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

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

# AMENDED DISCLOSURE STATEMENT WITH RESPECT TO DEBTOR'S AMENDED PLAN OF REORGANIZATION

## ARTICLE I. INTRODUCTION

The Debtor submits this amended disclosure statement (the "Disclosure Statement") pursuant to Bankruptcy Code section 1125, for use in the solicitation of votes on the Debtor's Amended Plan of Reorganization dated November 1~~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

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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 Marshal 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 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 by the fourth quarter of 2019 and will be concluded no later than the third quarter of 2020~~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 files 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, Newco 1 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 fourthree (43) 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 DC** is a true and correct copy of the Loan CommitmentCommitment issued by The Fauquier Bank in connection with the proposed financing.

PIN #502-39-3940 (5.77 acres)

Further, on or about the Effective Date, Newco 2 shall borrow approximately ~~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 $~~53~~50,000 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).

The proposed terms for the Second New Bank Loan are as follows: $2,000,000 loan; 5% fixed interest; 20 year amortization; 5 year balloon payment. Payments on the Second New Bank Loan will be made from funds held on reserve after the Effective Date and proceeds from lot sales. No commitment letter has been issued as of this date for the Second New Bank Loan.

The Virginia Rail Parcels will not be transferred and will remain property of the Debtor.

**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 $6,3~~1~~00,000.

### 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.

The Debtor has objected to the Marshall Capital Claim, and believes that the total amount of the Marshall Capital Claim as or the Effective Date will be adjudicated to be less than $6,300,000. The Debtor does not dispute the amount of principal ($4,000,000) or non-default interest at 12% ($916,706.52) owed pursuant to the Marshall Capital Note. However, the Debtor believes that, under Virginia and federal law, Marshall Capital is not entitled to all of the charges that they are demanding, namely the Debtor disputes the additional 15% default interest, the 15% liquidated damages penalty, and, alternatively, the 5% late fee as these are unenforceable penalties. If the objection to the Marshall Capital Claim is sustained in full, with Marshall Capital only being allowed to collect non-default interest at the rate of 12%, with no liquidated damages or other fees, the total payoff will be approximately $5,257,000 as of the Effective Date.

However, if the Marshall Capital Claim is allowed in its entirety with non-default interest of approximately $916,706.52, a $677,983.91 liquidated damages penalty, a $225,994.66 late fee and over $725,114 in additional default interest, all compounding daily, then the total payoff will exceed $7,488,532.17. If this is the case, it is likely that the Debtor would default under its obligations in the Plan to pay all creditors in full as provided therein.

## 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. It is projected that lot sales will commence in late 2019, and continue through 2021. Approximately 25% of net sales will be committed to pay the remaining portion of Class 5 General Unsecured Claims that have elected to be paid over time instead of receiving 80% up front in full satisfaction of their claim. A summary of the Debtor's financial projections with sales projection 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: November 1, 2017~~October 11, 2017~~ Respectfully submitted,

Traveller's Rest, LLC

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