

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TM ASSOCIATES MANAGEMENT, INC.,  
a Maryland Corporation,

Plaintiff,

v.

Civil Action No.: 15-C-568  
Judge Bloom

DEER FOREST LIMITED PARTNERSHIP,  
a West Virginia Limited Partnership, DYLAN  
HEIGHTS LIMITED PARTNERSHIP, a West  
Virginia Limited Partnership, OLD ASH VILLAGE  
LIMITED PARTNERSHIP, a West Virginia  
Limited Partnership, PAULI HEIGHTS LIMITED  
PARTNERSHIP, a West Virginia Limited Partnership,  
BARBARA HEIGHTS LIMITED PARTNERSHIP, a  
West Virginia Limited Partnership, BROOK VILLAGE  
LIMITED PARTNERSHIP, a West Virginia Limited  
Partnership, DUNHILL LIMITED PARTNERSHIP, a  
West Virginia Limited Partnership, HUDSON PLACE  
LIMITED PARTNERSHIP, a West Virginia Limited  
Partnership, VANMETER HEIGHTS LIMITED  
PARTNERSHIP, a West Virginia Limited Partnership,  
and WILSHERE LANDING LIMITED  
PARTNERSHIP, a West Virginia Limited Partnership,

Defendants.

ANSWER TO COUNTERCLAIM

Now comes plaintiff, TM Associates Management, Inc. ("Plaintiff"), by counsel, and  
hereby answers Defendants' Counterclaim as follows:

1. Plaintiff denies the allegations set forth in Paragraph 1 of Defendants' Counterclaim.
2. Plaintiff denies the allegations set forth in Paragraph 2 of Defendants' Counterclaim.
3. Plaintiff denies the allegations set forth in Paragraph 3 of Defendants' Counterclaim.
4. Plaintiff is without sufficient knowledge and information to affirm or deny the allegations contained in Paragraph 4 of Defendants' Counterclaim, and therefore denies these allegations. Plaintiff, however, admits that certain Management Agreements were terminated by Defendants.

5. Plaintiff denies the allegations set forth in Paragraph 5 of Defendants' Counterclaim. The alleged "Purchase Agreement" is not applicable to Plaintiff.

6. Plaintiff denies the allegations set forth in Paragraph 6 of Defendants' Counterclaim. The alleged "Purchase Agreement" is not applicable to Plaintiff.

7. Plaintiff denies the allegations set forth in Paragraph 7 of Defendants' Counterclaim.

8. Plaintiff denies the allegations set forth in Paragraph 8 of Defendants' Counterclaim. The alleged "Purchase Agreement" is not applicable to Plaintiff.

9. Plaintiff denies the allegations set forth in Paragraph 9 of Defendants' Counterclaim. The alleged "Purchase Agreement" is not applicable to Plaintiff.

10. Plaintiff denies the allegations set forth in Paragraph 10 of Defendants' Counterclaim.

11. Plaintiff denies the allegations set forth in Paragraph 11 of Defendants' Counterclaim.

12. Plaintiff denies the allegations set forth in Paragraph 12 of Defendants' Counterclaim.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

Defendants' Counterclaim fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Defendants' claims are or may be barred by the applicable statutes of limitation.

### **THIRD AFFIRMATIVE DEFENSE**

Defendants' damages, if any, are or may be the result of acts or omissions of persons or entities other than TM Associates Management, Inc., including, but not limited to, non-parties yet to be identified, and are in no way attributable to any wrongdoing on the part of TM Associates Management, Inc.

#### FOURTH AFFIRMATIVE DEFENSE

Defendants' damages are or may be the result of acts or omissions committed by Plaintiff, and are in no way attributable to any wrongdoing on the part of TM Associates Management, Inc.

#### FIFTH AFFIRMATIVE DEFENSE

Defendants' damages, if any, are or may be barred in whole or in part by Defendants' failure to mitigate.

#### SIXTH AFFIRMATIVE DEFENSE

TM Associates Management, Inc. denies all allegations not affirmatively admitted herein.

#### SEVENTH AFFIRMATIVE DEFENSE

Some or all of the damages claimed in Defendants' Counterclaim are not or may not be recoverable under applicable law.

#### EIGHTH AFFIRMATIVE DEFENSE

Defendants' Counterclaim fails or may fail to state a claim for which attorneys' fees and/or costs may be awarded.

#### NINTH AFFIRMATIVE DEFENSE

Some or all of Defendants' claims are barred, and/or reduced, by the doctrines of laches, waiver, estoppel, unclean hands, accord and satisfaction, setoff and recoupment.

#### TENTH AFFIRMATIVE DEFENSE

TM Associates Management, Inc. denies that Defendants are entitled to any of the relief requested in their Counterclaim.

#### ELEVENTH AFFIRMATIVE DEFENSE

Any harm suffered by Defendants was or may have been legally and proximately caused by persons, individuals, corporations, or other entities beyond the control or supervision TM Associates Management, Inc., or for whom TM Associates Management, Inc. is not responsible or liable.

#### TWELFTH AFFIRMATIVE DEFENSE

Defendants' claims fail or may fail due to the lack of personal jurisdiction, insufficiency of service of process, and/or lack of capacity to be sued.

#### THIRTEENTH AFFIRMATIVE DEFENSE

TM Associates Management, Inc. raises and asserts, so as not to waive, all defenses contemplated by Rule 8 and Rule 12 of the West Virginia Rules of Civil Procedure and/or Federal Rules of Civil Procedure.

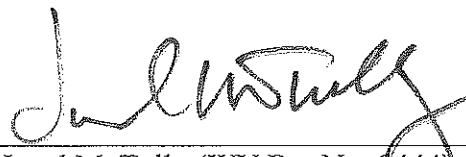
#### FOURTEENTH AFFIRMATIVE DEFENSE

TM Associates Management, Inc. reserves the right to assert additional affirmative defenses not specifically raised herein as may become apparent through additional investigation and discovery. Furthermore, TM Associates Management, Inc. specifically reserves the right to file an amended answer, counterclaims, cross-claims, or third-party complaints should additional investigation and discovery demonstrate the propriety of the same.

#### PRAYER

WHEREFORE, TM Associates Management, Inc. prays that Defendants take nothing by way of their Counterclaim, that Defendants be denied all of the relief requested in their Answer and Counterclaim, that a judgment be entered in favor of TM Associates Management, Inc. and against Defendants for costs of this action, and for all other appropriate relief.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "J. M. Tully", written over a horizontal line.

Jared M. Tully (WV Bar No. 9444)

Elizabeth A. Moore (WV Bar No. 12164)

Frost Brown Todd LLC

500 Lee Street, East

Laidley Tower – Suite 401

Charleston, WV 25301

(304) 345-0111 / (304) 345-0115 (f)

*Counsel for TM Associates Management,  
Inc.*

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PARTNERSHIP, a West Virginia Limited Partnership,

Defendants.

CERTIFICATE OF SERVICE

I, Jared M. Tully, do hereby certify that on this 19<sup>th</sup> day of May, 2015, a copy of the foregoing *Answer to Counterclaim* was forwarded via U.S. Mail, postage prepaid to the following:

Mark A. Ferguson  
Ferguson Law Office, PLLC  
230 Capitol Street, Suite 300  
Charleston, WV 25301

  
Jared M. Tully

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

TM ASSOCIATES MANAGEMENT, INC.,  
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Plaintiff,

v.

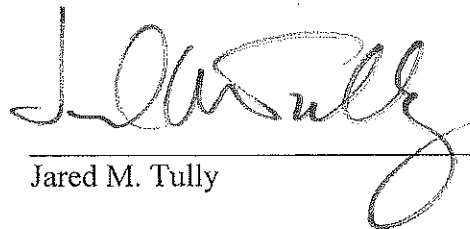
Kanawha County Circuit Court  
Civil Action No.: 15-C-568

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Defendants.

CERTIFICATE OF SERVICE

I, Jared M. Tully, do hereby certify that on this 19<sup>th</sup> day of May, 2015, I have served the foregoing *Motion to Refer Case to Business Court Division*, with attachments, by either hand delivery or first class mail to Mark A. Ferguson, Esq., Sprouse & Ferguson, 230 Capitol Street, Suite 300, Charleston, WV 25301; the Kanawha County Circuit Clerk's Office; Judge Duke Bloom of the Kanawha County Circuit Court, and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.



Jared M. Tully