnell transferred Dynasty Trust assets to UBS Investment Bank. That account's balance was between \$8,000,000 and \$9,000,000.

29. On June 18, 2009, two weeks after the Crummey Notice, three deeds were executed by Virginia Burt Gunnell and Thomas Nelson Gunnell, as "Trustees, *Virginia Burt Gunnell Revocable Declaration of Trust*," Gunnell chose Howard, Morrison, Ross and Whelan, PLLC, a Warrenton, Va. law firm, to draft these instruments, which deeded property to:

- (1) Banbury Cross, LLC;
- (2) Bush Hill Development Corporation; and
- (3) Covington Middleburg, LLC.

All three of these entities were solely owned by Virginia Burt Gunnell and were Dynasty Trust assets.

30. On July 31, 2009, Virginia Burt Gunnell, the grantor and plaintiff's grandmother, died.

31. Ten months later, on April 28, 2010, Gunnell again retained his Warrenton counsel, this time to draft a Deed of Trust which pledged Dynasty Trust real property assets as security for a \$2,000,000 loan. The loan amount is a fraction of the value of the property used as collateral. The grantors are Banbury Cross, LLC, and Bush Hill Development Corporation, and the borrowers were "T. Nelson Gunnell and The Gunnell Family Dynasty Trust." Gunnell signed as President, Bush Hill Development Corporation, as well as Manager, Banbury Cross, LLC.

32. Gunnell told Thompson that approximately \$6,000,000 of the funds held by the UBS Investment Bank would be used to pay estate taxes. Thompson asked Gunnell for documentation, as well as records of the assets and the plan to preserve assets. Gunnell assured her that those matters would be disclosed upon completion of negotiations with the IRS, but Gunnell provided no documentation, notwithstanding Thompson's repeated requests that he do so. Nor did Gunnell account for the remainder of funds in that account, which, according to Gunnell's representations, would have been between \$2,000,000 and \$3,000,000.

33. A few days after Virginia's death, and before her August 4, 2009 funeral, Thompson, Gunnell, and their mother, Jane Rittenhouse discussed how they were going to navigate the Dynasty Trust. The parties agreed that

each would make matching capital contributions so as to avoid having to liquidate Dynasty Trust assets in order to pay the taxes.

34. At their grandmother's death Thompson became entitled to two separate \$1,000,000 bequests. She agreed that rather than take them, she would contribute all of one of them, and \$750,000 of the other \$1,000,000 she had inherited from her grandfather Bruce Covington Gunnell which had funded upon Virginia's death. Gunnell's capital contribution would come from the sale of 11.3 acre farm that Virginia had gifted to him some ten years prior.

35. On January 27, 2010, Thompson contributed her \$1,000,000 to the Dynasty Trust. At the time, Thompson asked for documentation to confirm the agreements going forward to preserve the assets. Gunnell assured her that that information would be forthcoming, but Gunnell never provided any documentation, notwithstanding Thompson's repeated requests that he do so.

36. On May 4, 2018, eight years after he had agreed to do so, Gunnell finally sold the Carter's Farm Lane property, Loudoun County Parcel Identification Number 467478981, for \$1.28 million, but refused to apply any of it as his capital contribution to the Dynasty Trust. Nor did he distribute any part of the proceeds to Thompson, notwithstanding that the Dynasty Trust was by that time \$185,000 in arrears in its minimum required distributions to her. Gunnell announced that he intended to use those proceeds to pay his back child support, to pay money owed to his current wife's marketing business, and to obtain the release of unspecified liens.

37. Gunnell had assigned his employee, Mr. George Walker, to be his agent to respond to Thompson's inquiries about the disposition of the assets of the Dynasty Trust. In 2015, Thompson telephoned, emailed, and text-messaged Mr. Walker a dozen or more times, seeking information about the administration of the Dynasty Trust, mostly regarding its Trustee's failures to remit sorely needed stipend payments, pay health insurance premiums, or to reimburse her costs of residential repairs and upkeep, all to no avail. In July, for example, Mr. Walker wrote that "Nelson would take care of it," and in September wrote that the absence of payments was the result of a staffing shortage.

38. On December 9, 2015, through communication with Gunnell's employee George Walker, and his counsel Ilene Tognini, Thompson and Gunnell agreed that the Dynasty Trust would:

- (a) Purchase each beneficiary's primary residence;
- (b) Pay for maintenance and property tax associated with the residence;
- (c) Pay each beneficiaries' health insurance premiums; and
- (d) Provide each beneficiary the \$5,000 monthly stipend.

39. Despite this agreement, Gunnell as Trustee failed to arrange for the Dynasty Trust to purchase Thompson's residence and failed to pay her property tax or costs of maintenance. Plaintiff has received no stipend nor moneys toward health insurance premiums since June of 2017. Before that, from 2012 onward, payments had been sporadic.

40. The Dynasty Trust eventually did purchase one beneficiary's residence. On June 17, 2015, Gunnell formed the *Gunnell Family Homestead*,

LLC, and purchased his mother Jane Rittenhouse's residence, 140 Pine Needle Road, Aiken, South Carolina. On April 7, 2017, and unbeknownst to his mother, Gunnell as Trustee mortgaged that property for \$150,000. The note became due on April 7, 2018, but was extended to April 7, 2020. Thompson fears that the note remains unpaid and the property, which is a Dynasty Trust asset, subject to foreclosure.

41. For the period of October of 2011 through April of 2020, Gunnell sold the following Dynasty Trust real property in Loudoun and Fauquier Counties, worth \$10,802,000:

- (a) 18.19 acres, TPN 467278809, sold on October 5, 2011, for \$1 million;
- (b) 4.93 acres, TPN 6093345939 Lot 1, sold on June 13, 2012, for \$377,000;
- (c) Boundary line Adjustment, TPN 467363576 and 466393875, sold on August 21, 2012, for \$450,000;
- (d) 97 acres, TPN 6093-454302 sold on November 21, 2014, for \$2.5 million;
- (e) 3 acres, TPN 6093351247 Lot 2 sold on July 31, 2014, for \$255,000;
- (f) 3 acres, TPN 6093340907 Lot 3 sold on July 24, 2015 for \$330,000;
- (g) 72 acres, TPN 467363576, sold on April 19, 2018, for \$1.57 million;
- (h) 11.33 acres, TPN 467478981, sold on May 4, 2018, for \$1.28 million;
- (i) 5.77 acres, TPN 502393940, sold on December 11, 2018 for \$400,000;
- (j) 46.15 acres, Parcel ID: 501-97-1155-000, sold on January 29, 2020 for \$840,000; and
- (k) 61.86 acres, Parcel ID: 468-46-5456-000, sold on April 22, 2020 for \$1.8 Million.

Gunnell has not accounted for any part of these transactions, and Thompson reasonably fears that he has converted those monies to his own purposes and spent them, to her great detriment.

42. On October 1, 2016, Gunnell told Thompson that he had arranged a sale and development of Dynasty Trust assets, ready to close in November, which would net the Trust \$38,000,000. Gunnell claimed that a development group based in South Carolina, the Ilk Alliance, had entered into a contract for the purchase of parcels to build a rural country resort and sporting club. That day, in response to Gunnell's assertions, Thompson emailed Mr. Walker. She wrote that she was not "comfortable proceeding forward with any of this until I see the paperwork establishing the relationships and compensation of all involved parties and their contracts with... Gunnell Dynasty Trust and any other entity that is relative to this project." She asked to "see all of the documents and agreements relating to the parcels of land," asked "who will control [the] funds," and requested "to meet with you and the development team." She inquired "what portions of the overall Dynasty Trust investments will be invested and what cash we will be able to access to finalize our own individual properties." Thompson also asked "to be included in the future of how these Gunnell" assets are proposed be used, going forward.

43. Thompson never received any of the requested information, and she later learned that, at the time when Gunnell had told her about the proposed sale, the Ilk Alliance had already defaulted on its purchase contract, the development plan Gunnell had told her about had already been abandoned, and that Gunnell had been knowingly telling her false information.

44. Thompson's inquiries to Gunnell's agent Walker regarding failures to remit sorely needed funds as set forth in the Dynasty Trust continued in

October and December 2016. In 2017, Thompson made the same requests to Mr. Walker every month. In 2018, she inquired six or more times, all to no avail. As recently as November 19, 2019, Thompson emailed Gunnell, "I have been kept in the dark by you all about everything that has happened with our family trust, the bankruptcy, Thomas and the development status; to my great personal detriment." Gunnell did not respond regarding the Trust.

45. Gunnell's actions plainly demonstrates that he has treated Dynasty Trust funds entirely as if they were his own, and not as trust assets. He has transferred and comingled Dynasty Trust assets among his Limited Liability Companies, and expended large sums to support his exorbitant lifestyle, including owning and supporting two Polo teams, including a dozen ponies, stables, vans, and two Polo fields. He has converted many millions of dollars' worth of Dynasty Trust property to his own uses, without notice or compensation to the Trust or its beneficiaries. Gunnell has commingled Dynasty Trust money with his own funds, on a grand scale. He has amply demonstrated that he is utterly unfit to serve as Trustee.

The Traveler's Rest/Banbury Cross Reserve Project

46. Traveller's Rest, LLC had four members, most of whom were entities largely owned and controlled by defendant:

- (1) *TR Management, LLC*, which was owned and controlled by *Banbury Cross, LLC*, a Dynasty Trust asset controlled by Gunnell;
- (2) *Banbury Cross, LLC*, a Dynasty Trust asset controlled by Gunnell;
- (3) *SB East, LLC*, owned by *Alfred Rogers Smithwick Irrevocable*

Trust, with Alfred Smithwick and defendant serving as managing members; and

- (4) Gordon & Judith Davis.

47. The members conveyed the assemblage of the following eight parcels, totaling 633.6 acres that had been owned by the Smithwick family, and by the Dynasty Trust, to *Traveller's*:

- (1) 283.83 acres, Loudoun County PIN 502398957; Black (5)
- (2) 56.5 acres, Loudoun County PIN 502495305; Black (5)
- (3) 5.77 acres, Loudoun County PIN 502393940; Black (5)
- (4) 188.25 acres, Loudoun County PIN 502281672; Black (5)
- (5) 98.71 acres, Loudoun County PIN 503464523; Black (5)
- (6) 40 acres, Loudoun County PIN 502304353; Blue (2)
- (7) 6 acres, Loudoun County PIN 502486535; and not listed
- (8) .75 of an acre, Loudoun County PIN 503354029. Not listed

48. *Traveller's* thereafter conveyed the first six of the above-identified parcels, and retained the ownership of the following two parcels:

- (1) 6 acres, Loudoun County PIN 5022486535; and
- (2) .75 of an acre, Loudoun County PIN 5033534029.

49. On June 15, 2017, *Traveller's Rest* filed a voluntary Chapter 11 petition. *In Re: Traveller's Rest, LLC*, United States Bankruptcy Court for the Eastern District of Virginia, Case No. 17-12061-BFK. Gunnell did not list the beneficiaries of the Dynasty Trust in its Creditor Matrix, and did not apprise that court of the existence of beneficiaries' equitable ownership interests, nor impart to those beneficiaries the particulars of that action, or even that bankruptcy protection had been sought.

50. Marshall Capital, LLC, was the largest creditor, owed \$6,589,000, and Virginia Rail, LLC was owed \$750,000. The loans were secured by

Dynasty Trust real property. "All of the real estate of the debtor secures the indebtedness owed to Marshall Capital or Virginia Rail," according to the pleadings. See Exhibit 3, *In Re: Traveller's Rest, LLC*, Case No. 17-12061-BFK, ECF 41, Disclosure Statement With Respect to Debtor's Plan of Reorganization.

51. In those proceedings, on July 18, 2017, Gunnell filed a *Declaration Under Penalty of Perjury for Non-Individual Debtors*. It reflects the failure to keep adequate records; payments of over \$1,000,000 cash to Gunnell and his joint venture partner the year before the bankruptcy; the existence of numerous questionable payments to defendant-controlled entities and other insiders; and false statements regarding assets, in violation of 18 U.S.C. § 152 *et seq.* All told, it reveals Gunnell's egregious commingling of Dynasty Trust assets with his own. See Exhibit 4, *In Re: Traveller's Rest, LLC*, Case No. 17-12061-BFK, ECF 25, Declaration Under Penalty of Perjury for Non-Individual Debtors.

52. Under "*Transfers not already listed on this statement*", Gunnell provided the date as "2016-2017" for the following transactions:

- (1) \$515,700 to Gunnell for "Transfers/advances for maintenance and Capital improvements—currently being reconciled;"
- (2) \$458,629 was paid to Alfred Smithwick, "currently being reconciled;"
- (3) \$31,600 was paid from the *Dynasty Trust*, described as "Transfers advances for members and beneficiaries—Currently being reconciled;"
- (4) An "unknown" amount to Gunnell's *Point to Point, LLC*, for "Transfers/advances for maintenance and Capital improvements—currently being reconciled;"

- (5) \$80,000 was paid to *Banbury Cross, LLC*, for "Transfers/advances for maintenance and Capital improvements—currently being reconciled;"
- (6) Another \$41,862 was paid to *Banbury Cross, LLC*, for "Transfers/advances for maintenance and Capital improvements—currently being reconciled;" and
- (7) \$10,000 to Gunnell's wife's company, *Pipers Marketing*.

53. Under "*Payments or other transfers of property made within 1 year before filing this case that benefited any insider*", Gunnell made three entries under this section:

- (1) An "unknown amount" from the Dynasty Trust, "one year prior to the Petition date;"
- (2) An "unknown amount" to himself, "one year prior to the \ Petition date;" and
- (3) An "unknown amount" to his *Point to Point, LLC*, "one year prior to the Petition date."

54. Under *Payments, distributions, or withdrawals credited or given to insiders within 1 year*, Gunnell identified himself, and his fencing company *Point to Point, LLC*, both of which received unknown "unreconciled" amounts, in 2016 and 2017.

55. In his Schedule EF, *Creditors Who Have Unsecured Claims*, Gunnell's entries include:

- (1) \$118,000 owed to Destiny Polo, LLC & P. Miles, for "deposit of land;"
- (2) An "unknown amount" owed to the Dynasty Trust, for "loans 2014-2017," in amounts of which are "currently being reconciled;"
- (3) An "unknown amount" owed to Gunnell's *Point to Point, LLC*,

for "loans 2014-2017," in amounts of which are "currently being reconciled;"

- (4) An "unknown amount" owed to Gunnell, with the notation, "loans 2014-2017 currently being reconciled."
- (5) \$150,000 legal fees owed to Ilene Tognini, Esquire; and
- (6) \$26,000 owed to George Walker, Walker Consulting.

56. Gunnell did not include among these schedules the \$150,000 proceeds he obtained on April 2017 mortgage of Jane Gunnell's Aiken, South Carolina, residence.

57. On October 20, 2017, Marshall Capital, LLC, filed its objection to defendant's statements. It observed that Gunnell and his partner had received \$1,000,000, and that "several other [than listed] transfers appear to have been made to insiders, insider entities or other entities that Mr. Gunnell controls." It also related that Gunnell used the credit line draws that were "false"—funds being used to pay for work on the infrastructure for the development that had not, in fact, been performed. Exhibit 5, *In Re: Traveller's Rest, LLC*, Case No. 17-12061-BFK, ECF 25, Marshall Capital LC's Objection to the Approval of Debtor's Disclosure Statement:

The schedules and statements indicate that the debtor made substantial transfers to insiders T. Nelson Gunnell ("Mr. Gunnell") or Alfred Rogers Smithwick ("Mr. Smithwick") and others in on certain amounts and in uncertain circumstances in the year prior to the Petition date. All of the descriptions of the transfers state that they are "currently being reconciled" and the debtor has indicated that it has no comprehensive records books and records, but that an accounting firm has been retained to provide them. The transfer is disclosed in the statement of financial affairs identify transfers to Mr. Gunnell and Mr. Smithwick alone of approximately \$1 million. The debtor also testified that it primarily utilized cash to make payments prior to the Petition date... [and]

that it signed draw certificates as to the uses of loan proceeds, which draw certificates appear to have been false, as loan proceeds were converted to cash and paid to unknown individuals or entities.

58. Upon information and belief, the creditors chose to overlook these deficiencies when Mr. Andrew J. Hertneky guaranteed the debtor's payment of a new loan for \$8,500,000.

59. Now, the Traveler's Rest project has been resurrected as Banbury Cross Reserve, but Thompson remains as much in the dark as before as to what is being done with properties in which she is an equitable owner. She fears that what remains of Dynasty Trust money is being squandered by Gunnell.

60. Gunnell's conduct as Trustee has been in utter disregard of VA Code § 64.2-775, *Duty to inform and report*. Over the last eleven years Gunnell has steadfastly failed to:

- (a) Keep "beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests." VA Code § 55-548.13 (A);
- (b) "Promptly respond to a beneficiary's request for information related to the administration of the trust." VA Code § 55-548.13 (B); and
- (c) "Send to... beneficiaries who request it, at least annually... a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets." VA Code § 55-548.13(C).

61. Gunnell's conduct as Trustee has also been in utter disregard of VA Code § 64.2-703 *et seq.*, *Duties and Powers of Trustee*. Over the last decade, Gunnell has:

- (a) Failed to "[a]ct in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries." VA Code § 64.2-703(B)(2);
- (b) Violated his of fiduciary duty to "administer the trust solely in the interests of the beneficiaries." VA Code § 64.2-764; and
- (c) Violated his equitable duty of impartiality and unfair favoritism between beneficiaries by ignoring respective interests of competing beneficiaries. VA Code § 64.2-765.

62. The *Dynasty Trust* exculpatory provision, repeated above Virginia's signature line, does not permit or excuse Gunnell's depredations. Under VA Code 64.2-799(A), *Exculpation of trustee*, "A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

- 1. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or
- 2. Was inserted as the result of an abuse by the trustee of fiduciary or confidential relationship to the settlor.

At an absolute minimum, Gunnell has consistently acted with reckless indifference to the purpose of the Dynasty Trust and the interests of the beneficiaries.

Count I
Accounting

63. The allegations of Paragraphs 1 through 62 are incorporated herein by reference as if set forth in full.

64. As a beneficiary of the Dynasty Trust, and pursuant to Virginia Code § 64.2-914 and other applicable law, Thompson has standing to petition this Court to order Gunnell to make an accounting of Trust property and provide a written statement of the administration of that property, and she now does so. She now moves this Court to make such order(s) and to compel Gunnell to provide a complete accounting of all Dynasty Trust assets, from the time he took control of them as Trustee to the present day, omitting nothing; and to provide full details of what disposition(s) he made of any Trust property, on what terms; what acquisition(s) of Trust assets there may have been, on what terms; to provide a detailed and complete written record of all payments made to all entities from Trust assets, at any time from when he first took control of Dynasty Trust assets to the present day, as well as provide a detailed and complete written record of any Trust debt(s) or obligation(s) for the same period; and to provide a summary of what assets the Dynasty Trust now holds. WHEREFORE your Plaintiff prays that this Court order an accounting as above described or as the Court may direct; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count II

Removal of Thomas Nelson Gunnell as Trustee And Appointment of a Substitute Trustee or Special Fiduciary

65. The allegations of Paragraphs 1 through 62 are incorporated herein by reference as if set forth in full.

66. As outlined above, Gunnell has, for a period of about eleven years, treated the Gunnell Family Dynasty Trust as if it were not a trust, for the benefit of all the beneficiaries; but rather has treated it as if it were his own personal piggy-bank, to be raided at his whim, without accountability to anyone. He has exercised poor judgment and worse management, such that the present value of Dynasty Trust assets is but a fraction of what they were worth when he first assumed control. The necessity of a bankruptcy filing due to his mismanagement is emblematic of his practices as Trustee, and the fact that he was only able to take the Traveller's Rest project out of bankruptcy with additional outside funding, despite having taken in millions of dollars in proceeds from the sale of Dynasty Trust assets, certainly suggests that he has not safeguarded those proceeds. He has engaged in tremendous self-dealing. He has co-mingled Trust assets with his own continually and consistently. He has breached his fiduciary duties. He has proven himself utterly inept as a fiduciary, and unworthy to continue in that role. The protection of the interests of all the other beneficiaries, including your Plaintiff, require that this Court remove him as Trustee of the Gunnell Family Dynasty Trust and replace him as Trustee with an appropriate and disinterested substitute trustee in accordance with Code of Virginia § 64.2-1405 *et. seq.*; and/or remove him as Trustee and replace him with a Special Fiduciary in accordance with Code of Virginia § 64.2-759 and/or Code of Virginia § 64.2-792; and/or suspend him and preclude him from acting in any capacity as the Trustee of the Gunnell Family Dynasty Trust.

WHEREFORE your Plaintiff prays that this Court remove Thomas Nelson Gunnell as the Trustee of the Gunnell Family Dynasty Trust; that it replace him as Trustee with an appropriate and disinterested substitute Trustee or Special Fiduciary; that such person take possession of the Trust Property and administer the Trust and trace the Trust property wrongfully disposed of and recover it or its proceeds; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count III

Alternatively, Motion to Set an Appropriate Bond

67. The allegations of Paragraphs 1 through 66 are incorporated herein by reference as if set forth in full.

68. If for any reason this Court declines to remove Thomas Nelson Gunnell as the Trustee of the Gunnell Family Dynasty Trust, then it would still be the case that Gunnell's previous conduct as Trustee has, at a minimum, raised serious and substantial concerns as to the financial safety and security of Gunnell Family Dynasty Trust assets, should Gunnell's tenure as Trustee be extended. Such concerns would fully merit the imposition of a requirement of bond in accordance with Code of Virginia § 64.2-755, in an amount not less than the value of the Trust assets at the time Gunnell first assumed control over them, that is, in an amount not less than TWENTY-NINE MILLION DOLLARS (\$29,000,000) with appropriate surety.

WHEREFORE, should this Court decline to remove Thomas Nelson Gunnell as the Trustee of the Gunnell Family Dynasty Trust, then and in that event your Plaintiff prays that this Court require, as a condition of Gunnell remaining as Trustee, that he post an appropriate bond to secure the faithful performance of his duties, with surety, in an amount not less than TWENTY-NINE MILLION DOLLARS (\$29,000,000); and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count IV
(Breach of Fiduciary Duty)

69. The allegations of Paragraphs 1 through 66 are incorporated herein by reference as if set forth in full.

70. Gunnell, as Trustee of the Dynasty Trust, owes a fiduciary duty to all beneficiaries to use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Gunnell repeatedly breached that duty, egregiously, by among other things his failures to inform; his failures to respond promptly to inquiries from beneficiaries; his failures to keep adequate records; his failures to keep Dynasty Trust assets separate from other assets, i.e. comingling; and his failures to properly and competently administer the Dynasty Trust assets. As a direct and proximate cause of Gunnell's breach of his fiduciary duties, Thompson as well as the other beneficiaries have suffered

damages, the extent of which is yet unknown because of Gunnell's refusal to provide any information.

WHEREFORE your Plaintiff prays that this Court find that Gunnell has violated his fiduciary duties to the beneficiaries; that it remove him as Trustee of the Dynasty Trust; that it take evidence as to the damages caused by Gunnell's breaches of his fiduciary duties; that it require him to disgorge assets which he has improperly taken for his own; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count V
(Conversion)

71. Plaintiff restates paragraphs 1 through 66 as if fully repeated here.

72. Plaintiff has an equitable ownership interest in all Dynasty Trust assets. Gunnell has wrongfully and in violation of his duties as Trustee converted millions of dollars of Dynasty Trust assets to his own use and/or to the use of others beside the Dynasty Trust, to the great detriment of the beneficiaries.

WHEREFORE your Plaintiff prays that this Court take evidence as to the nature and extent of Gunnell's conversion of Dynasty Trust assets; that it determine the value of those assets so converted; and that it order Gunnell to disgorge and pay over to the Dynasty Trust such sums including profits therefrom, and enter judgment against Gunnell, in an amount not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000), plus costs, with interest both pre- and post-judgment, until paid; and that she have such other and further

relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count VI
Defendant Thomas Nelson Gunnell
(Negligence)

73. Plaintiff restates paragraphs 1 through 66 as if fully repeated here.

74. Defendant Gunnell has a duty as Trustee of the Dynasty Trust to among other things administer the Dynasty Trust in a competent manner in the best interests of the beneficiaries; to maximize the return and investment of the Trust assets; and to safeguard the assets for the benefit of the beneficiaries. He breached those duties by incompetently administering those assets, including by failing to keep adequate records, by encumbering Dynasty Trust assets without adequate means to service those encumbrances, resulting in the Traveller's Rest LLC bankruptcy; by taking on additional liabilities to Dynasty Trust assets which would not have been necessary but for his failures; and by failing to prevent depredations from and conversions of the Trust Assets, by himself and others. As a direct and proximate result of Gunnell's breaches of duty, plaintiff suffered damages, the extent of which is at this time unknown, because of yet another breach of duty by Gunnell, the failure to inform your Plaintiff of his dealings and the failure to respond timely to inquiries.

WHEREFORE your Plaintiff prays that this Court take evidence as to Gunnell's negligence and the damages resultant therefrom; that it award

judgment for compensatory damages against Gunnell for his negligence in an amount not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000), plus costs, with interest both pre- and post-judgment, until paid; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count VII
Defendant Thomas Nelson Gunnell
(Gross Negligence)

75. Plaintiff restates paragraphs 1 through 74 as if fully repeated here.

76. Gunnell's conduct is in reckless indifference to the purposes of the trust or the interests of the beneficiaries, and in wanton disregard of plaintiff's rights. As a direct and proximate defendant's gross negligence, plaintiff suffered damages.

WHEREFORE your Plaintiff prays that this Court take evidence as to Gunnell's gross negligence and the damages resultant therefrom; that it award compensatory judgment against Gunnell for his negligence in an amount not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000), plus costs, with interest both pre- and post-judgment, until paid; that it further award punitive damages against him in an amount not less than TEN MILLION DOLLARS (\$10,000,000), plus costs, with interest both pre- and post-judgment, until paid; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count VIII
(Temporary Injunction)

77. Plaintiff restates paragraphs 1 through 76 as if fully repeated here.

78. Gunnell as Trustee has committed serious breaches of trust. A part of those breaches has been his refusal to inform the beneficiaries of what actions he has taken with regard to the Trust assets, including their encumbrance(s) and/or their alienation. He appears to have wasted and/or converted a large percentage of the assets entrusted to his care, perhaps even the majority of them, without accounting to anyone; and your Plaintiff fears that unless Gunnell is immediately restrained from further encumbering and/or alienating remaining assets, that he will continue to do so, even on an expedited basis. Your Plaintiff believes that she is likely to prevail on the merits as to seeking to remove Gunnell as Trustee of the Dynasty Trust and as to compelling him to make an accounting; and she submits that if a new Trustee is ordered, that person should have the opportunity to review such accounting before determining how to handle the remaining assets, and she asserts that the balancing of hardships favors taking control of Dynasty Trust assets away from Gunnell without delay. Your Plaintiff further avers that given Gunnell's record of depredations upon the Dynasty Trust and his failure to even maintain records, that she and the other beneficiaries are likely to suffer irreparable harm in the absence of such a temporary injunction. Further, she asserts that the public interest is served by among other things upholding the integrity of the fiduciary system by denying a faithless Trustee the opportunity to do more harm.

WHEREFORE your Plaintiff prays that this Court enter a temporary injunction, prohibiting Gunnell or anyone acting by or through him to convey,

alienate, encumber, waste, despoil, remove, carry away, withdraw, transfer, or in any way make any Dynasty Trust asset less available to any special fiduciary or substitute trustee, or any more restricted in any way, until such time as an appropriate accounting is made and this Court dissolves such temporary injunction, or until this Court deems appropriate. Your Plaintiff further prays that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count IX
All Defendants
Equitable Relief
(Constructive Trust)

79. Plaintiff restates paragraphs 1 through 76 as if fully repeated here.

80. Gunnell's conduct as Trustee has wrongfully deprived your Plaintiff and the other beneficiaries of their rights. Gunnell's entities hold legal title to real properties and other assets that they should not possess, due to defendant's breach of his fiduciary duties. This wrong must be righted, and the assets returned to the Dynasty Trust, and re-titled accordingly as appropriate; and any profits arising from Gunnell's improper conduct and breach of fiduciary duties must be accounted for and returned to the Dynasty Trust.

WHEREFORE your Plaintiff prays that this Court impress and impose a constructive trust on any and all assets found by the Court to have been wrongfully transferred, titled, or otherwise alienated from the Dynasty Trust, such that their rightful ownership and title may be restored to the Dynasty Trust; any profits arising from Gunnell's breach of fiduciary duties and

improper conduct must be accounted for and returned to the Dynasty Trust; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

Count X
Attorney's Fees and Costs

81. Plaintiff restates paragraphs 1 through 80 as if fully repeated here.

82. Code of Virginia § 64.2-795 provides that in an appropriate case involving the administration of a trust, that the Court may award costs and expenses, including reasonable attorney's fees, to be paid by another party or from the trust. Further, this Court has the inherent equitable authority to do so under the auspices of *Prospect Development Co. v. Bershader*, 258 Va. 75, 92 (1992). Your Plaintiff avers that this is such a case, and she moves this Court for such an award, in such amounts as may be deemed appropriate by the Court; and she prays that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

WHEREFORE your Plaintiff prays that this Court award her her costs and reasonable attorney's fees, from other parties and/or from the Dynasty Trust, as the interests of justice may require; and that she have such other and further relief, and that this Court make such other and further order(s), as the nature of this case may require.

PLAINTIFF DEMANDS TRIAL BY JURY.

Dated this 27th day of July, 2020.

Respectfully submitted,
Jane Page Gunnell Thompson
By Counsel:

John H. Clarke VSB 023842
1629 K Street, NW
Suite 300
Washington, DC 20006
(202) 344-0776
Fax: (202) 332-3030
john@johnhclarkelaw.com

Warren R. Stein, VSB No. 32029
210 Wirt Street SW
Suite B-4
Leesburg, VA 20175
(703) 771-9120
Fax: (703) 771-9121
warrenstein@warrenstein.com

Exhibits

Exhibit 1

Trust Agreement for the Gunnell family Dynasty Trust. 1-16

Exhibit 2

The Virginia Burt Gunnell Amended and Restated Revocable
Declaration of Trust 17-30

Exhibit 3

In Re: Traveller's Rest, LLC, Case No. 17-12061-BFK,
ECF 41, Disclosure Statement With Respect to Debtor's
Plan of Reorganization. 31-53

Exhibit 4

In Re: Traveller's Rest, LLC, Case No. 17-12061-BFK,
ECF 25, Declaration Under Penalty of Perjury for
Non-Individual Debtors. 54-80

Exhibit 5

In Re: Traveller's Rest, LLC, Case No. 17-12061-BFK, ECF 25,
Marshall Capital LC's Objection to the Approval of Debtor's
Disclosure Statement. 81-91

**TRUST AGREEMENT
FOR THE
GUNNELL FAMILY DYNASTY TRUST**

THIS TRUST AGREEMENT is made effective as of the 26 day of May, 2009, by and between **VIRGINIA BURT GUNNELL**, of Loudoun County, Virginia, herein for convenience referred to as "Grantor," and **THOMAS NELSON GUNNELL**, or his successors, herein for convenience referred to as "Trustee."

W I T N E S S E T H:

For and in consideration of the mutual covenants and agreements herein contained, it is agreed between the Grantor and the Trustee as follows:

ARTICLE ONE

A. The Grantor has established this irrevocable trust to be the owner of all right, title and interest in such property which the Grantor may transfer to it, as set forth on Schedule A attached hereto. Such property, together with any other funds, property or policies of insurance that may from time to time be added hereto by the Grantor or any other person by gift, devise or bequest or purchased by the Trustee, hereinafter collectively referred to as the "Trust Fund," shall be held, administered and disposed of as set forth in this Agreement. The Trustee accepts this Trust in accordance with the terms and conditions set forth below. This Trust shall be known as the "GUNNELL FAMILY DYNASTY TRUST."

B. At the time of execution of this Trust, the Grantor is not married and she has one child whose name is JANE RITTENHOUSE GUNNELL ("JANE"). Where reference herein is made to a child of the Grantor or children of the Grantor or words of similar import, it shall be deemed to refer exclusively to JANE. JANE has two children, whose names are JANE PAGE GUNNELL THOMPSON and THOMAS NELSON GUNNELL. This Trust is for the benefit of JANE and her issue.

Exhibit 1

000001

ARTICLE TWO

The Grantor or any other person may, at any time and from time to time, with the approval of the Trustee, transfer to the Trustee, by lifetime gift or by Will, any securities or other property, including policies of insurance. All such additions shall be irrevocable and shall be subject to all of the terms and conditions of this Agreement.

A. Whenever during the Grantor's lifetime a donation is made to the trust by the Grantor or any other person other than by Will (including the initial donation creating the trust), and except as provided in paragraph B of this Article Two, JANE and her issue and the issue's spouses, and certain key persons with beneficiary rights upon death (Teresa Copenhaver, Ellen Shifflett and Rodney Bolner), shall have the right to withdraw assets from the principal of the trust (including the donated assets) having aggregate value equal to a fraction of the value of the donated assets. The numerator of the fraction shall be one and the denominator shall be the number of persons having a withdrawal right at the time with respect to the donated assets.

B. The donor making any donation to the trust may, by written instrument delivered by the donor to the Trustee at the time of the donation, change or deny such person's withdrawal rights with respect to the donation being made, so as to: (i) exclude any such person from exercising such right; (ii) increase or decrease the amount subject to withdrawal by any one or more persons; or (iii) change the period during which any right may be exercised, from that provided under the following paragraphs. No donor may change or deny withdrawal rights with respect to any prior donations.

C. The Trustee shall promptly give written notice of each donation to each person having a withdrawal right. If any person having a withdrawal right is a minor or under legal disability, the notice shall be given to the person's legal guardian, but if there is none, to a parent or other adult person responsible for the person, as selected by the Trustee. If more than one Trustee is serving under this Agreement, any one of the Trustees may act for all Trustees in notifying each person having a withdrawal right. Notwithstanding the foregoing, by written instrument delivered to the Trustee, any person having a

withdrawal right may waive the giving of notice to such person as provided above and may similarly waive his right of withdrawal with respect to any donation to the Trust.

D. Any person having a withdrawal right may exercise that right by a written instrument delivered to the Trustee. The legal guardian, parent, or other adult person who receives notice of any donation on behalf of a minor or a person under legal disability may exercise that right on behalf of such person in the same manner. Any asset in the Trust Fund, including without limitation group term life insurance with respect to which a premium has been paid, may be used to satisfy a withdrawal right.

E. The withdrawal rights created under this Article are generally non-cumulative and shall lapse thirty (30) days from the date of receipt of notice from the Trustee, or at such earlier time at which such person irrevocably waives in writing his or her right to exercise the withdrawal right. However, if any person holding such a withdrawal right fails to exercise it within such period, then it shall continue in existence to the extent that the amount subject to such exercise will exceed the greater of five thousand dollars (\$5,000.00) or five percent (5%) of the aggregate value of the assets out of which such withdrawal right could be satisfied. For this purpose, the amount subject to the exercise of a withdrawal right includes all amounts over which such person had, with respect to this trust, a withdrawal right that expired during the same calendar year, and all unexpired withdrawal rights with respect to this trust as to any prior donations from the same or any prior calendar year. Such continuing withdrawal right shall lapse only to the extent that the amount subject to such withdrawal right, together with all other amounts subject to withdrawal rights granted to the same person, does not exceed the greater of five thousand dollars (\$5,000.00) or five percent (5%) of the aggregate value of the assets out of which such withdrawal right could be satisfied. Any reference to five thousand dollars (\$5,000.00) or five percent (5%) of the aggregate value of the assets out of which a withdrawal right can be satisfied shall be determined annually and shall not be cumulative.

ARTICLE THREE

The Grantor intends that this Trust Agreement be a grantor trust for federal income tax purposes under Code Section 671 and accordingly, the following applies:

A. The Grantor hereby expressly reserves the power to borrow Trust corpus or income in exchange for the Grantor's promissory note and without any security, but the promissory note must bear adequate interest. The Grantor irrevocably may release this power at any time by a written instrument signed by him and delivered to the Trustee, which the Trustee, in turn, will file with the original of this Trust Agreement and give a copy to all adult Trust beneficiaries (or their guardians, if minors). The Grantor's release of the power to borrow without any security as set forth in this paragraph A shall be final and binding on all persons, including the Trustee and all successor Trustees.

B. The Trustee at any time may add one or more organizations described in Code Sections 501(c) (3) and 170(c) (2), not to exceed a total of ten, to the class of beneficiaries eligible to receive distributions under ARTICLE FOUR and ARTICLE FIVE. Any such addition of beneficiaries shall be by a written instrument signed by the Trustee and filed with the original of this Trust Agreement.

1.1. If the Trustee elects to add one or more charitable beneficiaries, then the Trustee is authorized to pay to or expend for the benefit of such beneficiaries so much of the net income and principal of the Trust Fund as the Trustee, in the exercise of uncontrolled discretion, deems appropriate.

1.2. The Trustee irrevocably may release this power at any time by a written instrument signed by him and filed with the original of this Trust Agreement. If the Trustee relinquishes the power granted to him in this paragraph B while the Grantor is alive, then the Trustee, as well as all successor Trustees, will acquire the power to make distributions to the Trust's then current income beneficiaries for their education under ARTICLE FOUR. The Trustee's determination to exercise or release the power to designate additional beneficiaries as set forth in this paragraph B shall be final and binding on all persons, including all successor Trustees. The Trustee shall provide a copy of the relevant written instrument,

either exercising or releasing this power, to the Grantor (if living) and all adult Trust beneficiaries (or their guardians, if minors).

ARTICLE FOUR

During the Grantor's lifetime and subject to the provisions of ARTICLE TWO, the Trustee is authorized to pay to or expend for the benefit of JANE and her issue so much of the net income and principal of the Trust Fund (including all or none) as the Trustee, in the exercise of uncontrolled discretion, deems appropriate for JANE'S and her issue's health, maintenance, support and education; provided, however, that in no event shall income or principal of the Trust Fund be utilized for the benefit of the Grantor or the Trustee or to satisfy any legal obligation of the Grantor or the Trustee. Any income not so paid shall be accumulated and added to principal.

ARTICLE FIVE

Upon the Grantor's death, the Trustee shall collect all proceeds due the Trust under the terms of any and all insurance policies subject to the terms of this Agreement, and shall accept any assets to which the Trustee may then be or may thereafter become entitled under the terms of the Will of the Grantor or otherwise of which the Trustee has knowledge, and together with any cash and property held by the Trustee at the time of the death of the Grantor, and all investments and reinvestment thereof, shall hold, administer and dispose of the same as set forth below.

A. This Trust may be administered as two separate trusts if the Grantor or the Grantor's personal representative deems it appropriate for Generation Skipping Transfer ("GST") tax purposes. The Grantor may allocate all or any portion of the Grantor's available GST exemption to any property of which the Grantor is the transferor, including any property transferred by the Grantor during the Grantor's lifetime as to which the Grantor did not make an allocation before her death. The Grantor anticipates that she will allocate her available GST exemption to the Trust Fund if such allocation is deemed appropriate.

Should the allocation of the Grantor's GST exemption cause any trust under this Agreement to have an inclusion ratio other than one (1) or zero (0), the Grantor authorizes the Trustee to establish two separate trusts for accounting purposes. One trust (the "Nonexempt Trust") shall have an inclusion ratio of one (1), and the other trust (the "Exempt Trust") an inclusion ratio of zero (0). If any separate trust for a beneficiary is a Nonexempt Trust and the beneficiary dies, at the beneficiary's death, the Trustee shall distribute the principal and any undistributed income of the Nonexempt Trust to the creditors of the beneficiary's estate to the extent the beneficiary shall so appoint by specific reference to this power in the beneficiary's will.

B. The Trust shall be for JANE and her lawful issue. Until the death of the Grantor's last living lawful issue (singularly "beneficiary" or collectively "beneficiaries"), the Trustee shall manage, invest and reinvest the Trust assets, collect the income therefrom, and pay over or apply the net income and/or principal thereof to such extent, as the Trustee in the exercise of its sole and absolute discretion, shall deem advisable for the beneficiaries' support, maintenance, health and education. In determining the amounts of trust property, if any, to be paid over to or applied for the use of the beneficiaries pursuant to the discretionary powers herein granted, the Trustee is authorized, but not required, in the exercise of its sole and absolute discretion, to take into consideration any sources of income available to, or assets owned by or held for the use of, the beneficiaries and the effect that any distribution may have on increasing any income or wealth transfer taxes that may be payable. Any net income not so paid over or applied shall be accumulated and added to the principal of the Trust at least annually and thereafter shall be held, administered and disposed of as a part thereof. Further, the Trustee may pay such income or principal in such amounts and proportions as it deems advisable, including all to one to the exclusion of the others, and at such time or times.

C. In addition to the distributions described in subparagraph B immediately above in the discretion of the Trustee, the Grantor further directs that the Trustee pay to each of JANE, JANE PAGE GUNNELL THOMPSON and THOMAS NELSON GUNNELL, Five Thousand Dollars (\$5,000) per

month, on the first of each month. However, if JANE, JANE PAGE GUNNELL THOMPSON and THOMAS NELSON GUNNELL are otherwise receiving mandatory distributions from any of the other Grantor's Trusts under a similar provision, it shall reduce the amount received from this Trust so that in total the amount does not exceed Five Thousand Dollars (\$5,000) per beneficiary. However, each beneficiary may still receive distributions for health, maintenance, support and education as stated in subparagraph B above.

D. If the Trust consists of property at Banbury Cross Farm "Farm," owned directly or indirectly through LLC interests, such as Banbury Cross, LLC, the Grantor directs that the Farm and its contents not previously distributed pursuant to the Grantor's Will, be held in Trust for THOMAS NELSON GUNNELL and his lawful issue. The expenses of maintaining the Farm for as long as it remains in the Trust and occupied by THOMAS NELSON GUNNELL and his lawful issue shall be an expense of the Trust.

E. The Grantor expects the Trustee to maximize the return and investment of the Trust assets. In this regard, the Grantor anticipates that the Trustee in due course will sell various Trust assets or develop Trust assets as the Trustee determines in its sole discretion is in the best interests of the beneficiaries.

F. If the expenses set forth below in this subparagraph F are not being paid from the Grantor's Estate or Revocable Trust, then the Trustee may provide the following distributions from the Trust Fund:

1. If Teresa Copenhaver or such other agent who is acting in the same capacity is in the Grantor's employ at the time of the Grantor's incapacity or at the time of the Grantor's death, the Trustee shall provide Teresa with funds to pay ordinary bills on the Grantor's behalf or for a reasonable period after the Grantor's death to wind up the Grantor's personal affairs. This provision shall be a continuing one if Teresa Copenhaver or such other agent shall continue in such capacity on behalf of the Grantor's heirs. Teresa shall be entitled to receive compensation for her services at the same rate as she

was receiving payment from the Grantor with appropriate adjustments in the discretion of the Trustee. Further, upon the Grantor's death, Teresa shall receive \$1,000 from the Trust.

2. If Ellen Shifflett is in the Grantor's employ at the time of the Grantor's death and continues in the same capacity for the Grantor's heirs, the Trustee shall continue to employ Ellen in accordance with the same arrangements as exist at that time with appropriate adjustments in the discretion of the Trustee and to pay for such monetary arrangements out of the general funds of the Trust. Further, upon the Grantor's death, Ellen shall receive \$1,000 from the Trust.

3. If Rodney Bolner is in the Grantor's employ at the time of the Grantor's death and continues in the same capacity for the Grantor's heirs, the Trustee shall continue to employ Rodney in accordance with the same arrangements as exist at that time with appropriate adjustments in the discretion of the Trustee and to pay for such monetary arrangements out of the general funds of the Trust. Further, upon the Grantor's death, Rodney shall receive \$1,000 from the Trust.

G. Upon the death of the Grantor's last living lawful issue, the Trustee shall distribute the principal and any undistributed income to the Episcopal Diocese of Virginia for its general purposes. If such Diocese does not then exist, the Trustee shall distribute the principal and any undistributed income to one or more organizations as the Trustee may select in the sole discretion of the Trustee and in such proportions as the Trustee shall deem appropriate; provided, each such organization must be an organization described in Sections 170(b) (1) ((A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code at the time of distribution.

H. During the continuation of the Trusts provided herein, no beneficiary shall have the right to anticipate, alienate or assign any interest, whether to income or principal, to which such beneficiary may be entitled hereunder, unless such right is expressly conferred upon such beneficiary, nor shall such interest be liable for his or her debts or be subject to attachment or garnishment by his or her creditors or by any of them (including any government or subdivision or agency thereof). It is the Grantor's intent by this provision to create a spendthrift trust to the extent permitted by law.

I. The Grantor intends that this Trust Fund continue indefinitely, if permissible, under Virginia law. The Trustee may change the situs of any trust under this Agreement, for any reasons in its sole and absolute discretion, including to carry out the Grantor's intent regarding its duration. However, this Trust shall terminate when all of the Trust Fund has been distributed to the beneficiaries by the Trustee; provided, however, that anything in this Agreement to the contrary notwithstanding, no trust created hereunder shall continue longer than any applicable rules governing perpetuities, vesting, accumulations and the like.

ARTICLE SIX

A. The Trustee is hereby authorized, in the exercise of uncontrolled discretion, without regard to whether the Trustee may also be serving as personal representative of the Grantor's estate or as trustee of any other trust created by the Grantor, to purchase on behalf of the Trust Fund any property, real, personal or mixed, tangible or intangible, and wherever situated, belonging to the estate of the Grantor or any other trust created by him, or to make loans or advancements, secured or unsecured, to the personal representative of the estate of the Grantor or to the trustee of any other trust created by him. Any such purchases, loans and advancements shall be made upon such terms and conditions as the Trustee in the exercise of uncontrolled discretion considers appropriate. The Trustee shall not be liable for any loss to the Trust Fund by reason of acting in accordance with this ARTICLE SIX, whether or not such assets constitute investments which may be legally made by trustees.

B. The Grantor hereby expressly waives any applicable "Prudent Person" Rule. In addition to the investment powers conferred in this ARTICLE SIX and as set forth in ARTICLE SEVEN below, the Trustee is authorized (but is not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would be forbidden by the "prudent person" rule. The Trustee may, in the exercise of its sole and absolute discretion, invest in any type of property, wherever located, including any type of security or option, improved or unimproved real property, and tangible or intangible personal

property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, corporations, mutual funds or any other form of participation or ownership whatsoever. In making investments, the Trustee may disregard all of the following factors:

1.1. Whether a particular investment or the Trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal.

1.2. Whether the acquisition or retention of a particular investment or the Trust investments collectively are consistent with any duty of impartiality as to the different beneficiaries. (The Grantor intends that no such duty shall exist.)

1.3. Whether the Trust is diversified. (The Grantor intends that no duty to diversify shall exist.)

1.4. Whether any or all of the Trust investments would traditionally be classified as too risky or speculative for trusts. The entire Trust may be so invested. (The Grantor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy.) The Grantor's purpose in granting the foregoing authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature of the investment or the degree of risk presented by the investment, but the Trustee shall be liable if the Trustee's procedures in selecting and monitoring the investment are proved by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

ARTICLE SEVEN

A. In addition to every power and discretion conferred upon the Trustee by any other provision of this Agreement, the Trustee shall have the usual powers conferred by law on trustees in every jurisdiction in which the Trustee may act including specifically the powers of fiduciaries enumerated in

Section 64.1-57 of the Code of Virginia, as in force at the date of this Agreement together with any additional powers enumerated therein after said date, which powers are incorporated herein by reference. Specifically included, the Trustee, in its sole discretion, may execute any form of indemnity or guarantee secured by assets of the Trust necessary to carry out the operations of any Trust asset or entity.

B. Except as provided in ARTICLE THREE, the Trustee shall have no power to enable the Grantor, the Trustee or any other person to purchase, exchange, deal with or dispose of any trust assets for less than adequate consideration, or to borrow any trust assets without adequate interest and security.

C. At any time, the Trustee, insofar as may be practicable, may consolidate the trust estate of any trust herein created with any other trust or trusts created by the Grantor or any member of the Grantor's family, and may hold, administer and invest the several trusts as one or more common fund or funds and make joint or several distributions of income and principal thereof, whichever the Trustee deems advisable.

D. If at any time the size of any trust under this Agreement is so small that, in the opinion of the Trustee, the Trust is uneconomical to administer, or if in the opinion of the Trustee the Trust is impractical or inappropriate to continue in view of changed conditions in the future with respect to property rights, taxation or social, economic or political matters which are unforeseen and which might make desirable a different disposition of the property or insurance policies held in trust, the Trustee shall have full power and discretion to sell any insurance policy held by the Trustee for its interpolated terminal reserve value and/or to terminate the Trust in whole or in part. In the event of such termination, the Trustee shall distribute the assets either in cash or in kind, including any insurance policies then held by the Trustee, to one or more of the Grantor's descendants and if to more than one in such proportions as the Trustee may deem appropriate in the exercise of uncontrolled discretion. The Trustee shall have no liability to anyone for any decision pursuant to this paragraph, so long as the Trustee acts in good faith and the Trustee shall not be required to give notice to anyone before taking such action.

E. The Trustee is not required to provide a Trustee's report or any other information otherwise required to be furnished under Section 55-548.13 of the Code of Virginia, as amended from time to time.

F. The Trustee, in the Trustee's sole and complete discretion, may utilize the provisions of Section 55-548.17 of the Code of Virginia, as amended from time to time, with respect to any partial or complete termination of any trust created by this instrument. The Trustee is under no obligation to create a plan of distribution, but if the Trustee desires to utilize such provisions, then the Trustee is authorized to do so.

G. The Trustee shall not be obligated or required under the terms of this Agreement to pay or reimburse the Grantor for the payment of any incremental income tax imposed upon the Grantor with right to income or gains received by the Trust. However, the Trustee may do so in its sole discretion.

ARTICLE EIGHT

Any individual Trustee serving hereunder shall be entitled to receive fair and reasonable compensation from the Trust Fund for services rendered from time to time, and to reimbursement of reasonable expenses incurred in connection with the performance of such services. Any corporate Trustee serving hereunder shall be entitled to receive compensation from the Trust Fund for the services which it renders from time to time, which compensation shall be at the rate at which it is willing to render similar services to others at the time such services are rendered, as evidenced by its published schedule of fees in effect at the particular time, or as otherwise agreed to by the Trustee and the Grantor during his lifetime or by the Trustee and the adult income beneficiaries after the Grantor's death.

ARTICLE NINE

A. Any Trustee serving hereunder shall have the power to resign at any time upon the giving of thirty (30) days prior written notice to the Grantor, if living, or after the Grantor's death, to the current adult beneficiary or beneficiaries. Any Trustee may appoint a Co-Trustee or successor Trustee to serve

with him or her or to succeed him or her. If THOMAS NELSON GUNNELL is unable or unwilling to serve, then TERESA COPENHAVER shall serve as Trustee. If there is no Trustee serving hereunder, then a Trustee may be appointed by the majority vote of the adult income beneficiaries. At age 21 THOMAS NELSON GUNNELL, JR., shall serve as Co-Trustee, and at age 30, any then Co-Trustee shall resign and THOMAS NELSON GUNNELL, JR., shall serve as sole Trustee. Any Successor Trustees shall be vested with full power and authority upon the written acceptance of the Trusteeship and without further formality. Successor Trustees shall have all the powers and authority of the Trustee succeeded, including the power to appoint a successor Trustee in the same manner provided above. No successor Trustee shall be responsible for, or be required to inquire into, the actions or omissions of any predecessor Trustee, and no Trustee shall be required to file accountings with a public official. Under no circumstances shall the Grantor serve as a Trustee hereunder.

B. Any Trustee serving hereunder is authorized to delegate to any other Trustee serving hereunder the exercise of any or all powers, discretionary or otherwise, and to revoke any such delegation at will. The delegation of any such power, and also the revocation of any such delegation, shall be evidenced by an instrument in writing executed, acknowledged and delivered to the other Trustee or Trustees. So long as any such delegation is in effect, any of the powers, discretionary or otherwise, hereby granted and so delegated may be exercised and action may be taken by the other Trustee(s) with the same force and effect as if the Trustee delegating such power had personally joined in the execution of such power and the taking of such action. Further, the remaining Trustee(s) shall be relieved of all liability with regard to all powers and responsibilities specifically delegated to a particular other Trustee.

C. Any decision of the Trustee with respect to the exercise or nonexercise of any discretionary power or the time or manner of the exercise thereof, if made in good faith, shall fully protect the Trustee and be binding upon all persons interested in any trust created by this Trust Agreement. No Trustee shall be liable for any acts or omissions in administering any trust created hereunder, except that each Trustee shall be liable for his or her own actual fraud, gross negligence, or willful misconduct.

ARTICLE TEN

No Trustee serving hereunder shall be required to furnish any bond or other security in any jurisdiction for the performance of duties in such capacity.

ARTICLE ELEVEN

This Trust is irrevocable and the Grantor relinquishes all right to alter, amend, revoke or terminate this Agreement.

ARTICLE TWELVE

This Agreement shall be construed and regulated in all respects by the laws of the Commonwealth of Virginia.

ARTICLE THIRTEEN

A. Where appropriate, the masculine as used in this Agreement shall include the feminine and neuter, the singular shall include the plural, and vice versa.

B. The term "issue", wherever used in this Agreement, shall be construed to mean lineal descendants in the first, second or any other degree of the ancestor designated. While legally adopted children may not be considered issue or heirs, they may be educated by Trust money in private schools from pre kindergarten to graduate school, just as issue.

C. This Agreement may be signed in more than one counterpart, each of which shall be deemed an original.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this instrument effective as of the day and year first written above.

Virginia Burt Gunnell (SEAL)
VIRGINIA BURT GUNNELL, Grantor

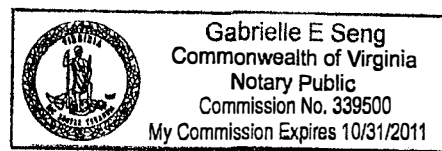
COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit: Loudoun

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid do hereby certify that VIRGINIA BURT GUNNELL, personally known to me to be (or satisfactorily proven to be) the person whose name is signed to the foregoing Dynasty Trust, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand and seal this 26th day of May, 2009.

[Signature] (SEAL)
NOTARY PUBLIC

My Commission Expires: 10/31/2011



The Grantor specifically acknowledges that this Trust Agreement contains exculpatory clauses intended to limit the liability of the Trustee. The Trustee is held harmless for all actions, inactions, decisions, and votes made in his capacity as Trustee of the Trust Fund except for his own actual fraud, gross negligence, or willful misconduct. The Grantor agrees with such provisions of this Trust Agreement.

Virginia Burt Gunnell (SEAL)
VIRGINIA BURT GUNNELL, Grantor


_____(SEAL)
THOMAS NELSON GUNNELL, Trustee

COMMONWEALTH OF VIRGINIA,
COUNTY OF ~~FAIRFAX~~, to-wit: Loudoun

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid do hereby certify that **THOMAS NELSON GUNNELL**, personally known to me to be (or satisfactorily proven to be) the person whose name is signed to the foregoing Dynasty Trust, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand and seal this 26th day of May, 2009.


_____(SEAL)
NOTARY PUBLIC

My Commission Expires: 10/31/2011



Gabrielle E Seng
Commonwealth of Virginia
Notary Public
Commission No. 339500
My Commission Expires 10/31/2011

**THE VIRGINIA BURT GUNNELL
AMENDED AND RESTATED
REVOCABLE DECLARATION OF TRUST**

VBG THIS AMENDED AND RESTATED DECLARATION OF TRUST is made this 12TH day of December, 2007, by ^{Louderman} VIRGINIA BURT GUNNELL, of Fauquier County, Virginia, as Grantor and VIRGINIA BURT GUNNELL as Trustee, and supersedes and replaces in its entirety all prior Trusts. This Trust Agreement was initially made and entered into October 9, 1996, and amended and restated as of June 21, 2001 and September 27, 2007, pursuant to Article V of the Trust.

ARTICLE ONE

The Grantor does hereby transfer and deliver to the Trustee such property as may be set forth on "Schedule A" attached hereto, the receipt of which is hereby acknowledged by the Trustee. Such property, hereinafter referred to as the Trust Fund, shall be held, administered and disposed of as hereinafter set forth in this Declaration.

For purposes of beneficiary designations and transfers to the Trust, this Trust shall be referred to as:

VIRGINIA BURT GUNNELL, Trustee, or her successors, of the VIRGINIA
BURT GUNNELL REVOCABLE DECLARATION OF TRUST, created
U/A/D October 9, 1996, as amended.

At the time of execution of this Declaration, the Grantor is not married, and she has one child, whose name is JANE RITTENHOUSE GUNNELL. Where reference herein is made to a child of the Grantor or children of the Grantor or words of similar import, it shall be deemed to refer exclusively to JANE RITTENHOUSE GUNNELL. JANE has two children, whose names are JANE PAGE GUNNELL THOMPSON and THOMAS NELSON GUNNELL.

Exhibit 2

126
000017

ARTICLE TWO

During the Grantor's lifetime, the Trust Fund shall be held by the Trustee in trust to invest and reinvest the same, with all the powers, authority and discretion hereinafter conferred upon the Trustee in ARTICLE FOUR, (i) to pay all the net income arising therefrom to the Grantor in convenient installments or dispose of such net income in such other manner as the Grantor may from time to time direct in writing, (ii) to pay and deliver to the Grantor all or so much of the principal thereof as the Grantor may, from time to time, request the Trustee in writing to pay over and deliver to her, and (iii) in the event of the Grantor's inability to manage business or financial affairs, to pay or expend the net income and principal thereof for the support, maintenance, health and welfare of the Grantor and to discharge the obligations of the Grantor. This Declaration is a Revocable Trust which may be revoked or amended by the Grantor at any time during her lifetime.

For all purposes of this Declaration, no successor Trustee, beneficiary or other person interested in this Declaration shall have any obligation to inquire into or seek a judicial determination of the Grantor's ability to manage business or financial affairs. It may be assumed that the Grantor has that ability unless and until written notice to the contrary is received from the Grantor's physician and a second physician or licensed clinical psychologist after a personal examination of the Grantor and certified in writing.

The Grantor intends, but does not direct, that if she is ever incapacitated, in addition to any other payments under this paragraph, the Trustee may make distributions on behalf of the Grantor for the purpose of making present interest gifts to each of the Grantor's descendants and spouses of such descendants, in amounts not more than the annual federal gift tax exclusion (presently \$12,000 per donee). In making any such distributions, the Trustee should first consider their tax effects and their effect on the Grantor's estate plan. All such gifts may be made outright, in trust, to a legal guardian, or to a custodian under any applicable Uniform Transfers (or Gifts) to Minors Act, as the Trustee deems appropriate, even if the Trustee is such trustee, guardian or custodian.

ARTICLE THREE

Unless the Grantor shall revoke this Declaration during her lifetime, the Trustee, upon being informed of the death of the Grantor, shall collect all proceeds which are then or at any subsequent time payable to the Trustee and shall accept any assets to which the Trustee may then be or may thereafter become entitled under the terms of the Will of the Grantor or otherwise of which the Trustee has knowledge, and all such proceeds and assets so collected and accepted, together with any cash and property held by the Trustee at the time of the death of the Grantor, and all investments and reinvestments thereof, shall be held, administered and disposed of by the Trustee upon the trusts hereinafter set forth; provided, however, that all cash or other assets representing income earned upon the estate of the Grantor during the period of administration thereof which shall be received by the Trustee under the terms of the Will of the Grantor shall be treated as income received by the Trustee from the Trust Fund during such period and distributed accordingly.

I. In the event that the cash and other liquid assets (i.e. marketable securities and the like) passing under the Grantor's Last Will and Testament are not sufficient to pay all the Grantor's debts (exclusive of any mortgage or similar encumbrance on real property owned by the Grantor at her death), funeral expenses and expenses of last illness, all cash legacies provided for in the Grantor's Will or any codicil thereto (including funding The Virginia Burt Gunnell Charitable Lead Trust, dated March 14, 2005, referenced in the Grantor's Will), all the costs of administration of the Grantor's estate, and all estate and inheritance taxes which are payable out of the estate passing under the Grantor's Last Will and Testament, then the Trustee is authorized to pay out of the Trust Fund to the Grantor's personal representative such amount as, when added to the cash and other liquid assets available to the Grantor's personal representative from property passing under her Will, will be sufficient to pay in full all such debts, expenses, legacies, costs and taxes. In determining the amount to be paid by the Trustee under the foregoing sentence, the Trustee may rely, and shall be fully protected in relying, upon the certificate of the Grantor's personal representative as to the amount which should be paid by the Trustee under the foregoing sentence and notwithstanding anything herein to the contrary, there shall be no obligation upon

the Trustee to make any payment under the foregoing sentence after the Grantor's personal representative shall have certified to the Trustee that to the best of the personal representative's information, knowledge and belief all such debts, expenses, legacies, costs and taxes have been paid in full or after the Grantor's personal representative shall have filed the estate's final account for settlement. Notwithstanding these provisions, the Trustee shall segregate any sums received by the Trustee that are or may be exempt from federal estate tax and pay those sums to the Grantor's estate only after all other assets of the Trust Fund have been exhausted.

II. The balance of the Residuary Trust as then constituted shall be retained in Trust to be held, administered and disposed of by the Trustee as set forth below.

A. This Trust may be administered as two separate trusts if the Grantor or the Grantor's personal representative deems it appropriate for Generation Skipping Transfer ("GST") tax purposes. The Grantor may allocate all or any portion of the Grantor's available GST exemption to any property of which the Grantor is the transferor, including any property transferred by the Grantor during the Grantor's lifetime as to which the Grantor did not make an allocation before her death. The Grantor anticipates that she will allocate her available GST exemption to the Trust Fund if such allocation is deemed appropriate. Should the allocation of the Grantor's GST exemption cause any trust under this Agreement to have an inclusion ratio other than one (1) or zero (0), the Grantor authorizes the Trustee to establish two separate trusts for accounting purposes. One trust (the "Nonexempt Trust") shall have an inclusion ratio of one (1), and the other trust (the "Exempt Trust") an inclusion ratio of zero (0). If any separate trust for a child is a Nonexempt Trust and the child dies, at the child's death, the Trustee shall distribute the principal and any undistributed income of the Nonexempt Trust to the creditors of the child's estate to the extent the child shall so appoint by specific reference to this power in the child's will.

B. The Trust shall be for the Grantor's daughter, JANE RITTENHOUSE GUNNELL and her lawful issue. Until the death of the Grantor's last living lawful issue (singularly "beneficiary" or collectively "beneficiaries"), the Trustee shall manage, invest and reinvest the Trust assets, collect the income therefrom, and pay over or apply the net income and/or principal thereof to my descendants, as th

Trustee in the exercise of its sole and absolute discretion, shall deem advisable for any purpose. In determining the amounts of trust property, if any, to be paid over to or applied for the use of the beneficiaries pursuant to the discretionary powers herein granted, the Trustee is authorized, but not required, in the exercise of its sole and absolute discretion, to take into consideration any sources of income available to, or assets owned by or held for the use of, the beneficiaries and the effect that any distribution may have on increasing any income or wealth transfer taxes that may be payable. Any net income not so paid over or applied shall be accumulated and added to the principal of the Trust at least annually and thereafter shall be held, administered and disposed of as a part thereof. Further, the Trustee may pay such income or principal in such amounts and proportions as it deems advisable, including all to one to the exclusion of the others, and at such time or times.

C. In addition to the distributions described in subparagraph B immediately above in the discretion of the Trustee, the Grantor further directs that the Trustee pay to each of JANE RITTENHOUSE GUNNELL, JANE PAGE GUNNELL THOMPSON and THOMAS NELSON GUNNELL, Five Thousand Dollars (\$5,000) per month, on the first of each month. While legally adopted children may not be considered as heirs to the Trust, they may be educated by trust money in private schools from pre-kindergarten to graduate school, just the same as natural born heirs.

D. If the Trust consists of the Grantor's principal residence at Banbury Cross Farm, along with approximately 224 acres that adjoin such residence ("Farm"); the Grantor directs that the Farm and its contents not previously distributed pursuant to the Grantor's Will, be held in Trust for THOMAS NELSON GUNNELL and his lawful issue. The expenses of maintaining the Farm for as long as it remains in the Trust and occupied by THOMAS NELSON GUNNELL and his lawful issue shall be an expense of the Trust.

E. The Grantor expects the Trustee to maximize the return and investment of the Trust assets. In this regard, the Grantor anticipates that the Trustee in due course will sell various Trust assets as the Trustee determines in its sole discretion is in the best interests of the beneficiaries. These assets include a portion of Banbury Cross Farm, consisting of approximately 145 acres that is not described

above; Covington Farm, consisting of approximately 130.59 acres; Dover, consisting of approximately 81.54 acres (or held indirectly as an asset of Bush Hill Development Corporation, which stock is in the Trust and which may be sold).

F. The Grantor directs that the Trustee also provide the following distributions from the Trust Fund:

1. If Teresa Copenhaver or such other agent who is acting in the same capacity is in the Grantor's employ at the time of the Grantor's incapacity or at the time of the Grantor's death, the Trustee shall provide Teresa with funds to pay ordinary bills on the Grantor's behalf or for a reasonable period after the Grantor's death to wind up the Grantor's personal affairs. This provision shall be a continuing one if Teresa Copenhaver or such other agent shall continue in such capacity on behalf of the Grantor's heirs. Teresa shall be entitled to receive compensation for her services at the same rate as she was receiving payment from the Grantor with appropriate adjustments in the discretion of the Trustee.

VBG
2. If Ellen Shifflett is in the Grantor's employ at the time of the Grantor's death and continues in the same capacity for the Grantor's heirs, the Trustee shall continue to ^{pay}~~employ~~ Ellen in accordance with the same arrangements as exist at that time with appropriate adjustments in the discretion of the Trustee and to pay for such monetary arrangements out of the general funds of the Trust, ^{for so long as she remains}

VBG
3. If Rodney Bolner is in the Grantor's employ at the time of the Grantor's death and continues in the same capacity for the Grantor's heirs, the Trustee shall continue to ^{pay}~~employ~~ Rodney in accordance with the same arrangements as exist at that time with appropriate adjustments in the discretion of the Trustee and to pay for such monetary arrangements out of the general funds of the Trust, ^{for so long as he remains}

G. Upon the death of the Grantor's last living lawful issue, the Trustee shall distribute the principal and any undistributed income to the Episcopal Diocese of Virginia for its general purposes. If such Diocese does not then exist, the Trustee shall distribute the principal and any undistributed income to one or more organizations as the Trustee may select in the sole discretion of the Trustee and in such proportions as the Trustee shall deem appropriate; provided, each such organization must be an

organization described in Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code at the time of distribution.

H. The Grantor intends that this Trust Fund continue indefinitely, if permissible, under Virginia law. The Trustee may change the situs of any trust under this Agreement, for any reasons in its sole and absolute discretion, including to carry out the Grantor's intent regarding its duration. However, this Trust shall terminate when all of the Trust Fund has been distributed to the beneficiaries by the Trustee; provided, however, that anything in this Agreement to the contrary notwithstanding, no trust created hereunder shall continue longer than any applicable rules governing perpetuities, vesting, accumulations and the like.

III. If under the foregoing provisions of this Declaration a beneficiary who has not attained twenty-five (25) years of age becomes entitled to receive any share or part of the principal of the Trust Fund and no effective provision is made for the retention thereof prior to the beneficiary attaining such age, the Trustee is authorized to retain such share or part in trust with power and authority in the Trustee, in the exercise of uncontrolled discretion, to accumulate the net income therefrom and add it to the principal thereof or to pay to or expend for the benefit of such beneficiary, with or without the intervention of a guardian, so much of the net income and principal of the beneficiary's share or part of the Trust Fund as the Trustee, in the exercise of uncontrolled discretion, shall consider advisable for the support, maintenance, health and education of such beneficiary until the beneficiary attains twenty-five (25) years of age, at which time the beneficiary shall be entitled to receive his or her share or part free of any trusts. If the beneficiary dies prior to reaching such age, such share or part shall become a part of the beneficiary's estate. The foregoing provision shall not be construed to postpone the vesting of any share or part of the Trust Fund in such beneficiary, but shall have only the effect of postponing the beneficiary's uncontrolled enjoyment thereof prior to the beneficiary attaining such age.

IV. During the continuation of the trusts provided herein, no beneficiary shall have the right to anticipate, alienate or assign any interest, whether to income or principal, to which such beneficiary may be entitled hereunder, unless such right is expressly conferred upon such beneficiary, nor shall such

V B

000023

interest be liable for his or her debts or be subject to attachment, garnishment or sequestration by his or her creditors or by any of them. It is the Grantor's intent by this provision to create a spendthrift trust to the extent permitted by law.

ARTICLE FOUR

In addition to every power and discretion conferred upon the Trustee by any other provision of this Agreement, the Trustee shall have the usual powers conferred by law on trustees in every jurisdiction in which the Trustee may act including specifically the powers of fiduciaries enumerated in Section 64.1-57 of the Code of Virginia, as in force at the date of this Agreement together with any additional powers enumerated therein after said date, which powers are incorporated herein by reference. Without limitation on the foregoing, the Trustee, insofar as may be practicable, may consolidate the trust estate of any trust herein created with any other trust or trusts created by the Grantor or any member of her family, and may hold, administer and invest the several trusts as one or more common fund or funds and make joint or several distributions of income and principal thereof, whichever the Trustee deems advisable.

In addition to the investment powers conferred on the Trustee by law and other provisions of this agreement, the Trustee is authorized to invest in funds, joint ventures, partnerships, limited partnerships, corporations, trusts or other forms of participation or ownership (all forms hereinafter referred to as "special investments") which are sponsored, organized, distributed, managed or serviced in any way by the Bank of New York, its successor or any affiliate. The payment of compensation by special investments to The Bank of New York, its successor or any affiliate for its services to special investments is approved and authorized. Such compensation shall not affect in any way, or be taken into consideration in connection with the compensation of The Bank of New York or its successor as Trustee under this agreement. The compensation of The Bank of New York or its successor as Trustee under this agreement shall be computed as if The Bank of New York, its successor or any affiliate was not receiving any compensation from special investments.

VBC

Further, the Trustee may participate in decisions concerning any corporate or partnership interest included in the Trust Fund even if the Trustee has an individual interest in the corporation or partnership. The Trustee may deal with and make investments through any person or entity even if the Trustee is related to that person or entity as an employee, family member, beneficiary, owner, partner, stockholder or fiduciary.

The Trustee is not required to provide a Trustee's report or any other information otherwise required to be furnished under Section 55-548.13 of the Code of Virginia, as amended from time to time.

The Trustee, in the Trustee's sole and complete discretion, may utilize the provisions of Section 55-548.17 of the Code of Virginia, as amended from time to time, with respect to any partial or complete termination of any trust created under this instrument. The Trustee is under no obligation to create a plan of distribution, but if the Trustee desires to utilize such provisions, then the Trustee is authorized to do so.

Notwithstanding, if the Trustee of any trust created herein is the recipient of any individual retirement account (IRA) or other retirement or deferred income arrangement, then the Trustee shall exercise its powers as recipient of the Grantor's retirement benefits to receive no less than the amount of net income produced each year or the required minimum distribution (as that term is defined in Code Section 401(a)(9)) whichever is greater, and the Trustee shall ensure that such amount is paid directly to the beneficiary of such trust, or, if a minor child, for the benefit of such child pursuant to the VTMA (21).

If any vehicle is transferred into this Trust, it shall not be used for any business purpose. It is the Grantor's intent that the vehicle be in the Trust solely for estate planning purposes and that it will continue to be used for only personal purposes and that the vehicle continue to qualify under the Personal Property Tax Relief Act of 1998.

ARTICLE FIVE

Any individual Trustee serving under this Declaration shall be entitled to receive fair and reasonable compensation from the Trust Fund for services rendered and to reimbursement of reasonable expenses incurred in connection with the performance of such services.

WBA

Any corporate Trustee serving hereunder shall be entitled to receive compensation from the Trust Fund for the services which it renders from time to time, which compensation shall be at the rate at which it is willing to render similar services to others at the time such services are rendered, as evidenced by its published schedule of fees in effect at the particular time.

ARTICLE SIX

No Trustee serving hereunder shall be required to furnish any bond or other security in any jurisdiction for the performance of duties in such capacity.

ARTICLE SEVEN

Any Trustee serving hereunder may resign at any time upon the giving of thirty (30) days prior written notice to the Grantor, if she is living, or in the event of her death, to the current adult beneficiary or beneficiaries. If the Grantor shall die, resign, or otherwise be unable or unwilling to serve as a Trustee, then THE BANK OF NEW YORK shall serve as Trustee. Further, any Trustee serving hereunder shall have the right to appoint one or more individuals, a corporation or both to serve as Trustee with it, him or her or to succeed it, him or her either currently or at some designated future time. Such appointment shall be made by a written instrument executed by the Trustee and the designated successor or Co-Trustee, and the appointment shall be revocable until the designated Trustee begins to serve. The designated Trustee shall have the same powers and discretion as the Trustee who appoints him. No successor Trustee shall be responsible for, or be required to inquire into, the actions or omissions of any predecessor Trustee, and no Trustee shall be required to file accountings with a public official. If at any time there is no Trustee serving hereunder, a Trustee may be appointed by a majority vote of the adult income beneficiaries.

Whenever a corporate Trustee is serving hereunder, those among the Grantor's daughter and grandchildren who are living, acting by unanimous written consent, shall have the authority to remove and replace such trustee upon a written determination by an arbitrator that such Trustee has breached its fiduciary duty. Acting by unanimous written consent, those among the Grantor's daughter and

grandchildren who are living may apply to the Circuit Court for Loudoun County, Virginia to appoint an arbitrator pursuant to the provisions of Section 8.01-581.03 of the Code of Virginia (1950). Such arbitrator shall hold an arbitration hearing within thirty (30) days after such appointment. At the hearing the arbitrator shall allow each party to present his case, evidence, and witnesses, if any, in the presence of the other party, and shall render its decision, including a provision for payment of costs and expenses of arbitration to be paid by one or both of the parties, as the arbitrator deems just. The decision of the arbitrator shall be binding on the parties (although each party shall retain his right to appeal any questions of law arising at the hearing), and judgment may be entered thereon in any court having jurisdiction. A corporate trustee must be serving at all times after the Grantor's death. Any corporate Trustee appointed by the Grantor's daughter and grandchildren shall be a corporate entity authorized to do trust business under the laws of the state in which at least one beneficiary hereunder resides and shall have capital and surplus of at least \$10 million. The removal and replacement of a corporate Trustee shall be made by a writing signed by those among the Grantor's daughter and grandchildren who are living, which shall be delivered to the successor Trustee and then serving corporate Trustee. The appointment shall become effective upon the later of (1) and (2) as follows: (1) the arbitrator's determination that the corporate Trustee has breached its fiduciary duty; and (2) the written acceptance by the successor Trustee. The successor Trustee shall not be responsible for or required to inquire into the transactions of a predecessor Trustee. Notwithstanding the foregoing provisions, if the then serving corporate Trustee is advised by counsel that its removal or the appointment of a successor Trustee requires the action of an appropriate court, it may condition the delivery of the trust assets to the successor Trustee on the entry of a court order in an appropriate proceeding authorizing it to do so. It is the Grantor's intention, however, to the extent possible under the laws of Virginia in effect at the time, to permit the appointment of a successor Trustee without any action by a court in Virginia or in the jurisdiction to which the trust is to be moved. Following the removal of the trust to a jurisdiction other than Virginia, it shall be administered in accordance with the laws of the other jurisdiction insofar as accounting is concerned, but the laws of Virginia shall govern the interpretation of the dispositive provisions.

VBO

000027

ARTICLE EIGHT

This Declaration shall be construed and regulated in all respects by the laws of the Commonwealth of Virginia.

ARTICLE NINE

A. Where appropriate, the masculine as used in this Declaration shall include the feminine and neuter, the singular shall include the plural, and vice versa.

B. The term "issue", wherever used in this Declaration, shall be construed to mean lineal descendants in the first, second or any other degree of the ancestor designated.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

V.B.

IN WITNESS WHEREOF, the Grantor has executed this instrument all as of the day and year first above written.

Virginia Burt Gunnell (SEAL)
VIRGINIA BURT GUNNELL, as Grantor and Trustee

COMMONWEALTH OF VIRGINIA,
COUNTY OF Leicester, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid do hereby certify that VIRGINIA BURT GUNNELL, personally known to me to be (or satisfactorily proven to be) the person whose name is signed to the foregoing Revocable Inter Vivos Trust, has acknowledged the same before me in my jurisdiction aforesaid.

GIVEN under my hand and seal this 12th day of December, 2007.

Sharon Wiggins
NOTARY PUBLIC

My Commission Expires: 9/30/11

#863216v1 GUNNELL, VIRGINIA'S TRUST

SHARON WIGGINS
Notary Public
Commonwealth of Virginia
My Commission Expires Sep 30, 2011
Notary Registration Number:
7101402

VBA
000029

SCHEDULE A

All tangible personal property including, but not limited to, furniture, household effects, artwork, collectibles, jewelry, tools, etc., with the exception of those items I have specifically noted to be given to others by separate list or label.

VB9

**UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:	:	
	:	Chapter 11
TRAVELLER'S REST, L.L.C.,	:	
	:	Case No. 17-12061-BFK
Debtor	:	
	:	

**DISCLOSURE STATEMENT WITH RESPECT TO
DEBTOR' PLAN OF REORGANIZATION**

ARTICLE I. INTRODUCTION

The Debtor submits this disclosure statement (the "Disclosure Statement") pursuant to Bankruptcy Code section 1125, for use in the solicitation of votes on the Debtor's Plan of Reorganization dated October 11, 2017 (the "Plan"). A copy of the Plan is annexed as Exhibit A to this Disclosure Statement.

This Disclosure Statement sets forth certain information regarding the Debtor's prepetition operating and financial history, the need to seek chapter 11 protection, and significant events that have occurred during this Chapter 11 Case. This Disclosure Statement also describes terms and provisions of the Plan, certain effects of Confirmation of the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. Unless otherwise noted herein, all dollar amounts provided in this Disclosure Statement and in the Plan are given in United States dollars.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THIS CHAPTER 11 CASE AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR BELIEVES THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE FULL TEXT OF SUCH DOCUMENTS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTOR DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING

Bruce W. Henry, VSB #23951
Kevin M. O'Donnell, VSB #30086
Jeffery T. Martin, Jr., VSB #71860
Henry & O'Donnell, P.C.
300 N. Washington St., Suite 204
Alexandria, Virginia 22314
Telephone: 703-548-2100
Facsimile: 703-548-2105
Counsel for the Debtor

Exhibit 3

000031

FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION.

THE DEBTOR BELIEVES THAT THE PLAN WILL ENABLE THE DEBTOR TO ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND THE HOLDERS OF ALL CLAIMS. ACCORDINGLY, THE DEBTOR URGES HOLDERS OF CLAIMS TO VOTE TO ACCEPT THE PLAN.

ARTICLE II. PLAN VOTING INSTRUCTIONS AND PROCEDURES

A. Notice to Holders of Claims and Interests

This Disclosure Statement will be transmitted to Holders of Claims that are entitled to vote on the Plan. A discussion and listing of those Holders of Claims that are entitled to vote on the Plan and those Holders of Claims that are not entitled to vote on the Plan is provided herein. The primary purpose of this Disclosure Statement is to provide adequate information to enable such Claimholders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the Plan.

The Bankruptcy Court has been asked to approve this Disclosure Statement as containing information of a kind and in sufficient and adequate detail to enable such Claimholders to make an informed judgment with respect to acceptance or rejection of the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT (WHEN SUCH APPROVAL IS OBTAINED) DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN, OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

WHEN AND IF CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR, WHETHER OR NOT SUCH HOLDERS ARE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT HOLDERS RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS, YOU ARE ENCOURAGED TO READ THE PLAN AND THIS DISCLOSURE STATEMENT CAREFULLY. IN PARTICULAR, ALL HOLDERS OF IMPAIRED CLAIMS WHO ARE ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

This Disclosure Statement contains important information about the Plan, the Debtor's businesses and operations, considerations pertinent to acceptance or rejection of the Plan and developments concerning this Chapter 11 Case.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtor other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. Except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. The Debtor does not anticipate that any amendments or supplements to this Disclosure Statement will be distributed to reflect such occurrences. Accordingly, the delivery of this Disclosure Statement shall not under any circumstance imply that the information herein is correct or complete as of any time *subsequent* to the date hereof.

THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTING FIRM AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

B. Holders of Claims Entitled to Vote

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired *and* that are in a class that will receive a distribution under a proposed chapter 11 plan are entitled to vote to accept or reject a proposed chapter 11 plan. Classes of claims in which the holders of claims are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. Classes of claims or interests that receive no distribution on account of their claims or interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan.

Under Bankruptcy Code section 1124, a class of claims or interests is deemed to be “impaired” under a plan unless (i) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitled the holder thereof or (ii) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults.

In addition, a holder of an impaired claim or interest which is entitled to receive or retain property under a plan may vote to accept or to reject a plan only if the claim or interest is “allowed” for purposes of voting, which means generally that no party in interest has objected to such claim or interest or, if no proof of claim was filed, that such claim or interest has not been scheduled by the debtor as contingent, unliquidated or disputed.

Thus, the Holder of a Claim against the Debtor that is Impaired under the Plan is entitled to vote to accept or reject the Plan if (i) the Plan provides a Distribution in respect of such Claim, (ii)(a) the Claim has been scheduled by the Debtor (and such claim is not scheduled at zero or as disputed, contingent or unliquidated) or (b) the Claimholder has filed a Proof of Claim on or before the Bar Date applicable to such Holder, pursuant to Bankruptcy Code sections 502(a) and 1126(a) and Bankruptcy Rules 3003 and 3018, and (iii) (a) no objection to the Claim has been timely filed or any timely objection been withdrawn, dismissed or denied by Final Order, or (b) pursuant to Bankruptcy Rule 3018(a), upon application of the Holder of the Claim with respect

to which there has been an objection, the Bankruptcy Court temporarily allows the Claim in an amount that the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan.

C. Acceptance of the Plan

The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims that cast ballots for acceptance or rejection of the plan. Acceptance of a plan by a class of interests requires acceptance by at least two-thirds (2/3) of the number of shares in such class that cast ballots for acceptance or rejection of the plan.

Bankruptcy Code section 1129(b) permits the confirmation of a plan notwithstanding the non-acceptance of a plan by one or more impaired classes of claims or interests. Under that section, a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class.

After approval of this Disclosure Statement by the Bankruptcy Court, a copy of the Plan will be mailed to all creditors, all parties-in-interest entitled to vote pursuant to § 1126 of the Bankruptcy Code, and within the manner specified by Bankruptcy Rule 3017(d), accompanied by a ballot. Pursuant to § 1126(a) of the Bankruptcy Code, any holder of an Allowed Claim or an Allowed Interest may accept or reject the Plan. However, approval or rejection of the Plan is measured by Classes of Claims and interests rather than by each Claim holder or interest holder. A Class of Claims or interests which is not impaired by the Plan is conclusively presumed to have accepted the Plan. Accordingly, no Class of Claims that is unimpaired by the Plan need submit a ballot for voting.

If this Disclosure Statement is approved, then pursuant to § 1128 of the Code and Bankruptcy Rules 2002(b), 3017 and 3018, the Court shall conduct a hearing to consider confirmation of the Plan on twenty eight (28) days notice to creditors and parties in interest, unless shortened by order of the Bankruptcy Court. A party-in-interest may object to the confirmation of the Plan. The date by which objections must be filed to the confirmation of the Plan and by which votes must be submitted shall be established at a date and in a manner as determined by the Bankruptcy Court.

ARTICLE III. HISTORY, OPERATIONS, AND STRUCTURE OF THE DEBTOR

History of the Debtor

The Debtor is a Virginia limited liability company that is largely owned by entities owned and/or controlled by Nelson Gunnell and Alfred Rogers Smithwick. It was formed in May of 2012 with the intent of facilitating an assemblage of contiguous parcels of largely unimproved real property in Middleburg, Virginia for the purpose of obtaining entitlements for clusters of residential

building lots and associated infrastructure.¹ Significant portions of the assemblage were owned for years by members of the Gunnell and Smithwick families, and served as the core components of the overall assemblage of real estate.

Shortly after its inception in 2012, the members conveyed real property consisting of approximately 730 acres to the Debtor. This was part of a conceptual plan for use of the property that envisioned the development and sale of individual lots slated for residential construction and clustered within the overall property to take advantage of existing access, utilities and other development requirements. Additionally, the initial conceptual plan envisioned the potential development and construction of a hotel site and Polo grounds to develop the larger portion of the assembled acreage in a manner consistent with the “horse country” reputation of Middleburg and its surrounding jurisdictions. However, currently the plans are limited to only the pursuit of entitlements and eventual sale of residential building lots to be clustered within the overall property, with the balance of the property subject to open space dedication or to be held for future use. The Debtor’s intent is, and always has been, to preserve approximately 88% of the land in open space and continue the existing equestrian and farming use and character of the land.

Property currently owned by the Debtor is identified upon the Schedules filed by the Debtor in this proceeding, and is identified and summarized more fully as follows:

PIN #	Acres	Address/Improvements	Estimated Value	Secured Lender
501197155	50.00	Vacant land	\$1,100,000	Virginia Rail
502486535	6.00	Vacant land	\$350,000	Virginia Rail
503354029	0.75	37040 John Mosby Hwy Rental house	\$250,000	Virginia Rail
502398957	283.83	Farm Buildings	\$7,100,000	Marshall Capital
502495305	56.5	(“Davis Parcel”) Farm Buildings	\$1,100,000	Marshall Capital ²
502393940	5.77	Vacant Land	\$335,000	Marshall Capital
502304353	40.00	22959 Carters Farm Lane Main & tenant houses, barns	\$3,500,000	Marshall Capital
502281672	188.25	23006, 22934 & 22880 Sam Fred Rd	\$4,500,000	Marshall Capital
503464523	98.71	Vacant Land	\$2,400,000	Marshall Capital

¹ To date, the majority of the property assembled has either been vacant or used for farming purposes. Accordingly, improvements located upon parcels of the assembled property consist principally of a few houses, barns and other farm buildings.

² Marshall Capital has previously agreed to release the Marshall Capital Deed of Trust against the Davis Parcel. Further, the Davis Parcel was not identified as a subject property on the foreclosure notice previously sent by Marshall Capital.

The acquisition of the real property and costs of developing the conceptual plan were facilitated through contributions of property (and other capital) and by secured borrowing by the Debtor (described in more detail below).

Prior to commencing this case, the Debtor made substantial efforts to develop and/or sell portions of its real property.

In 2012, Gordon and Judith Davis (the “Davises”) purchased approximately 73 acres of land from the Debtor, subject to certain rights of the Debtor to continue to use the density contained in such land toward the overall development plan. Subsequently, the purchased property was split into two parcels after a boundary line adjustment, with the Davises retaining an approximately 16.8 acre parcel and conveying to the Debtor an approximately 56.5-acre parcel (the “Davis Parcel”) in order for the Debtor to move forward with its development. In exchange, the Davises were granted 100% of the Class C non-voting interests in the Debtor. Pursuant to a certain Land Development and Reconveyance Agreement dated October 5, 2015, the Debtor was obligated to complete a boundary line adjustment and reconvey the Davis Parcel back to the Davises no later than September 30, 2017. At that time the Davises’ Class C interests would be extinguished. To date, the Debtor has not extracted the density from the Davis Parcel and has not reconveyed it to the Davises.

In January 2015, Peter Pollack, and his group, The Ilk Alliance, a development group based in South Carolina, approached the Debtor about acquiring several parcels. Pollack's initial inquiry was to acquire two of the larger retained open space parcels from the evolving plan. In September 2015, the Debtor executed two contracts with Ilk for the purchase of specific parcels for a total sale price of \$ 3,500,000 in order to build a rural country resort and sporting club. In January 2016, Ilk defaulted on its purchase contracts.

Additionally, in September 2015, the Debtor contracted to sell a five-acre lot to Phillip Miles, a private buyer, in order to generate additional working capital. The contract required that the Debtor create the Miles Lot by boundary line adjustment from an adjacent parcel, as well as new fencing and new roads. This sale fell through when the secured lender at the time, Marshall Capital, refused to release the deed of trust encumbering the Miles Lot.

In October of 2015, in order to pay off a \$2,000,000 loan that was then maturing, the Debtor borrowed approximately \$3,500,000 from Marshall Capital secured by the parcels of real property as identified in the table above. The Marshall Capital loan was intended to be short term bridge financing of only one year in order to close under the then pending sales agreement. Upon failure of the proposed sale, the Debtor attempted without success to extend or refinance the Marshall Capital loan prior to the October 2016 maturity date. Efforts to effect a subsequent refinance and payoff of the Marshall Capital loan since that time have been impaired by the insistence of Marshall Capital upon the payment of a “liquidated damages” penalty of fifteen percent (15%) of the loan balance. The effect of the penalty (which the Debtor contends is illegal under Virginia law), had the effect of increasing the potential payoff of Marshall Capital by over \$700,000.00.

In addition to the property securing the Marshall Capital loan, the Debtor owns three parcels

identified on the table set forth above which serve as collateral security for a \$750,000 loan currently held by Virginia Rail. This loan originated initially in November of 2013 by Mill Pond Investments LLC and was twice modified and extended in 2016. The loan is secured by the three parcels identified on the table set forth hereinabove and matures in April of 2018. Sometime in or around May of 2017, Virginia Rail, an affiliate of Marshall Capital, acquired the loan. Accordingly, as of the Petition Date in this case, all of the real estate of the Debtor secures the indebtedness owed to Marshall Capital or Virginia Rail.

A. Prepetition Indebtedness of the Debtors:

Pre-petition, the Debtor was indebted to, and had secured, the following creditors under the below described loan documents:

Marshall Capital:

1. Credit Line Deed of Trust Promissory Note dated October 5, 2015, in the principal sum of \$4,000,000.00; and
2. Credit Line Deed of Trust dated October 5, 2015, conveying the Marshall Capital Parcels, in trust, to secure the Marshall Capital Note up to the aggregate principal amount of \$4,000,000.00.

Marshall Capital asserts that the total payoff as of June 13, 2017 (shortly before the Petition Date) was approximately \$6,589,160.67 with interest accruing at the default rate of 27%, compounding daily. The Debtor disputes this payoff as it includes a 15% liquidated damages penalty (assessed on October 6, 2016) and a 5% late fee (assessed on October 15, 2016) on top of (and subject to) a 27% default interest rate, all compounding daily. The Debtor takes the position that these are unenforceable penalties and that the correct payoff as of the date of this Disclosure Statement is approximately \$6,000,000.

Virginia Rail:

1. Credit Line Deed of Trust Promissory Note to Mill Pond Investments dated April 3, 2015, in the principal sum of \$250,000;
2. Credit Line Deed of Trust, conveying Virginia Rail parcels, in trust, to secure the note;
3. Allonge dated August 16, 2016 to extend the original Credit Line Deed of Trust to Mill Pond Investments dated April 3, 2015 to a new total amount of \$500,000; and extending the due date until April 5, 2017;
4. A second Allonge dated October 19, 2016 that extended the original Credit Line Deed of Trust to Mill Pond Investments dated April 3, 2015, in the total amount of \$750,000; and
5. A notice from Virginia Rail LLC on May 22, 2017 stating that it had purchased the note from Marshall Capital

This loan is not in default as a result of a payment made by Nelson Gunnell on behalf of the Debtor to Mill Pond Investments on April 3, 2017, in the amount of \$22,500. Accordingly, the maturity date of the note was extended by agreement and in accordance with the terms of the note to April 3, 2018

In addition to these secured debts. The Debtor owes approximately \$34,572.84 to Loudoun County for prepetition unpaid real estate taxes, \$118,800 to Destiny Polo, LLC and Phillip Miles for a refund of a deposit for the purchase of real property, and \$240,000 to various professionals for services rendered prior to the Petition Date. The Debtor also has an unknown amount of insider unsecured claims.

B. The Corporate Structure of the Debtor:

The Debtor has three classes of ownership. The Class A membership interests in the Debtor are owned 100% by TR Management, LLC, which is owned and controlled by Banbury Cross LLC and SB East LLC. Banbury Cross LLC is owned by the Gunnell Family Dynasty Trust and by Thomas Nelson Gunnell, individually. SB East is owned and controlled by the Alfred Rogers Smithwick Irrevocable Trust. Thomas Nelson Gunnell and Alfred Rogers Smithwick are the two Managing Members of TR Management LLC.

The Class B membership interests in the Debtor are owned and controlled 50% by Banbury Cross LLC and 50% by SB East LLC.

The Class C membership interests in the Debtor are owned and controlled 100% by Gordon and Judith Davis.

C. Officers:

The Debtor is a limited liability company and does not have a Board of Directors. TR Management, LLC is the manager of the Debtor. Under the Plan, the majority of real property representing the assets of the Debtor will be transferred to Newco 1 or Newco 2, each of which will be managed by Andrew Hertneky and Stanley Settle who are further identified hereinbelow. The parcels of real property securing the Virginia Rail secured claim(s) shall be retained by the Debtor and the Debtor's current management shall be maintained for the purposes of dealing with such retained property and all debt secured thereby.

ARTICLE IV. EVENTS LEADING TO COMMENCEMENT OF THE CHAPTER 11 CASE

In October of 2016, despite best efforts by the Debtor, the Marshall Capital Note was unable to be paid at maturity or refinanced. Over the next few months, refinance opportunities were pursued, but they were unable to be completed due in large part to Marshall Capital's insistence on payment of a 15% liquidated damages penalty which is unenforceable under Virginia law.

On or about March 30, 2017, Marshall Capital issued a notice of default based on the maturity of the Marshall Capital Note. Marshall Capital subsequently scheduled a foreclosure sale with respect to the Marshall Capital Parcels for June 19, 2017. The Debtor filed its Chapter 11

petition on June 18, 2017.

ARTICLE V. CHAPTER 11 CASE

A. Continuation of Business; Stay of Litigation

After the Petition Date, the Debtor continued to operate as debtor in possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. Under the Bankruptcy Code, the Debtor is to comply with certain statutory reporting requirements, including the filing of monthly operating reports. As of the date hereof, the Debtor has complied with such requirements. The Debtor is authorized to operate its businesses in the ordinary course, with transactions out of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of the filing of the Debtor's bankruptcy petitions was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by Creditors, the enforcement of Liens against property of the Debtor, and the continuation of litigation against the Debtor. This relief has provided the Debtor with the "breathing room" necessary to assess its business and carry out an organized reorganization. The automatic stay remains in effect, unless modified by the Bankruptcy Court, until consummation of a plan of reorganization or liquidation.

B. Retention of Debtor's Professionals

On June 29, 2017, the Debtor filed an Application to Employ Henry & O'Donnell, P.C. as legal counsel (The "H&O Application"). Dkt. No. 13. On October 4, 2017, the Court entered an order granting the H&O Application, *nunc pro tunc* to the Petition Date. Dkt. No. 38.

C. Exclusivity

Under 11 U.S.C. § 1121(b), upon the filing of this Chapter 11 Case, the Debtor had the exclusive right to propose a plan for 120 days from the Petition Date, which date is October 13, 2017 (the "Exclusive Proposal Period"). Additionally, under 11 U.S.C. § 1121(c), upon the filing of this Chapter 11 Case, the Debtor had the exclusive right to solicit approval of a plan for 180 days from the Petition Date, which date is December 12, 2017 (the "Exclusive Solicitation Period").

D. Summary of Claims Process and Bar Date

1. *Schedules and Statements of Financial Affairs*

The Debtors filed Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the "Schedules and Statements") with the Bankruptcy Court on July 18, 2017 (Dkt. No. 25). Among other things, the Schedules and Statements set forth the Claims of known Creditors against the Debtor as of the Petition Date, based upon the Debtor's books and records.

2. *Claims Bar Date and Proofs of Claim*

The Bankruptcy Court established October 18, 2017 as the general bar date for filing nongovernmental Proofs of Claim against the Debtor (the “General Bar Date”). Governmental Units are required to file proofs of claim by December 12, 2017 (the “Governmental Units Bar Date”). Notice of the General Bar Date and the Governmental Units Bar Date was mailed to Creditors on June 24, 2017. (Dkt. No. 9).

ARTICLE VI. SUMMARY OF THE PLAN OF REORGANIZATION

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT, AND TO THE EXHIBITS ATTACHED THERETO. THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CREDITORS AND INTEREST HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR.

A. Purpose and Effect of the Plan

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its creditors and shareholders. The Debtor has filed its Plan as a means to maximize the value of its Estate for the benefit of its creditor, and to reorganize their financial affairs.

The following is a summary of the significant provisions of the Plan. The Plan contemplates the full payment over time of Allowed Administrative claims, Allowed Tax Claims, Allowed Priority claims, Allowed Secured claims, and Allowed Unsecured Claims.

All statements made below are general in nature and are qualified in their entirety by reference to the complete terms of the Plan attached hereto. Creditors and parties-in-interest are urged to read the entire Plan and consult with their respective counsel, accountants, and business advisors in order to fully understand the Plan.

The Plan, upon confirmation by the Bankruptcy Court, shall be legally binding upon the Debtor, its creditors, and other parties-in-interest designated by § 1141(a) of the Bankruptcy Code. It is essential that Creditors fully understand the Plan in order to make an informed decision with respect to the treatment of their respective Claims or Interests. Unless otherwise defined herein, all capitalized terms shall have the respective meanings assigned in the Plan. In the event that any disclosure herein provided appears to conflict with an express provision of the Plan, the explicit terms of the Plan, as incorporated as an integral element of the Disclosure Statement, are controlling.

The Debtor believes the Plan provides for the greatest and earliest feasible return to the holders of Allowed Claims in a fair and equitable manner. The following is a summary of the Plan and a brief description of the treatment of the Classes of Claims and Interests.

B. Classification and Treatment of Claims and Interests

1. *Unclassified Claims:* Under the plan, administrative claims and priority tax claims are unclassified, meaning they are not placed in any specific class. The Debtor has two known administrative claims: professional fees and post-petition tax claims. The Debtor has no known priority tax claims. All known claims for pre-petition real estate taxes fall under the category of Class 3 Secured Claims. The following is an explanation of how such claims shall be treated under the plan.

(a) Administrative Claims

1. Professional Claims

Professionals whose engagement has been approved by the Court pursuant to Section 327 of the Bankruptcy Code must file Final Fee Applications no later than sixty (60) days after the Effective Date. Professional claims shall be paid in full upon entry of an order approving the Final Fee Applications. From and after the Effective Date, Professionals whose engagement has been approved by the Court pursuant to Section 327 of the Bankruptcy Code, including legal counsel, shall no longer need to comply with Bankruptcy Code sections 327 through 331 and shall be compensated without the requirement of application to, or order of, the Bankruptcy Court. The Debtor estimates that there will be \$100,000-\$125,000 in Professional Fees as of the Effective Date.

2. Post-Petition Tax Claims and Other Administrative Claims

On the Effective Date, the Debtor shall pay in full any and all post-petition real estate taxes then due and owing. This shall include all real estate taxes for the last six months of 2017, which are payable to Loudoun County, Virginia on December 5, 2017. The Debtor estimates that there will be approximately \$34,000 in post-petition taxes payable on the Effective Date.

(b) Priority Tax Claims

A Priority Tax Claim means a Claim of a Governmental Unit of the kind specified in Bankruptcy Code sections 502(i) or 507(a)(8). As the Debtor does not pay income tax, and all pre-petition real estate tax claims are secured claims, the Debtor does not believe that there are any Priority Tax Claims. To the extent that such claims exist, they shall be paid in full in equal quarterly installments but in no event later than the date that is five (5) years after the Petition Date, with interest on the unpaid portion of such Allowed Priority Tax Claim from the Effective Date through the date of payment at the rate of interest determined under applicable nonbankruptcy law as of the calendar month in which Confirmation occurs.

2. *Impaired Claims and Interests entitled to vote:* All claims have the option of being paid in full under the Plan. However, to the extent that certain claims are paid less than 100% on the dollar, or are paid over time, those claims are deemed impaired. The only impaired class of claims or interests entitled to vote are the Class 5 General Unsecured Claims and the Class 7 Interests. The following is an explanation of the treatment of these classes.

a) Class 5 – General Unsecured Claims – Non-insider

This classes consist of non-priority Allowed Unsecured Claims against the Debtor. The Debtor estimates total allowable unsecured claims in Classes 5 will equal approximately \$340,000.

Claimants in this Class may elect one of the following two treatments of their Allowed Claims:

Option 1: If the Claimant elects this option, the Debtor shall pay such Claimant 100% on the dollar, with interest at 7% per annum, as follows:

- i) an initial lump sum payment equal to 50% of the Allowed Claim on the Effective Date of the plan, with such amounts to be funded from consideration paid by Newco 1 for the sale and transfer of property as provided for herein; and
- ii) the remaining 50% of the Allowed Claim over time in quarterly payments in pro rata amounts beginning upon the sale of the first developed parcel by Newco 1 and continuing until such Claim is paid in full. The Debtor estimates that these payments will commence approximately 24 months after the Effective Date of the Plan. The amount of these payments will be funded by additional consideration paid by Newco 1 to the Debtor as deferred consideration for the transfer of real property and as more fully described on the Contract for Sale between the Debtor and Newco 1 which is attached hereto as **Exhibit B** and is incorporated herein by reference.

Option 2: If the Claimant elects this option, the Debtor shall pay such Claimant 80% on the dollar upon the Effective Date of the Plan. Such amounts are to be funded from consideration paid by Newco 1 for the sale and transfer of property as provided for herein and as set forth more fully on the Contract for Sale attached hereto as **Exhibit B**.

b) Class 7: Class A and Class B Interests

Owners of Class A and Class B membership interests in the Debtor will receive identically proportionate interests in Newco 1 and 2 totaling 99% of the total interests in Newco 1 and 2.

3. Claims not entitled to vote

a) Classes 1 – Allowed Secured Claim of Marshall Capital, L.C.

In full and final satisfaction, settlement and release of and in consideration for the Secured Claim in Class 1, on the Effective Date, the Debtor shall pay Marshall Capital, L.C. one hundred percent (100%) of the Allowed Amount of its Claim in cash, including all allowed, accrued, post-petition interest. The Marshall Capital Deed of Trust shall be extinguished on the Effective Date, and upon payment of its allowed secured claim, Marshall Capital shall be required to file such releases or satisfactions as may be necessary to release the current deed of trust of record. Class 1 is unimpaired under this Plan and is conclusively presumed to have accepted this Plan and, therefore, Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan.

b) Class 2 – Secured Claim of Virginia Rail, L.C.

All contractual rights of Virginia Rail, L.C. under the Virginia Rail Note and the Virginia Rail Deed of Trust shall be reinstated and remain intact. The Virginia Rail Note will mature on its current maturity date of April 3, 2018, unless otherwise extended as provided for and permitted therein. Class 2 is unimpaired under this Plan and is conclusively presumed to have accepted this Plan and, therefore, Holders of Class 2 Claims are not entitled to vote to accept or reject this Plan.

c) Class 3 – Secured Claims of Loudoun County

This class consists of Loudoun County's secured claims against the Debtor for real estate taxes. It is believed that the amount of these claims is less than \$34,000.00 in real estate taxes. The Debtor shall pay Loudoun County in full on the Effective Date from consideration paid by Newco 1 for the sale and transfer of property as provided for herein and as set forth more fully on the Contract for Sale attached hereto as Exhibit B. Class 3 is unimpaired under this Plan and is conclusively presumed to have accepted this Plan and, therefore, Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan.

d) Class 4 – Non-Tax Priority Claims

Class 4 consists of claims entitled to priority under 11 U.S.C. § 507 other than taxes. The Debtor does not believe there are any Class 4 Claims. To the extent any claims exist, holders of such claims shall receive, on the Effective Date, (i) Cash equal to the unpaid portion of such Allowed Non-Tax Priority Claim or (ii) such other treatment as to which such Holder and the Debtor shall have agreed upon in writing. Class 4 is unimpaired under this Plan and is conclusively presumed to have accepted this Plan and, therefore, Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan.

e) Class 6 – General Unsecured Claims - Insiders

Class 6 insider Claims shall receive no distribution under the Plan. However, any contractual right to payment that any insider may have against the Debtor shall survive the Effective Date and shall be converted into equity in Newco 1 in amounts to be agreed upon by the existing principals. Class 6 consists entirely of claims of insiders who are not entitled to vote on the Plan.

f) Class 8: Class C Interests

The Davises are holders of Class C interests in the Debtor. Unless otherwise agreed to in writing by the Debtor and the Davises, pursuant to the Land Development and Reconveyance Agreement between the Debtor and the Davises, the Debtor will transfer the Davis Parcel back to the Davises and will assist in any manner with the required boundary line adjustment.

C. Means For Implementation Of The Plan

1. Creation of Newco(s)

The Plan contemplates the organization of two newly created limited liability companies (“Newco 1” and “Newco 2”) which are proposed to obtain financing secured by the Marshall Capital Parcels sufficient to i) make payoff of the Marshall Capital allowed secured claim(s), and ii) provide operating capital and debt service reserves sufficient to ensure completion of entitlements and the commencement of sales of projected residential building lots. The organization and management of the Newco entities will involve allocation of membership and management interests as follows:

- 1% Voting Membership interest to be held by Andrew Hertneky;
- 49.5% Non-voting membership interest held by SB East, LLC; and
- 49.5% Non-voting membership interest held by Banbury Cross LLC

The managers of each of the Newco entities will be Andrew Hertneky and Stanley Settle. Messrs. Hertneky and Settle bring financial strength and development expertise necessary to the completion of entitlements required to effect the recordation and ultimate sale of residential building lots upon portions of the Debtor’s property.

Mr. Hertneky has over 25 years of experience in guiding U.S. and international energy companies on strategy, trading/marketing and risk management. He is a Past President of Edison Mission Marketing & Trading, an Edison International (“EIX”) subsidiary, and former Senior Vice President of EIX. While there he was responsible for all commercial management of the Edison Mission Group (“EMG”) power generation and trading portfolios with combined revenue of \$2.4 billion per year. Prior to that he was VP of Strategy for EIX; VP of Origination/Marketing for EMG where he was responsible for all marketing and structured deals; and VP of Risk Management for corporate wide trading, credit, market, and operational risk. Before EMG he was an Associate Principal with McKinsey & Company serving Fortune 500 and international energy clients on strategy,

risk, trading and operational improvements. Prior to McKinsey he held senior positions including VP Structured Transactions, Head of Trading/ Marketing, and Head of Transmission Planning. Mr. Hertneky has built organizations from the ground up and led business units with full profit and loss responsibility. He also has engineering and IT experience. Mr. Hertneky possesses significant financial strength and has agreed to guaranty the New Bank Loan for Newco 1. Mr. Hertneky will be compensated by receiving a 2% guarantee fee, as well as a commission on the total gross sales of property to be owned by Newco 1, as follows:

For sales up to \$15,000,000 - 1%
For sales between \$15,000,000 and \$20,000,000 - 2.5%
For sales over \$20,000,000 - 5%

Mr. Settle offers over 33 years of building and development experience including 25 years with Pulte Homes where he ultimately served as VP of Land Acquisitions & Development. He was responsible for negotiating all land purchases and site development including rezoning, planning and engineering for the Mid-Atlantic Region. He has been involved in more than \$1 billion in real estate transactions overseeing high profile projects throughout the greater Mid-Atlantic area including Fairfax County's first Smart Growth community; design and redevelopment of the previous Lorton Penitentiary; and many other master plan developments in the Washington Metropolitan area. Mr. Settle will be paid a 1.5% commission on the total gross sales of property to be owned by Newco 1.

2. Transfer of Property

Under the Plan, the Debtor will sell, transfer and assign all of its rights, title and interest in and to the Marshall Capital Parcels (with the exception of the Davis Parcel) to Newco 1 or Newco 2 in exchange for the cash consideration paid to the Debtor sufficient to effect a payoff of certain allowed claims herein. Upon transfer, each of the Newco entities shall effect new borrowing under the financial strength and guaranties of Hertneky, in the amounts and under terms described as follows:

On or about the Effective Date, Newco1 shall borrow at least \$8,500,000 pursuant to the New Bank Loan, of which approximately \$6,100,000 shall be made available to the Debtor for payments under the Plan.³ The Debtor shall convey title to the three (3) parcels identified hereinbelow to Newco 1 in exchange for the consideration identified herein. Pursuant to the New Bank Loan, Newco 1 shall grant a first priority Deed of Trust on said parcels to secure such loan. The parcels are identified as follows:

PIN #502-39-8957 (283.83 acres)
PIN #502-28-1672 (188.25 acres)
PIN #503-46-4523 (98.71 acres)

³ Attached hereto as **Exhibit C** is a true and correct copy of the Loan Commitment issued by The Fauquier Bank in connection with the proposed financing.

Further, on or about the Effective Date, Newco2 shall borrow at least \$2,000,000 pursuant to the Second New Bank Loan, of which approximately \$1,000,000 shall be held in escrow as an interest reserve required with respect to the New Bank Loan and approximately \$350,000 shall be made available to the Debtor for payments under the Plan. The Debtor shall convey title to the parcel identified hereinbelow to Newco 2 in exchange for the consideration identified herein. Pursuant to the Second New Bank Loan, Newco 2 shall grant a first priority Deed of Trust on said parcel to secure such loan. The parcel is identified as follows:

PIN #502-30-4353 (40 acres)

3. Miscellaneous Items:

Except as otherwise provided, all mortgages, deeds of trust, liens, or other security interests against the property of the Estate shall be released on the Effective Date. Pursuant to Bankruptcy Code section 1146(a), any transfers from the Debtor to any Person pursuant to the Plan in the United States shall not be subject to any stamp tax or similar tax. All Avoidance Actions shall be waived and released as of the Effective Date. All other Causes of Action of the Debtor shall be preserved and shall transfer to Newco.

4. Disputed Claims Procedure

Notwithstanding any other provision of this Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. The Debtor believes the only disputed claim is the Claim of Marshall Capital.

5. Treatment Of Executory Contracts And Unexpired Leases

Except as otherwise provided in the Confirmation Order, the Plan, or any other Plan Document, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all pre-petition executory contracts and unexpired leases to which the Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) previously shall have been assumed, assumed and assigned, or rejected by the Debtor, (b) previously shall have expired or terminated pursuant to its own terms before the Effective Date, (c) is the subject of a pending motion to assume or reject on the Confirmation Date, or (d) is an insurance agreement of the Debtor. All claims for rejection damages shall be filed within thirty (30) days after service of a notice of the Effective Date or such other date as is prescribed by the Bankruptcy Court. The Debtor does not anticipate that there will be any claims for rejection damages.

To the extent provided in the Confirmation Order, this Plan, or any other Plan Document entered into after the Petition Date or in connection with this Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assuming, as of the

Effective Date, those executory contracts and unexpired leases identified in such documents as being assumed. To the extent provided in the Confirmation Order, this Plan, or any other Plan Document entered into after the Petition Date or in connection with this Plan, the Confirmation Order shall constitute an order under Bankruptcy Code section 365 assigning, as of the Effective Date, those executory contracts and unexpired leases identified in such documents as being assigned.

D. Conditions to Confirmation and Consummation of the Plan

1. Conditions to Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date:

- a. The Court shall have determined that the aggregate dollar amount of the Claim of Marshall Capital shall be equal to or less than \$6,100,000.

2. Conditions to Effective Date

- a. The Confirmation Order shall have been entered in the Chapter 11 Case and shall provide that the Debtor is authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with this Plan or effectuate, advance, or further the purposes thereof;
- b. The Confirmation Order shall have become a Final Order; and
- c. The New Bank Loan and the Second New Bank Loan shall have been funded contemporaneously with the Effective Date.

3. Waiver of Conditions

Each of the conditions set forth in Articles VIII.A and VIII.B of the Plan, except for entry of the Confirmation Order, as set forth in Article VIII.B.1 of this Plan, may be waived in whole or in part jointly by the Debtor and Marshall Capital. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtor as a basis to not consummate this Plan regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

4. Consequences of Non-Occurrence of Effective Date

In the event that the Effective Date does not timely occur, the Debtor reserves all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that this Plan be null and void in all respects, and/or that any settlement of

Claims provided for in this Plan be null and void. In the event that the Bankruptcy Court shall enter an order vacating the Confirmation Order, the time within which the Debtor may assume and assign or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

E. Discharge of the Debtor

Pursuant to Bankruptcy Code section 1141(d)(3), Confirmation will not discharge Claims against the Debtor, except for the Allowed Claims that are paid in full as of the Effective Date.

F. Confirmation Without Acceptance of All Impaired Classes: The “Cramdown” Alternative

Under the Plan, Class 5 may reject the Plan. In view of the potential rejection by such Holders, the Debtor may seek confirmation of the Plan pursuant to the “cramdown” provisions set forth in section 1129(b) of the Bankruptcy Code.

G. Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, THE CONFIRMATION ORDERS SHALL PROVIDE, AMONG OTHER THINGS, THAT FROM AND AFTER THE EFFECTIVE DATE ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTOR ARE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST THE DEBTOR, ITS ESTATE, OR ANY OF ITS PROPERTY ON ACCOUNT OF ANY SUCH CLAIMS OR INTERESTS: (A) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION OR OTHER PROCEEDING; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY, OR OBLIGATION DUE TO THE DEBTOR, EXCEPT AS SET FORTH IN ARTICLE VI.H.2 OF THE PLAN; AND (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN; PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL PRECLUDE SUCH ENTITIES FROM EXERCISING THEIR RIGHTS PURSUANT TO AND CONSISTENT WITH THE TERMS OF THE PLAN OR THE CONFIRMATION ORDERS.

H. Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code section 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Upon the Effective Date, the injunction provided in Article X.C of the Plan shall apply.

I. Indemnification Obligations

Except as otherwise provided in the Plan or any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtor has pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law, including the Indemnification Obligations, shall be rejected as of the Effective Date, to the extent executory. Nothing in the Plan shall be deemed to release the Debtor's Insurers from any claims that might be asserted by counter-parties to contracts or agreements providing the indemnification by and of the Debtor, to the extent of available coverage.

J. Retention of Jurisdiction

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to resolve disputes relating to property of the Debtor's estate, to all claims, professional fees, executory contracts, performance under the Plan, interpretation or implementation of the Plan, modifications to the Plan, releases and indemnification obligations under the Plan, taxes due under the Plan, and Causes of Action belonging to the Debtor. The Bankruptcy Court shall retain jurisdiction to dismiss the Chapter 11 cases and enter a final decree closing the Chapter 11 Cases.

ARTICLE VII. CERTAIN FACTORS TO BE CONSIDERED

The Holders of Claims against the Debtor should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan.

A. General Considerations

The Plan sets forth the means for satisfying the Claims against the Debtor. The Plan provides for the payment of 100% of all claims over time, except to the extent that Class 5 Claimants elect immediate, discounted payments.

B. Certain Bankruptcy Considerations

Even if all Impaired voting Classes vote in favor of the Plan and, with respect to any Impaired Class deemed to have rejected the Plan, the requirements for "cramdown" are met, the Bankruptcy Court may choose not to confirm the Plan. Bankruptcy Code section 1129 requires, among other things, a showing that the value of Distributions to dissenting Holders of Claims and Interests may not be less than the value such Holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. See Section VIII.D. Although the Debtor believes that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court

will reach the same conclusion.

The Plan provides for certain conditions that must be fulfilled prior to Confirmation of the Plan and the Effective Date. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be met (or waived) or that the other conditions to Confirmation, if any, will be satisfied. If a chapter 7 liquidation were to occur, there is a substantial risk that the value of the Debtor's Estate would be substantially eroded to the detriment of all stakeholders.

C. Administrative and Priority Claims

As the number and amount of Priority Tax Claims and Administrative Claims are presently unknown to the Debtor, it is possible that, if the actual number and amount of Priority Tax Claims and Administrative Claims exceeds the Debtor's estimates, the amount of the Available Cash to be distributed will be diminished. As set forth elsewhere in the Plan and the Disclosure Statement, the Debtor reserves its right to seek to dismiss or convert this Chapter 11 Case.

D. Tax Consequences for the Debtor

The Debtor is a limited liability company owned by entities owned or controlled by Nelson Gunnell and A. Rogers Smithwick. Any income or loss of the Debtors passes through to the owners. The Plan will have no income tax consequences for the Debtor.

ARTICLE VIII. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS

A. Feasibility of the Plan

The Debtor believes that the proceeds from the New Bank Loan and the Second New Bank Loan will be sufficient to pay all Administrative and Priority Claims that become Allowed, based upon the Debtor's estimates. The New Bank Loan and the Second New Bank Loan shall raise \$10.5 Million as of the Effective Date. These transactions will allow to pay all priority and administrative claims, the Marshall Capital Claim, and other claims which the plan provides shall be paid on the Effective Date.

Further, the Debtor believes that future cash flow will be sufficient to pay the remaining portion of the Allowed General Unsecured Claims over time. The Fauquier Bank has agreed to lot release prices equal to 85% of the gross sale price for each lot, which will permit the Debtor to pay off all claims within a four-year period. A summary of the Debtor's financial projections is attached as **Exhibit C**. Accordingly, the Debtor believes that the Plan is feasible.

The Debtor has obtained a commitment from The Fauquier Bank for the New Bank Loan, and a Letter of Intent from Union Bank for the Second New Bank Loan. The Debtor continues to seek enhancements of these transactions and reserve the right to obtain financing from other sources.

B. Acceptance of the Plan

As a condition to confirmation of the Plan, the Bankruptcy Code requires that an impaired class must vote to accept the Plan.

Bankruptcy Code Section 1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject a plan. Thus, Impaired Classes under the Plan will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting in each Class cast their Ballots in favor of acceptance. Holders of Claims who fail to vote for the Plan are not counted as either accepting or rejecting that Plan.

C. Best Interests Test

As noted above, even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a bankruptcy court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by that plan and that have not accepted that plan. The “best interests” test, as set forth in Bankruptcy Code section 1129(a)(7), requires a bankruptcy court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor was liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from a debtor’s assets if its chapter 11 case were converted to a chapter 7 case under the Bankruptcy Code. However, the Debtor believes that in a chapter 7 liquidation, there would be additional costs and expenses that the Estate would incur as a result of the ineffectiveness associated with replacing existing management and professionals in a chapter 7 case. Furthermore, the Debtor believes that the possibility of the Debtor’s property being lost at foreclosure, along with the additional expenses arising from the administration of the case by a Chapter 7 trustee, would potentially eliminate distributions to Holders of General Unsecured Claims.

D. Application of the “Best Interests” of Creditors Test to the Liquidation Analysis and the Plan

Under the Plan, Holders of all Allowed Claims will be paid in full. In contrast, in a Chapter 7 case, unsecured creditors likely would receive no distribution because all of the Debtors’ assets would be used to pay Marshall Capital’s secured claim.

ARTICLE IX. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtor believes that the Plan affords Holders of Claims the potential for a better realization on the Debtor’s Assets than a chapter 7 liquidation, and, therefore, is in the best interests of such

Holders.

If, however, the requisite acceptances of voting Classes of Claims are not received, or no Plan is confirmed and consummated, the theoretical alternatives include: (a) formulation of an alternative plan or plans of liquidation; (b) liquidation of the Debtor under chapter 7 of the Bankruptcy Code; or (c) dismissal of the Debtor's case under 11 U.S.C § 1112.

A. Alternative Plans

If the requisite acceptances are not received or if the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate and propose a different plan or plans of reorganization or liquidation.

With respect to an alternative liquidation plan, the Debtor has explored various other alternatives in connection with the extensive negotiation process involved in the formulation and development of the Plan. The Debtor believes that the Plan enables Creditors to realize the greatest possible value under the circumstances, and, as compared to any plan of liquidation, has the greatest chance to be confirmed and consummated.

B. Liquidation under Chapter 7

If no Plan is confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code. As discussed above, the Debtors do not believe that unsecured creditors would receive any distribution in a Chapter 7 case.

C. Dismissal of the Chapter 11 Case

If no Plan is confirmed, the Debtor or other parties in interest may seek dismissal of the Chapter 11 Case pursuant to Bankruptcy Code section 1112. Without limitation, dismissal of the Chapter 11 Case would terminate the automatic stay and might allow certain Creditors to foreclose on their Liens on substantially all of the Debtor's remaining assets. Accordingly, the Debtor believes that dismissal of the Chapter 11 Case would reduce the value of the Debtor's remaining assets, would lower the return to Creditors.

ARTICLE X. THE SOLICITATION AND VOTING PROCEDURE

A. Parties in Interest Entitled to Vote

Under Bankruptcy Code section 1124, a class of claims or interests is deemed to be "impaired" under a plan unless (i) the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder thereof or (ii) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

In general, a holder of a claim or interest may vote to accept or to reject a plan if (i) the claim or interest is "allowed," which means generally that no party in interest has objected to such claim

or interest, and (ii) the claim or interest is impaired by the plan. If, however, the holder of an impaired claim or interest will not receive or retain any distribution under the plan on account of such claim or interest, the Bankruptcy Code deems such holder to have rejected the plan, and, accordingly, holders of such claims and interests do not actually vote on the plan. If a claim or interest is not impaired by the plan, the Bankruptcy Code deems the holder of such claim or interest to have accepted the plan and, accordingly, holders of such claims and interests are not entitled to vote on the plan.

B. Classes Impaired and Unimpaired under the Plan

Under the Plan, Classes 1, 2, 3, and 4 are Unimpaired and are presumed under Bankruptcy Code section 1126(f) to have accepted the Plan, and their votes to accept or to reject the Plan will not be solicited. Class 5 is Impaired under the Plan and is entitled to vote on the Plan, subject to the limitations set forth above. Pursuant to Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax Claims are not classified and are not entitled to vote on the Plan.

ARTICLE XI. FURTHER INFORMATION

A. Further Information; Additional Copies

If you have any questions or require further information about the voting procedure for voting your Claim or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, the Disclosure Statement, or any exhibits or appendices to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d)), please contact Debtor's counsel:

Jeffery T. Martin, Jr.
HENRY & O'DONNELL, P.C.
300 N. Washington St., Suite 204
Alexandria, VA 22314
(703) 548-2100

ARTICLE XII. RECOMMENDATION AND CONCLUSION

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that confirmation and consummation of the Plan is preferable to all other alternatives.

Dated: October 11, 2017

Respectfully submitted,
Traveller's Rest, LLC

/s/ Thomas Nelson Gunnell
By: Thomas Nelson Gunnell,
Managing Member of
TR Management, LLC

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☒ *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)
- ☒ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☒ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☒ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☒ *Schedule H: Codebtors* (Official Form 206H)
- ☒ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ *Amended Schedule*
- ☒ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ☐ Other document that requires a declaration

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2017

☒ /s/ Thomas Nelson Gunnell

Signature of individual signing on behalf of debtor

Thomas Nelson Gunnell

Printed name

Managing Member of TR Management, LLC

Position or relationship to debtor

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 206Sum
Summary of Assets and Liabilities for Non-Individuals

12/15

Part 1: Summary of Assets

1. Schedule A/B: Assets-Real and Personal Property (Official Form 206A/B)

1a. Real property: Copy line 88 from <i>Schedule A/B</i>	\$ <u>20,635,000.00</u>
1b. Total personal property: Copy line 91A from <i>Schedule A/B</i>	\$ <u>3,300.00</u>
1c. Total of all property: Copy line 92 from <i>Schedule A/B</i>	\$ <u>20,638,300.00</u>

Part 2: Summary of Liabilities

2. Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D) Copy the total dollar amount listed in Column A, <i>Amount of claim</i> , from line 3 of <i>Schedule D</i>	\$ <u>7,339,160.67</u>
3. Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F)	
3a. Total claim amounts of priority unsecured claims: Copy the total claims from Part 1 from line 5a of <i>Schedule E/F</i>	\$ <u>34,572.84</u>
3b. Total amount of claims of nonpriority amount of unsecured claims: Copy the total of the amount of claims from Part 2 from line 5b of <i>Schedule E/F</i>	+\$ <u>361,996.81</u>
4. Total liabilities Lines 2 + 3a + 3b	\$ <u>7,735,730.32</u>

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 206A/B Schedule A/B: Assets - Real and Personal Property

12/15

Disclose all property, real and personal, which the debtor owns or in which the debtor has any other legal, equitable, or future interest. Include all property in which the debtor holds rights and powers exercisable for the debtor's own benefit. Also include assets and properties which have no book value, such as fully depreciated assets or assets that were not capitalized. In Schedule A/B, list any executory contracts or unexpired leases. Also list them on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G).

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. At the top of any pages added, write the debtor's name and case number (if known). Also identify the form and line number to which the additional information applies. If an additional sheet is attached, include the amounts from the attachment in the total for the pertinent part.

For Part 1 through Part 11, list each asset under the appropriate category or attach separate supporting schedules, such as a fixed asset schedule or depreciation schedule, that gives the details for each asset in a particular category. List each asset only once. In valuing the debtor's interest, do not deduct the value of secured claims. See the instructions to understand the terms used in this form.

Part 1: Cash and cash equivalents

1. Does the debtor have any cash or cash equivalents?

- ☐ No. Go to Part 2.
☒ Yes Fill in the information below.

All cash or cash equivalents owned or controlled by the debtor

Current value of debtor's interest

3. Checking, savings, money market, or financial brokerage accounts (*Identify all*)

Name of institution (bank or brokerage firm)

Type of account

Last 4 digits of account number

3.1. Branch Banking & Trust Company

Checking account

8085

\$3,300.00

4. Other cash equivalents (*Identify all*)

5. Total of Part 1.

Add lines 2 through 4 (including amounts on any additional sheets). Copy the total to line 80.

\$3,300.00

Part 2: Deposits and Prepayments

6. Does the debtor have any deposits or prepayments?

- ☒ No. Go to Part 3.
☐ Yes Fill in the information below.

Part 3: Accounts receivable

10. Does the debtor have any accounts receivable?

- ☒ No. Go to Part 4.
☐ Yes Fill in the information below.

Part 4: Investments

13. Does the debtor own any investments?

- ☒ No. Go to Part 5.
☐ Yes Fill in the information below.

Debtor Traveller's Rest, L.L.C.
Name

Case number (if known) 17-12061

Part 5: Inventory, excluding agriculture assets

18. Does the debtor own any inventory (excluding agriculture assets)?

- ☒ No. Go to Part 6.
☐ Yes Fill in the information below.

Part 6: Farming and fishing-related assets (other than titled motor vehicles and land)

27. Does the debtor own or lease any farming and fishing-related assets (other than titled motor vehicles and land)?

- ☒ No. Go to Part 7.
☐ Yes Fill in the information below.

Part 7: Office furniture, fixtures, and equipment; and collectibles

38. Does the debtor own or lease any office furniture, fixtures, equipment, or collectibles?

- ☒ No. Go to Part 8.
☐ Yes Fill in the information below.

Part 8: Machinery, equipment, and vehicles

46. Does the debtor own or lease any machinery, equipment, or vehicles?

- ☒ No. Go to Part 9.
☐ Yes Fill in the information below.

Part 9: Real property

54. Does the debtor own or lease any real property?

- ☐ No. Go to Part 10.
☒ Yes Fill in the information below.

55. Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest

Description and location of property
Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building, if available).

Nature and extent of debtor's interest in property

Net book value of debtor's interest
(Where available)

Valuation method used for current value

Current value of debtor's interest

Debtor Traveller's Rest, L.L.C.
Name

Case number (if known) 17-12061

55.1. Appx 57 total acres
consisting of the
following three lots:

50 acres consisting
of vacant land
PIN #501-19-7155
Value \$1,100,000

Appx. 6 acres known
as the "Hunkins-John
Jackson Lot"
PIN #502-48-6535
Value \$350,000

Appx. .75 acres
known as the "Joe
Brown House and
Lot"

Contains one rental
house

PIN #503-35-4029

Value \$250,000

Fee simple

Unknown

Appraisal

\$1,700,000.00

Debtor Traveller's Rest, L.L.C.
Name

Case number (if known) 17-12061

55.2. Appx. 673.06 acres
consisting of the
following parcels:

283.83 acres
containing farm
buildings
PIN #502-39-8957
Value \$7,100,000

56.5 acres containing
farm buildings
PIN #502-49-5305
Value \$1,100,000

5.77 acres of vacant
land
PIN #502-39-3940
Value \$335,000

188.25 acres
containing three
rental houses
including 23006 and
22934 Sam Fred Rd.
PIN #502-28-1672
Value \$4,500,000

98.71 acres of vacant
land
PIN #503-46-4523
Value \$2,400,000

40 acres containing
22959 Carters Farm
Lane - contains main
house, tenant house,
and two barns
PIN #502-30-4353
Value \$3,500,000

Fee simple

Unknown

Appraisal

\$18,935,000.00

56. Total of Part 9.

Add the current value on lines 55.1 through 55.6 and entries from any additional sheets.
Copy the total to line 88.

\$20,635,000.00

57. Is a depreciation schedule available for any of the property listed in Part 9?

☒ No
☐ Yes

58. Has any of the property listed in Part 9 been appraised by a professional within the last year?

☒ No
☐ Yes

Part 10: **Intangibles and Intellectual property**

59. Does the debtor have any interests in intangibles or intellectual property?

☐ No. Go to Part 11.
☒ Yes Fill in the information below.

Debtor Traveller's Rest, L.L.C.
Name

Case number (If known) 17-12061

General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
60. Patents, copyrights, trademarks, and trade secrets Copyrighted land development materials	Unknown		Unknown
61. Internet domain names and websites			
62. Licenses, franchises, and royalties			
63. Customer lists, mailing lists, or other compilations			
64. Other intangibles, or intellectual property			
65. Goodwill			
66. Total of Part 10. Add lines 60 through 65. Copy the total to line 89.			\$0.00
67. Do your lists or records include personally identifiable information of customers (as defined in 11 U.S.C. §§ 101(41A) and 107? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
68. Is there an amortization or other similar schedule available for any of the property listed in Part 10? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
69. Has any of the property listed in Part 10 been appraised by a professional within the last year? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Part 11: All other assets

70. Does the debtor own any other assets that have not yet been reported on this form?
Include all interests in executory contracts and unexpired leases not previously reported on this form.
- ☒ No. Go to Part 12.
☐ Yes Fill in the information below.

Debtor **Traveller's Rest, L.L.C.**
Name

Case number (if known) **17-12061**

Part 12: Summary

In Part 12 copy all of the totals from the earlier parts of the form

Type of property	Current value of personal property	Current value of real property
80. Cash, cash equivalents, and financial assets. Copy line 5, Part 1	\$3,300.00	
81. Deposits and prepayments. Copy line 9, Part 2.	\$0.00	
82. Accounts receivable. Copy line 12, Part 3.	\$0.00	
83. Investments. Copy line 17, Part 4.	\$0.00	
84. Inventory. Copy line 23, Part 5.	\$0.00	
85. Farming and fishing-related assets. Copy line 33, Part 6.	\$0.00	
86. Office furniture, fixtures, and equipment; and collectibles. Copy line 43, Part 7.	\$0.00	
87. Machinery, equipment, and vehicles. Copy line 51, Part 8.	\$0.00	
88. Real property. Copy line 56, Part 9.....>		\$20,635,000.00
89. Intangibles and intellectual property. Copy line 66, Part 10.	\$0.00	
90. All other assets. Copy line 78, Part 11.	+ \$0.00	
91. Total. Add lines 80 through 90 for each column	\$3,300.00	+ 91b. \$20,635,000.00
92. Total of all property on Schedule A/B. Add lines 91a+91b=92		\$20,638,300.00

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 206D

Schedule D: Creditors Who Have Claims Secured by Property

12/15

Be as complete and accurate as possible.

1. Do any creditors have claims secured by debtor's property?

☐ No. Check this box and submit page 1 of this form to the court with debtor's other schedules. Debtor has nothing else to report on this form.

☒ Yes. Fill in all of the information below.

Part 1: List Creditors Who Have Secured Claims

2. List in alphabetical order all creditors who have secured claims. If a creditor has more than one secured claim, list the creditor separately for each claim.

		Column A Amount of claim Do not deduct the value of collateral.	Column B Value of collateral that supports this claim	
2.1	Marshall Capital, LC <small>Creditor's Name</small> 8458 West Main Street Marshall, VA 20115 <small>Creditor's mailing address</small> <small>Creditor's email address, if known</small> Date debt was incurred Last 4 digits of account number Do multiple creditors have an interest in the same property? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Specify each creditor, including this creditor and its relative priority.	Describe debtor's property that is subject to a lien Appx. 673.06 acres Listed on Schedule A at 55.1 Describe the lien Real Estate Loan Is the creditor an insider or related party? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Is anyone else liable on this claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Fill out <i>Schedule H: Codebtors</i> (Official Form 206H) As of the petition filing date, the claim is: Check all that apply <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed	\$6,589,160.67	\$18,935,000.00

2.2	Virginia Rail LC <small>Creditor's Name</small> 8485 West Main Street Marshall, VA 20115 <small>Creditor's mailing address</small> <small>Creditor's email address, if known</small> Date debt was incurred 04/03/2015 Last 4 digits of account number Do multiple creditors have an interest in the same property? <input type="checkbox"/> No <input type="checkbox"/> Yes. Specify each creditor, including this creditor and its relative priority.	Describe debtor's property that is subject to a lien Appx 57 total acres Listed on Schedule A at 55.2 Describe the lien Real Estate Loan Is the creditor an insider or related party? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Is anyone else liable on this claim? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Fill out <i>Schedule H: Codebtors</i> (Official Form 206H) As of the petition filing date, the claim is: Check all that apply	\$750,000.00	\$1,700,000.00
------------	---	--	---------------------	-----------------------

Debtor **Traveller's Rest, L.L.C.**
Name

Case number (if know) **17-12061**

- ☒ No ☐ Contingent
☐ Yes. Specify each creditor, including this creditor and its relative priority. ☐ Unliquidated ☐ Disputed

3. Total of the dollar amounts from Part 1, Column A, including the amounts from the Additional Page, if any.

\$7,339,160.6
7

Part 2: List Others to Be Notified for a Debt Already Listed in Part 1

List in alphabetical order any others who must be notified for a debt already listed in Part 1. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for secured creditors.

If no others need to be notified for the debts listed in Part 1, do not fill out or submit this page. If additional pages are needed, copy this page.

Name and address

On which line in Part 1 did
you enter the related creditor?

Last 4 digits of
account number for
this entity

Dave Culbert
Culbert & Schmitt, PLLC
30C Catoctin Cir., SE
Leesburg, VA 20175

Line 2.1

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 206E/F

Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY unsecured claims and Part 2 for creditors with NONPRIORITY unsecured claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on *Schedule A/B: Assets - Real and Personal Property* (Official Form 206A/B) and on *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G). Number the entries in Parts 1 and 2 in the boxes on the left. If more space is needed for Part 1 or Part 2, fill out and attach the Additional Page of that Part included in this form.

Part 1: List All Creditors with PRIORITY Unsecured Claims

1. Do any creditors have priority unsecured claims? (See 11 U.S.C. § 507).

☐ No. Go to Part 2.

☒ Yes. Go to line 2.

2. List in alphabetical order all creditors who have unsecured claims that are entitled to priority in whole or in part. If the debtor has more than 3 creditors with priority unsecured claims, fill out and attach the Additional Page of Part 1.

		Total claim	Priority amount
2.1	Priority creditor's name and mailing address Loudoun County P.O. Box 8000 Leesburg, VA 20177-9804	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed	\$34,572.84 \$34,572.84
	Date or dates debt was incurred	Basis for the claim: Unpaid Real Estate Taxes	
	Last 4 digits of account number	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
	Specify Code subsection of PRIORITY unsecured claim: 11 U.S.C. § 507(a) (8)		

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. List in alphabetical order all of the creditors with nonpriority unsecured claims. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

		Amount of claim
3.1	Nonpriority creditor's name and mailing address Becker, Kellogg & Berry, PC 5501 Backlick Rd., Ste. 220 Springfield, VA 22151	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed
	Date(s) debt was incurred <u>2015</u>	\$20,000.00
	Last 4 digits of account number	Basis for the claim: <u>Unpaid legal fees</u>
		Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3.2	Nonpriority creditor's name and mailing address Carson Ashley 410 Rosedale Ct., Ste. 200 Warrenton, VA 20186	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed
	Date(s) debt was incurred <u>2017</u>	\$9,115.00
	Last 4 digits of account number	Basis for the claim: <u>Services rendered</u>
		Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes

Debtor **Traveller's Rest, L.L.C.**
Name

Case number (if known) **17-12061**

3.3	Nonpriority creditor's name and mailing address Crow Finance & Realty 8235 Douglas Ave., Ste. 815 Dallas, TX 75225 Date(s) debt was incurred <u>2016</u> Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Services rendered</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$15,000.00
3.4	Nonpriority creditor's name and mailing address Destiny Polo, LLC & P. Miles Attn: Craig Hatch, Esq. 2109 Market St. Camp Hill, PA 17011 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Deposit for land</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$118,800.00
3.5	Nonpriority creditor's name and mailing address Gunnell Family Dynasty Trust P.O. Box 2061 Middleburg, VA 20118 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Loans 2014-2017</u> <u>Currently being reconciled</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown
3.6	Nonpriority creditor's name and mailing address Meyers Appraisal Service 106 South King St. Leesburg, VA 20175 Date(s) debt was incurred <u>2016</u> Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Services rendered</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$4,500.00
3.7	Nonpriority creditor's name and mailing address PB Mares 33 Culpeper St. Middleburg, VA 20117 Date(s) debt was incurred <u>2014-2017</u> Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Services rendered</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$18,581.81
3.8	Nonpriority creditor's name and mailing address Piedmont Law PC 22923 Carters Farm Ln. Middleburg, VA 20117 Date(s) debt was incurred <u>2014-2017</u> Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Unpaid legal fees</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$150,000.00
3.9	Nonpriority creditor's name and mailing address Point to Point, LLC P.O. Box 2061 Middleburg, VA 20118 Date(s) debt was incurred _ Last 4 digits of account number _	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: <u>Loans 2014-2017</u> <u>Currently being reconciled</u> Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Unknown

Debtor **Traveller's Rest, L.L.C.**
Name

Case number (if known) **17-12061**

3.10 Nonpriority creditor's name and mailing address

T. Nelson Gunnell
P.O. Box 2061
Middleburg, VA 20118

Date(s) debt was incurred _

Last 4 digits of account number _

As of the petition filing date, the claim is: Check all that apply.

- ☐ Contingent
☐ Unliquidated
☐ Disputed

Basis for the claim: Loans 2014-2017
Currently being reconciled

Is the claim subject to offset? ☒ No ☐ Yes

Unknown

3.11 Nonpriority creditor's name and mailing address

Walker Consulting Services
PO Box 1064
Warrenton, VA 20186

Date(s) debt was incurred 2014

Last 4 digits of account number _

As of the petition filing date, the claim is: Check all that apply.

- ☐ Contingent
☐ Unliquidated
☐ Disputed

Basis for the claim: Services rendered

Is the claim subject to offset? ☒ No ☐ Yes

\$26,000.00

Part 3: List Others to Be Notified About Unsecured Claims

4. List in alphabetical order any others who must be notified for claims listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors.

If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy the next page.

Name and mailing address

On which line in Part 1 or Part 2 is the
related creditor (if any) listed?

Last 4 digits of
account number, if
any

Part 4: Total Amounts of the Priority and Nonpriority Unsecured Claims

5. Add the amounts of priority and nonpriority unsecured claims.

5a. Total claims from Part 1

5b. Total claims from Part 2

5c. Total of Parts 1 and 2
Lines 5a + 5b = 5c.

Total of claim amounts
5a. \$ **34,572.84**
5b. + \$ **361,996.81**

5c. \$ **396,569.65**

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 206G

Schedule G: Executory Contracts and Unexpired Leases

12/15

Be as complete and accurate as possible. If more space is needed, copy and attach the additional page, number the entries consecutively.

1. Does the debtor have any executory contracts or unexpired leases?

☐ No. Check this box and file this form with the debtor's other schedules. There is nothing else to report on this form.

☒ Yes. Fill in all of the information below even if the contacts of leases are listed on *Schedule A/B: Assets - Real and Personal* (Official Form 206A/B).

Property

2. List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.1. State what the contract or lease is for and the nature of the debtor's interest Farm Lease

State the term remaining 4 years

List the contract number of any government contract N/A

Banbury Cross Polo Club
PO Box 201
Middleburg, VA 20117

2.2. State what the contract or lease is for and the nature of the debtor's interest Traveller's Rest, LLC Operating Agreement

State the term remaining

List the contract number of any government contract

Banbury Cross, LLC
22932 Carters Farm Lane
Middleburg, VA 20117

2.3. State what the contract or lease is for and the nature of the debtor's interest Executory Contract

State the term remaining Continuing

List the contract number of any government contract

Global Resort Development Co
7140 Helsem Bend
Dallas, TX 75230-1947

2.4. State what the contract or lease is for and the nature of the debtor's interest Traveller's Rest, LLC Operating Agreement

State the term remaining 10/1/2017

List the contract number of any government contract

Gordon & Judith Davis
22913 Carter's Farm Ln.
Middleburg, VA 20117

Debtor 1 **Traveller's Rest, L.L.C.**Case number (if known) **17-12061**

First Name

Middle Name

Last Name

Additional Page if You Have More Contracts or Leases**2. List all contracts and unexpired leases****State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.5. State what the contract or lease is for and the nature of the debtor's interest **Garage Lease**

State the term remaining **6 years**

List the contract number of any government contract

**Point to Point, LLC
PO Box 2061
Middleburg, VA 20117**

2.6. State what the contract or lease is for and the nature of the debtor's interest **Traveller's Rest, LLC
Operating Agreement**

State the term remaining

List the contract number of any government contract

**SB East, LLC
c/o Alfred Rogers Smithwick
4800 Hydes Rd.
Hydes, MD 21082-9558**

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 206H
Schedule H: Your Codebtors

12/15

Be as complete and accurate as possible. If more space is needed, copy the Additional Page, numbering the entries consecutively. Attach the Additional Page to this page.

1. Do you have any codebtors?

- ☒ No. Check this box and submit this form to the court with the debtor's other schedules. Nothing else needs to be reported on this form.
☐ Yes

2. In Column 1, list as codebtors all of the people or entities who are also liable for any debts listed by the debtor in the schedules of creditors, Schedules D-G. Include all guarantors and co-obligors. In Column 2, identify the creditor to whom the debt is owed and each schedule on which the creditor is listed. If the codebtor is liable on a debt to more than one creditor, list each creditor separately in Column 2.

Column 1: Codebtor

Column 2: Creditor

	Name	Mailing Address	Name	Check all schedules that apply:
2.1		Street		<input type="checkbox"/> D
				<input type="checkbox"/> E/F
		City State Zip Code		<input type="checkbox"/> G
2.2		Street		<input type="checkbox"/> D
				<input type="checkbox"/> E/F
		City State Zip Code		<input type="checkbox"/> G
2.3		Street		<input type="checkbox"/> D
				<input type="checkbox"/> E/F
		City State Zip Code		<input type="checkbox"/> G
2.4		Street		<input type="checkbox"/> D
				<input type="checkbox"/> E/F
		City State Zip Code		<input type="checkbox"/> G

Fill in this information to identify the case:

Debtor name Traveller's Rest, L.L.C.

United States Bankruptcy Court for the: EASTERN DISTRICT OF VIRGINIA

Case number (if known) 17-12061

☐ Check if this is an amended filing

Official Form 207

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

04/16

The debtor must answer every question. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known).

Part 1: Income

1. Gross revenue from business

☐ None.

Identify the beginning and ending dates of the debtor's fiscal year, which may be a calendar year

Sources of revenue
Check all that apply

Gross revenue
(before deductions and exclusions)

From the beginning of the fiscal year to filing date:
From 1/01/2017 to Filing Date

☐ Operating a business
☒ Other Lease income

\$8,500.00

For prior year:
From 1/01/2016 to 12/31/2016

☐ Operating a business
☒ Other Lease income

\$8,500.00

For year before that:
From 1/01/2015 to 12/31/2015

☐ Operating a business
☒ Other Lease income

\$8,500.00

2. Non-business revenue

Include revenue regardless of whether that revenue is taxable. *Non-business income* may include interest, dividends, money collected from lawsuits, and royalties. List each source and the gross revenue for each separately. Do not include revenue listed in line 1.

☒ None.

Description of sources of revenue

Gross revenue from
each source
(before deductions and
exclusions)

Part 2: List Certain Transfers Made Before Filing for Bankruptcy

3. Certain payments or transfers to creditors within 90 days before filing this case

List payments or transfers—including expense reimbursements—to any creditor, other than regular employee compensation, within 90 days before filing this case unless the aggregate value of all property transferred to that creditor is less than \$6,425. (This amount may be adjusted on 4/01/19 and every 3 years after that with respect to cases filed on or after the date of adjustment.)

☐ None.

Creditor's Name and Address

Dates

Total amount of value

Reasons for payment or transfer
Check all that apply

Debtor **Traveller's Rest, L.L.C.**

Case number (if known) **17-12061**

Creditor's Name and Address	Dates	Total amount of value	Reasons for payment or transfer Check all that apply
3.1. Walker Consulting Services PO Box 1064 Warrenton, VA 20186	April 15, 2017	\$4,000.00	<input type="checkbox"/> Secured debt <input type="checkbox"/> Unsecured loan repayments <input type="checkbox"/> Suppliers or vendors <input checked="" type="checkbox"/> Services <input type="checkbox"/> Other__

4. Payments or other transfers of property made within 1 year before filing this case that benefited any insider

List payments or transfers, including expense reimbursements, made within 1 year before filing this case on debts owed to an insider or guaranteed or cosigned by an insider unless the aggregate value of all property transferred to or for the benefit of the insider is less than \$6,425. (This amount may be adjusted on 4/01/19 and every 3 years after that with respect to cases filed on or after the date of adjustment.) Do not include any payments listed in line 3. *Insiders* include officers, directors, and anyone in control of a corporate debtor and their relatives; general partners of a partnership debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(31).

☐ None.

Insider's name and address Relationship to debtor	Dates	Total amount of value	Reasons for payment or transfer
4.1. Gunnell Family Dynasty Trust Co-owner through Banbury Cross, LLC	One year prior to the Petition Date	Unknown	Miscellaneous loan repayments - currently being reconciled
4.2. T. Nelson Gunnell Co-owner through Banbury Cross, LLC	One year prior to the Petition Date	Unknown	Miscellaneous loan repayments - currently being reconciled
4.3. Point to Point, LLC Insider through T. Nelson Gunnell	One year prior to the Petition Date	Unknown	Miscellaneous loan repayments - currently being reconciled

5. Repossessions, foreclosures, and returns

List all property of the debtor that was obtained by a creditor within 1 year before filing this case, including property repossessed by a creditor, sold at a foreclosure sale, transferred by a deed in lieu of foreclosure, or returned to the seller. Do not include property listed in line 6.

☒ None

Creditor's name and address	Describe of the Property	Date	Value of property
-----------------------------	--------------------------	------	-------------------

6. Setoffs

List any creditor, including a bank or financial institution, that within 90 days before filing this case set off or otherwise took anything from an account of the debtor without permission or refused to make a payment at the debtor's direction from an account of the debtor because the debtor owed a debt.

☒ None

Creditor's name and address	Description of the action creditor took	Date action was taken	Amount
-----------------------------	---	-----------------------	--------

Part 3: Legal Actions or Assignments

7. Legal actions, administrative proceedings, court actions, executions, attachments, or governmental audits

List the legal actions, proceedings, investigations, arbitrations, mediations, and audits by federal or state agencies in which the debtor was involved in any capacity—within 1 year before filing this case.

☒ None.

Case title Case number	Nature of case	Court or agency's name and address	Status of case
---------------------------	----------------	------------------------------------	----------------

8. Assignments and receivership

List any property in the hands of an assignee for the benefit of creditors during the 120 days before filing this case and any property in the hands of a receiver, custodian, or other court-appointed officer within 1 year before filing this case.

Debtor Traveller's Rest, L.L.C.

Case number (if known) 17-12061

☒ None

Part 4: Certain Gifts and Charitable Contributions

9. List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than \$1,000

☐ None

Recipient's name and address	Description of the gifts or contributions	Dates given	Value
9.1. Banbury Cross Polo Club 22932 Carters Farm Lane Middleburg, VA 20117	Season sponsorship	7/26/2016	\$2,000.00
Recipients relationship to debtor Insider			

Part 5: Certain Losses

10. All losses from fire, theft, or other casualty within 1 year before filing this case.

☒ None

Description of the property lost and how the loss occurred	Amount of payments received for the loss	Dates of loss	Value of property lost
If you have received payments to cover the loss, for example, from insurance, government compensation, or tort liability, list the total received.			
List unpaid claims on Official Form 106A/B (Schedule A/B: Assets - Real and Personal Property).			

Part 6: Certain Payments or Transfers

11. Payments related to bankruptcy

List any payments of money or other transfers of property made by the debtor or person acting on behalf of the debtor within 1 year before the filing of this case to another person or entity, including attorneys, that the debtor consulted about debt consolidation or restructuring, seeking bankruptcy relief, or filing a bankruptcy case.

☐ None.

Who was paid or who received the transfer? Address	If not money, describe any property transferred	Dates	Total amount or value
11.1. Henry & O'Donnell, P.C. 300 N. Washington St. Suite 204 Alexandria, VA 22314		6/6/17	\$8,000.00
Email or website address			
Who made the payment, if not debtor? T. Nelson Gunnell			

Debtor **Traveller's Rest, L.L.C.**

Case number (if known) **17-12061**

	Who was paid or who received the transfer? Address	If not money, describe any property transferred	Dates	Total amount or value
11.2.	Henry & O'Donnell, P.C. 300 N. Washington St. Suite 204 Alexandria, VA 22314		6/15/17	\$9,785.00

Email or website address

Who made the payment, if not debtor?
T. Nelson Gunnell

11.3.	Henry & O'Donnell, P.C. 300 N. Washington St. Suite 204 Alexandria, VA 22314		6/15/17	\$4,994.00
-------	---	--	----------------	-------------------

Email or website address

Who made the payment, if not debtor?
T. Nelson Gunnell

11.4.	Henry & O'Donnell, P.C. 300 N. Washington St. Suite 204 Alexandria, VA 22314	Retainer	6/10/17	\$20,221.00
-------	---	-----------------	----------------	--------------------

Email or website address

Who made the payment, if not debtor?
T. Nelson Gunnell

12. Self-settled trusts of which the debtor is a beneficiary

List any payments or transfers of property made by the debtor or a person acting on behalf of the debtor within 10 years before the filing of this case to a self-settled trust or similar device.
Do not include transfers already listed on this statement.

☒ None.

Name of trust or device	Describe any property transferred	Dates transfers were made	Total amount or value
-------------------------	-----------------------------------	---------------------------	-----------------------

13. Transfers not already listed on this statement

List any transfers of money or other property by sale, trade, or any other means made by the debtor or a person acting on behalf of the debtor within 2 years before the filing of this case to another person, other than property transferred in the ordinary course of business or financial affairs. Include both outright transfers and transfers made as security. Do not include gifts or transfers previously listed on this statement.

☐ None.

Debtor Traveller's Rest, L.L.C.Case number (if known) 17-12061

	Who received transfer? Address	Description of property transferred or payments received or debts paid in exchange Transfers/advances for for health insurance, estate litigation, medical expenses, new truck, house repairs, vehicle repairs, attorney's fees, tax preparation	Date transfer was made	Total amount or value
13.1	<u>Alfred Rogers Smithwick 4800 Hydes Road Hydes, MD 21082</u>	<u>Currently being reconciled</u>	<u>2016-2017</u>	<u>\$458,620.00</u>
	<u>Relationship to debtor Sole beneficiary of IRR Trust that owns SB East - member</u>			
13.2	<u>Gunnell Family Dynasty Trust</u>	<u>Transfers advances for members and beneficiaries - Currently being reconciled</u>	<u>2016-2017</u>	<u>\$31,600.00</u>
	<u>Relationship to debtor Trust that owns Banbury Farm, LC - member</u>			
13.3	<u>Point to Point, LLC</u>	<u>Transfers/advances for maintenance and capital improvements - currently being reconciled</u>	<u>2016-2017</u>	<u>Unknown</u>
	<u>Relationship to debtor Contractor owned by TNG</u>			
13.4	<u>Banbury Cross Farm, LLC</u>	<u>Transfers/advances for maintenance and capital improvement - currently being reconciled</u>	<u>2016-2017</u>	<u>\$80,000.00</u>
	<u>Relationship to debtor Member</u>			
13.5	<u>Banbury Cross, LLC</u>	<u>Transfers/advances for maintenance and capital improvement - currently being reconciled</u>	<u>2016-2017</u>	<u>\$41,862.13</u>
	<u>Relationship to debtor Insider</u>			
13.6	<u>Greenfields Sporting Club, LLC</u>	<u>Transfers/advances for maintenance and capital improvement - currently being reconciled</u>	<u>2016-2017</u>	<u>\$10,000.00</u>
	<u>Relationship to debtor Insider</u>			
13.7	<u>Pipers Marketing</u>	<u>Payments for marketing expenses</u>	<u>5/27/2016-6/18- 2016</u>	<u>\$10,000.00</u>
	<u>Relationship to debtor Wife of T. Nelson Gunnell</u>			

Debtor Traveller's Rest, L.L.C.Case number (if known) 17-12061

	Who received transfer? Address	Description of property transferred or payments received or debts paid in exchange	Date transfer was made	Total amount or value
13.8	T. Nelson Gunnell P.O. Box 2061 Middleburg, VA 20118	Transfers/advances for maintenance and capital improvement - currently being reconciled	2016-2017	\$515,700.00
	Relationship to debtor Insider			

Part 7: Previous Locations**14. Previous addresses**

List all previous addresses used by the debtor within 3 years before filing this case and the dates the addresses were used.

☐ Does not apply

Address

Dates of occupancy
From-To**Part 8: Health Care Bankruptcies****15. Health Care bankruptcies**

Is the debtor primarily engaged in offering services and facilities for:

- diagnosing or treating injury, deformity, or disease, or
- providing any surgical, psychiatric, drug treatment, or obstetric care?

☐ No. Go to Part 9.☐ Yes. Fill in the information below.

Facility name and address

Nature of the business operation, including type of services
the debtor providesIf debtor provides meals
and housing, number of
patients in debtor's care**Part 9: Personally Identifiable Information****16. Does the debtor collect and retain personally identifiable information of customers?**☐ No.☐ Yes. State the nature of the information collected and retained.**17. Within 6 years before filing this case, have any employees of the debtor been participants in any ERISA, 401(k), 403(b), or other pension or profit-sharing plan made available by the debtor as an employee benefit?**☐ No. Go to Part 10.☐ Yes. Does the debtor serve as plan administrator?**Part 10: Certain Financial Accounts, Safe Deposit Boxes, and Storage Units****18. Closed financial accounts**

Within 1 year before filing this case, were any financial accounts or instruments held in the debtor's name, or for the debtor's benefit, closed, sold, moved, or transferred?

Include checking, savings, money market, or other financial accounts; certificates of deposit; and shares in banks, credit unions, brokerage houses, cooperatives, associations, and other financial institutions.

☐ NoneFinancial Institution name and
AddressLast 4 digits of
account numberType of account or
instrumentDate account was
closed, sold,
moved, or
transferredLast balance
before closing or
transfer

Debtor Traveller's Rest, L.L.C.Case number (if known) 17-12061

	Financial Institution name and Address	Last 4 digits of account number	Type of account or instrument	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
18.1.	Middleburg Bank Operations Center 106 Catoctin Circle, SE Leesburg, VA 20175	XXXX-6101	<input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Money Market <input type="checkbox"/> Brokerage <input type="checkbox"/> Other___	11/30/16	\$0.00
18.2.	BB&T 202 W. Washington St. Middleburg, VA 20118	XXXX-8085	<input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Money Market <input type="checkbox"/> Brokerage <input type="checkbox"/> Other___	7/6/17	\$100.00

19. Safe deposit boxes

List any safe deposit box or other depository for securities, cash, or other valuables the debtor now has or did have within 1 year before filing this case.

☒ None

Depository institution name and address	Names of anyone with access to it Address	Description of the contents	Do you still have it?
---	--	-----------------------------	-----------------------

20. Off-premises storage

List any property kept in storage units or warehouses within 1 year before filing this case. Do not include facilities that are in a part of a building in which the debtor does business.

☒ None

Facility name and address	Names of anyone with access to it	Description of the contents	Do you still have it?
---------------------------	-----------------------------------	-----------------------------	-----------------------

Part 11: Property the Debtor Holds or Controls That the Debtor Does Not Own**21. Property held for another**

List any property that the debtor holds or controls that another entity owns. Include any property borrowed from, being stored for, or held in trust. Do not list leased or rented property.

☒ None**Part 12: Details About Environment Information**

For the purpose of Part 12, the following definitions apply:

Environmental law means any statute or governmental regulation that concerns pollution, contamination, or hazardous material, regardless of the medium affected (air, land, water, or any other medium).*Site* means any location, facility, or property, including disposal sites, that the debtor now owns, operates, or utilizes or that the debtor formerly owned, operated, or utilized.*Hazardous material* means anything that an environmental law defines as hazardous or toxic, or describes as a pollutant, contaminant, or a similarly harmful substance.

Report all notices, releases, and proceedings known, regardless of when they occurred.

22. Has the debtor been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.

Debtor Traveller's Rest, L.L.C.

Case number (if known) 17-12061

- ☒ No.
☐ Yes. Provide details below.

Case title Case number	Court or agency name and address	Nature of the case	Status of case
---------------------------	-------------------------------------	--------------------	----------------

23. Has any governmental unit otherwise notified the debtor that the debtor may be liable or potentially liable under or in violation of an environmental law?

- ☒ No.
☐ Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice
-----------------------	---------------------------------------	-----------------------------	----------------

24. Has the debtor notified any governmental unit of any release of hazardous material?

- ☒ No.
☐ Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice
-----------------------	---------------------------------------	-----------------------------	----------------

Part 13: Details About the Debtor's Business or Connections to Any Business

25. Other businesses in which the debtor has or has had an interest

List any business for which the debtor was an owner, partner, member, or otherwise a person in control within 6 years before filing this case. Include this information even if already listed in the Schedules.

- ☒ None

Business name address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.	Dates business existed
-----------------------	-------------------------------------	--	------------------------

26. Books, records, and financial statements

26a. List all accountants and bookkeepers who maintained the debtor's books and records within 2 years before filing this case.

- ☐ None

Name and address	Date of service From-To
------------------	----------------------------

26a.1. John Vincie - CPA
 PB Mares
 33 Culpepper St.
 Warrenton, VA 20186

2015 - Present

26a.2. Teresa Copenhaver

1995 - 06/2017

26b. List all firms or individuals who have audited, compiled, or reviewed debtor's books of account and records or prepared a financial statement within 2 years before filing this case.

- ☒ None

26c. List all firms or individuals who were in possession of the debtor's books of account and records when this case is filed.

- ☐ None

Name and address	If any books of account and records are unavailable, explain why
------------------	---

Debtor **Traveller's Rest, L.L.C.**

Case number (if known) **17-12061**

Name and address

If any books of account and records are unavailable, explain why

26c.1. **John Vincie, CPA**
PBGH
33 Culpepper St.
Warrenton, VA 20186

26c.2. **Thomas Nelson Gunnell**
PO Box 2061
Middleburg, VA 20117

26d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom the debtor issued a financial statement within 2 years before filing this case.

☒ None

Name and address

27. Inventories

Have any inventories of the debtor's property been taken within 2 years before filing this case?

☒ No

☐ Yes. Give the details about the two most recent inventories.

Name of the person who supervised the taking of the inventory

Date of inventory

The dollar amount and basis (cost, market, or other basis) of each inventory

28. List the debtor's officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.

Name	Address	Position and nature of any interest	% of interest, if any
TR Management, LLC	PO Box 2061 Middleburg, VA 20118	Class A	100
Name	Address	Position and nature of any interest	% of interest, if any
Banbury Cross, LLC	PO Box 2061 Middleburg, VA 20118	Class B	50
Name	Address	Position and nature of any interest	% of interest, if any
SB East LLC	PO Box 2061 Middleburg, VA 20118	Class B	50
Name	Address	Position and nature of any interest	% of interest, if any
Gordon & Judith Davis	22913 Carter's Farm Ln. Middleburg, VA 20117	Class C	100

29. Within 1 year before the filing of this case, did the debtor have officers, directors, managing members, general partners, members in control of the debtor, or shareholders in control of the debtor who no longer hold these positions?

☒ No

☐ Yes. Identify below.

30. Payments, distributions, or withdrawals credited or given to insiders

Within 1 year before filing this case, did the debtor provide an insider with value in any form, including salary, other compensation, draws, bonuses, loans, credits on loans, stock redemptions, and options exercised?

Debtor Traveller's Rest, L.L.C.

Case number (if known) 17-12061

- ☐ No
☒ Yes. Identify below.

Name and address of recipient	Amount of money or description and value of property	Dates	Reason for providing the value Received payments for capital improvements - currently being reconciled
30.1 Point to Point, LLC	Unreconciled	2016-2017	
Relationship to debtor Insider			
30.2 T. Nelson Gunnell	Unreconciled	2016-2017	Payments for capital improvements and maintenance
Relationship to debtor Insider			

31. Within 6 years before filing this case, has the debtor been a member of any consolidated group for tax purposes?

- ☒ No
☐ Yes. Identify below.

Name of the parent corporation

Employer Identification number of the parent corporation

32. Within 6 years before filing this case, has the debtor as an employer been responsible for contributing to a pension fund?

- ☒ No
☐ Yes. Identify below.

Name of the parent corporation

Employer Identification number of the parent corporation

Part 14: Signature and Declaration

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

I have examined the information in this *Statement of Financial Affairs* and any attachments and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2017

/s/ Thomas Nelson Gunnell

Signature of individual signing on behalf of the debtor

Thomas Nelson Gunnell

Printed name

Position or relationship to debtor Managing Member of TR Management, LLC

Are additional pages to *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (Official Form 207) attached?

- ☒ No
☐ Yes

**United States Bankruptcy Court
Eastern District of Virginia**

In re **Traveller's Rest, L.L.C.**

Debtor(s)

Case No. **17-12061**
Chapter **11**

LIST OF EQUITY SECURITY HOLDERS

Following is the list of the Debtor's equity security holders which is prepared in accordance with rule 1007(a)(3) for filing in this Chapter 11 Case

Name and last known address or place of business of holder	Security Class	Number of Securities	Kind of Interest
Banbury Farm, LLC 22932 Carters Farm Lane Middleburg, VA 20117	Class B	50%	
Gordon & Judith Davis 22913 Carter's Farm Ln. Middleburg, VA 20117	Class C	100%	
SB East, LLC	Class B	50%	
TR Management, LLC	Class A	100%	

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the Managing Member of TR Management, LLC of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

Date **July 18, 2017**

Signature **/s/ Thomas Nelson Gunnell**
Thomas Nelson Gunnell

*Penalty for making a false statement of concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

In re:

TRAVELLER'S REST, L.L.C.

Debtor.

**Case No. 17-12061- BFK
Chapter 11**

**MARSHALL CAPITAL, LC'S OBJECTION
TO THE APPROVAL OF THE DEBTOR'S DISCLOSURE STATEMENT WITH
RESPECT TO THE DEBTOR'S PLAN OF REORGANIZATION**

Marshall Capital, LC ("Marshall Capital"), by counsel, hereby files this objection (the "Objection") to the approval of the Debtor's Disclosure Statement with Respect to the Debtor's Plan of Reorganization (the "Plan") dated October 11, 2017 (the "Disclosure Statement"), and respectfully states as follows:

PRELIMINARY STATEMENT

The Debtor's Disclosure Statement cannot be approved. It utterly fails to provide adequate information to creditors, and describes an incomplete and unfeasible plan that cannot be confirmed. To add to the lack of information in the Disclosure Statement, the Debtor has filed incomplete schedules and incomplete monthly operating reports, leaving creditors in the dark.

Stephen K. Gallagher (Va. Bar No. 38085)
Venable LLP
8010 Towers Crescent Drive, Suite 300
Tysons Corner, VA 22182
(703) 760-1647
FAX: (703) 821-8949

Counsel for Marshall Capital, LC

Exhibit 5

000081

BACKGROUND

Marshall is the largest creditor in this case. It made a loan to the Debtor on October 5, 2015 (the date of the "Loan"), in the face amount of \$4,000,000.00 to the Debtor (the "Loan") evidenced by a Credit Line Deed of Trust Promissory Note dated October 5, 2015 ("Note") and a Credit Line Deed of Trust, Assignment of Leases and Rents and Security Agreement dated October 5, 2015 ("Deed of Trust") and secured by property owned by the Debtor located in Middleburg, VA with the Tax Identification numbers 502-39-8957-000; 502-49-5305-000; 502-39-3940-000; 502-28-1672-000; 503-46-4523-000; and 502-30-4353-000 (the "Property").

Payment for the loan was due at maturity. The Loan matured on October 5, 2016. The Debtor is in default on the Loan and has made no payments since the maturity date. On June 1, 2017, Marshall noticed a foreclosure on the Property securing the Loan that was set for June 16, 2017. On June 15, 2017 ("Petition Date"), the Debtor filed a voluntary chapter 11 petition.

Debtor's schedules and statement of financial affairs were incomplete when filed. Despite extensions of time, and despite the debtor's assurance that amended schedules would be filed two weeks after the meeting of creditors, the schedules and statement of financial affairs remain incomplete and have not been amended. The schedules and statement indicate that the Debtor made substantial transfers to insiders T. Nelson Gunnell ("Mr. Gunnell" or "Gunnell"), Alfred Rogers Smithwick ("Mr. Smithwick" or "Smithwick") and others in uncertain amounts and under uncertain circumstances in the year prior to the Petition Date. All of the descriptions of the transfers state that they are "currently being reconciled" and the Debtor has indicated that it has no comprehensive books and records, but that an accounting firm has been retained to provide them. The transfers disclosed in the statement of financial affairs identify transfers to Mr. Gunnell and Mr. Smithwick alone of approximately \$1 million. The debtor also testified

that it primarily utilized cash to make payments prior to the Petition Date. Additionally, several other transfers appear to have been made to insiders, insider entities or other entities that Mr. Gunnell controls. In addition, the Debtor testified that it signed draw certificates as to the uses of loan proceeds, which draw certificates appear to have been false, as loan proceeds were converted to cash and paid to unknown individuals or entities.

All the while, the debtor has been indicating that he has been working to develop the property. Yet, no plan has been filed with the county government, promises of refinancing have come and gone repeatedly, and creditors with almost no reliable information are being asked to evaluate what is really just another “wait and see” effort by the debtor hoping for some future prospect.

Recently filed monthly operating reports are incomplete and are also insufficient to assess the Debtor’s financial condition. At best, they indicate that the Debtor has no income. The Debtor has admitted the inadequacy of its Statements, Schedules and Monthly Operating Reports. It states in the Monthly Operating Reports that its accounting data is incomplete and is undergoing a “complete overhaul” and that the Debtor will update its information “as soon as accurate information is available.” Creditors have waited long enough, and need information.

At the meeting of creditors, the Debtor indicated that it has retained an accounting firm, and actually had an expert and counsel (in addition to Henry & O’Donnell) in attendance. No applications to employ professionals other than Henry & O’Donnell have been filed, and it remains unclear how these post-petition professionals are being paid, especially in light of the Debtor’s statements that it had no income in June and July, per the only two monthly operating reports it has filed.

The Disclosure Statement continues the Debtor's failure to provide creditors with full information, does not adequately describe the proposed Plan, does not provide projections, and does not provide information required to allow creditors to properly assess the Plan. Although Marshall Capital has requested documents and an examination of the Debtor and its principals under Rule 2004, the Debtor has opposed that effort.

OBJECTION

A. A Disclosure Statement cannot be approved if it does not provide adequate information as required by Section 1125 of the Bankruptcy Code.

The Disclosure Statement fails to adequately provide information that is material to creditors in making an informed decision as to whether they should vote to accept or reject the Plan; thus, it should not be approved. Section 1125(b) of the Bankruptcy Code requires that a plan proponent provide "adequate information" regarding a debtor's proposed plan of reorganization. Section 1125(a)(1) defines "adequate information" as follows:

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

See In re A.H. Robins, Co., 880 F.2d 694 (4th Cir. 1989).

A disclosure statement must contain adequate information to allow creditors to make an informed decision on how to vote on the plan. *In re Pecht*, 53 B.R. 768, 769 (Bankr. E.D. Va. 1985). Accordingly, the information provided in the disclosure statement "should be comprised of all factors presently known to the plan proponent that bears upon the success or failure of proposals contained in a plan." *In re The Stanley Hotel, Inc.*, 13 B.R. 926 (Bankr. D. Colo. 1981). Furthermore, "adequate information" is to be determined by the facts and circumstances

of each case. *See In re Walker*, 198 B.R. 476, 479 (Bankr. E.D. Va. 1996); *Oneida Motor Freight v. United Jersey Bank (In re Oneida Motor Freight)*, 848 F.2d 414, 417 (3d Cir. 1988), *cert. denied* 488 U.S. 967 (1988).

Thus, bankruptcy courts require a proper disclosure statement to clearly and succinctly inform creditors of: (i) what they are going to get; (ii) when they are going to get it; and (iii) what contingencies there are to getting their distribution. *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991). Finally, the price of availing a debtor's use of the protections of the Bankruptcy Code is full disclosure. This Debtor has failed in that regard.

1. The Disclosure Statement fails to adequately describe the implementation of the Plan

Among the Disclosure Statement's failures to provide adequate information are the following, which Marshall Capital reserves the right to supplement or amend at the hearing on the Disclosure Statement:

- The proposed structure of the two Newcos is not adequately described. It is unclear who owns the non-voting interests, and the capitalization of the Newcos is not described.
- There is no description as to how the Newcos will operate or fund operations after the Effective Date and until the property is developed and properties are sold.
- There are no financial projections attached to the Disclosure Statement.
- There is no description of the governmental approval process for the development anticipated under the Plan, and no description of the risks of delays or lack of approval.
- There is no description of any proposed community opposition to the proposed development of the property.
- There is no description of the costs of development.

- There is no description of any government approvals, or any testing, studies or reports undertaken by the Debtor that would support development of the property.
- There is no discussion of the contingencies contained in the loan commitment filed as an exhibit to the Disclosure Statement, and there is no discussion of what will occur if those contingencies are not met.
- Closing under the commitment letter appears to be required to take place prior to December 29, 2017 and yet there is no discussion of how that closing can occur in that timeframe, and what will occur if closing does not occur.
- There is no information regarding a proposed additional loan for \$2 million that appears to be part of the Plan, and no commitment letter or discussion of the risks of not obtaining that loan.
- The Disclosure Statement understates the amount of postpetition administrative claims, which should include postpetition claims of oversecured lenders, and all of the Debtor's disclosed and undisclosed professionals.
- The Disclosure Statement proposes to reject all leases and executory contracts not assumed (none have been to date), but there is no description of them, and the Debtor's schedules do not accurately reflect adequate information about those leases and contracts.
- The Disclosure Statement fails to disclose the identity of insiders to be employed or retained by the Newcos.
- The Disclosure Statement fails to identify potential avoidable transfers or the value of those transfers to the estate.

2. The Disclosure Statement fails to adequately describe the Debtor's treatment of claims with respect to Marshall Capital.

- Marshall Capital lent \$4 million to the Debtor, not \$3.5 million as set forth in the Disclosure Statement.
- Marshall Capital's claim is not equal to or less than \$6,100,000 as stated in the Disclosure Statement. Marshall maintains that the balance as of the Petition Date was \$6,599,054.74.
- While the Debtor describes its view of the claim and the loan terms, the loan was negotiated between sophisticated commercial parties, each of

which was represented by counsel, and Marshall Capital maintains that it is owed the full balance of the loan as bargained for. Marshall Capital's position should be stated.

- Marshall Capital's claim is impaired and should be permitted to vote. It is not described that way in the Disclosure Statement.
- The Disclosure Statement identifies that the Plan cannot be confirmed unless Marshall Capital's claim is determined to be equal to or less than \$6,100,000, but fails to disclose what will occur if that contingency is not met.
- Marshall Capital's loan continues to accrue interest and attorney's fees postpetition, and that is not disclosed. As of October 24, 2017, another \$683,376.62 in postpetition interest will have accrued, plus attorney's fees and costs. There is no description of that amount or of any means for its repayment.

B. A Disclosure Statement based on a non-confirmable Plan should not be approved.

A disclosure statement should not be approved if the Court is convinced that the plan to which it relates is flawed on its face so that it could not possibly be confirmed. *See In re CRIIMI MAE, Inc.*, 251 B.R. 796, 799 (Bankr. D. Md. 2000); *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999); *In re 266 Washington Assocs.*, 141 B.R. 275, 288 (Bankr. E.D.N.Y.), *aff'd*, 147 B.R. 827 (E.D.N.Y. 1992); *In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 332-33 (Bankr. E.D. Pa. 1987).

Section 1129(a) (11) of the Bankruptcy Code requires as a condition of confirmation that a court find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Put another way, the plan proponent must show the plan is feasible, among other things. *See In re A.H. Robins*, 880 F.2d at 698.

Additionally, a number of courts have held that a plan is not feasible and thus not confirmable when it is submitted on a conditional basis. *See e.g., In re Premere Network Servs., Inc.*, No. 04-33402-HDH-11, 2005 WL 6443624, at * 5 (Bankr. N. D. Texas (finding a plan not to be feasible and denying confirmation where the effective date was conditioned on sufficient funds which debtor did not have); *In re Sis Corp.*, 120 B.R. 93, 95 (Bankr. N.D. Ohio 1990) (holding that uncertainty regarding plan implementation renders a plan infeasible).

The Plan is unconfirmable because it is conditioned on so many unknown factors that it is not feasible.¹ The Debtor has proposed a Plan that is the very type of unreasonable and speculative plan that the feasibility requirement prohibits from being confirmed. It is conditioned upon the occurrence of a number of events, the occurrence of which are uncertain, at best.

In order for the Debtor's Plan to go effective, for example, certain conditions must be met, including all of the loan conditions contained in the loan commitment letter filed by the Debtor. This conditions include the establishment of a one million dollar interest reserve account, the provision of 2.5 million dollars by the guarantor as additional collateral, and obtaining 2.5 million dollar life insurance policy on the guarantor. In addition, the Guarantor must maintain \$3.5 million in unencumbered liquidity. The commitment requires a specific minimum loan to value ratio, but the debtor has provided no Appraisal to establish value. The Debtor appears to have no loan in place for an additional \$2 million required under the Plan. The Plan is simply too speculative. Marshall Capital's claim is impaired, and yet, is not permitted to vote under the Plan. In addition, all administrative claims, including those of Marshall Capital, must be paid in full on the Effective Date, but the Debtor has no ability to do

¹ Marshall Capital reserves all of its rights to object to confirmation of the Plan on this and any other basis. *See In re Birdneck Apartment Assocs., II*, 156 B.R. 499 (E.D. Va. 1993).

that.

Finally, no appraisal has been provided by the Debtor, and no other potential buyers have been given a chance to bid in order to test the consideration being offered in the Plan in what appears to be an insider sale, and even though prepetition claims and administrative claims will not be paid in full.

Where, as here, the Plan is unconfirmable, the related Disclosure Statement should not be approved. The solicitation of votes would clearly be a waste of time to both the Court and the parties. *See In re 266 Washington Assocs.*, 141 B.R. at 288 (quoting *In re Valrico Square Ltd. P'ship*, 113 B.R. 794, 796 (Bankr. S.D. Fla. 1990) (Explaining that “[s]oliciting votes and seeking court approval on a clearly fruitless venture is waste of the time of the Court and the parties.”). The Court should not put creditors through the further delay and cost of a contested confirmation hearing and lengthy post-confirmation wait and hope period to see whether the conditions to effectiveness or plan implementation can be met.

CONCLUSION

The Disclosure Statement cannot be approved as it fails to provide “adequate information” and it describes a plan that is not confirmable. For the reasons set forth above, the Disclosure Statement should not be approved.

WHEREFORE, Marshall Capital respectfully requests that the Court deny approval of the Disclosure Statement, and grant other such relief as is just and proper.

Respectfully submitted,

Dated: October 20, 2017

/s/ Stephen K. Gallagher
Stephen K. Gallagher (Va. Bar No. 38085)
Lindsay R. Heitger (Va. Bar No. 80464)
Venable LLP
8010 Towers Crescent Drive, Suite 300
Tysons Corner, VA 22182
(703) 760-1647
FAX: (703) 821-8949

Counsel for Marshall Capital, LC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October 2017, a copy of the foregoing Objection was served via this court's ECF system on those parties listed to receive such notice and via first class United States mail, postage prepaid, on the following parties:

Jeffery T. Martin, Jr.
Henry & O'Donnell, P.C.
300 N. Washington St., Suite 204
Alexandria, Virginia 22314

Traveller's Rest, L.L.C
Post Office Box 2061
Middleburg, Virginia 20118

Alfred Rodgers Smithwick
4800 Hydes Road
Hydes, Maryland 21082-9558

Alfred Rogers Smithwick
22959 Carters Farm Lane
Middleburg, Virginia 20117-3015

Alfred Rogers Smithwick
Post Office Box 2061
Middleburg, Virginia 20118

Thomas Nelson Gunnell
22959 Carters Farm Lane
Middleburg, Virginia 20117-3015

Thomas Nelson Gunnell
Post Office Box 2061
Middleburg, Virginia 20118

Judy A. Robbins
c/o Jack Frankel
Office of the U.S. Trustee - Region 4
115 South Union Street, Room 210
Alexandria, VA 22314

/s/ Stephen K. Gallagher
Stephen K. Gallagher