



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID C. FANNIN AND LUCILLE S.
FANNIN AS CO-TRUSTEES OF THE
DAVID C. FANNIN REVOCABLE
TRUST DATED AUGUST 3, 1995 AND
THE LUCILLE STEWART FANNIN
REVOCABLE TRUST DATED
AUGUST 3, 1995,

Plaintiffs,

v.

UMTH LAND DEVELOPMENT, L.P.,
UMT SERVICES, INC., UMT
HOLDINGS, L.P., UMTH GENERAL
SERVICES, L.P., UNITED MORTGAGE
TRUST, UNITED DEVELOPMENT
FUNDING, L.P., UNITED
DEVELOPMENT FUNDING IV,
UNITED DEVELOPMENT FUNDING
X, L.P., TODD F. ETTER, HOLLIS M.
GREENLAW, MICHAEL K. WILSON,
BEN L. WISSINK, CARA D. OBERT,
AND MELISSA H. YOUNGBLOOD,

Defendants,

-and-

UNITED DEVELOPMENT FUNDING
III, L.P.,

Nominal Defendant.

C.A. No.12541-VCMR

**SECOND AMENDED AND SUPPLEMENTAL DERIVATIVE
AND CLASS ACTION COMPLAINT**

INTRODUCTION

1. Plaintiffs David C. Fannin (“David”) and Lucille S. Fannin (“Lucille”), co-trustees of the David C. Fannin Revocable Trust Dated August 3, 1995 (the “David Fannin Trust”) and the Lucille Stewart Fannin Revocable Trust Dated August 3, 1995 (the “Lucille Fannin Trust”) (collectively, “Plaintiffs”) own limited partnership interests (“LP Units”) in United Development Funding III, L.P. (“UDF III” or “Partnership”).

2. Through this action, the Plaintiffs assert claims derivatively on behalf of UDF III and directly on behalf of themselves and the unaffiliated holders of the LP Units (“Limited Partners”). These claims relate to the Fiduciary Defendants’ (defined below) self-dealing and misuse of UDF III’s assets with the knowing and substantial participation of the Aiding & Abetting Defendants (defined below).

3. UDF III is a Delaware limited partnership formed in 2005. It raised over \$330.3 million through the sale of approximately 16,499,994 LP Units to Limited Partners. Its business purpose is to invest in a portfolio of mortgage loans secured by real property and to enter into guaranties or letters of credit for the benefit of borrowers.

4. The Fiduciary Defendants manage and control UDF III’s operations and investments. Included among the Fiduciary Defendants are UMTH Land Development, L.P. (“Land Development”), which is the general partner of UDF

III, and the six individuals who control and ultimately own Land Development: Todd F. Etter (“Etter”), Hollis M. Greenlaw (“Greenlaw”), Michael K. Wilson (“Wilson”), Ben L. Wissink (“Wissink”), Cara D. Obert (“Obert”), and Melissa H. Youngblood (“Youngblood”) (collectively the “Individual Fiduciary Defendants”). The Fiduciary Defendants control numerous other entities including: entities that raised capital from investors for the stated purpose of investing in mortgage loans; entities that are owned by Land Development and that have invested in mortgage loans; and entities that provide administrative and asset management services to the affiliates that invest in mortgage loans.

5. The Fiduciary Defendants caused UDF III to use the majority of the capital that it raised from the sale of LP Units and UDF III’s assets to: (1) make loans to UDF III’s earlier formed affiliates that the Fiduciary Defendants control, including Defendant United Development Funding I, L.P. (“UDF I”); (2) invest in a participation interest in a loan from Defendant United Mortgage Trust (“UMT”), an earlier-formed affiliate of UDF III that the Fiduciary Defendants control, to UDF I; and (3) make loans to two real estate developers, the “Developer Borrowers,” that had borrowed from UDF III’s earlier-formed affiliates including UMT, UDF I, and United Development Funding II, L.P. (“UDF II”), an entity that is also controlled by the Fiduciary Defendants and that participates pro rata in all investments made by UDF I.

6. The “Developer Borrowers” are CTMGT, LLC (“CTMGT”) and its affiliates and Buffington Land Development, LLC (“Buffington Land”) and its affiliates, which are real estate developers that do business primarily in the State of Texas. CTMGT and its affiliates are controlled by an individual by the name of Mehrdad Moayedi (“Moayedi”) who does business as “Centurion American.” Buffington Land and its affiliates are controlled by an individual by the name of Thomas Buffington.

7. In addition to causing UDF III to make loans, the Fiduciary Defendants caused UDF III to enter numerous guaranty agreements whereby UDF III has guaranteed the repayment of loans made by third parties to affiliates controlled by the Fiduciary Defendants including UMT, UDF I, and United Development Funding IV (“UDF IV”).

8. The Fiduciary Defendants’ purpose for causing UDF III to enter these transactions was to bail out and conceal the losses facing UDF III’s earlier affiliates which included UMT, UDF I and UDF II, and to ensure that the Developer Borrowers would continue to make loan payments to these entities. The crash of the real estate bubble and the ensuing “Great Recession” had a severe impact upon the Developer Borrowers and other borrowers of UDF III’s earlier affiliates. Without the large influx of cash from UDF III that began in 2007, the

Developer Borrowers could not have continued to make loan payments to UMT, UDF I, and UDF II.

9. Through their scheme, the Fiduciary Defendants concealed the losses facing UDF III's earlier affiliates by funneling more than \$1 billion, raised from UDF III's Limited Partners and from investors in UDF-affiliated entities formed subsequent to UDF III's formation, to earlier UDF-affiliated entities and to the Developer Borrowers (who in turn, at the direction of the Fiduciary Defendants, used those proceeds to make loan payments to earlier UDF-affiliated entities). In doing so, the Fiduciary Defendants left UDF III with impaired assets and unrecoverable loans.

10. The Fiduciary Defendants were motivated by self-interest to conceal losses facing UMT, UDF I, and UDF II by funneling UDF III's cash to the Developer Borrowers, and by directing the Developer Borrowers to use those proceeds to make loan payments to UMT, UDF I, and UDF II. Land Development owns a 49.99% subordinated profits interest in UDF I and a 49.95% subordinated profits interest in UDF II, and Land Development is ultimately owned primarily by the six Individual Fiduciary Defendants (defined below). Therefore, when the Fiduciary Defendants funneled cash to the Developer Borrowers they: (1) increased the values of Land Development's subordinated profits interests in UDF I and UDF II; (2) ensured that UDF I would receive interest payments from the

Developer Borrowers, providing UDF I cash with which to distribute to Land Development on account of its subordinated profits interest; and (3) ensured that UDF II would receive interest payments from the Developer Borrowers from its loans to them, providing cash with which to distribute to Land Development on account of its subordinated profits interest. The Fiduciary Defendants did so to continue to reap material personal profits. (See SEC Compl.¹ ¶¶ 3, 25-34).

11. Further, the Fiduciary Defendants were motivated to bail out and conceal the losses facing UDF III's earlier affiliates because entities controlled and ultimately owned by certain of the Fiduciary Defendants receive massive fees for providing advisory and management services to these earlier affiliates. For example, UMT pays a trust administration fee equal to 1.0% of the value of its mortgage loan portfolio on an annual basis to UMTH General Services, L.P. ("UMTH General"), an entity controlled and ultimately owned by the six Individual Fiduciary Defendants. When the Fiduciary Defendants caused UDF III to funnel money to the Developer Borrowers and caused UDF III to participate in UMT's loan to UDF I, the Fiduciary Defendants concealed the losses facing UMT's mortgage loan portfolio and ensured that UMTH General would continue to receive large trust administration fees from UMT.

¹ Defined below.

12. The Fiduciary Defendants knew that loans that they caused UDF III to make were not economically sound ones for UDF III because, among other reasons, they were secured by inadequate collateral, the borrowers were not economically viable entities and because the borrowers had no ability to repay the loans absent a continuing influx of cash from new investors. Further, the Fiduciary Defendants knew that UDF III's affiliates, whose debt payments they caused UDF III to guarantee, were not economically viable entities and could not repay the loans absent a continuing influx of cash from new investors. The Fiduciary Defendants' decisions to cause UDF III to enter these transactions were the products of malfeasance and self-interestedness rather than the products of sound business judgment consistent with the Partnership's stated objectives and the best interests of the Partnership and the Limited Partners.

13. The Fiduciary Defendants' concealment of UDF III's losses permitted them to raise capital through entities formed subsequent to UDF III including UDF IV and United Development Funding Income Fund V ("UDF V"). The Fiduciary Defendants have caused these subsequently-formed entities to make loans to earlier affiliates, to purchase participation interests in loans made by earlier affiliates, and to make loans to the Developer Borrowers in furtherance of their scheme.

14. The Fiduciary Defendants had substantial self-interests which were not shared with the Partnership or its Limited Partners. Through the continued operation of their scheme since 2007, the Fiduciary Defendants and their affiliates have garnered massive fees which have included:

- fees from the capital raises (measured as a percentage of the gross offering proceedings);
- administrative fees, loan origination fees and loan servicing fees for management of UDF III and the other affiliated entities;
- fees resulting from promotional interests in UDF III and certain of its affiliates; and
- distributions from a carried interest in UDF III.

15. Pursuant to UDF III's Second Amended and Restated Agreement of Limited Partnership, dated April 21, 2006 ("Partnership Agreement"), no more than 20% of UDF III's offering proceeds may be invested in loans to any one borrower. The Fiduciary Defendants breached fiduciary duties owed to UDF III when they concentrated more than 20% of UDF III's offering proceeds in loans to UDF I and when they concentrated more than 20% of UDF III's offering proceeds in loans to each of the Developer Borrowers.

16. Defendants' scheme has been concealed from the Limited Partners in several ways:

- through a complex web of multiple entities;

- through the complexity and opaqueness of real estate backed loans;
- through omissions and misrepresentations about the condition and value of the Partnership's portfolio and the financial condition and track record of the entities that Defendants control;
- by the omission and misrepresentation of the identities and collateral of the Developer Borrowers; and
- by omission and misrepresentation concerning the concentration of UDF III's assets in loans to the Developer Borrowers and in to loans to UDF I.

17. In late 2015, information began to surface which cast doubt on the integrity and value of the Partnership's assets and the completeness and candor of the information historically provided to the Limited Partners:

- (a) On November 19, 2015, Whitley Penn LLP ("Whitley Penn") resigned as the auditor for each of the affiliated entities including UDF III, UMT, UDF I, UDF II, UDF IV, UDF V, Land Development, and UMTH Holdings which was followed by more than six months of UDF III's reports about its "inability" "to engage a new independent auditing firm."
- (b) UDF III has failed to file with the Securities and Exchange Commission ("SEC") any annual or quarterly report since November 2015, when it filed its quarterly report on Form 10-Q for the period ended September 30, 2015.

(c) Beginning on December 10, 2015, Hayman Capital Management, L.P. (“Hayman Capital”), a hedge fund led by Kyle Bass, disseminated reports (through the Internet) alleging that the UDF-affiliated entities are operating as a Ponzi-like scheme, raising new capital through entities in order to provide liquidity to earlier affiliated entities and their borrowers. Among Hayman Capital’s allegations are that the affiliated entities used “new investor money” raised through UDF III, UDF IV, and UDF V to provide liquidity to earlier UDF-affiliated entities. Hayman Capital also alleged that UDF III, UDF IV, and UDF V’s note portfolios were concentrated in loans to the two Developer Borrowers that had borrowed from earlier UDF-affiliated entities.

(d) UDF III’s December 14, 2015 Form 8-K filing of a press release revealed that the SEC had been conducting a non-public fact-finding investigation of UDF III since April 2014 and addressed Hayman Capital’s allegations acknowledging the over-concentration (and cross-concentration) of UDF III and UDF IV’s capital in loans to the

Developer Borrowers:

[W]e concentrate our lending to seasoned and accomplished builders and developers. Our largest group of related borrowers represents one of the largest single-family developers in North Texas.Many of the projects we have financed have related

borrowers. At September 30, 2015, UDF IV has invested 62% of its portfolio in 69 loans to its largest group of related borrowers. In addition, as of September 30, 2015, UDF IV is participating in 5 loans originated by its affiliates to the same group of related borrowers, representing an additional 5% of the outstanding balance of UDF IV's loan portfolio. As of September 30, 2015, UDF III has invested 43% of its portfolio in 11 loans to its largest group of related borrowers.

- (e) After January 2016, UDF III ceased payments of “Cash Available for Distribution” to Plaintiffs and the Limited Partners.
- (f) Realty Capital Securities, LLC (“RCS”), the securities broker-dealer firm that was the dealer-manager for UDF V, was charged in 2015 with committing fraud in connection with proxy vote solicitation for certain non-affiliated entities and its parent company filed for bankruptcy in January 2016.
- (g) On February 18, 2016, the Federal Bureau of Investigation (“FBI”) raided the corporate office of UDF III, which is also the headquarters of the UDF-affiliated entities, in Grapevine, Texas.
- (h) On February 22, 2016, UDF III filed a Form 8-K announcing the FBI raid:

On February 18, 2016, law enforcement authorities executed a search warrant at the corporate office of [UDF III] in Grapevine, Texas. The search warrant was issued by a Magistrate Judge of the United States District Court for the Northern District of Texas. In addition, law enforcement officers served executive officers of the Partnership and its general partner, as well as certain other employees of the

Partnership's general partner and its affiliates, with grand jury subpoenas seeking the production of documents related to the operations of the Partnership. The Partnership cannot, however, predict what additional action, if any, government authorities might take in the future.

UMT, UDF IV, and UDF V made similar Form 8-K filings on February 22, 2016.

- (i) The Nasdaq Stock Market ("NASDAQ") suspended trading in Defendant UDF IV's stock in February 2016 following the FBI's execution of the search warrant.
- (j) On March 6, 2016, UDF V announced that it was suspending its securities offering after raising only \$55 million, far short of its \$750 million target.
- (k) On March 17, 2016, UDF IV received notice from the NASDAQ that it was not in compliance with the continued listing requirements pursuant to NASDAQ rules because of its failure to file its annual report for the year ended December 31, 2015. On May 16, 2016, UDF IV submitted a plan to regain compliance with NASDAQ rules; however, on May 26, 2016 Defendant UDF IV received a notice that NASDAQ's staff had determined to deny its request for continued listing.

- (l) On or about October 18, 2016, UDF III received a Wells Notice from the staff of the SEC’s Division of Enforcement, which, as described in UDF III’s October 18, 2016 Form 8-K filing, stated that “the Staff has made a preliminary determination to recommend that the SEC file an enforcement action against [UDF III]” and that “[c]ertain individuals associated with [UDF III] and its general partner [Defendant Land Development] also received similar Wells Notices.”
- (m) In a December 5, 2016 Form 8-K filing attaching a letter from UDF III to the Limited Partners, UDF III revealed the following status of its “liquidity” “operations” and “financial condition”:

Liquidity

UDF III clients rely on third party lenders, including regional banks and the UDF family of funds, to fund ongoing development costs. These events have had an impact on the Fund’s operations and financial condition, and have impeded the Fund’s ability to maintain outstanding debt and to access both debt and equity capital.

- (n) In addition, in the December 2016 Form 8-K, UDF III revealed that Defendant Land Development, UDF III’s general partner, was not able to provide an estimated value of the LP Units until its year-end 2015 and 2016 quarterly financial statements are filed with the SEC, and that until then, “customer account statements provided to UDF III’s limited partners will reflect no value reported.” No estimated

value of UDF III's LP units has been provided since December 2015. On January 20, 2017, the trading suspension and delisting of UDF IV securities from the NASDAQ was confirmed by the NASDAQ Listing and Hearing Review Council.

- (o) On January 6, 2017, the Fiduciary Defendants revealed that effective December 14, 2016, they had caused UDF III *to forgive Buffington Land of a loan with a balance of over \$122 million*, representing approximately 31% of UDF III's total loan portfolio as of September 30, 2015. Concurrently, UDF I also forgave over \$33.4 million in indebtedness owed by Buffington Land, and UDF III, UDF I, UDF IV and United Development Funding X, L.P. ("UDF X"), an entity wholly-owned by Land Development, released any and all claims against Buffington Land and its affiliates.
- (p) On May 18, 2017 the NASDAQ filed, with respect to UDF IV, a Notice of Removal from Listing and/or Registration Under Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") with the SEC on Form 25; UDF IV's stock was delisted 10 days thereafter.
- (q) On September 27, 2017, the SEC commenced an administrative proceeding against UMT alleging that UMT failed to comply with Section 13(a) of the Exchange Act and Rules 13-a1 and 13-a13

thereunder by failing to file periodic reports with the SEC; on October 16, 2017, the SEC entered an order revoking UMT's registration of securities.

- (r) On July 3, 2018, following a more-than-four-year-long investigation and review of discovery obtained by subpoenas and searches, the SEC filed an action (the "SEC Action") in the United States District Court for the Northern District of Texas against UDF III, UDF IV, and certain of their controllers, who include certain of the Individual Fiduciary Defendants in this action, asserting violations of the federal securities laws with regard to, among other things, UDF III's SEC filings; on this date a consent judgment was entered in the SEC Action against UDF III and UDF IV and a consent judgment was entered against Etter, Greenlaw, Wissink and Obert (collectively the "Consent Judgments")². The Consent Judgments against Etter, Greenlaw, Wissink, and Obert required them to pay disgorgement on a joint and

² The complaint filed in the SEC Action ("SEC Compl.") is incorporated herewith and attached hereto as Exhibit 1; the Consent Judgment entered against UDF III and UDF IV is incorporated herewith and attached hereto as Exhibit 2; the Consent Judgments against Defendants Etter, Greenlaw, Wissink, and Obert are incorporated herewith and attached hereto as Exhibit 3; and the Final Judgments entered against UDF III and UDF IV and Defendants Etter, Greenlaw, Wissink, and Obert are incorporated herewith and attached hereto as Exhibits 4 and 5.

several basis of \$6,809,282 plus interest of \$390,718, and requiring each of them to pay a civil penalty of \$250,000; and

- (s) On September 24, 2018, the SEC served UDF III with an Order Instituting Administrative Proceedings and Notice of Hearing Pursuant to Section 12(j) of the Exchange Act (“Order Instituting Administrative Proceedings”) alleging that UDF III failed to comply with Section 13(a) of the Exchange Act, Rules 13a-1 and 13a-13 thereunder by failing to file periodic reports; on this date, the SEC likewise served UDF IV with an order alleging violations of Section 13(a) of the Exchange Act, Rules 13a-1 and 13a-13 thereunder.

18. As of September 30, 2015, more than 90% of UDF III’s assets were concentrated in: (a) the participation interest in UMT’s loan to UDF I; (b) a loan to a subsidiary of UDF I; (c) a loan to UDF X; and (d) loans to the Developer Borrowers and their affiliates.

19. The total damages to UDF III, the Plaintiffs and Limited Partners cannot currently be determined because the Fiduciary Defendants have failed to file with the SEC, or to publicly disclose any quarterly or annual report, or audited or unaudited financial statement, for UDF III since November 16, 2015, which quarterly report was for the reporting period ending September 30, 2015.

20. However, as discussed more fully herein, available evidence reveals that UDF III has suffered massive permanent losses as a result of Defendants' disloyal use of the Partnership's assets, leaving the Partnership with matured, uncollectible loans, with little, if any salvage or recourse value. In December 2016, the Fiduciary Defendants caused UDF III to forgive Buffington Land of a loan with a balance of over \$122,117,682. In addition, there is substantial evidence that CTMGT and its affiliates, UDF I, and UDF X are insolvent and therefore have no ability to satisfy their obligations. UDF III's loans and its participation interest investment are therefore unrecoverable and severely impaired. It also appears likely that UDF III's obligation to repay over \$70 million of loans on account of its guaranty agreements have been triggered (or will be triggered) because of UMT's, UDF I's, and UDF IV's inability to satisfy their obligations.

21. The Partnership Agreement requires Land Development to cause UDF III to distribute "Cash Available for Distribution" (defined in the Partnership Agreement) to the Limited Partners. The Fiduciary Defendants have determined to cease distributions of the Cash Available for Distribution to Limited Partners since January 2016.

22. The Partnership Agreement also requires Land Development and UDF III to provide annual reports to the Limited Partners, quarterly reports for the first three quarters of each Partnership fiscal year to the Limited Partners, and reports of

the estimated value of the LP Units to the Limited Partners. Land Development and UDF III failed to provide any annual report since it provided the annual report for the year ended December 31, 2014, and has failed to provide any quarterly report since it provided the quarterly report for the quarter ended September 30, 2015. In addition, Land Development and UDF III have failed to provide a report of the estimated value of the LP Units to the Limited Partners since November 2015.

23. Plaintiffs assert claims derivatively on behalf of UDF III against:

- (a) the Fiduciary Defendants for Breach of Fiduciary Duty;
- (b) the Fiduciary Defendants for Waste;
- (c) the Aiding & Abetting Defendants for Aiding and Abetting Breaches of Fiduciary Duty;
- (d) Defendant Land Development for Breach of Contract; and
- (e) all Defendants for Unjust Enrichment.

24. Plaintiffs assert claims directly (on behalf of themselves and the Limited Partners) against:

- (a) the Fiduciary Defendants for Breach of Fiduciary Duty; and
- (b) Defendant Land Development for Breach of Contract.

PARTIES

I. The Plaintiffs

25. Plaintiffs David C. Fannin (“David”) and Lucille S. Fannin (“Lucille”) are residents of the State of Florida. They are co-trustees of the David C. Fannin Revocable Trust Dated August 3, 1995 (the “David Fannin Trust”) of which David is the sole beneficiary and the Lucille Stewart Fannin Revocable Trust Dated August 3, 1995 (the “Lucille Fannin Trust”) of which Lucille is the sole beneficiary. Plaintiffs purchased \$100,000 of limited partnership interests in UDF III for the David Fannin Trust in March 2008 and \$150,000 of limited partnership interest in UDF III for the Lucille Fannin Trust in July 2008. The David Fannin Trust and the Lucille Fannin Trust have held LP Units in UDF III continuously since they purchased the LP Units in 2008.

26. Until Defendants’ scheme publicly came to light in December 2015, Plaintiffs had no reason to believe that the Fiduciary Defendants were acting in bad faith and breaching their fiduciary duties owed to the Partnership and the Limited Partners as forth in detail herein. Plaintiffs’ beliefs that the Fiduciary Defendants were fulfilling their fiduciary obligations were reasonable under the circumstances.

II. The Defendants

A. Nominal Defendant

27. Nominal Defendant UDF III is a Delaware limited partnership formed in 2005.

B. The Fiduciary Defendants

28. Defendants Land Development, UMT Services, Inc. (“UMT Services”), Etter, Greenlaw, Wilson, Wissink, Obert, and Youngblood are collectively referred to herein as the “Fiduciary Defendants.” Defendants Etter, Greenlaw, Wilson, Wissink, Obert and Youngblood are collectively referred to herein as the “Individual Fiduciary Defendants.”

29. Defendant Land Development, a Delaware limited partnership formed in 2003, is UDF III’s general partner. As general partner of UDF III, Land Development participates in the control and management of UDF III’s daily operations and business. As the general partner of UDF III, Defendant Land Development owes fiduciary duties to UDF III and its Limited Partners. Defendant Land Development also:

- (a) owns a 49.99% subordinated profits interest in UDF I;
- (b) provides asset management services for UDF I, UDF II, UDF TX Two, LP, UDF IV, and United Development Funding Land Opportunity Fund L.P. (“UDF LOF”);

- (c) holds a 99.9% partnership interest in UDF X, with the remaining 0.1% interest owned by UMT Services; and
- (d) owns 100% of the interests in UDF Land GP, LLC, which is the general partner of UDF Land GenPar, L.P. (“Land GenPar”), the general partner of UDF LOF.

30. Defendant UMT Services is a Delaware corporation formed in 2003. UMT Services is the general partner of Land Development. Defendants Etter and Greenlaw each own 50% of the equity interests in UMT Services and serve as directors of UMT Services. Greenlaw is the President and CEO of UMT Services. In addition, UMT Services:

- (a) owns 0.1% of the limited partnership interests in Defendant Land Development;
- (b) owns 0.1% of the limited partnership interests in Defendant UMT Holdings, L.P. (“UMT Holdings”), which owns 99.9% of the limited partnership interests in Land Development and UMTH General, and is also its general partner;
- (c) holds 0.1% interest in UDF X; and
- (d) is the general partner of UMTH General.

As the parent and controller of UDF III and its general partner, UMT Services owed fiduciary duties to UDF III and its Limited Partners in exercising control over UDF III and its assets.

31. Defendant Etter is an individual who, upon information and belief, is a resident of the State of Texas and was UDF III's original limited partner. In addition, Etter:

- (a) has been held out as Defendant Land Development's executive vice president since 2003;
- (b) is a 50% owner of Defendant UMT Services along with Greenlaw, and has been the chairman and a director of UMT Services since its formation in 2003;
- (c) owns 30% of Defendant UMT Holdings;
- (d) owns 33.75% of, and is held out as chairman of, United Development Funding, Inc. ("UDF I Inc."), a Delaware corporation and UDF I's general partner;
- (e) owns 50% of and is chairman of United Development Funding II, Inc. ("UDF II, Inc."), UDF II's general partner;
- (f) is executive vice president and director of United Development Funding X., Inc. ("UDF X, Inc."), a Delaware corporation and the general partner of Defendant UDF X; and

- (g) has been the chairman of UMTH General, the advisor to UDF IV and the current advisor to UMT, since 1996.

Defendant Etter was named as a defendant in the SEC Action and a Consent Judgment was entered against him.

32. Defendant Greenlaw is an individual who, upon information and belief, is a resident of the State of Texas. In addition, Greenlaw:

- (a) has been held out as Defendant Land Development's chief executive officer since 2003, and was previously its president from March 2003 until June 2011;
- (b) owns 50% of, and has been the president, chief executive officer and a director of Defendant UMT Services since March 2003;
- (c) owns 30% of, and has been a partner, vice-chairman and chief executive officer of Defendant UMT Holdings since March 2003;
- (d) owns 33.75% of, and is president, chief executive officer, and a director of UDF I, Inc.;
- (e) owns 50% of, and is president, chief executive officer, and a director of UDF II, Inc.;
- (f) is chief executive officer and a director of UDF X, Inc.; and

- (g) is chief executive officer and chairman of the board of trustees for UDF IV and UDF V.

Defendant Greenlaw was named as a defendant in the SEC Action and a Consent Judgment was entered against him.

33. Defendant Wilson is an individual who upon information and belief is a resident of the State of Colorado. In addition, Wilson:

- (a) is a director of UMT Services;
- (b) has been president of UMT Holdings since June 2009, has been partner of this entity since January 2007, was its senior vice president of marketing from January 2004 through July 2005, and is currently responsible for its sales, marketing and investor relations;
- (c) has been executive vice president and a director of UMT Services since August 2005;
- (d) is a director of UDF I, Inc.;
- (e) is a director of UDF X, Inc.; and,
- (f) since August 2005 has directed the capital raise of over \$1 billion across the affiliated entities.

34. Defendant Wissink is an individual who upon information and belief is a resident of the State of Texas. In addition, Wissink:

- (a) has been held out as Defendant Land Development's president since June 2011, and was previously held out as its chief operating officer from March 2007 until June 2011;
- (b) is a partner of Defendant UMT Holdings;
- (c) is the chief operating officer of Defendant UMT Services;
- (d) participates in the direction of the management of UDF III's investments.

Defendant Wisskink was named as a defendant in the SEC Action and a Consent Judgment was entered against him.

35. Defendant Obert is an individual who upon information and belief is a resident of the State of Texas. In addition, Obert:

- (a) has been Defendant Land Development's chief financial officer since August 2006;
- (b) is a partner of Defendant UMT Holdings, was its chief financial officer from March 2004 until August 2006, and was its controller from October 2003 through March 2004;
- (c) is the chief financial officer and treasurer of UDF IV;
- (d) is treasurer of Defendant UMT Services;
- (e) is treasurer and CFO of UDF I, Inc.;
- (f) is treasurer and CFO of UDF II, Inc.; and

- (g) is treasurer of UDF X, Inc.

Defendant Obert was named as a defendant in the SEC Action and a Consent Judgment was entered against her.

36. Defendant Youngblood is an individual who upon information and belief is a resident of the State of Texas. In addition, Youngblood:

- (a) has been Defendant Land Development's chief operating officer since June 2011;
- (b) is a partner of Defendant UMT Holdings;
- (c) is executive vice president of Defendant UMT Services;
- (d) is vice president of UDF II, Inc.; and
- (e) is chief operating officer and assistant secretary of UDF X, Inc.

C. The Aiding & Abetting Defendants

37. Defendants UMT, UMT Holdings, UMTH General, UDF IV, UDF I, and UDF X are collectively referred to herein as the "Aiding & Abetting Defendants."

38. Defendant UMT is a non-traded REIT organized in Maryland in 1996. On October 16, 2017, the SEC entered an order revoking the registration of UMT's securities. UMT has no employees. UMTH General manages UMT's day-to-day operations, providing it with administrative services, and managing its assets. As alleged herein, UMT knowingly and substantially participated in the self-dealing

and self-enriching misconduct by the Fiduciary Defendants and is liable therefore as an aider and abettor.

39. Defendant UMT Holdings is a Delaware limited partnership. As of December 31, 2014, 99.9% of UMT Holdings is owned by individuals as follows: Defendant Etter (30.00%); Defendant Greenlaw (30.00%); Defendant Wissink (10.09%); Defendant Wilson (7.41%); Craig A. Pettit (5.00%); Timothy J. Kopack (4.84%); Defendant Youngblood (4.83%); Defendant Obert (4.82%); Christine A. Griffin (1.95%); and William E. Lowe (1.06%). The remaining 0.1% of the limited partnership interest in UMT Holdings is owned by UMT Services, which is UMT Holdings' general partner. In addition, UMT Holdings:

- (a) holds 99.9% of the limited partnership interests in Defendant Land Development; and
- (b) is a limited partner of Defendant UMTH General.

As alleged herein, UMT Holdings knowingly and substantially participated in the self-dealing and self-enriching misconduct by the Fiduciary Defendants and is liable therefor as an aider and abettor.

40. Defendant UMTH General is a Delaware limited partnership and is owned by UMT Holdings. UMTH General assists Defendant Land Development in the management of UDF III. UMTH General is also the external advisor to UMT and UDF IV. Defendants Etter and Greenlaw are directors of Defendant

UMTH General. As alleged herein, UMTH General knowingly and substantially participated in the self-dealing and self-enriching misconduct by the Fiduciary Defendants and is liable therefor as an aider and abettor.

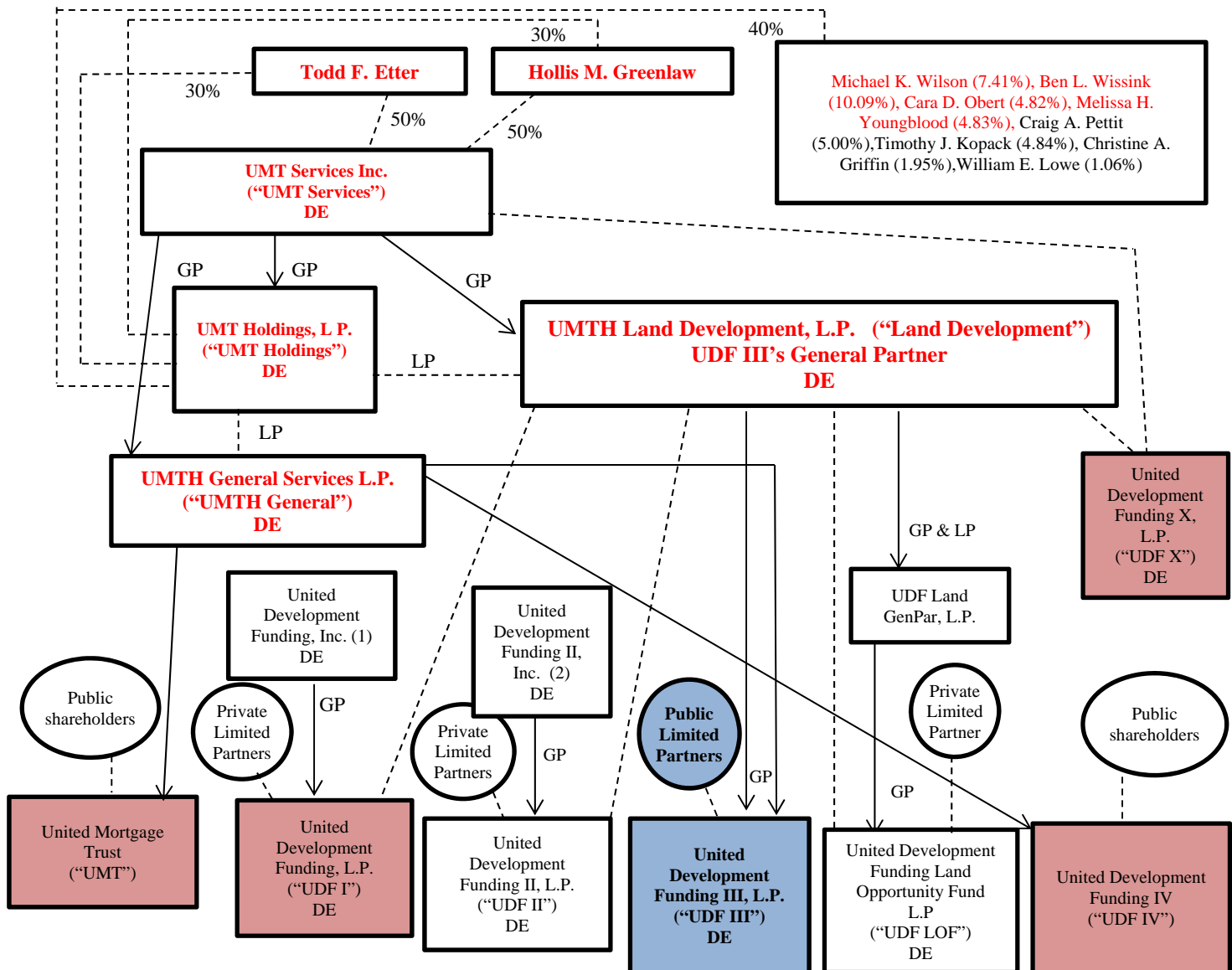
41. Defendant UDF IV is a public non-traded REIT organized in Maryland in 2008. UMTH General is UDF IV's advisor and Defendant Land Development is UDF IV's asset manager. Defendant UDF IV conducts its business primarily through its wholly-owned subsidiaries which include at least 11 Delaware limited partnerships, 11 Delaware limited liability companies, and seven Delaware corporations. As alleged herein, UDF IV knowingly and substantially participated in the self-dealing and self-enriching misconduct by the Fiduciary Defendants and is liable therefor as an aider and abettor.





42. Defendant UDF I is a private limited partnership originally organized in Nevada in 2003 and reorganized in Delaware in 2008. UDF I, Inc. serves as general partner for UDF I and owns a 0.02% general partnership interest. Defendant Land Development owns a 49.99% subordinated profits interest in UDF I. As alleged herein, UDF I knowingly and substantially participated in the self-dealing and self-enriching misconduct by the Fiduciary Defendants and is liable therefor as an aider and abettor.

43. Defendant UDF X is a limited partnership organized in Delaware in 2007. UDF X is a wholly-owned subsidiary of Defendant Land Development.

As alleged herein, UDF X knowingly and substantially participated in the self-dealing and self-enriching misconduct by the Fiduciary Defendants and is liable therefor as an aider and abettor.

44. The following chart illustrates the names, ownership structures and relationships between and among Etter and Greenlaw and their affiliates and the affiliated entities involved in the self-dealing and self-enriching scheme, which is the subject of the claims herein.



-  Asset Manager or Advisor
-  Ownership Interest
-  Currently, Entities with which UDF III Has Outstanding Loans,
Guaranties and/or Participation Interest
-  The Plaintiffs and Nominal Defendant

Red Typeface Fiduciary Duty Defendants

- (1) United Development Funding, Inc. (“UDF I, Inc.”) serves as general partner for UDF I and owns a 0.02% general partnership interest in UDF I. Defendants Etter and Greenlaw each own 33.75% of UDF I, Inc. Land Development owns a 49.99% subordinated profits interest in UDF I.
- (2) United Development Funding II, Inc. (“UDF II, Inc.”) serves as general partner for UDF II and owns a 0.1% general partnership interest in UDF II. Defendants Etter and Greenlaw each own 50% of UDF II, Inc. Land Development owns a 49.95% subordinated profits interest in UDF II.

SUBSTANTIVE ALLEGATIONS

I. Background and Overview of the Formation of Affiliated Entities

45. UMT, a Maryland REIT formed in 1996, is the earliest known affiliate of UDF III that raised investor capital for the purpose of investing in mortgage loans. UMT has been externally managed by an advisor controlled by Defendant Etter since its formation. Since UMT’s formation, its advisor and affiliates of the advisor have received substantial compensation for providing general management and investment services to UMT.

46. In March 2003, Etter and Greenlaw and their affiliates formed UMT Services, a Delaware corporation, as well as UMT Holdings, UMTH General, and Land Development, Delaware limited partnerships. UMT Services is the general partner to each of UMT Holdings, UMTH General, and Land Development.

46. UMT General has served as UMT's advisor since 2006. UMT Services is UMT General's general partner. UMT Services, UMT General, and their officers and directors, caused UMT to enter the challenged transactions with UDF III set forth herein herein. UMT's annual report for the fiscal year ended December 31, 2014 filed on Form 10-K on March 31, 2015 states: "the services of [UMTH General] include all day-to-day administrative services including managing our development of investment guidelines, overseeing servicing [sic], negotiating purchases of loans and overseeing the acquisition or disposition of investments and managing our assets."

47. In May 2003, Etter and Greenlaw formed UDF I Inc. as a Nevada corporation to serve as the general partner of UDF I, a Nevada limited partnership formed in June 2003. In July 2004, Etter and Greenlaw formed UDF II, Inc. as a Nevada corporation to serve as the general partner of UDF II, a Nevada limited partnership formed in July 2004. In January 2008, the Fiduciary Defendants reorganized UDF I and UDF II as Delaware limited partnerships, and reorganized UDF I, Inc. and UDF II, Inc. as Delaware corporations, by filing certificates in Delaware.

48. UDF I began to raise investor capital in 2003, and UDF II began to raise investor capital in 2004. Etter and Greenlaw and their affiliates caused UMT to make loans to UDF I and UDF II. Etter and Greenlaw and their affiliates also

directed UMT, UDF I and UDF II to invest heavily in real estate loans to the Developer Borrowers. As alleged herein, the collapse of the real estate bubble exposed UMT, UDF I, and UDF II to losses on real estate loans.

49. In August 2006, UMT General became the advisor of UMT.

50. As alleged above, UDF III was formed as a Delaware limited partnership in June 2005, with Land Development as its general partner.

51. UDF X was formed as a Delaware limited partnership in 2007. According to UDF X filings made with the State of Texas, Greenlaw serves as the president and chief executive officer of UDF X, Obert serves as its treasurer, Youngblood serves as its chief operating officer, and Etter, Greenlaw and Wilson serve as its directors.

52. Land GenPar, was formed as a Delaware limited partnership in Delaware in 2008 with Land Development as its general partner. Land GenPar is the general partner of UDF LOF, a Delaware limited partnership formed in 2008. UDF LOF began offering its units of limited partnership interest in April 2008.

53. UDF IV was formed as a Maryland real estate investment trust in 2009. UDF IV's operating partnership, United Development Funding IV Operating Partnership, L.P. ("UDF IV OP"), was formed as a Delaware limited partnership in 2008. UDF IV is the sole general partner of and owns a 99.999% partnership interest in UDF IV OP. Land Development is the sole limited partner

and owner of 0.001% of the partnership interests in UDF IV OP. UDF IV commenced its initial public offering of common shares of beneficial interest on November 12, 2009 and was later listed on the NASDAQ in 2014. According to UDF IV's Proxy Statement filed April 30, 2015, Obert is the CFO and Treasurer of UDF IV and UMTH General serves as its advisor.

54. UMTH General serves as UDF IV's advisor. UMT Services is UMTH General's general partner. UMT Services, UMTH General, and their officers and directors, caused UDF IV to enter the challenged transactions with UDF III set forth herein. UDF IV's annual report for the fiscal year ended December 31, 2014 filed on Form 10-K on March 16, 2015 states: UMTH General "manag[es] [UDF IV's] affairs on a day-to-day basis," manages UDF IV's "investments and finance transactions," "underwrites [its] transactions," and "manages [its] capital structure."

55. UDF V, was formed as a Maryland real estate investment trust in 2013. UDF V is co-sponsored by UDF Holdings, L.P. ("UDFH"), which is a Delaware limited partnership formed in 2012. According to UDF V's Proxy Statement filed on April 30, 2015, Etter and Greenlaw serve as co-chairman of UDFH, Wilson serves as president of UDFH, and Obert as chief financial officer and treasurer.

II. UDF III's Formation and Securities Offerings

56. UDF III is a public, unlisted limited partnership, meaning: (1) that it is public because it is registered with the SEC, can sell to the investing public rather than only to qualified investors and is required to file reports with the SEC; and (2) that it is unlisted because its securities are not listed on any national securities exchange. There is presently no public market for UDF III's LP Units.

57. On May 15, 2006, UDF III commenced an initial public offering covering up to 12,500,000 LP Units (the "Primary Offering") and up to 5,000,000 LP Units to be issued pursuant to the distribution reinvestment plan (the "DRIP"). The offering price through the Primary Offering and DRIP was \$20.00 per LP Unit. The Primary Offering was terminated on April 23, 2009 and the DRIP was terminated on July 21, 2009. UDF III sold 16,499,994 LP Units pursuant to the Primary Offering in exchange for gross proceeds of approximately \$330.3 million (approximately \$290.7 million, net of costs associated with the Primary Offering). UDF III issued 716,260 LP Units pursuant to the DRIP in exchange for gross proceeds of approximately \$14.3 million.

58. On June 12, 2009, UDF III registered 5,000,000 additional units to be offered through the secondary dividend reinvestment program ("Secondary DRIP") at the estimated unit value. As of September 30, 2015, UDF III had issued

3,290,286 LP Units through the Secondary DRIP in exchange for gross proceeds of approximately \$65.8 million.

59. As of September 30, 2015, UDF III had repurchased 607,774 LP Units through a unit repurchase program.

III. UDF III's General Partner and Its Partnership Agreement

60. Defendant Land Development is UDF III's general partner. Land Development participates in UDF III's overall management and operation, and acts on behalf of UDF III in all matters respecting UDF III, its business and its property. Land Development also provides advisory services to UDF I, UDF II, UDF IV, and UDF LOF.

61. Land Development is owned by UMT Holdings and UMT Services which are in turn primarily owned by Defendants Etter, Greenlaw, Wilson, Wissink, Obert, and Youngblood.

62. As the general partner of Land Development, Defendant UMT Services controls UDF III. As officers and/or directors of Land Development and/or of UMT Services, Etter, Greenlaw, Wilson, Wissink, Obert and Youngblood control Land Development. *See also supra* at ¶¶ 31-36.

63. The Partnership Agreement of UDF III was entered into effective April 21, 2006 between Land Development as general partner, Etter as the initial Limited Partner, and UDF III's Limited Partners. The Partnership Agreement

replaced the Amended and Restated Agreement of Limited Partnership dated February 9, 2006, which replaced the original Agreement of Limited Partnership dated February 1, 2006. There have been two amendments made to the Partnership Agreement, the first on April 25, 2008, and the second on June 9, 2009, both of which amendments concern the issuance of additional LP Units.

64. The purpose of UDF III, stated in the Partnership Agreement at section 4.1, is:

To originate, acquire, service and otherwise manage, either alone or in association with others, a diversified portfolio of mortgage loans on real property (including mortgage loans that are not first in priority and participation interests in mortgage loans) and to issue or acquire an interest in credit enhancements to borrowers (i.e., guarantees or letters of credit), and to engage in any or all general business activities related to or incidental to such principal purpose.

65. The objectives of UDF III, stated in the Partnership Agreement at section 4.2, are:

Objectives. The business of the Partnership shall be conducted with the following objectives:

(a) To make, originate or acquire a participation interest in mortgage loans (first priority and junior priority) typically in the range of \$500,000 to \$10,000,000, and to provide credit enhancements to, real estate developers and regional and national homebuilders who acquire real property, subdivide such real property into single family residential lots and sell such lots to homebuilders or build homes on such lots;

(b) To preserve, protect and return the Partners' investment in the Partnership;

(c) To realize growth in the value of Partnership Properties upon the ultimate sale thereof; and

(d) To maximize Cash Available for Distribution and Net Capital Proceeds.

66. The Partnership Agreement at section 22.6 specifies that it is expressly governed by Delaware law. Further, the Partnership Agreement at section 11.3(g) specifically retains and prohibits the contractual limitation of common law fiduciary duties:

The General Partner shall exercise its fiduciary duty for the safekeeping and use of all funds and assets of the Partnership, whether or not in their immediate possession or control, and shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the Partnership. In addition, the Partnership shall not permit the Partners to contract away the fiduciary duty owed to the Partners by the General Partner under common law.

67. In addition, the Partnership Agreement at Art. XIV provides that the General Partner's fiduciary duties to the Partnership continue to apply in the General Partner's conduct in the General Partner's other business transactions.

68. UDF III's SEC filings state that it does not have a board of directors. UDF III's SEC filings also state that because it does not have an audit committee or officers, Land Development oversees the relationship between UDF III and its registered public accounting firm.

IV. UDF III's Affiliates Faced Massive Losses When the Real Estate Bubble Collapsed in 2007

A. UMT, UDF I, and UDF II's Assets Were Concentrated in Mortgage Loans Including Loans to the Developer Borrowers

69. When UDF III began to raise capital in May 2006, its earlier-formed affiliates, including UMT, UDF I, and UDF II, were heavily invested in loans to real estate developers including the Developer Borrowers. The period between 2002 and 2006 had witnessed the rapid and unsustainable growth of the homebuilding and real estate development industries in the United States. The collapse of the real estate bubble beginning in 2007 and the ensuing "Great Recession" resulted in the insolvency of many real estate lenders and real estate developers. By 2007, UMT, UDF I, and UDF II were faced with substantial impending liabilities, loan impairments, and losses.

70. Defendant UMT's SEC filings scarcely disclose the identities of UMT's non-affiliated borrowers. UDF I and UDF II are non-public entities that do not make public filings. Some information concerning the loans that UMT, UDF I, and UDF II made to the Developer Borrowers (i.e., CTMGT, Buffington Land and their affiliates), however, may be gleaned from UDF IV's SEC filings, and from UCC filings.

71. The UDF IV prospectus dated April 27, 2012 discloses loans that UDF I and UDF II had made to the Developer Borrowers and their affiliates and

which had been repaid. These include loans to CTMGT affiliates controlled by Moayed: Centurion American Custom Homes in 2003; Centurion Acquisitions LP in 2003, 2005, and 2006; and Shahan Prairie L.P. (“Shahan Prairie”), in 2004. Also included among these loans are a loan to a Buffington Land affiliate, Buffington Hidden Lakes Ltd. in 2006. This UDF IV prospectus also discloses the existence of the Buffington JV Fund II, Ltd. (“Buffington JF Fund II”), a joint venture between a Buffington Land affiliate and UDF I.

72. UDF IV’s Form 10-Q for the period ended September 30, 2015 (“UDF IV 9/30/15 Form 10-Q”) provides the following information about UMT’s prior lending to affiliates of Buffington Land:

- (a) On December 18, 2009, we entered into a participation agreement (the “Buffington Participation”) with UMT Home Finance, LP (“UMTHF”), an affiliated Delaware limited partnership, pursuant to which we purchased a participation interest in UMTHF’s construction loan to Buffington Texas Classic Homes, LLC (“Buffington Classic”), an affiliated Texas limited liability company. Our Advisor also serves as the advisor for UMT, which owns 100% of the interests in UMTHF. UMTH LD has a minority limited partnership interest in Buffington Homebuilding Group, Ltd., which is the parent of Buffington Classic. The Buffington Participation matured and was not renewed on October 28, 2014. (Emphasis added.)
- (b) On October 6, 2014, we entered into a participation agreement (the “UMTHF Mason Park Participation”) with UMTHF III pursuant to which we purchased a participation interest in UMTHF III’s loan (the “Mason Park Loan”) to Buffington Mason Park, Ltd., an unaffiliated Texas limited partnership (“Mason Park”). Our Advisor also serves as the

advisor for UMT, which owns 100% of the interests in UMTHF III. The UMTHF Mason Park Participation is due and payable in full on April 26, 2016. (Emphasis added.)

73. UDF IV's 9/30/15 Form 10-Q also provides the following information concerning UMT's lending to an affiliate of CTMGT:

On December 16, 2013, we entered into a participation agreement (the "URHF Buckingham Participation") with URHF pursuant to which we purchased a participation interest in URHF's \$4.9 million loan (the "URHF Buckingham Loan") to CTMGT Buckingham, LLC ("Buckingham"), a Texas limited liability company. Our Advisor also serves as the advisor for UMT, which owns 100% of the interests in URHF. The URHF Buckingham Participation is due and payable in full on June 28, 2016. (Emphasis added.)

74. The UDF IV 9/30/15 Form 10-Q, also reveals that Land Development was a limited partner of Buffington Homebuilding Group, Ltd. ("Buffington Homebuilding") an affiliate of Buffington Land, as of September 30, 2015. Accordingly, Defendants Etter, Greenlaw, Wilson, Wissink, Obert, and Youngblood, who are the ultimate owners of Land Development, have economic interests in Buffington Homebuilding. To deem Buffington Land a third-party borrower, as Defendants have, is therefore, at best, misleading.

75. While Defendant UMT's SEC filings do not disclose direct lending to the two Developer Borrowers, they reveal that UMT loaned money to four affiliated entities which in turn loan money to "non-related third party borrowers."

Upon information and belief, these “non-related third party borrowers” are the Developer Borrowers.

76. The UMT loans to CTMGT, Buffington Land, and their affiliates, as disclosed in UDF IV’s 9/30/15 Form 10-Q, are reflective of only some of UMT’s lending to these entities. State UCC filings reflect that UMT made at least two additional loans to Buffington Land and its affiliates and at least three additional loans to CTMGT and its affiliates. State UCC filings reflect that UDF I made at least 27 loans to Buffington Land and its affiliates and at least 13 loans to CTMGT and its affiliates. UDF II participated pro rata in all of UDF I’s investments, including in UDF I’s loans to the Developer Borrowers.

B. UMT’s SEC Filings Reveal That It Faced Massive Losses in 2007 as a Result of its Exposure to Real Estate Development Loans

77. Defendants UDF I and UDF II are private limited partnerships and do not make public filings. Defendant UMT’s public SEC filings, however, reveal that it faced massive losses by 2007. UMT’s annual report for 2007 filed on Form 10-K (the “UMT 2007 Annual Report”) states that of the \$109.7 million of assets on its balance sheet as of December 31, 2007, more than \$87.9 million consisted of loans to affiliates, recourse obligations of its affiliates, and deficiency notes from affiliates. These assets include: (1) \$21.9 million in loans to Ready America Funding Corp. (“RAFC”) a Texas corporation that is 50% owned by South Central Mortgage, Inc. (“SCMI”), which is in turn owned in part by Defendant Etter; (2)

\$19.8 million in loans to UMTH Lending, an entity owned by Defendant UMT Holdings; (3) a \$25.1 million line of credit to UDF I; (4) recourse obligations from affiliates of \$16.0 million; and (5) deficiency notes of \$5.1 million from affiliates.

78. According to the UMT 2007 Annual Report, RAFC “is in the business of financing interim loans for the purchase of land and the construction of modular and manufactured single-family homes placed on the land by real estate investors.” RAFC used funds borrowed from Defendant UMT to make loans to other borrowers and to assign such loans to Defendant UMT as security for its obligations.

79. Defendant UMT’s SEC filings reveal that: it extended a \$7.5 million line-of-credit to Defendant UDF I in September 2003, shortly after UDF I’s formation; by 2006 the line-of-credit had been increased to \$45 million; UDF I used the loan proceeds to make loans to real estate developers; and UMT’s loans to UDF I were secured by UDF I’s interest in mortgages and equity participations.

80. Deteriorating conditions in the real estate development market made it unlikely that Defendant UMT could recover the balances on its loan to UDF I. UMT’s 2007 Annual Report acknowledged that it would likely be unable to recover the balance of its secured line-of-credit to UDF I:

Our loans to [UDF I] are secured by [UDF I’s] interest in mortgages and equity participations that it has obtained to secure its loans to real estate developers. Some of those mortgages are junior mortgages. The developers obtain the money to repay the development loans by

reselling the residential home lots to home builders or individuals who build single-family residences on the lots. The developer's ability to repay their loans is based primarily on the amount of money generated by the developer's sale of its inventory of single-family residential lots. As a result, we are exposed to the risks of the homebuilding industry, which is undergoing a significant downturn due in large part to the sub-prime crisis, the duration and ultimate severity of which are uncertain. Accordingly, continued or further deterioration of home building conditions or in the broader economic conditions of the homebuilding market could cause the number of homebuyers to decrease, which would increase the likelihood of defaults on the development loans and, consequently, increase the likelihood of a default on the [UDF I] line of credit loan. If this were to occur, we may face the inability to recover the outstanding loan balance on foreclosure of collateral securing our loans because our rights to this collateral will be junior to the rights of senior lenders and because of the potentially reduced value of the underlying properties.

The economic conditions of the homebuilding market would in fact deteriorate much further during 2008.

81. The UMT 2007 Annual Report describes that UMT received the "deficiency notes" from affiliates (which amounted to \$5.1 million as of December 31, 2007) and the "recourse obligations" from affiliates (which amounted to \$16.0 million from affiliates as of December 31, 2007) when these affiliate borrowers foreclosed on property securing a loan and the sales proceeds were insufficient to pay the loans in full.

82. By December 31, 2007, UMTH Lending had issued UMT a variable amount "deficiency note" (the "UMTH Lending Deficiency Note") to evidence its "deficiency obligations to [UMT]". The UMT 2007 Annual Report explains that

UMTH Lending may issue deficiency notes to UMT when UMTH Lending forecloses on property securing a loan, and in which UMT also has a secured interest, and the proceeds from the sale are insufficient to pay the loan in full. The balance of the UMTH Lending Deficiency Note was approximately \$5.1 million as of December 31, 2007.

83. UMT's SEC filings describe UMTH Lending as an entity "which originates, purchases, sells and services interim loans for the purchase and renovation of single-family homes." Further, UMT's SEC filings state that "[UMT] has loaned and will continue to loan money to UMTHLC so it can make loans to its borrowers." UMTH Lending is owned by UMT Holdings, which also owns Land Development.

84. Rather than recording impairments on UMT's loans to UMTH Lending that UMTH Lending would never have the ability to repay, UMT would simply increase the value of the UMTH Lending Deficiency Note balance which was reported as an asset on UMT's balance sheet. By September 30, 2015, the UMTH Lending Deficiency Note balance had grown to approximately \$41.3 million. UMT thereby concealed losses by reporting bogus assets in its financial statements.

85. The UMT 2007 Annual Report also discloses deficiency notes from a non-affiliate in the amount of \$1.7 million as of December 31, 2007.

86. The UMT 2007 Annual Report explains that “recourse obligations” are similar to “deficiency notes”: “if the underlying loan is foreclosed and the real estate sells, our affiliate pays us all accrued interest from the proceeds from the sale of the property. Any deficiency is reclassified to ‘Recourse Obligations, affiliates.’” As of December 31, 2007, UMT had a total recourse obligation balance of approximately \$16.0 million due from three affiliates: (1) Capital Reserve Group, Inc. (“CRG”) of which Defendant Etter is an owner; (2) RAFC; and (3) SCMI. This balance was reported as assets on UMT’s balance sheet.

87. Defendant UMT’s SEC filings reveal that its recourse obligations balance had grown steadily between 2005 and 2007. This balance, \$0 as of December 31, 2004, grew to approximately \$9.3 million as of December 31, 2005, to approximately \$12.0 million as of December 31, 2006, and to approximately \$16.0 million as of December 31, 2007. UMT concealed its losses by presenting these obligation balances – which could never be recovered because the debtors had no ability to satisfy them – as assets in its financial statements.

88. The growth of the amounts due to Defendant UMT as deficiency note balances and recourse obligation balances evidence UMT’s deteriorating financial condition between 2005 and 2007. As UMT’s borrowers foreclosed upon real estate properties upon which UMT had secured interests, and there was insufficient capital to pay UMT, UMT received recourse obligations and deficiency notes.

These were bogus assets as UMT's borrowers had no ability to satisfy their obligations.

89. As Defendant UMT's borrowers struggled to pay loans, and as its deficiency notes balance and recourse obligation balance increased, its cash from operating activities decreased from approximately \$14.7 million in 2005; to approximately \$11.7 million in 2006 and 2007; and to approximately \$5.5 million in 2008.

90. By 2008, Defendant UMT no longer had sufficient cash from operating activities to cover shareholder distributions at the rate that it had historically paid them. In 2006 and 2007 it paid distributions of \$9.7 million (\$1.40 per share) and \$9.8 million (\$1.47 per share) respectively. As UMT's cash from operating activities declined from approximately \$11.7 million in 2006 and 2007 to approximately \$5.5 million in 2008, and as UMT had cash and cash equivalents of less than \$2 million, UMT would be required to obtain liquidity from an outside source in order to continue paying shareholder distributions at rates similar to the rates that it had paid in the past.

V. The Fiduciary Defendants Misused UDF III's Assets in a Scheme to Benefit Themselves and to Bail Out and Conceal Losses Facing UDF III's Affiliates

91. The Fiduciary Defendants were motivated to bail out and conceal the losses facing UMT, UDF I, and UDF II by funneling UDF III's capital to these

entities both directly and through their real estate developer borrowers including the Developer Borrowers. With an influx of capital from UDF III, these borrowers could make loan payments to UMT, UDF I, and UDF II despite having suffered devastating losses as a result of the collapse of the real estate bubble. The Fiduciary Defendants ensured that they would continue to receive fees and profits when they prevented UMT, UDF I, and UDF II from collapsing, when they prevented these entities from recording losses to their mortgage loan portfolios, and when they used UDF III's capital to provide liquidity to these entities' borrowers. Specifically:

- (a) *If UMT had ceased to exist, or had recorded losses to its mortgage loan portfolio, UMTH General's administration fee would have been eliminated or reduced.* UMT has no employees: the management of UMT's day-to-day operations, and the management of its assets, including the acquisition and disposition of its investments, is performed by its advisor, Defendant UMTH General. UMTH General receives a trust administration fee of approximately 1% of the value of UMT's mortgage loan portfolio for the management services that it provides to UMT. UMTH General is owned by UMT Holdings which is in turn owned by the six Individual Fiduciary

Defendants. UMT's payment of trust administration fees to UMTH General therefore benefits the Individual Fiduciary Defendants.

- (b) *The Fiduciary Defendants would have experienced an adverse financial impact if UDF I had ceased to exist, if its borrowers had defaulted on their loans, or if it had recorded impairments to its mortgage loan portfolio.* Defendant UDF I is a private limited partnership. UDF I, Inc. serves as UDF I's general partner and receives fees from it. Defendants Greenlaw and Etter own 67.5% of UDF I, Inc. If UDF I had ceased to exist, it would have stopped paying fees to UDF I, Inc. In addition, Land Development owns a 49.99% subordinated profits interest in UDF I. Land Development is owned by UMT Holdings which is in turn owned by the six Individual Fiduciary Defendants. If UDF I's borrowers had stopped making loan payments, there would have been no profit available to distribute to Land Development on account of its subordinated profits interest.
- (c) *The Fiduciary Defendants would have experienced an adverse financial impact if UDF II had ceased to exist, if its borrowers*

had defaulted on their loans, or if it had recorded impairments to its mortgage loan portfolio. Defendant UDF II is also private limited partnership. UDF II, Inc. serves as UDF II's general partner and receives fees from it. Defendants Greenlaw and Etter own 100% of UDF II, Inc. If UDF II had ceased to exist, it would have stopped paying fees to UDF II, Inc. In addition, Land Development owns a 49.95% subordinated profits interest in UDF II. If UDF II's borrowers had stopped making loan payments, there would have been no profit available to distribute to Land Development on account of its subordinated profits interest.

92. The collapse of UMT, UDF I, or UDF II and/or the recognition of substantial losses by these entities would have also impaired the Fiduciary Defendants' ability to continue to profit in the future. The Fiduciary Defendants rely on securities broker-dealers to raise new investor capital. The Fiduciary Defendants knew that it would become far more difficult to raise capital through new entities if UMT, UDF I or UDF II were to collapse because securities brokers-dealers would have been put on notice. Securities broker-dealers are disinclined to sell their customers securities in entities managed by those with poor track records. The Fiduciary Defendants knew that it would become far more difficult to raise

new investor capital if UMT, UDF I, or UDF II failed or if they were to record substantial losses. Without new investor capital, the Fiduciary Defendants would have been unable to continue to garner massive securities offering fees, management fees, and administrative fees through new entities in the future.

93. To keep UDF III's earlier affiliates afloat, the Fiduciary Defendants, aided and abetted by the Aiding & Abetting Defendants, therefore caused UDF III to enter the following transactions whereby they caused UDF III to funnel capital to affiliates and whereby they permitted UDF III's affiliates to obtain loans:

- i. UDF III purchased from UMT a participation interest in a loan from UMT to UDF I;
- (b) UDF III made loans to various of UDF III's affiliates including UDF I and its subsidiaries and UDF X.
- (c) UDF III made loans to the Developer Borrowers (i.e., Buffington Land, CTMGT and their affiliates) that had borrowed from earlier affiliated entities;
- (d) UDF III entered into guaranty agreements through which UDF III guaranteed the repayment of its affiliates' loans.

94. The Fiduciary Defendants caused UDF III to enter into these transactions for their own benefit including to generate financial benefits for their economic interest and to conceal losses facing UDF III's affiliates. They shifted

losses from UDF III's failing affiliates to UDF III through these transactions. The cash that UDF III funneled to its earlier affiliates through the making of loans and the purchase of the loan participation interest kept the affiliates afloat, allowed them to make payments on their loans, allowed them to make distribution payments to their investors, and allowed the Fiduciary Defendants to continue to garner fees from these entities. UDF III's guaranty agreements allowed its affiliates to obtain loans while exposing UDF III to the risk of massive loss for which UDF III received minimal compensation.

95. Further, the loans that Fiduciary Defendants caused UDF III to make to the Developer Borrowers and their affiliates allowed the Developer Borrowers to make loan payments to UDF III's earlier affiliated entities. UDF III's loans to the Developer Borrowers thereby allowed UDF III's earlier affiliates to continue operations and allowed them to avoid recording losses. These transactions benefited the Fiduciary Defendants because it kept the fee stream flowing to the Fiduciary Defendants and their affiliates.

96. UDF III's public filings concealed the economic reality of the UDF III portfolio. UDF III's SEC filings conceal and mislead with respect to UDF III's lending to the Developer Borrowers, the amount and nature of lending to affiliates, and the affiliated entities' concentration of lending to affiliates and the Developer Borrowers.

97. The Fiduciary Defendants thereby exploited UDF III and used its assets as piggybank funds for their own benefit.

A. The Fiduciary Defendants Bailed Out Defendant UMT by Causing UDF III to Purchase a Participation Interest in UMT's Loan to UDF I

98. In September 2008, Defendants saddled UDF III with the risks and losses associated with UMT's impaired loan to UDF I. Defendants accomplished this by causing UDF III to enter into an economic participation agreement (the "UMT Loan Participation Agreement") with Defendant UMT pursuant to which UDF III purchased: (1) a participation interest (the "UMT Participation Interest"), an economic interest in a \$45 million revolving loan from Defendant UMT to Defendant UDF I (the "UMT Loan"); and (2) an option (the "UMT Loan Option"), to acquire a full ownership economic participation interest in the UMT Loan. Through the UMT Loan Participation Agreement, UDF III agreed to reimburse Defendant UMT for the funds that it had previously advanced to Defendant UDF I, and all funds that Defendant UMT may advance in the future, pursuant to the UMT Loan. Therefore, through the UMT Loan Participation Agreement, the UMT Loan was effectively shifted from UMT to UDF III.

99. The funds that UMT received from UDF permitted UMT to fund its shareholder distributions for 2008 and 2009. As a result of the liquidity that UDF

III provided, UMT was able to pay shareholder distributions at the rate of \$1.35 per share for 2008 and at the rate of \$0.73 per share in 2009.

100. On June 29, 2009, the UMT Loans was modified to increase the commitment amount from \$45 million to \$60 million, and on December 31, 2010, the commitment amount was increased to \$75 million and its maturity date extended until December 21, 2011. Effective December 31, 2012, the UMT Loan was increased from \$75 million to \$82 million, and the maturity date was extended by one year to December 31, 2013. UDF III funded the principal advances to UDF I. UDF III's economic interest in the UMT Loan therefore increased proportionately with its contribution to UDF I.

101. The UMT Loan did not mature; instead, effective October 1, 2013, the maturity date of the UMT Loan was extended to December 31, 2014. In addition, the UMT Loan was modified to reduce the base interest rate from 14% to 9.25% per annum. Less than a year later, effective September 30, 2014, the UMT Loan was increased from \$82 million to \$84,674,672, and effective December 31, 2014 the maturity date was extended to December 31, 2015. Accordingly, following the initial maturity date of December 31, 2009, the UMT Loan maturity date was extended six times, resulting in a maturity date of December 31, 2015.

102. The UMT Loan is secured by a subordinate security interest in the assets of UDF I including UDF I's land development loans and equity investments.

It is subordinate to a senior secured loan from a regional bank to UDF I in the amount of \$10,000,000, and all project-specific financing provided to UDF I or any of its subsidiaries. The Fiduciary Defendants knew that the collateral securing the UMT Loan was insufficient, particularly when the principal amount of the loan was increased despite the absence of additional collateral.

103. Between year-end 2008 and year-end 2014, UDF III's UMT Participation Interest balance increased as follows: \$39.2 million in 2008; \$54.7 million in 2009; \$57.8 million in 2010; \$66.2 million in 2011; \$75.2 million in 2012; \$70.8 million in 2013; and \$74.6 million in 2014.

104. On April 1, 2015, the Fiduciary Defendants caused UDF III to exercise the UMT Loan Option, thereby converting UDF III's economic interest in the UMT Loan into a full participation interest. As of September 30, 2015, the maturity date of the UMT Loan was January 31, 2015 and the balance of the loan was approximately \$71.2 million.

105. When the Fiduciary Defendants caused UDF III to enter into the UMT Loan Participation Agreement, they knew that UDF I would be unable to repay the loan absent a continuing influx of new investor capital. Further, when the Fiduciary Defendants caused UDF I to request advances of principal under the UMT Loan and when they caused UDF III to fund these advances, they knew: (1) that UDF I was not an economically sound entity; (2) that UDF I would have no

ability to repay the loan absent future influxes of new investor capital; (3) that the loan was secured by insufficient collateral; and (4) that UDF III's investment in the loan was not consistent with UDF III's objective to preserve capital or with the best interests of the Partnership and Limited Partners. The Fiduciary Defendants' use of UDF III's assets to enter the UMT Loan Participation Agreement and to cause UDF III to fund principal advances under the UMT Loan were the products of malfeasance and self-interestedness rather than the products of sound business judgment and consistent with the Partnership's objectives or the best interests of the Partnership and the Limited Partners.

106. As set forth *infra*, the available evidence indicates that UDF I is insolvent, that the UMT Loan is unrecoverable, and that UDF III has suffered massive losses through its investment in the UMT Participation Interest.

B. UDF III's Direct Lending to Affiliated Parties and Its Guarantees of Affiliated Parties' Loan Obligations

107. In addition to causing UDF III to invest in the UMT Participation Interest, the Fiduciary Defendants have caused UDF III to invest a significant portion of its assets in loans to affiliates and to enter guaranty agreements for the repayment of its affiliates' loans. Such use of UDF III's assets wrongly benefitted the Fiduciary Defendants, who own profits interests or equity interests in each of these affiliates, to the detriment of UDF III and the Limited Partners.

1. The Fiduciary Defendants Bailed Out Defendant UDF I by Causing UDF III to Make Loans to UDF I and Its Subsidiaries

108. In December 2006, UDF III originated a loan to UDF I in the principal amount of approximately \$6.3 million and bearing interest at a rate of 12% (the “2006 UDF I Loan”). UDF I’s obligations under the loan were secured by a first lien deed of trust filed on 190 developed single-family home lots located in Thornton, Colorado. The 2006 UDF I Loan was originally scheduled to mature on June 21, 2007. However, the principal amount of the loan was subsequently increased and its maturity date extended on multiple occasions:

- a. UDF III’s annual report for the fiscal year ended December 31, 2007, filed with the SEC on March 31, 2008, indicated that the principal amount of the 2006 UDF I Loan had increased to approximately \$6.9 million, and its maturity date had been extended until December 31, 2008.
- b. UDF III’s annual report for the fiscal year ended December 31, 2008, filed with the SEC on March 31, 2009, reported that the principal amount of the 2006 UDF I Loan was increased to \$8.1 million and its maturity date extended until June 30, 2009.
- c. UDF III’s annual report for the fiscal year ended December 31, 2009, filed with the SEC on March 31, 2010, reported the same status of the

2006 UDF I Loan (“[t]he note matures on June 30, 2009”), notwithstanding that the maturity date had passed.

- d. UDF III’s annual report for the fiscal year ended December 31, 2010, filed with the SEC on March 31, 2011, states that the UDF I Loan “matured on June 30, 2009 but remains outstanding as of December 31, 2010.”
- e. UDF III’s annual report for the fiscal year ended December 31, 2011, filed with the SEC on March 30, 2012 indicates that the maximum principal amount of the 2006 UDF I Loan had been increased to \$12.8 million and its maturity date extended until December 31, 2011. Despite the fact that the principal amount of the 2006 UDF I Loan had been increased from an original amount of \$6.3 million to \$12.8 million, the 2011 annual report revealed that it was secured by the same collateral.
- f. UDF III’s annual report for the fiscal year ended December 31, 2012, filed with the SEC on April 1, 2013, states that the principal amount of the 2006 UDF I Loan, effective June 30, 2012, was increased to a maximum of \$15.5 million and the maturity date was extended to June 30, 2015.

- g. UDF III's SEC filings do not indicate the exact balances of the 2006 UDF I Loan prior to 2010. Between 2010 and 2012, the balance of the 2006 UDF I Loan, as recorded in UDF III's financial statements, increased as follows: \$11.1 million as of December 31, 2010; \$12.6 million as of December 31, 2011; and \$12.9 million as of December 31, 2012.
- h. Accordingly, Defendants caused UDF III to extend the maturity date of the 2006 UDF I Loan on five occasions.
- i. Defendant UDF I never repaid the 2006 UDF I Loan to UDF III. Instead, effective October 1, 2013, Defendants caused Defendant UDF I to assign to UDF III a promissory note payable by "an unrelated party" in exchange for the cancellation of the 2006 UDF I Loan.
- j. The identity of this "unrelated party", and the status of the promissory note that UDF III received from Defendant UDF I, cannot be determined from UDF III's SEC filings. From the available evidence, however, it may be inferred that UDF III suffered a substantial loss on the 2006 UDF I Loan.

109. UDF III's lending to Defendant UDF I's wholly-owned subsidiaries included a loan (the "UDF NP Loan") to Northpointe LLC ("Northpointe") that

was originated in December 2007 in the amount of approximately \$6.0 million, bearing interest at the rate of 12%, and payable on December 28, 2010. This loan was initially collateralized by a second lien deed of trust on 251 finished lots and 110 acres of land in Texas.

- a. In May 2008, UDF I sold Northpointe to an unaffiliated third party.
- b. Subsequent to Defendant UDF I's sale of Northpointe, Northpointe assigned the loan to UDF Northpointe II, L.P. ("Northpointe II"), a wholly-owned subsidiary of Defendant UDF I.
- c. In UDF III's Form 10-Q for the quarterly period ended September 30, 2011 (filed with the SEC on November 14, 2011) it was revealed that the commitment amount of the UDF NP Loan was increased to \$15 million (secured by the same collateral as the original promissory note) and the maturity date was extended to December 28, 2013.
- d. In December 2013, the maturity date of the UDF NP Loan was further extended to December 28, 2014; and, in 2014 it was further extended to December 28, 2015. Accordingly, the most recent maturity date for the UDF NP Loan of December 28, 2015 has passed and Plaintiffs and the Limited Partners do not know its current status.
- e. The outstanding balance of the UDF NP Loan was not reported in UDF III's SEC filings for 2008 or 2009. UDF III's SEC filings

indicate that the loan balance, net of the Northpointe II Participation, as recorded on UDF III's balance sheet, increased between 2010 and 2012 as follows: \$10.1 million as of December 31, 2010; \$11.6 million as of December 31, 2011; \$13.4 million as of December 31, 2012.

- f. As of September 30, 2015, the balance of the UDF NP Loan, net of the Northpointe II Participation balance of approximately \$10.2 million, was \$61,000. UDF I's subsidiary did not satisfy the UDF NP Loan; rather the Fiduciary Defendants have effectively transferred this loan from UDF III to UDF IV.

110. When the Fiduciary Defendants caused UDF III to make and extend the terms of loans to UDF I and its subsidiaries, they knew that the loans were under-collateralized, that UDF I was not an economically sound borrower, that UDF III would not be repaid absent a continuing influx of new investor capital, and that UDF III's investment in this loan was inconsistent with its business purpose of preserving capital as set forth in the Partnership Agreement. Further, the Fiduciary Defendants knew that it was not in the best interest of the Partnership and the Limited Partners for UDF III to increase the principal amount of the 2006 UDF I Loan without securing any additional collateral and to extend the maturity dates of the loans rather than enforcing UDF III's rights under the loan agreements.

Their decisions to cause UDF III to make the 2006 UDF I Loan and the UDF NP Loan, to increase the principal amount of the 2006 UDF I Loan without securing additional collateral, and to extend the maturity dates of these loans multiple times were the products of malfeasance and self-interestedness and were not the products of sound business judgment or consistent with the Partnership's objectives and in the best interests of the Partnership and Limited Partners.

2. *The Fiduciary Defendants Caused UDF III to Make Loans to Defendant UDF X, a Wholly-Owned Subsidiary of Defendant Land Development, and Have Failed to Enforce UDF III's Rights with Respect to the Loan or to Record Impairments*

111. UDF III's SEC filings disclose little information about Defendant UDF X, which is a wholly-owned subsidiary of Defendant Land Development.

112. In November 2007, UDF III originated a loan to Defendant UDF X (the "UDF X Loan") in the principal amount of approximately \$70 million and bearing interest at a rate of 15% per annum. The original maturity date of the UDF X Loan was November 11, 2012, and collateralized by a pledge of 100% of the ownership interests in UDF X. The UDF X Loan is guaranteed by Defendant UMT Holdings, which owns 99.9% of the limited partnership interests in Defendant Land Development.

113. In August 2008, the UDF X Loan was amended to reduce the commitment amount to \$25 million. Then the maturity date was extended four times, as follows: during the first quarter of 2012, it was extended to November 11,

2013; during the fourth quarter of 2013, it was extended to November 11, 2014; during the fourth quarter of 2014, it was extended to November 11, 2015; and during the first quarter of 2015, it was extended to November 11, 2016.

114. As of September 30, 2015, the balance of the UDF X Loan, as recorded on UDF III's balance sheet, was approximately \$16.4 million, and the accrued interest on the loan was in excess of \$2.1 million.

115. When the Fiduciary Defendants caused UDF III to make the UDF X Loan, they knew that UDF X was not an economically sound borrower, and that UDF III would not be repaid absent a continuing influx of new investor capital. The Fiduciary Defendants' decision to cause UDF III to make the UDF X Loan was not the product of reasonable business judgment or consistent with the Partnership's objectives or the best interest of the Partnership and Limited Partners.

116. Further, the Fiduciary Defendants have failed to enforce UDF III's rights under the UDF X Loan by seeking repayment from UMT Holdings, which is primarily owned by the six Individual Fiduciary Defendants (i.e., Defendants Etter, Greenlaw, Wilson, Wissink, Obert and Youngblood), pursuant to the guaranty agreement. Instead, the Fiduciary Defendants have allowed interest on the UDF X Loan to accrue and have caused UDF III to extend the maturity date of the loan at least four times. The Fiduciary Defendants' decisions to forego enforcement of

UDF III's rights against Land Development and instead to place their own interests above UDF III's interests, were the products of malfeasance and self-interestedness and not the products of reasonable business judgment consistent with the Partnership's objectives and the best interests of the Partnership and the Limited Partners.

3. *Defendants caused UDF III to Enter Guaranty Agreements for the Repayment of its Affiliates' Loans*

117. As of September 30, 2015, the last periodic for which UDF III filed a periodic report with the SEC, UDF III had eight outstanding repayment guaranty agreements. Each of these agreements bound UDF III as guarantor of loans owed by one of its affiliated entities. The combined outstanding balance of these eight loans was \$70.9 million as of September 30, 2015. The total credit risk to UDF III resulting from the guarantee agreements was approximately \$96.8 million. UDF III's repayment guaranty agreements are not included on UDF III's balance sheet.

118. The following are UDF III's eight repayment guaranty agreements with affiliated entities as of September 30, 2015:

1. ***UDF III's August 2009 Guarantee of UMTHF's Loan:*** In August 2009, UDF III entered into a guaranty agreement with Texas Capital Bank, National Association ("Texas Capital"), which bound UDF III as the guarantor for the repayment of up to \$5.0 million owed to Texas Capital pursuant to a loan. UMTHF is a wholly-owned subsidiary of UMT. In 2014, the maturity date of the Texas Capital's loan to UMTHF was extended from September 5, 2015 to September 5, 2016.

2. ***UDF III's April 2010 Guarantee of UDF IV Home Finance L.P.'s Loan:*** In April 2010, UDF III entered into a guaranty agreement for the benefit of Community Trust Bank of Texas ("CTB"), which bound UDF III as the guarantor for the repayment of up to, initially, \$6.0 million owed to CTB by UDF IV Home Finance L.P. ("UDF IV Home Finance"), a Delaware limited partnership, with respect to a revolving line-of-credit loan between UDF IV Home Finance and CTB. UDF IV Home Finance is a wholly-owned subsidiary of UDF IV, of which Land Development is the asset manager.
- i. The maturity date of the CTB loan to UDF IV Home Finance was extended; the publicly available information references only extensions granted in 2014 and 2015, extending the maturity date to July 30, 2015 and July 30, 2016, respectively.
 - ii. In addition, effective July 31, 2013 and June 3, 2014, CTB increased the line of credit from \$6 million to \$10 million, and \$10 million to \$30.0 million, respectively. (Per 2nd quarter 2013 Form 10-Q filed on 8/14/2013; 2nd quarter 2015 Form 10-Q filed on 8/14/2014).
 - iii. Further, UDF III's 1st quarter 2014 Form 10-Q (filed on 5/15/2014) indicated its guaranty had increased from \$6 to \$10 million, without further detail. And, effective July 31, 2014 (disclosed in UDF III's 3^d quarter 2014 Form 10-Q, filed on 11/14/2014), UDF III had increased its guaranty to \$30 million.
 - iv. For the first time in UDF III's 2nd quarter 2015 Form 10-Q (filed on 8/14/2015), it was revealed that for the CTB loan to UDF IV Home Finance (which by then had matured on July 30, 2015) there was approximately \$20.6 million remaining outstanding as of June 30, 2015.
 - v. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty for which the maturity date has now passed.

3. ***UDF III's April 2010 Guarantee of UMT 15th Street L.P.'s Loan:*** In April 2010, UDF III entered into a guaranty agreement for the benefit of CTB, which bound UDF III as the guarantor for the repayment of up to \$1.6 million owed to CTB with respect to a loan between UMT 15th Street, L.P. (“UMT 15th Street”), a Delaware limited partnership, and CTB. UMT 15th Street is a wholly-owned subsidiary of UMT, to which an affiliate of Land Development is the advisor.
 - i. For the first time, UDF III revealed through its 1st quarter 2014 Form 10-Q (filed on 5/15/2014) that maturity date of the CTB loan to UMT 15th Street, previously unknown, was extended to February 18, 2015.
 - ii. Then, in UDF III's 2014 Form 10-K (filed on 3/31/15) it was stated that the maturity date of the loan had again been extended to July 30, 2016.
 - iii. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty for which the maturity date has now passed.

4. ***UDF III's August 2010 Guarantee of UDF IV Acquisitions L.P.'s Loan:*** In August 2010, UDF III entered into a guaranty agreement for the benefit of CTB, which bound UDF III as guarantor for the repayment of up to, initially, \$8.0 million owed to CTB by UDF IV Acquisitions L.P. (“UDF IV Acquisitions”), a Delaware limited partnership, with respect to a revolving line-of-credit loan between UDF IV Acquisitions and CTB. UDF IV Acquisitions is a wholly-owned subsidiary of UDF IV, to which Land Development is the asset manager.
 - i. It was disclosed in UDF III's 1st Q 2013 Form 10-Q that, effective April 11, 2013, CTB increased the loan from \$8 million to \$15 million.
 - ii. First the first time in UDF III's 1st quarter 2014 Form 10-Q (filed on 5/15/2014), it was revealed that the then-unknown maturity date of the CTB loan to UDF IV Acquisitions was extended to July 30, 2015.

- iii. In addition, effective April 11, 2014, CTB further increased the loan from \$15 million to \$25 million.
- iv. For the first time in UDF III's 2nd quarter 2015 Form 10-Q (filed on 8/14/2015), it was revealed that for the CTB loan to UDF IV Acquisitions (which by then had matured on July 30, 2015) there was approximately \$20.2 million remaining outstanding as of June 30, 2015.
- v. Then, in UDF III's 3d quarter 2015 Form 10-Q (filed on 11/16/15) it was stated that the maturity date of the loan had again been extended to July 30, 2016.
- vi. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty for which the maturity date has now passed.

5. ***UDF III's December 2010 Guarantee of UDF IV Finance II L.P.'s Loan:*** In December 2010, UDF III entered into a guaranty agreement for the benefit of The F&M Bank and Trust Company n/k/a Prosperity Bank ("Prosperity"), which bound UDF III as guarantor for the repayment of up to, initially, \$5.0 million owed to Prosperity by UDF IV Finance II L.P. ("UDF IV Finance II"), a Delaware Limited Partnership, with respect to a loan between UDF IV Finance II and Prosperity. UDF IV Finance II is a wholly-owned subsidiary of UDF IV.

- i. Without explanation or specific identification as an increase, UDF III's repayment guaranty was no longer stated as \$5.0 million but as \$7.5 million, as reported in UDF III's 3d quarter 2011 Form 10-Q (filed on 11/14/2011).
- ii. Similarly, again without explanation or specific identification as an increase, UDF III's repayment guaranty was no longer identified as \$7.5 million but as \$10 million, as reported in UDF III's 2012 Form 10-K (filed on 4/1/2013).

- iii. UDF III's 3d quarter 2013 Form 10-Q (filed on 11/14/2013) states that effective October 31, 2013, Prosperity had increased the line-of-credit loan from \$10 million to \$15 million, and UDF III increased its guaranty to \$15 million.
 - iv. For the first the first time in UDF III's 1st quarter 2014 Form 10-Q (filed on 5/15/2014), it is revealed that the then-unknown maturity date of the Prosperity loan to UDF IV Finance II was extended to December 14, 2014.
 - v. Then, in UDF III's 2014 Form 10-K (filed on 3/31/15) it is stated that the maturity date of the loan had again been extended to December 14, 2016.
 - vi. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty for which the maturity date has now passed.
6. ***UDF III's May 2011 Guarantee of UMT HF III L.P.'s Loan:*** In May 2011, UDF III entered into a guaranty agreement (the "UMT HF III Guaranty") for the benefit of Veritex Community Bank, N. A. ("Veritex"), which bound UDF III as guarantor for the repayment of up to, initially, \$4.3 million owed to Veritex with respect to a loan between UMT Home Finance III L.P. ("UMT HF III"), a Delaware limited partnership, and Veritex. UMT HF III is a wholly-owned subsidiary of UMT. The Veritex loan to UMT HF III, as amended, matures on May 27, 2017.
- i. For the first the first time in UDF III's 1st quarter 2014 Form 10-Q (filed on 5/15/2014), it was revealed that the then-unknown maturity date of the Veritex loan was May 27, 2014.
 - ii. UDF III's 2nd quarter 2014 Form 10-Q (filed on 8/14/2014) states that effective June 2, 2014, Veritex increased the loan to \$5.0 million and UDF III agreed to increase its guaranty to \$5.0 million. And, the maturity date of the loan was extended to May 27, 2017.

- iii. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty.
7. ***UDF III's August 2013 Guaranty of UDF IV Finance VI L.P.'s Loan:*** In August 2013, UDF III entered into a guaranty agreement (the "UDF IV Finance VI Guaranty") for the benefit of CTB, pursuant to which it guaranteed the repayment of up to, initially, \$25.0 million owed to CTB with respect to a loan between UDF IV Finance VI L.P. ("UDF IV Finance VI"), a Delaware limited partnership and CTB. UDF IV Finance VI is a wholly-owned subsidiary of UDF IV.
- i. For the first the first time in UDF III's 1st quarter 2014 Form 10-Q (filed on 5/15/2014), it was revealed that the then-unknown maturity date of the CTB loan was August 19, 2015. It was also stated in the Form 10-Q that effective April 11, 2014, CTB decreased its commitment under the loan from \$25 million to \$15 million.
 - ii. Then, in UDF III's 3d quarter 2015 Form 10-Q (filed on 11/16/15) it was stated that the maturity date of the loan had again been extended to July 30, 2016.
 - iii. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty for which the maturity date has now passed.
8. ***UDF III's November 2014 Guaranty of UDF I's Loan:*** In November 2014, UDF III entered into a guaranty agreement (the "UDF, LP Guaranty for the benefit of City Bank"), which bound it is guarantor for the repayment of up to \$225,500 owed to City Bank, with respect to a loan between UDF I and City Bank. The loan is secured by a deed of trust on 8.2 acres of land owned by UDF Ash Creek, L.P., a wholly-owned subsidiary of UDF I. The City Bank loan to UDF I matured on November 3, 2015, and \$225,500 remains outstanding. Since UDF III's last Form 10-Q filing in November 2015, no further information has been publicly disclosed for the guaranty for which the maturity date has now passed.

119. When the Fiduciary Defendants caused UDF III to enter guaranty agreements for the repayment of its affiliates' loans, and when the Fiduciary Defendants caused UDF III to increase the guaranty amounts pursuant to these agreements, they knew that they were exposing UDF III to the risk of massive losses for which UDF III was receiving inadequate compensation. The Fiduciary Defendants knew that UDF III's affiliates had no ability to repay the loans absent a continued influx of capital from new uninformed investors. They knew that that the guaranty agreements were contrary to UDF III's business objective of preserving capital. Their decisions to cause UDF III to enter guaranty agreements and to increase the guaranty amounts, were the products of malfeasance and self-interestedness and not the products of sound business judgment consistent with the Partnership's objectives and the best interests of the Partnership and the Limited Partners.

120. The Fiduciary Defendants were motivated to cause UDF III to enter guaranty agreements to help UDF IV obtain financing. UDF IV paid debt financing fees to UMTH General of 0.25% of the primary loan amount for all loan financing that UDF IV and its subsidiaries obtained. When Land Development caused UDF III to enter guaranty agreements that permitted UDF IV to obtain loan financing, Land Development increased the amounts of debt financing fees that

UDF IV paid to UMTH General, an entity ultimately owned by the Individual Fiduciary Defendants.

C. Loans to the Developer Borrowers Benefitted the Fiduciary Defendants to the Detriment of UDF III

1. The Fiduciary Defendants Bailed Out CTMGT, Buffington Land and Their Affiliates by Causing UDF III to Make Loans to These Entities

121. CTMGT, Buffington Land and their affiliates faced severe losses as a result of the collapse of the real estate bubble in 2007. UDF III's SEC filings indicate that UDF III began to make loans to these entities shortly after its formation.

122. The proceeds of the loans that Defendants caused UDF III to make to the Developer Borrowers were not used to fund real estate development projects. Rather, UDF III's loan proceeds allowed the Developer Borrowers to pay down loans to earlier affiliates of UDF III. Upon information and belief, including the SEC Action's allegations based on its multi-year investigation, Defendants specifically directed the Developer Borrowers to use UDF III's loan proceeds in this manner. The earlier affiliates of UDF III then used the loan payments that the Developer Borrowers made to them (using funds received from UDF III) to fund distributions to their investors. It was the Fiduciary Defendants rather than the Developer Borrowers who initiated the transactions. The Fiduciary Defendants caused UDF III to make these loans to the Developer Borrowers when the

Fiduciary Defendants knew that UDF III's earlier affiliates required capital to make distributions to their investors. In this way, UDF III's assets were used to fund distributions to investors in UDF III's earlier affiliates according to the Fiduciary Defendants' direction, and the Fiduciary Defendants continued to reap enormous personal profits through these distributions. (*See* SEC Compl. ¶¶ 3, 25-34).

123. Upon information and belief, the Developer Borrower never even touched the money from UDF III in many instances. Rather, Defendants transferred UDF III's money directly to UDF III's earlier affiliate. The Defendants then caused UDF III to represent to investors that the funds had been lent to the Developer Borrower.

124. The Developer Borrowers did not object to using UDF III's loan proceeds to make loan payments to UDF III's earlier affiliates. The Developer Borrowers' total indebtedness remained the same. Upon information and belief, the Developer Borrowers' costs often went down because UDF III loaned money at lower rates than UDF III's earlier affiliates.

125. UDF III never disclosed to investors the true nature of its lending to the Developer Borrowers. UDF III's investors were led to believe that UDF III's loans to the Developers Borrowers were made for the purpose of funding actual

real estate development projects rather than the for the purpose of funding its earlier affiliates' distributions to investors.

126. UDF III's SEC filings have never contained comprehensive information about its lending to CTMGT, Buffington Land and their affiliates. In 2012, UDF III began to report in its SEC filings the amount of its loans to Buffington Land and its affiliates and to CTMGT and its affiliates as a percentage of UDF III's loan portfolio.

127. UDF III's SEC filings indicate that as of September 30, 2015, UDF III's loan to Buffington Land had comprised 25% of its loan portfolio; its loans to CTMGT comprised another 31% of the portfolio; and its loans to CTMGT's affiliates comprised an additional 13%. In November 2015, UDF III filed an involuntary bankruptcy petition against Lennar Buffington Stonewall Ranch L.P. ("Lennar Buffington") reflecting UDF III's loan to Buffington Land with a balance of approximately \$106.5 million as of November 2015. UDF III's SEC filings prior to November 2015 do not appear to identify Lennar Buffington.

128. UDF III's SEC filings disclose lending to several affiliates of Buffington Land including the following entities: Buffington Asset Group; Buffington Hidden Lakes, Ltd.; Buffington Capital Homes, Ltd.; Buffington Texas Classic Homes, Ltd.; and Buffington Bushy Creek Ltd. UDF III's SEC filings also disclose lending to affiliates of CTMGT including the following: CTMGT Travis

Ranch, LLC; CTMGT Travis Ranch II, LLC; Centurion Acquisitions L.P.; and Shahan Prairie.

129. Shahan Prairie is among the affiliates of CTMGT to which UDF III made loans. UDF III was not the first affiliated entity to make loans to Shahan Prairie: UDF I and UDF II made loans to this entity in 2004. The affiliated entities' lending to Shahan Prairie serves as a clear example of Defendants' practice of causing successive affiliated entities to make loans to real estate developers that had borrowed from earlier affiliated entities.

130. As of January 2016, Shahan Prairie owned 102 acres of undeveloped land in Oak Point, Denton County, Texas. According to the UDF IV's Prospectus, UDF I made a loan to Shahan Prairie of approximately \$2.4 million in 2004. Denton County deed records indicate that Shahan Prairie paid interest on the loan at the rate of approximately 13% a year, a rate far in excess of market rates. The 102 acres of land remained undeveloped.

131. Denton County deed records show that UDF III made a loan of approximately \$1.9 million to Shahan Prairie in September 2007 that was secured by land. According to the UDF IV Prospectus, Shahan Prairie repaid the loan to Defendant UDF I in full in November 2007. UDF III increased its loan to Shahan Prairie from approximately \$1.9 million to \$2.5 million in September 2009; to

approximately \$3.4 million in April 2012; and to approximately \$4.8 million in February 2014.

132. In June 2015, UDF V made a \$18.1 million loan to Shahan Prairie with an interest rate of 13%. Immediately thereafter, Shan Prairie repaid its loan in full to UDF III.

133. More than 11 years after Defendant UDF I made the loan to Shahan Prairie, there remained no sign of development on the land in Denton County. There is no economic justification for Shahan Prairie's payment of interest on real estate development loans over a 12-year period at the rate of 13% for undeveloped land generating no revenue.

134. UDF III represented in its 8-K filing of December 14, 2015, that the 402 lots on Shahan Prairie are "currently under option contracts" with two real estate developers. This confirms that as of December 2015, over 11 years after Defendant UDF I made a loan to Shahan Prairie, there was still no contract to actually develop the land. CTMGT and its affiliates' indebtedness to affiliated entities is in excess of \$585 million. The average interest rate on these loans is approximately 13% for a total annual interest expense of approximately \$75 million per year.

135. As alleged *infra* (§ 242), the evidence indicates that CTMGT and its affiliates are insolvent and borrow at massive interest rates in order to keep up with

loan payments rather than to engage in legitimate real estate development activities, and that UDF III's loans to these entities are severely impaired. Similarly, as alleged *infra* (¶ 241), the Fiduciary Defendants caused UDF III to forgive over \$122 million in indebtedness owed to UDF III by Buffington Land, representing approximately 31% of UDF III's loan portfolio as of September 30, 2015.

136. In its 2012 Form 10-K, filed on March 31, 2013, UDF III identified several loans totaling nearly \$112 million that had matured but had not been repaid or extended as of December 31, 2012 and impaired eight of these loans. According to the SEC, “the largest of these loans, which was not impaired as the note was amended during March 2013, was a 2008 loan to [Buffington Land] that reflected an outstanding principal balance of \$76,999,000. The 2013 10-K filed on March 31, 2014 disclosed that the loan to [Buffington Land] was extended in March 2013 to a new maturity date of March 31, 2014, and increased to a new commitment amount of approximately \$85 million.” (SEC Compl. ¶ 37). The SEC determined that as of March 2014, “UDF knew or should have known that full collectability from [Buffington Land] was not probable and, at best, highly uncertain.” (SEC Compl. ¶ 37). Yet, UDF III recognized no specific impairment on its loan to Buffington Land in its Form 10-K filed on March 31, 2014, and in all subsequent periodic reports. (SEC Compl. ¶ 39). Instead, UDF III continued to

extend the maturity date and increase the loan until, on January 6, 2017, UDF III filed a Form 8-K announcing certain agreements with Buffington Land, including forgiveness of more than \$122 million of indebtedness. (SEC Compl. ¶ 40).

137. UDF III's Exhibit 10.2 to UDF III's January 6, 2017 Form 8-K filing states disclosing its forgiveness of Buffington Land's \$122 million in indebtedness states:

UDF III represents that as of 12:01 a.m. on the Effective Date, the outstanding principal balance of the UDF III Loan was \$112,521,174.66, and \$10,046,507.61 of interest was accrued and unpaid, for a total amount due to UDF III under the UDF III Loan of \$122,567,682.27. As of the Effective Date, but immediately prior to the effectiveness of this Assignment, UDF III forgives \$122,117,682.27 (forgiving all of the outstanding accrued but unpaid interest, plus \$112,071,174.66 of principal).

138. When the Fiduciary Defendants caused UDF III to make loans to the Developer Borrowers and their affiliates, they knew: (1) that there was inadequate collateral securing the loans; (2) that the Developer Borrowers were not economically viable and had suffered massive losses in the aftermath of the crash of the real estate bubble in 2007; (3) that the Developer Borrowers were not using loan proceeds to develop real estate consistent with the stated purpose of the loans but were rather using the proceeds to make loan payments to earlier creditors; (4) that the loans were inconsistent with UDF III's stated business objective of preserving capital and the best interests of the Partnership and the Limited Partners; and (5) that the Developer Borrowers would have no ability to repay the

loans absent a continuing influx of new investor capital. In addition, the Fiduciary Defendants knew that no prospective lender, acting at arm's length, would loan to the Developer Borrowers on terms that the Fiduciary Defendants were causing UDF III to loan to them. The Fiduciary Defendants' decisions to cause UDF III to make these loans were the products of malfeasance and self-interestedness and not the products of sound business judgment or consistent with the Partnership's objectives or the best interest of the Partnership and the Limited Partners.

139. The Fiduciary Defendants also caused UDF III to continually increase its loans to the Developer Borrowers through 2016 despite their knowledge that: (1) the Developer Borrowers were not economically viable and were facing mounting financial problems and mounting pressure from other creditors; (2) that there was inadequate collateral securing the increased loan amounts; (3) that the Developer Borrowers had failed to use the loan proceeds from UDF III to develop real estate consistent with the purpose of the loans; and (4) that the Developer Borrowers would have no ability to satisfy the loans to UDF III absent a continuing influx of new investor capital. The Fiduciary Defendants' decisions to cause UDF III to increase its existing loans to the Developer Borrowers were the products of malfeasance and self-interestedness and not the products of sound business judgment or consistent with the Partnership's objectives or the best interests of the Partnership and the Limited Partners.

2. *The Fiduciary Defendants Diverted UDF III's Receivables from the Developer Borrowers to Benefit UDF I*

140. In December 2007, UDF III originated a secured loan (the “CTMGT Loan”) to CTMGT and its subsidiaries. The CTMGT Loan commitment was originally \$25 million, and was subsequently increased to \$50 million in July 2008, to \$64.5 million in November 2011, to \$65.7 million in December 2014 and to \$112.9 million in July 2015.

141. The CTMGT Loan is a co-investment loan secured by multiple investments including current and future-acquired assets. These investments are cross-collateralized and are secured by collateral-sharing arrangements in subordinate liens covering finished lots and entitled land, pledges of the ownership interests in the borrowing entities, and guaranties. *The collateral-sharing arrangements allocate the proceeds of the co-investment collateral between UDF III and UDF I.*

142. Effective July 1, 2015, the Fiduciary Defendants caused UDF III to enter an agreement with CTMGT that modified the collateral-sharing arrangements with UDF I pursuant to the CTMGT Loan. This modification agreement permitted UDF III “at its option” to defer some or all of its 75% payment preference from time to time in order that CTMGT and its subsidiaries may pay UDF I instead.

143. Defendant Land Development owns a 49.99% subordinated profits interest in Defendant UDF I. Land Development, as well as the six Individual

Fiduciary Defendants who ultimately own Land Development, therefore benefitted directly from diversion of UDF III's receivables to UDF I. The Fiduciary Defendants' decision to cause UDF III to enter an agreement that permitted the Fiduciary Defendants to divert UDF III's receivables to UDF I was the product of malfeasance and self-interestedness and not the product of reasonable business judgment or consistent with the Partnership's objectives or the best interests of the Partnership and the Limited Partners.

VI. Defendants Have Continued the Scheme through their Operation of UDF IV and UDF V

144. Upon the termination of UDF III's securities offering in July 2009, Defendants began raising capital through Defendant UDF IV. Between 2009 and 2014, Defendant UDF IV raised approximately \$535 million (net of offering costs) through its primary offering and approximately \$36.5 million through its distribution reinvestment programs. Upon the termination of Defendant UDF IV's securities offering, Defendants began raising capital through UDF V. From July 2014 through September 2015, UDF V raised approximately \$55 million net of offering costs.

145. Defendants raised capital through UDF IV and UDF V for the purpose of funneling cash to their earlier affiliates, through the Developer Borrowers, in perpetuation of their scheme in the same way that Defendants had raised capital through UDF III for the purpose of funneling cash to UDF III's earlier affiliates.

As discussed in detail *infra*, the SEC's complaint filed in the SEC Action describes that UDF IV made loans to the Developer Borrowers in order that they could make loan payments to UDF III, and that UDF III used these proceeds to fund distributions to UDF III's Limited Partners.

146. The majority of capital raised through UDF IV and UDF V has been directed to earlier UDF-affiliated entities and the Developer Borrowers. As of September 30, 2015, Defendant UDF IV's assets were concentrated in loans to CTMGT and its affiliates (approximately 67% of its loan portfolio); Buffington Land affiliates (approximately 10% of its loan portfolio); and earlier affiliated entities (approximately 11% of its loans portfolio). UDF V's Form 10-Q for the period ending September 30, 2015 and the exhibits filed thereto indicate that approximately 62% of its assets were concentrated in loans to CTMGT as of this date.

147. As set forth *supra*, the Fiduciary Defendants caused UDF IV to purchase the Northpointe II Participation from UDF III through which the UDF NP Loan has been effectively transferred from UDF III to UDF IV. Similarly, as set forth *supra*, the proceeds of UDF V's loan to Shahan Prairie was used to repay UDF III, just as the proceeds of UDF III's loan to Shahan Prairie was used to repay UDF I.

VII. The SEC Action Against UDF III, UDF IV and Their Controllers

148. On December 11, 2015, UDF III and UDF IV revealed that they had “been cooperating since April 2014 with a nonpublic fact-finding investigation being conducted by the staff of the [SEC].” Subsequently, on October 18, 2016, UDF III revealed in a Form 8-K filing that UDF III and “certain individuals associated with [UDF III] and its general partner” had received ‘Wells Notices’ from the staff (“Staff”) of the SEC’s enforcement division stating that the SEC staff had made a preliminary determination to recommend that the SEC file an enforcement action against UDF III alleging violations of the Securities Act of 1933 (“Securities Act”) and the Exchange Act. UDF IV likewise announced on October 18, 2016 that UDF IV and certain individuals associated with it had received Wells Notices. In a joint response to the Wells Notices dated December 23, 2016, UDF III and UDF IV requested that the SEC Staff reject the Staff’s recommendation and not authorize an enforcement action.

149. On July 3, 2018, the SEC initiated the SEC Action alleging violations of the Securities Act and Exchange Act. On this date, the Consent Judgment against UDF III and UDF IV, and the Consent Judgment against Etter, Greenlaw, Wissink, and Obert were also filed. The SEC’s allegations in its complaint and the Consent Judgments entered against the Partnership and its controllers, which were based on materials obtained by subpoenas and searches and which followed a four-

year-long investigation, support Plaintiffs' claims asserted herein. Further, as set forth in detail *infra*, the SEC's allegations strongly support the futility of pre-suit demand on the Partnership's controllers and the grounds for tolling the limitations period.

150. The SEC alleges that UDF III's controllers engaged in a scheme through which they directed developers³, to which UDF III had made loans, to use loan proceeds from UDF IV to pay down principal and interest on the borrowers' outstanding loans to UDF III, in order that the controllers could continue to raise capital, generate fees and fund distributions to UDF III's controllers. (SEC Compl. ¶¶ 25-34). "Those developers did not use the new UDF IV money to advance the underlying UDF IV development projects, but instead – *at UDF's direction* – used it to pay down interest and principal on the developers' outstanding loans to UDF III. UDF III then used the funds that it received from the borrowers to make distributions to UDF III investors." (SEC Compl. ¶ 27.) (Emphasis in original.) "It was the lender (i.e., UDF) and not the borrower that initiated the transactions." (SEC Compl. ¶ 31.) UDF III's controllers caused UDF IV to make loans to the

³ The SEC does not specifically identify the "developers" in its complaint; however, information that the SEC provides in its complaint – including that UDF III received approximately \$80 million in loan payments between 2011 and 2015 funneled from UDF IV to UDF III through these "developers" (or funneled directly from UDF IV to UDF III) (SEC Compl. ¶ 30) – reveals that these "developers" included UDF III's largest non-affiliated borrowers: Buffington Land, CTMGT, and affiliates (i.e., the Developer Borrowers).

developers when UDF III required capital to make distribution payments to the Limited Partners. (*Id.*) “UDF’s reporting of these transfers created the appearance that UDF III was receiving enough money from operations on a monthly basis to support its ongoing distributions...” (SEC Compl. ¶ 28.) “UDF III investors were led to believe that their distributions were being paid from the operation of their fund.” (SEC Compl. ¶ 32.) “UDF III’s...annual reports on Forms 10-K, for at least the periods ended December 31, 2011 through December 31, 2014, and quarterly filings on Forms 10-Q for the periods ended December 31, 2011 through December 31, 2015 failed to adequately disclose the source of funds for UDF III’s distributions to investors.” (SEC Compl. ¶ 33.) “UDF III investors would have considered it important when making an investment decision that the true source of a portion of their received distributions were not actually coming from funds from operations as disclosed in UDF III’s filings...but instead were the results of transfers from UDF IV.” (SEC Compl. ¶ 34.)

151. The SEC gave special attention to the “loan to an Austin-based developer,” Buffington Land, one of the Developer Borrowers. The SEC alleges that by March 2014, UDF III’s controllers had possession of Buffington Land’s financial projections demonstrating Buffington Land’s inability to pay its loan balance to UDF III. (SEC Compl. ¶ 38). The SEC further alleges that UDF III’s controllers permitted the principal loan balance to increase from approximately

\$77 million as of March 2013 to more than \$122 million by January 2017, despite their knowledge that the loan was unrecoverable, while concealing the loan impairment from UDF III's Unit holders. (SEC Compl. ¶¶ 35-40). Specifically, the SEC stated that:

[t]he 2013 10-K, filed on March 31, 2014, disclosed that the loan to [Buffington Land] was extended in March 2013 to a new maturity date of March 31, 2014, and increased to a new commitment amount of approximately \$85 million. The disclosures further stated that fully collectability for this loan was considered probable. But, UDF knew or should have known that full collectability from the [Buffington Land] was not probably and, at best, highly uncertain.

(SEC Compl. ¶ 37).

152. Yet, despite knowledge as of March 2014 that Buffington Land was unlikely to repay the "loan," the SEC indicates that the loan "relationship" had ballooned to \$122 million, and due to Buffington Land's inability to pay back the loan, "[o]n January 6, 2017, UDF III filed a Form 8-K announcing certain agreements involving [Buffington Land], including UDF III's forgiveness of more than \$122 million indebtedness. (SEC Compl. ¶ 40).

153. The SEC also alleges that the Partnership's controllers took steps to conceal the impaired nature of the loan associated with its second-largest borrower, Buffington Land, from its auditors and the public – allowing them to conceal not only the poor state of the loan but also the Partnership's controllers' overall scheme. The SEC alleges that with Buffington Land's projections in hand, the

Partnership's controllers withheld the projections from UDF III's outside auditor and instead provided the auditor with fabricated projections, which showed Buffington Land paying off the loan in full. (SEC Compl. ¶ 38) In addition, the SEC alleges that "UDF III violated [Generally Accepted Accounting Principles (GAAP)] because it recognized no specific impairment on its loan to [Buffington Land] in UDF III's 2013 Form 10-K ... and in all subsequent periodic reports." (SEC Compl. ¶ 39). Further, the SEC alleges "[i]mpairment of the loan to [Buffington Land] was material to investors because it affected the status of the loan for UDF III's second-largest borrower." (SEC Compl. ¶ 39).

154. The Consent Judgment entered against Defendants Etter, Greenlaw, Wissink, and Obert permanently restrain them from further violations of Section 17(a)(2) and (3) of the Securities Act, further aiding and abetting violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, and further violations of Rule 13a-14 of the Exchange Act.

155. The Consent Judgment entered against them further require Defendants Etter, Greenlaw, Wissink, and Obert to pay disgorgement on a joint and several basis in the amount of \$6,809,282 plus interest of \$390,718, and requires each of them to make a payment of a civil penalty in the amount of \$250,000.

156. Under the terms of the Consent Judgment entered against them, Etter, Greenlaw, Wissink, and Obert are precluded from denying the SEC allegations:

Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; [and] (iii) upon the filing of this Consent, [each] Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint...

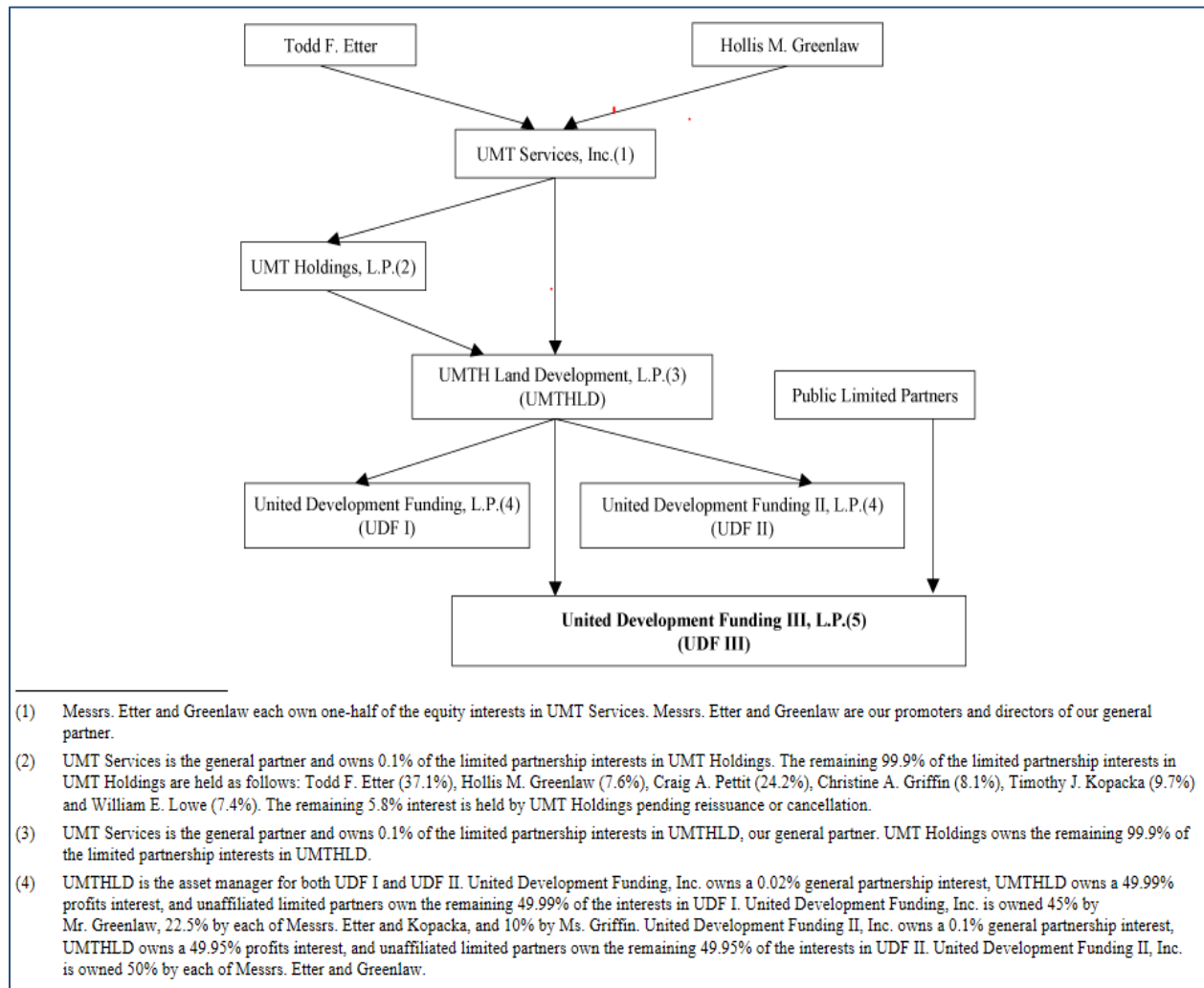
(Consent Judgment Against Etter, Greenlaw, Wissink, and Obert, Ex. 3 ¶¶10, 12.)

VIII. The Individual Fiduciary Defendants Exercised Control Over UDF III and Its Property and Therefore Owed Fiduciary Duties to UDF III

157. UMT Services has held out the Individual Fiduciary Defendants – Etter, Greenlaw, Wilson, Wissink, Obert and Youngblood – as the “key personnel” of Defendant Land Development who exercise control over UDF III and its property.⁴

⁴ UMT Services presently holds out Etter, Greenlaw, Wilson, Wissink, and Obert as the “key personnel.” See <http://www.udfonline.com/management-profiles> (last visited April 22, 2019.) As of March 2017, UMT Services also held as Youngblood as included among the “key personnel.”

158. From UDF III's inception, Defendants Etter and Greenlaw have been at the helm, as depicted in this chart in UDF III's Amendment No. 6 to Form S-11 Registration Statement filed with the SEC on May 12, 2006:



159. As represented in UDF III's Rule 424B3 Prospectus filing made with the SEC on May 18, 2006 ("5/18/2006 Prospectus"), UDF III "depend[s] on the....officers and employees of [its] general partner, including Todd F. Etter, Hollis M. Greenlaw and Jeff W. Shirley, *for the selection, acquisition, structuring*

and monitoring of [UDF III's] lending and investment activities..." (at p. 25, emphasis added). This prospectus makes clear that Etter and Greenlaw exercise control over UDF III and its property.

160. The 5/18/2006 Prospectus also holds out Defendants Etter, Greenlaw, Wilson and Obert as the "key personnel" who have controlled UDF III from its inception. *Id.* at p. 63.

161. Additionally, UDF III's 10-K for the year ended March 31, 2015, holds out Defendants Etter, Greenlaw, Wilson, Wissink, Obert and Youngblood as "key personnel" who manage UDF III, and states that "[o]ur success depends to a significant degree on the diligence, experience and skill of certain executive officers and other certain key personnel of our general partner, including Todd F. Etter, Hollis M. Greenlaw, Michael K. Wilson, Ben L. Wissink, Melissa H. Youngblood and Cara D. Obert."

162. With respect to the UMT Participation Agreement and UMT Loan Option, Wissink executed the agreements on behalf of UDF III on September 30, 2008 and Defendant Greenlaw executed the agreements on behalf of UDF I⁵. With respect to the UDF X Loan, Wissink executed a secured line of credit promissory note on behalf of UDF III on November 12, 2007 and Greenlaw executed it on

⁵ *See* https://www.sec.gov/Archives/edgar/data/1335732/000010139008000028/ex10_6.htm

behalf of UDF X.⁶ With respect to the UDF LOF Loan, Wissink executed a secured line of credit promissory note on behalf of UDF III on August 20, 2008 and Greenlaw executed it on behalf of UDF LOF.⁷ Defendant Wissink regularly exercises control over UDF III and its property.

163. Defendant Etter is: chairman, vice president and a director of UMT Services; and executive vice president of Land Development. Etter has also served as Land Development's executive vice president since 2003 and has served as chairman and a director of UMT Services since its formation. *See also, supra*, ¶ 31. Etter exercises control over UDF III and its property.

164. Defendant Greenlaw is president and chief executive officer of Land Development; and president, chief executive officer and a director of UMT Services. Greenlaw touts that he “directed the funding of over approximately \$237 million in loans and land banking transactions and over \$86 million of equity investments for UDF I and UDF II, and over \$132 million in loans for UDF III.” *See also, supra*, ¶ 32. Greenlaw exercises control over UDF III and its property.

⁶ *See* <https://www.sec.gov/Archives/edgar/data/1335732/000010139007000043/ex10-1.htm>

⁷ *See* https://www.sec.gov/Archives/edgar/data/1335732/000010139008000028/ex10_2.htm

165. Defendant Wilson has been the executive vice president and a director of UMT Services since August 2005. From August 2005 through June 2009, Wilson directed the capital raise of over approximately \$300 million in securities in UDF III and its affiliates through independent Financial Industry Regulatory Authority (“FINRA”) member broker-dealers. *See also, supra*, ¶ 33. Wilson exercises control over UDF III and its property.

166. Defendant Wissink is or has been at relevant times: president (since June 2011) and chief operating officer (from 2005 until 2011) of Land Development. *See also, supra*, ¶ 34. Wissink touts that he has directed the management of more than \$1.21 billion in loans and equity investments of UDF III and its affiliates, receiving more than \$592 million in repayments to date. As president and chief operating officer of Land Development, Wissink exercises control over UDF III and its property.

167. Defendant Obert, a Certified Public Accountant, has been the chief financial officer Land Development since August 2006. *See also, supra*, ¶ 35. In this role, Obert exercises control over UDF III and its property.

168. Youngblood is the chief operating officer of Land Development. *See also, supra*, ¶ 36. In this role, Youngblood exercises control over UDF III and its property.

169. UDF III's lending to affiliates and its guaranty agreements relating to affiliated parties' loan obligations were entered at the direction of and approval of the Individual Fiduciary Defendants.

170. Defendants Etter, Greenlaw and Wilson, in their capacities as directors of Defendant UMT Services advised the UDF III Limited Partners on March 23, 2016 that UMT Services had determined that UDF III would suspend the payment of distributions to the Limited Partners. They exercised control over UDF III's property when they made this decision as directors of UMT Services.

171. Defendants Etter, Obert and Greenlaw each signed UDF III's Certifications of Principal Financial and Executive Officers, Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, which, among other things, required them to attest that they were "responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e))" for UDF III, and that they "[d]esigned such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, *to ensure that material information relating to [UDF III]...is made known to us by others within those entities....*" Etter, Obert, and Greenlaw each certified that they were controlling persons of UDF III when they signed the following documents filed with the SEC:

Filed With:	Etter	Obert	Greenlaw
Form 10-Q for the 1 st Q 2006, dated June 29, 2006	X	X	--
Form 10-Q for the 2nd Q 2006, dated August 14, 2006	--	X	--
Form 10-Q for the 3d Q 2006, dated November 14, 2006	----	X	--
2006 Form 10-K	--	X	X
1 st Q 2007 Form 10-Q dated May 15, 2007	---	X	X
2nd Q 2007 Form 10-Q dated August 14, 2007	--	X	X
3rd Q 2007 Form 10-Q dated November 14, 2007	--	X	X
2007 Form 10-K	--	X	X
1 st Q 2008 Form 10-Q dated May 15, 2008	--	X	X
2nd Q 2008 Form 10-Q, dated August 14, 2008	--	X	X
3rd Q 2008 Form 10-Q dated November 14, 2008	--	X	X
2008 Form 10-K	--	X	X
1 st Q 2009 Form 10-Q dated May 15, 2009	--	X	X
2nd Q 2009 Form 10-Q, dated August 14, 2009	--	X	X
3rd Q 2009 Form 10-Q dated November 19, 2009	--	X	X
2009 Form 10-K	---	X	X
1 st Q 2010 Form 10-Q dated May 17, 2010	---	X	X

2nd Q 2010 Form 10-Q, dated August 16, 2010	--	X	X
3rd Q 2010 Form 10-Q dated November 15, 2010	---	X	X
2010 Form 10-K	--	X	X
1 st Q 2011 Form 10-Q dated May 16, 2011	--	X	X
2nd Q 2011 Form 10-Q, dated August 12, 2011	--	X	X
3 rd Q 2011 Form 10-Q dated November 14, 2011	--	X	X
2011 Form 10-K	--	X	X
1 st Q 2012 Form 10-Q dated May 15, 2012	---	X	X
2nd Q 2012 Form 10-Q, dated August 14, 2012	--	X	X
3 rd Q 2012 Form 10-Q dated November 14, 2012	--	X	X
2012 Form 10-K	--	X	X
1 st Q 2013 Form 10-Q dated May 14, 2013	---	X	X
2nd Q 2013 Form 10-Q, dated August 14, 2013	--	X	X
3 rd Q 2013 Form 10-Q dated November 14, 2013	--	X	X
2013 Form 10-K	--	X	X
1 st Q 2014 Form 10-Q dated May 15, 2014	---	X	X
2nd Q 2014 Form 10-Q, dated August 14, 2014	--	X	X

3 rd Q 2014 Form 10-Q dated November 14, 2014	--	X	X
2014 Form 10-K	--	X	X
1 st Q 2015 Form 10-Q dated May 15, 2015	---	X	X
2nd Q 2015 Form 10-Q, dated August 14, 2015	--	X	X
3 rd Q 2015 Form 10-Q dated November 16, 2015	--	X	X

IX. Land Development Violated the Partnership Agreement

A. Defendant Land Development Caused UDF III to Concentrate More than 20% of Its Offering Proceeds in Loans to Each of Three Individual Borrowers in Violation of the Partnership Agreement

172. The Partnership Agreement limits the exposure of UDF III and the Limited Partners to, among other things, concentrated credit risks, transactions with affiliates and investments in unimproved real property. Specifically, Section 11.3(b) of the Partnership Agreement provides: “[t]he Partnership may not invest in or make mortgage loans to or from any one borrower that would exceed, in the aggregate, an amount greater than 20% of the Offering proceeds.”

173. UDF III raised gross proceeds of approximately \$410.4 million through its securities offerings, or approximately \$370.8 million net of offering costs. The Partnership Agreement distinguishes between “Offering proceeds” and “gross Offering proceeds.” It is clear that the 20% limit is based upon “Offering

proceeds” net of offering expenses. The 20% Offering proceeds limit (the “20% Offering Proceeds Limit”) therefore contractually prohibits UDF III from lending more than approximately \$74.2 million (20% of UDF III’s net offering proceeds of \$370.8 million) to any one borrower.

174. Starting with its 10-K filing for 2011, UDF III has provided summary information concerning certain of its loans to Defendant UDF I and its affiliates, CTMGT and its affiliates, and Buffington Land and its affiliates. The loans to these entities are reported as percentages of the outstanding balance of “UDF III’s portfolio.” The term “UDF III’s portfolio” is undefined but appears to include notes receivable (net) and the UMT Participation Interest, excluding other assets on the balance sheet including cash and cash equivalents, restricted cash, accounts receivable, accrued interest, and “other assets.”

175. UDF III’s lending to Defendant UDF I, through the UMT Loan and through its lending to wholly-owned affiliates, continuously exceeded the 20% Offering Proceeds Limit of \$74.2 million limit between 2010 and 2014.

176. As of December 31, 2010, UDF III’s lending to Defendant UDF I and its subsidiaries included the UMT Participation Interest balance of approximately \$57.8 million; the UDF I Loan balance of approximately \$11.1 million; the UDF NP Loan balance of approximately \$10.1 million; and additional loan balances of approximately \$8.7 million and approximately \$2.8 million. UDF III’s total

balance of loans due from Defendant UDF I and its subsidiaries was approximately \$90.5 million, well in excess of the 20% Offering Proceeds Limit of \$74.2 million.

177. As of December 31, 2011, UDF III's lending to UDF I and its affiliates included the UMT Participation Interest balance of approximately \$66.2 million; the UDF I Loan balance of approximately \$12.6 million and additional loan balances of approximately \$11.6 million and approximately \$4.2 million. UDF III's total balance of loans due from Defendant UDF I and its subsidiaries was approximately \$94.6 million, well in excess of the 20% Offering Proceeds Limit of \$74.2 million.

178. As of December 31, 2012, UDF III's lending to UDF I and its subsidiaries included the UMT Participation Interest balance of approximately \$75.2 million; the UDF I Loan balance of \$12.9 million; and the UDF NP Loan balance of approximately \$13.4 million. UDF III's total balance of loans due from UDF I and its affiliates was approximately \$101.5 million, well in excess of the 20% Offering Proceeds Limit of \$74.2 million.

179. As of December 31, 2013, UDF III's lending to UDF I and its subsidiaries included the UMT Participation Interest balance of approximately \$70.8 million; and the UDF NP Loan balance of approximately \$9.1 million. UDF III's total balance of loans due from UDF I and its subsidiaries was approximately \$79.9 million, well in excess of the 20% Offering Proceeds Limit of \$74.2 million.

180. As of December 31, 2014, UDF III's lending to UDF I included the UMT Participation Interest balance of \$74.6 million, in excess of the 20% Offering Proceeds Limit of \$74.2 million.

181. UDF III's 10-Q filing for the period ended September 30, 2015 states that its loan to Buffington Land amounted to 25% of its portfolio, or approximately \$93.5 million. This is well in excess of the 20% limit of \$74.2 million. The involuntary bankruptcy petition that UDF III filed against Lennar Buffington in November 2015 shows a secured loan balance of \$106.5 million. In December 2016 UDF III forgave in excess of \$122 million owed jointly and severally by Buffington Land and its affiliates on a loan, well in excess of the 20% Offering Proceeds Limit of \$74.2 million.

182. UDF III's 10-K filings for 2011 through 2014 state that percentages of the loan portfolio attributable to Buffington Land were 20%, 21%, 21%, and 23% respectively. Based upon these representations, it appears that the 20% Offering Proceeds Limit of \$74.2 million was first exceeded in 2014. The SEC alleges that the balance of UDF III's loan to Buffington Land was approximately \$77 million as of March 2013. (SEC Compl. ¶ 37).

183. UDF III's SEC filings characterize the \$122 million in indebtedness of Buffington Land that the Fiduciary Defendants caused UDF III to forgive in December 2016 as indebtedness for a single loan. For example, the assignment

and assumption of risk agreement that was filed as Exhibit 10.2 to UDF III's January 6, 2017 Form 8-K filing states:

UDF III represents that as of 12:01 a.m. on the Effective Date, the outstanding principal balance of the UDF III Loan was \$112,521,174.66, and \$10,046,507.61 of interest was accrued and unpaid, for a total amount due to UDF III under the UDF III Loan of \$122,567,682.27. As of the Effective Date, but immediately prior to the effectiveness of this Assignment, UDF III forgives \$122,117,682.27 (forgiving all of the outstanding accrued but unpaid interest, plus \$112,071,174.66 of principal). (Emphasis added.)

184. The SEC (in the SEC Action) has likewise specifically characterized Buffington Land's indebtedness to UDF III as resulting from a single loan. The SEC refers to the Buffington Land loan as the "loan to the Austin Borrower" (SEC Compl. ¶¶ 37-40); describes that the "Austin Borrower" provided UDF III with a cash flow projection (the "Borrower Projection") for the loan (SEC Compl. ¶ 37); and describes that the Borrower Projection demonstrated that the "Austin Borrower would be unable to repay the loan with cash." (*Id.*). From these allegations, it is plain that UDF III's controllers caused UDF III to exceed the Offering Proceeds Limit in violation of the Partnership Agreement: UDF III's loans to one borrower – Buffington Land i.e., the "Austin Borrower" – exceeded 20% of the Offering proceeds by a wide margin.

185. As of September 30, 2015, loans to CTMGT "comprise 31% of the outstanding balance of UDF III's portfolio....and [loans to] certain of its affiliated entities.... comprise an additional 13% of the outstanding balance." Based upon

an estimated portfolio balance of \$373.8, the loans to CTMGT amounted to approximately \$115.9 million as of this date, well in excess of the 20% Offering Proceeds Limit of \$74.2 million.

186. UDF III's 2011 10-K filing states that loans to CTMGT and affiliates represented 29% and 13% of the outstanding portfolio balance respectively. Based upon these representations, it appears that UDF III's loans to CTMGT exceed the 20% Offering Proceeds Limit of \$74.2 million was exceeded before December 2011.

B. Defendant Land Development Caused UDF III to Exercise the UMT Participation Interest Option without Obtaining Independent Appraisals

187. The Partnership Agreement requires that loans, and particularly transactions with Defendant Land Development and its Affiliates, must be supported by independent appraisals. In this regard, Section 11.3(c) of the Partnership Agreement provides:

“ (c) All mortgage loans must be supported by an appraisal of the property which secures the loan, which shall be prepared by a Competent Independent Expert⁸. [] The appraisal shall be maintained in the Partnership's records for at least five (5) years

⁸ Section 3.17 defines “*Competent Independent Expert*” as “a Person with no material current or prior business or personal relationship with the Sponsor who is engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by the Partnership and who is qualified to perform such work.”

and shall be available for inspection and duplication by any Limited Partner. ...”

188. And, Section 13.3 of the Partnership Agreement provides:

13.3 *Loans.* No loans may be made by the Partnership to the General Partner or its Affiliates except in compliance with the terms Section 13.3.

(a) The Partnership may provide mortgage loans to Affiliates of the General Partner only if such mortgage loans meet the following conditions:

(i) Loans may be made to Affiliates of the General Partner in connection with transactions in which the General Partner or its Affiliate is participating in a joint venture with a developer or homebuilder to facilitate a FASB Interpretation No. 46 compliant structure. Any such loan must include all of the following terms: (a) the loan must be secured by a first of junior lien on residential real estate (or real estate to be developed into residential real estate), (b) the loan amount, inclusive of all indebtedness provided by the Partnership, shall not exceed 80% of the appraised value of the property securing the indebtedness, (c) the Affiliate of the General Partner may not own directly or indirectly more than 50% of the borrowing entity, (d) the borrowing entity provides a minimum equity contribution of not less than 20% of the property acquisition price, (e) the rate of interest shall not be less than the highest rate charged by the Partnership to unaffiliated borrowers, and (f) the loan shall provide recourse to the borrower of not less than 100% of the loan amount; or

(ii) An Independent Adviser issues an opinion to the effect that the proposed loan to an Affiliate of the General Partner is fair and at least as favorable to the Partnership as a loan to an unaffiliated borrower in similar circumstances. In addition, the General Partner will be required to obtain a letter of opinion from the Independent Adviser in connection with any disposition, renegotiation, or other subsequent transaction involving loans made to the General Partners or an Affiliate of the General Partner. The Independent Adviser must be

identified in the initial Prospectus. The Independent Adviser's compensation must be paid by the General Partner and not be reimbursable by the Partnership.

(b) Loans made to third parties, the proceeds of which are used to purchase or refinance a property or other asset in which the General Partner or an Affiliate has an equity or security interest, must meet the requirements of subparagraph (a)(i) or (a)(ii) of this Section 13.3.

189. Defendant Land Development failed to cause UDF III to obtain the required appraisals of the properties and collateral supposedly supporting the UMT Loan. Even in April 2015, when UDF III exercised the UMT Option to take the direct interest in the UMT Loan with Defendant UDF I, UDF III did not to obtain any appraisals of the collateral or other assurance that the loan was properly secured.

X. UDF III is in Turmoil.

190. As of September 2015, more than 90% of UDF III's loan portfolio consisted of loans to: CTMGT and its affiliates; Buffington Land and Lennar Buffington; Defendant UDF I and its subsidiaries; and Defendant UDF X. As of this date, UDF III had guaranteed repayment of loans by subsidiaries of UMT, UDF I, and UDF IV pursuant to guaranty agreements.

191. There is a systematic default risk across the affiliated entities as a result of the web of lending relationships among the affiliated entities and the Developer Borrowers. The concentration of assets by other affiliated entities in

loans to related parties and the Developer Borrowers magnifies the default risks facing UDF III.

192. With respect to its loans and guaranties, UDF III received neither adequate compensation nor protection for the risks that it assumed, as highlighted by events set forth herein.

193. UDF III's injury is confirmed by UDF III's 12/5/2016 Form 8-K In, attaching a December 5, 2016 Letter to the Limited Partners signed by Defendants Etter, Greenlaw and Wilson, as the Board of Directors of Defendant UMT Services ("UDF III 12/5/2016 Form 8-K") (emphasis added) in which it was stated:

UDF III clients rely on third party lenders, including regional banks and the UDF family of funds, to fund ongoing development costs. *These events have had an impact on the Fund's operations and financial condition, and have impeded the Fund's ability to maintain outstanding debt and to access both debt and equity capital.*

A. The FBI Raid

194. On February 18, 2016, law enforcement authorities executed a federal search warrant at UDF III's corporate office in Grapevine, Texas. In addition, the law enforcement officers served executive officers of UDF III and its general partner, Land Development, as well as certain other employees of UDF III's general partner Land Development and its affiliates, with grand jury subpoenas seeking the production of documents related to the operations of UDF III.

195. UDF III acknowledged the February 18, 2016 raid and subpoenas in a February 22, 2016 Form 8-K, which was signed by Defendant Greenlaw as “President and Chief Executive Officer” of UMT Services, as the general partner of the Partnership’s General Partner.

196. As of the date hereof, UDF III has not publicly provided in any SEC filing, any further update on the FBI raid and subpoenas.

B. UDF III and its SEC-Reporting Affiliates Fail to File Required Reports and Financial Statements

197. On November 19, 2015, Whitley Penn resigned as the public accounting firm for UDF III, UDF IV and UMT.

198. Over six months later, on June 30, 2016, UDF III, UDF IV and UMT publicly announced that they had retained EisnerAmper LLP to audit their respective 2015 and 2016 year-end financial statements, to review their 2016 quarterly statements, and to assist in the filing of the corresponding Form 10-K and Form 10-Q filings.

199. As of the date hereof, UDF III, UDF IV and UMT have failed to file annual and quarterly reports for all periods subsequent to the quarter ended on September 30, 2015. Instead, they each have filed with the SEC quarterly notifications of their inability to timely file their respective periodic reports.

200. On October 16, 2017, the SEC entered an order revoking UMT's registration of securities on account of its failure to file periodic reports since the third quarter of 2015.

201. On October 3, 2018, UDF III and UDF IV announced through 8-K filings with the SEC that they had received an Order Instituting Administrative Proceedings and Notice of Hearing Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against them dated September 27, 2018 ("Order Instituting Administrative Proceedings")⁹ alleging that they failed to comply with Section 13(a) of the Exchange Act, and Rules 13a-1 and 13a-13 thereunder, by failing to file periodic reports.

C. UDF III's Loss of LP Unit Value

202. On December 5, 2016, UDF III filed a Form 8-K with the SEC which signaled a reduction in the stated value of LP Units from the \$20.00 stated by UDF III on March 6, 2015.

203. The 12/5/2016 Form 8-K (signed by Defendant Greenlaw as "President and Chief Executive Officer" of Defendant UMT Services, as General Partner of Defendant Land Development) stated that "UDF III is not able to provide an updated estimated value until it has filed its year-end 2015 and 2016

⁹ The Order Instituting Administrative Proceedings is incorporated herewith and is attached hereto as Exhibit 6.

quarterly financial statements, but intends to determine an updated estimated value after such financial statements are filed.”

D. UMT Signaled Asset Impairments and Lower Share Value

204. Pursuant to FINRA regulations, UMT is required to determine and provide to its stockholders estimated values of its shares on an annual basis. The most recent estimated value was determined by UMT as of September 30, 2015. However, UMT reported in January 2017, that is not able to provide an updated estimated value until it has filed its 2016 quarterly (unaudited), year-end 2015 and 2016 (audited) financial statements, but intends to provide an updated estimated value when financial statements are filed. UMT also stated that, “[u]ntil UMT determines an updated estimated value, customer account statements provided to the Trust’s shareholders will reflect no value reported or N/A.”

E. Land Development Ceased the Payment of Distributions to Limited Partners in February 2016

205. Historically, the Limited Partners received distributions from UDF III. From UDF III’s inception through November 2015, monthly distributions were paid to the Limited Partners as a 9.75% annualized return, assuming a purchase price of \$20.00 per unit, on a pro rata basis based on the number of days the Limited Partner has been invested in UDF III. The Limited Partners either received their distributions in cash or reinvested the distributions in LP Units. As

of September 30, 2015, approximately \$80.1 million of LP distributions were *reinvested* in LP Units.

206. On January 29, 2016, the Limited Partners received a distribution in the amount of \$6.04 per LP Unit. The January 2016 distribution was the last distribution received by the Limited Partners.

207. On March 23, 2016, Defendants Etter, Greenlaw, and Wilson sent a letter to the Limited Partners notifying them that the UMT Services Board of Directors had determined to suspend the payment of distributions to the Limited Partners. The letter states: “we feel it is prudent for UDF III to preserve cash as we continue to work with UDF III’s borrowers to determine their capital requirements.”

208. In UDF III’s December 5, 2016 Form 8-K, Limited Partners were told that “[t]he amounts and timing of fund distributions will be determined after UDF III files its audited financials and future working capital needs have been assessed.”

209. As of the hereof, the LP Unit holders have received no further distributions.

210. As set forth *infra* (¶¶ 261-264), to the extent that UDF III has had Cash Available for Distribution since January 2016 pursuant to the formula set

forth in the Partnership Agreement, the Fiduciary Defendants have violated the Partnership Agreement by their failure to distribute it to the Limited Partners.

F. UDF III's \$122 Million Loan to Buffington Land Was Wiped Out in December 2016

211. UDF III is listed in the debtor's schedules of the Lennar Buffington bankruptcy proceeding as holding a \$106.5 million claim. UDF I is listed in the debtor's schedules as holding a \$30.7 million claim.

212. The indebtedness to UDF III is described as follows: "The Debtor *and the other land-owning entities controlled by Buffington Homes* also incurred a debt in excess of \$100 million to United Development Funding III, LP., which is also collateralized by their real property. This debt was guaranteed up to \$5 million by Thomas B. Buffington."

213. The Second Amended Joint Plan of Reorganization by UDF I, UDF III and Lennar Buffington, signed by Defendant Greenlaw on behalf of UDF I and UDF III, and entered on September 23, 2016, provides for the treatment of UDF III's \$106.5 million claim, and UDF I's \$9.07 million claim (the unsecured portion of UDF I's \$30.7 million claim) as unsecured, impaired, and for which UDF III and UDF I will receive no distribution under the Plan.

214. Importantly, the bankruptcy filings reveal that the land owned by Lennar Buffington, remained undeveloped (*no development* has occurred), had been posted for foreclosure as of November 30, 2015 by PNC Bank (which loaned

Buffington \$35 million), had been appraised by CBRE, Inc. for PNC Bank as of April 27, 2015 at \$6.4 million, and the property was sold in late 2016 for \$16 million.

215. Buffington Land had no ability to satisfy its loans to UDF III. UDF III's loan has been impaired for several years but the Fiduciary Defendants concealed the impairment and never caused UDF III to record any impairment expense. As stated in the SEC Complaint, the Fiduciary Defendants knew Buffington Land was unable to pay, yet continued to extend and modify the loan and report false information to the limited partners. (SEC Compl. ¶¶ 37, 40). In fact, the SEC concluded that the Fiduciary Defendants falsified information provided to the auditor to hide the truth about the condition of the assets of the borrower. (SEC Compl. ¶ 38).

216. In addition, because UDF I has suffered substantial losses through its investment in entities affiliated with Lennar Buffington, the ability of UDF I to fulfill its obligation to UDF III resulting from the \$71.2 million UMT Participation Interest has been impaired.

217. UDF III forgave a \$122 million loan owed by Buffington Land and its affiliates to UDF III. Effective December 14, 2016, Defendants Land Development, UMT Services, and Greenlaw caused UDF III (as well as UDF IV, UDF I, UDF X) to enter into an agreement **releasing** Buffington Land and its

affiliates and subsidiaries from any and all liabilities, including forgiveness of UDF I's \$33,442,945 loan and UDF III's \$122,117,682 loan, in exchange for "6 finished residential lots and approximately 4.56 acres of land in Pflugerville, Travis County, Texas." The Fiduciary Defendants did so knowing that Buffington Land and its affiliates knew the Fiduciary Defendants committed misconduct with the Partnership's assets.

218. On January 6, 2017, UDF III reported through a Form 8-K filed with the SEC: "[e]ffective as of December 31, 2016, UDF III, together with certain of its affiliates and subsidiaries, entered into various assignments and a release agreement with Buffington Land Development [LLC] and certain of its affiliates and subsidiaries." According to the 1/1/2017 Form 8-K, the transaction involved, among other things an assignment by Buffington Land of 100% of the membership interests in BLD VOHL 6A-1, LLC ("VOHL"), a Texas limited liability company, to LD Equity LLC, a Texas limited liability company jointly owned by UDF III and UDF I; an agreement by UDF I to forgive \$33,442,945.74 of indebtedness under a loan made by UDF I to Buffington Land affiliates and an agreement by UDF III to forgive \$122,117,682.27 of indebtedness under a loan to Buffington Land; and a release agreement by and among UDF I, UDF III, UDF IV, UDF X and United Residential Home Finance, LP (an entity affiliated with UMT), and their subsidiaries, successors, assigns and affiliates, and Buffington Land and its

affiliates, pursuant to which parties released all claims against each other in connection with any loan to Buffington Land and its affiliates.

219. According to the 1/6/2017 Form 8-K, VOHL owns 6 finished residential lots and approximately 4.56 acres of land in Travis County, Texas.

220. The 1/6/2017 Form 8-K also states that: “This transaction may have a material adverse impact on UDF III’s financial statements.”

221. The 1/6/2017 Form 8-K was signed by Defendant Greenlaw as “President and Chief Executive Officer” of Defendant UMT Services, as general partner of Land Development. In addition, the assignment and assumption of interests and release agreement was signed on behalf of UDF III by Defendant UMT Services, as general partner of Land Development.

G. CTMGT

222. UDF III will be forced to record impairments on its loans to CTMGT and its affiliates. CTMGT appears to be insolvent for several reasons including: (1) its loans to UDF III and Defendant UDF IV are not repaid when the loans mature and become due; (2) CTMGT recently defaulted on a first lien loan to a third-party lender and a second lien loan due to Defendant UDF IV that was secured by land in Denton County, Texas; (3) several mechanics and materialmen’s liens have been filed related to CTMGT in various North Texas counties; and (4) CTMGT has massive contractually-obligated interest expense.

H. UDF IV

223. As of September 2015, Defendant UDF IV represented approximately \$85 million of UDF III's \$96.8 million credit risk under the repayment guaranty agreements. Because of UDF IV's financial condition and problems, as alleged in the following paragraphs, UDF III's assets and value are at risk, and its ability to continue as a going concern is uncertain.

224. On October 30, 2015, Defendant UDF IV was named as a defendant in a lawsuit filed in state court in Texas (*Hanna/Magee L.P. #1 v. BHM Highpointe Ltd., et al.* Cause No. D-1-GN-15-004985). The lawsuit's allegations including the following: (1) plaintiff was retained by BHM Highpointe Ltd. ("BHM"), an affiliate of Buffington Land, to manage a real estate development project; (2) that plaintiff was to receive a profits interest from the project; (3) that Buffington Land took a distribution from BHM in the form of a loan at a time when "Buffington Land had no ability to repay any loan from [BHM] and failed to do so"; (4) that "[BHM] transferred to Buffington Land certain valuable property and/or property rights"; (5) that Buffington Land used these properties and/or property rights to obtain a loan; and (6) that Buffington repaid loans to UDF V using the proceeds of the loans that it improperly received.

225. On February 18, 2016, upon the news of the FBI's raid, UDF IV stock dropped more than 50% before trading in UDF IV stock was halted. Trading in UDF IV has not since resumed as of the filing of this Amended Complaint.

226. Stockholders of UDF IV filed class action lawsuits against the company in the U.S. District Court for the Northern District of Texas for securities fraud, which cases were subsequently consolidated. The plaintiffs alleged that defendants made false and/or misleading statements and/or failed to disclose: (i) that subsequent UDF companies provide significant liquidity to earlier vintage UDF companies, allowing them to pay earlier investors; (ii) that if the funding mechanism funneling retail capital to the latest UDF entity were halted, the earlier UDF entities would not be capable of standing alone, and the entire structure would likely crumble with investors left holding the bag; (iii) that UDF IV provided liquidity to UDF I, UMT and UDF III, among other affiliates, further exacerbating the problem and perpetuating the scheme; (iv) that, as such, defendants were operating a Ponzi-like real estate mortgage investing scheme; (v) that the SEC was investigating UDF IV; and (vi) that, as a result of the foregoing, defendants' statements about UDF IV's business, operations, and prospects, were false and misleading and/or lacked a reasonable basis. A settlement agreement was reached, the court held a final settlement approval hearing on February 15, 2019,

and the court entered a Final Judgment Approving Class Action Settlement on February 22, 2019.

227. On June 2, 2016, UDF IV announced that it received notice on May 26, 2016 from the Listing Qualifications Staff (the “Staff”) of the NASDAQ that the Staff had determined to delist UDF IV’s securities due to its non-compliance with NASDAQ Listing Rule 5250(c)(1), which requires the timely filing of all required periodic reports with the SEC, as UDF IV had not yet filed its Form 10-K for the fiscal year ended December 31, 2015 and Form 10-Q for quarter ended March 31, 2016. On October 17, 2016, UDF IV received written notice from NASDAQ of the determination by the Staff to suspend the trading of UDF IV’s common shares and to delist UDF IV’s securities because of UDF IV’s failure to file periodic reports with the SEC. UDF IV subsequently appealed the Staff’s determination to the NASDAQ Listing and Hearing Review Council (the “Listing Council”). On January 20, 2017, the Listing Council affirmed the decision of the Staff to place into effect a trading suspension of UDF IV’s common shares and to delist UDF IV’s securities from the NASDAQ. On May 18, 2017 the NASDAQ filed a Notice of Removal from Listing and/or Registration Under Section 12(b) of the Exchange Act with the SEC on Form 25; UDF IV’s securities were delisted 10 days thereafter.

228. Further, on May 23, 2016, Defendant UDF IV made a Form 8-K filing with the SEC in which it announced that it had defaulted on a \$35 million term loan from an unaffiliated party. UDF IV further announced: (a) that it had reached an agreement with the successors-in-interest to the loan under which the successors-in-interest agreed to forbear from exercising any of their default-related rights against UDF IV during a forbearance period extending until August 4, 2016; (b) that UDF IV would make a payment of accrued interest and a portion of principal; that the forbearance period would terminate immediately if UDF IV failed to meet or maintain certain representations, warranties, terms, conditions and covenants of the forbearance agreement; (c) that UDF IV would suspend its shareholder distributions; (d) that UDF IV would use a portion of its future available cash flow to pay interest and principal under the loan; that it would provide certain financial reporting to the lender; (e) that it would not originate any new mortgage loans, incur additional debt, grant or substitute collateral to any other lender; or dispose of assets without first obtaining the consent of the lender; and (f) that the balance of the loan as of May 23, 2016 was \$28.5 million. Then, on October 18, 2016 UDF IV disclosed that it had received a “Wells Notice” from the Staff stating that the Staff had made a preliminary determination to recommend that the SEC file an enforcement action against UDF IV alleging violations of certain federal laws, and that individuals associated with UDF IV and UDF IV’s

advisor received similar Wells Notices. On December 23, 2016, UDF IV, *together with UDF III*, submitted a joint response to the “Wells Notice” requesting that the SEC reject the Staff’s recommendation and not authorize an enforcement action against the Companies. As discussed in detail *supra*, the SEC initiated the SEC Action against UDF IV, UDF III, and certain of their controlling persons in July 2018 which resulted in entry of the Consent Judgments.

229. ***Importantly***, on December 30, 2016 UDF IV reported that “[t]he total owed by UDF IV under lines of credit and notes payable has been reduced from approximately \$170.9 million at September 30, 2015 to approximately \$18.4 million as of December 30, 2016” without any explanation as to how such reduction was accomplished, ***including whether it was paid down by UDF III through the guaranties.***

230. The Fiduciary Defendants have caused UDF III to execute four Repayment Guaranties to Defendant UDF IV with UDF III’s assets at risk. *See ¶ 118, supra.*

I. UMT

231. UMT announced on January 24, 2017 that the “liquidation of the UMT portfolio is substantially complete,” that UMT’s “non-performing assets have been sold”, and “[d]efficiency notes and recourse obligations from affiliates now represent the primary assets of [UMT].” Such statements were made in a

Form 8-K filing on 1/25/2017. UMT has not filed any audited financial statements or quarterly or annual reports with the SEC since November 15, 2013, and as noted *supra*, on October 16, 2017, the SEC entered an order revoking UMT's registration of securities

J. UDF V

232. The registration statement on Form S-11 filed by UDF V and declared effective on July 25, 2014 permitted UDF V to sell 37,500,000 shares of common stock at a price of \$20.00 per share. However, UDF V raised only approximately \$55 million through its primary offering, far short of its \$750 million target.

233. On or around March 4, 2016, UDF V announced that it was terminating its securities offering due to the revelation of the Ponzi-scheme and the following:

- a. On November 12, 2015, the Securities Division of the Secretary of the Commonwealth of Massachusetts charged RCS with fraudulent casting of shareholder proxy votes on investment programs sponsored by its affiliate AR Capital, LLC ("AR Capital"). RCS was UDF V's dealer-manager and AR Capital was UDF V's co-sponsor.
- b. On November 30, 2015, UDF V filed a Form 8-K disclosing that its Board of Directors had accepted the resignation of Kahane, one of its directors. Kahane is affiliated with RCS, AR Capital and with

American Realty Capital Residential Advisors, LLC (“ARCR Advisors”), UDF V’s external advisor.

- c. The holding company for RCS was RCS Capital Corp. This entity was controlled by Nicholas Schorsch (“Schorsch”), an individual who controlled several non-traded REITS including American Realty Capital Partners, Inc. (“ARCP”) (now known as VEREIT, Inc.). RCS Capital Corp. began its descent in October 2014: on or around October 29, 2014, ARCP announced through an 8-K filing that there had been accounting errors in its financial statements that “were identified but intentionally not corrected.” On this news, the market price of RCS Capital Corp.’s stock, and ARCP’s stock, (both publicly-traded) plummeted. The disclosure of ARCP’s wrongdoing has led to increased scrutiny of several entities controlled by Schorsch. The increased scrutiny has uncovered wrongdoing by other Schorsch-controlled entities, including wrongdoing by RCS.
- d. On or around December 2, 2015, RCS announced that it would discontinue operations and pay a fine of \$3 million to Massachusetts’ securities regulator.
- e. On or around January 31, 2016, RCS Capital Corp. filed a petition for Chapter 11 bankruptcy protection.

- f. On November 24, 2015, UDF V announced that Whitley Penn resigned as its auditor.
- g. On or around March 4, 2016, UDF V announced that it was terminating its securities offering.
- h. UDF V has not filed any periodic report with the SEC since the third quarter of 2015.

234. As of September 30, 2015, approximately 62% of UDF V's loan portfolio was concentrated in loans to CTMGT and its affiliates.

K. UDF X

235. Defendant UDF X is unable to make timely payments on its loan obligations to UDF III; Defendant UDF X stopped making payments to UDF III in 2014.

236. The Fiduciary Defendants have caused the original maturity date to be extended four times, and there is no indication that Defendant UDF X will be able to satisfy its \$16 million loan obligation to UDF III by November 11, 2016 (the current maturity date).

XI. UDF III Has Suffered Massive Permanent Losses Through Its Investments in Loans to Related Parties and to the Developer Borrowers

237. The value of loans decline when borrowers become unable to satisfy them. GAAP require a creditor to record impairment loss, representing a

permanent loss to the value of the asset, with respect to a loan when it becomes evident that the borrower will be unable to satisfy the loan. GAAP further require the creditor to make a corresponding reduction to the loan balance when an impairment to a loan is recorded. In order to conceal UDF III's losses, the Fiduciary Defendants failed to record impairments with respect to UDF III's loans despite their knowledge that the borrowers had no ability to satisfy them.

238. As of September 30, 2015, more than 90% of UDF III's loan portfolio consisted of loans to the following entities: CTMGT and its affiliates; Buffington Land; UDF I and its subsidiaries; and UDF X. UDF III has suffered massive permanent losses through its loans to each of these borrowers. These loans consisted primarily of: a balance of approximately \$71.2 million of the UMT Participation Interest in the UMT Loan; a balance of approximately \$16.4 million in the UDF X Loan; a balance of approximately \$106.5 million in loans to Buffington Land; a balance of approximately \$115.9 million in loans to CTMGT with an additional balance in loans to CTMGT's affiliates that comprised approximately 13% of the Partnership's outstanding loan portfolio.

239. On April 1, 2015, the Partnership exercised the UMT Loan Option to convert its economic interest in the UMT Loan to a full participation interest. In addition, the Partnership made loans directly to UDF I and its subsidiaries, including the 2006 UDF I Loan originated in December 2006. UDF I did not

repay the 2006 UDF I Loan but instead, in October 2013 when the loan balance was approximately \$11.6 million, assigned the Partnership a promissory note payable by an unrelated party in exchange for the cancellation of the loan.

240. Documents filed in the Lennar Buffington bankruptcy proceeding reveal that UDF III has realized a massive loss on its loans to Buffington Land. On December 14, 2016, Land Development and UMT Services released Buffington Land and its affiliates from any and all liabilities, which included forgiving indebtedness of over \$122,117,682, in exchange for “six finished lots and 4.56 acres of unfished land in Pflugerville County, Texas,” assets with very little value in relation to the forgiven \$122 million.

241. Available evidence indicates that CTMGT is insolvent: (1) the Fiduciary Defendants extended the maturity dates of UDF III’s loans to CTMGT when they matured and became due because CTMGT has no ability to satisfy them; (2) in 2016 CTMGT defaulted on a first lien loan to a third-party lender and a second lien loan due to Defendant UDF IV that was secured by land in Denton County, Texas; (3) several mechanics and materialmen’s liens have been filed related to CTMGT in various counties in north Texas; (4) CTMGT has massive contractually-obligated interest obligations not just to UDF III but to UDF III’s affiliates; and (5) the Fiduciary Defendants no longer have the ability to raise new investor to funnel to CTMGT and its affiliates. UDF III has suffered massive

permanent losses through its loans to CTMGT and its affiliates which the Fiduciary Defendants failed to record and concealed.

242. Available evidence indicates that UDF X is insolvent: (1) Defendant UDF X stopped making loan payments to UDF III in 2014; (2) the Fiduciary Defendants extended the original maturity date of the UDF X date four times; and (3) the Fiduciary Defendants no longer have the ability to raise new investor capital to funnel to UDF X. UDF III has suffered massive permanent losses through its loan to UDF X which the Fiduciary Defendants failed to record and concealed.

243. Available evidence indicates that UDF I is insolvent: (1) the Fiduciary Defendants extended the maturity date of the UMT Loan when it matured and became due because UDF I lacks the ability to satisfy it; (2) the maturity date of the UMT Loan has been extended multiple times; (3) UDF I suffered a large loss in connection with its loss to Lennar Buffington and/or its affiliates; and (4) the Fiduciary Defendants no longer have the ability to raise new investor capital to funnel to UDF I and its subsidiaries. UDF III has suffered massive permanent losses through its investment in the UMT Loan through the UMT Participation Interest which the Fiduciary Defendants failed to record and concealed.

244. UDF III's Form 10-Q for the period ending 9/30/15 indicates that the vast majority of UDF III's loan portfolio consisted of loans that either had already

matured or that would mature in 2016. If its loan portfolio had not primarily consisted of severely impaired loans at that juncture, UDF III would have had significant liquidity due to its receipt of loan repayments in 2015 and 2016. However, UDF III's December 5, 2016 Form 8-K filing made clear that UDF III was experiencing a liquidity crisis as of that date which serves as further evidence that UDF III has suffered permanent losses due to loan impairment. .

XII. The Partnership Has Suffered Losses Resulting From the Guaranty Agreements

245. As of September 2015, UDF III's guaranty agreements covered approximately \$96.8 million of loan obligations of UDF IV, UMT, and UDF I. the Partnership had eight outstanding guaranty agreements (the "Eight Guaranty Agreements") through which it had guaranteed repayment of its affiliates' loans. These loans included: (1) a \$5.0 million loan from Texas Capital to UMTHF with a maturity date of September 5, 2016; (2) a \$20.6 million loan from CTB to UDF IV Home Finance with a maturity date of July 30, 2015; (3) a \$1.6 million loan to UMT 15th Street from CTB with a maturity date of July 30, 2016; (4) a loan of \$20.2 million from CTB to UDF IV Acquisitions with a maturity date of July 30, 2016; (5) a \$15 million loan from Prosperity Bank to UDF IV Finance II with a maturity date of December 14, 2016; (6) a loan of \$5 million from Veritex to UMT HF III L.P. with a maturity date of May 27, 2017; (7) a loan of \$15 million from CTB to UDF IV Finance VI with a maturity date of July 30, 2016; and (8) a

loan of \$225,000 from City Bank to UDF I with a maturity date of November 3, 2015.

246. When the guaranty agreements were entered into, the Partnership's controllers knew that UDF IV, UMT, and UDF I lacked the ability to satisfy their obligations to creditors absent a continued influx of cash from new investors.

247. The Partnership received neither adequate compensation nor protection for the massive risks that it assumed in connection with its guaranty agreements of its affiliates' loan obligations.

248. As of September 2015, UDF III's guaranty agreements covered approximately \$85 million of UDF IV's loan obligations. Since this time, UDF IV has experienced liquidity problems. As alleged *supra*, UDF IV announced in a Form 8-K filing on May 23, 2016 that it had defaulted on a \$35 million term loan from an affiliated creditor.

249. On December 30, 2016 UDF IV reported that "[t]he total owed by UDF IV under lines of credit and notes payable has been reduced from approximately \$170.9 million at September 30, 2015 to approximately \$18.4 million as of December 30, 2016."

250. Upon information and belief, UDF IV's obligations were satisfied using UDF III's assets. UDF III has therefore suffered losses on account of the

guaranty agreements covering UDF IV's loan obligations for which UDF III received inadequate consideration.

251. UDF III's guaranty agreements covered approximately \$11.6 million of UMT's loan obligations as of September 2015.

252. UMT announced in an 8-K filing on January 24, 2017 that the "liquidation of the UMT portfolio is substantially complete," that UMT's "non-performing assets have been sold," and "deficiency and recourse obligations from affiliates now represent the primary assets of [UMT]."

253. On October 16, 2017, the SEC entered an order revoking UMT's registration of securities on account of its failure to file periodic reports since the third quarter of 2015.

254. It does not appear that UMT had the ability to satisfy its loan obligations. Upon information and belief, UDF III's assets were used to satisfy UMT's loan obligations pursuant to the guaranty agreements. UDF III has therefore suffered losses on account of the guaranty agreements covering UMT's loan obligations for which UDF III received inadequate consideration.

255. UDF III's guaranty agreement covered \$225,000 million of UDF I's loan obligations as of September 2015.

256. As set forth above, the available evidence indicates that UDF I is insolvent. Upon information and belief, UDF III's assets were used to satisfy UDF

I's loan obligations pursuant to the guaranty agreements. UDF III has therefore suffered losses on account of the guaranty agreements covering UDF I's loan obligations for which UDF III received inadequate consideration.

XIII. The Fiduciary Defendants Caused UDF III to Pay Inflated Mortgage Servicing Fees to Land Development

257. The Partnership Agreement requires UDF III to pay a mortgage servicing fee to Land Development equal to 0.25% of UDF III's aggregate outstanding loan balance on an annual basis. UDF III paid Land Development over \$7.6 million in mortgage servicing fees through September 2015.

258. The Fiduciary Defendants were required to record impairments on numerous loans in UDF III's portfolio pursuant to GAAP because UDF III's borrowers lacked the ability to repay the loans. These loans include UDF III's loans to Buffington Land, which were forgiven in December 2016 in exchange for minimal consideration, the UMT Participation Interest in the UMT Loan, UDF III's loan to UDF X, and UDF III's loans to CTMGT and its affiliates. Land Development and the Fiduciary Defendants, however, failed to record impairments and to reduce the loan balances as they were required pursuant to GAAP.

259. The Fiduciary Defendants calculated the mortgage servicing fees on the basis of inflated loan balances and thereby caused UDF III to pay Land Development inflated mortgage servicing fees. The other Fiduciary Defendants

likewise breached fiduciary duties owed to UDF III when they caused Land Development to pay inflated mortgage servicing fees.

XIV. The Fiduciary Defendants Failed to Cause UDF III to Distribute “Cash Available for Distribution” to the Limited Partners

260. The Partnership Agreement requires distribution of “Cash Available for Distribution” to the Limited Partners as follows:

Prior to the Preferential Limited Partner Return and Net Capital Contribution...Cash Available for Distribution for each applicable accounting period shall be distributed (a) 90% to the Limited Partners and the General Partner, with an amount of cash equal to the product of (i) 90% of the amount of Cash Available for Distribution, multiplied by (ii) the quotient of the difference between 90% and the General Partner’s Carried Interest divided by 90% being distributable to the Limited Partners in proportion to their relative Unit ownership, and the amount attributable to the General Partner’s Carried Interest being distributable to the General Partner; and (b) 10% to the General Partner. (§9.1)

After the return to the Limited Partners of all of their Preferential Limited Partner Return and Net Capital Contributions, Cash Available For Distribution for each applicable accounting period shall be distributed (a) 85% to the Limited Partners and the General Partner, with an amount of cash equal to the product of (i) 85% of the amount of Cash Available for Distribution, multiplied by (ii) the quotient of the difference between 85% and the General Partner’s Carried Interest divided by 85% being distributable to the Limited Partners in proportion to their relative Unit ownership, and the amount attributable to the General Partner’s Carried Interest being distributable to the General Partner, and (b) 15% to the General Partner. (§9.2)

The Partnership Agreement defines “Cash Available for Distribution” as:

...cash funds received by the Partnership from operations (other than proceeds from a Capital Transaction or Liquidating Distributions),

including, without limitation, interest, points or dividends from interim investments and proceeds from borrowings, if any, less all cash used to pay Partnership expenses and debt payments and amounts set aside for reserves. (§3.13).

Preferential Limited Partner Return” is defined as “with respect to each Unit an eight percent (8%) per annum non-compounding, cumulative return on a Limited Partners Net Capital Contribution.” (§3.54)

261. The Partnership Agreement makes clear that Cash Available for Distribution “shall be distributed.”

262. The Partnership ceased paying distributions to the Limited Partners in January 2016. In a March 23, 2016 letter to the Unit holders, Defendants Etter, Greenlaw and Wilson, as the Board of Directors of UMT Services, stated:

[C]ertain events...have disrupted the normal course of operations of UDF III...At present, we feel it prudent for UDF III to preserve cash as we continue to work with UDF III’s borrowers to determine their capital requirements. Therefore, we are not forecasting limited partner distributions at this time. We intend to provide further updates on limited partner distributions as we make further progress with UDF III’s clients and their projects.

The Partnership has not resumed distributions as of the date hereof.

263. The Fiduciary Defendants’ decision to cease paying distributions to the Limited Partners “to preserve cash” and instead to fund the Fiduciary Defendants’ special interests in transactions adverse to the best interests of the Partnership and at the expense of the Partnership breached and continues to breach Fiduciary Defendants’ duties and the terms of the Partnership Agreement and the

right of Limited Partners to distributions of Cash Available for Distribution. The Limited Partners have been injured, and continue to be injured, as a result of the Fiduciary Defendants' misconduct in this respect.

XV Land Development Has Failed to Provide Quarterly and Annual Reports or Reports of the Estimated Value of the LP Units as the Partnership Agreement Requires

264. The Partnership Agreement requires UDF III and Land Development to provide an annual report including certain specified information to all Limited Partners within 120 days after the end of each fiscal year:

Within one hundred twenty (120) days after the end of each fiscal year, an annual report shall be sent to all the Limited Partners and Assignees which shall include (i) a balance sheet... (ii) a Cash Flow statement... (iii) a report of the activities of the Partnership for such year; (iv) a report on the distributions... (v) [sic] a report setting forth the compensation paid to the General Partner and its Affiliates and (v) where forecasts have been provided to the Limited Partners and Assignees, a table comparing the forecasts previously provided with the actual results during the period covered by such report. (§15.2(b))

265. The Partnership Agreement also requires UDF III and Land Development to provide quarterly reports to all Limited Partners within 60 days of the end of each the first three quarters of each Partnership fiscal year:

If and for long as the Partnership is required to file quarterly reports on Form 10-Q with the [SEC], financial information substantially similar to the financial information contained in each report for a quarter shall be sent to the Limited Partners within sixty (60) days after the end of such quarter. Whether or not such reports are required to be filed, each Limited Partner will be furnished within sixty (60) days after the end of each of the first three quarters of each Partnership fiscal year an unaudited financial report for that quarter

including a profit and loss statement, a balance sheet and a cash flow statement. Such reports shall also include such other information as is deemed reasonably necessary by the General Partner to advise the Limited Partners of the activities of the Partnership during the quarter covered by the report. (§ 15.2(c))

266. Further, the Partnership Agreement requires UDF III and Land Development to furnish the Limited Partners with an annual report of the estimated value of the LP Units:

[Land Development] shall furnish each Limited Partner an annual statement of estimated [LP Unit] value...[which] shall report the value of each Unit based upon the General Partner's estimate of the amount a Unit holder would receive if the Partnership Properties were sold at their fair market values as of the close of the Partnership's fiscal year and the proceeds therefrom (without reduction for selling expenses), together with other funds of the Partnership, were distributed in a liquidation of the Partnership (provided that, during the Offering and with respect to the first three full fiscal years following the termination of the Offering), the value of a Unit shall be demand to be twenty dollars (\$20.00)...[Land Development] is required to obtain an opinion of an independent third party that its estimate of value is reasonable and appropriately prepared. (§15.2(f)).

267. UDF III and Land Development have failed to provide periodic reports to the Limited Partners since the third quarter of 2015 and have failed to provide estimated values to the Limited Partners since 2015 in breach of the terms of the Partnership Agreement. The failure has injured the Limited Partners.

XVI. The Fiduciary Defendants' Scheme Was Enabled by a Shared Auditor

268. Whitley Penn was the long-term auditor for UDF III. Whitley Penn also was the auditor for, at least, Defendant Land Development, UDF IV, UDF V

and UMT. It is also reasonable to infer that Whitley Penn was auditor for other non-public affiliated entities such as UDF I and the Fiduciary Defendant entities.

269. On November 24, 2015, Whitley Penn declined to stand for reappointment as the auditor of the affiliated entities.

270. The Fiduciary Defendants' use of the same auditor for UDF III and affiliated entities ensured that the conflicts and the related party transactions would continue and that the Fiduciary Defendants would continue to pilfer UDF III.

271. Had the Fiduciary Defendants used an independent auditor for UDF III, the following transactions may have been revealed and/or halted sooner. The following obvious red flags would not have been ignored by an independent auditor:

- a. The primary assets of the affiliated entities are loans. The book values of these assets appear to be materially overstated, either because the loans have inadequate collateral supporting them, or consequently insufficient reserves for losses have been taken.
- b. Management fees are assessed on the value of assets under management. If the book value of an affiliated entity's assets is materially overstated, the external manager may have improperly received inflated management fees.
- c. UDF IV is not accruing any provision for loan losses despite a material outstanding balance of past due loans (loans that have matured without being repaid or their mature date extended).
- d. UDF III, UDF IV and UMT have not reserved against certain loans that have a high probability of being impaired (*e.g.*, loans that remain outstanding but that have not matured).

- e. UDF IV's largest borrower, CTMGT, operates through a complex web of affiliated entities under the control of Moayed. Loans to CTMGT do not appear to be arm's-length transactions. These loans do not appear to be repaid upon maturity, and UDF IV does not appear to receive any compensation for such extensions.
- f. The largest borrower of UDF III represents 43% of loans.
- g. The largest borrower of UDF IV represents 67% of loans.
- h. The largest borrower of UDF V represents 62% of loans.
- i. While the loan concentration is disclosed individually for UDF III, UDF IV, and UDF V, it is not disclosed that the largest borrower of each of these entities is one and the same – CTMGT – and that there exists an inherent default risk across affiliated entities associated with this concentration in a single borrower. As a consequence, each of these entities' financial condition appears to be affected by, and dependent on, one another, which also does not appear to be disclosed.
- j. The largest borrower of each of UDF III, UDF IV and UDF V, CTMGT, is likely insolvent. This concern is based on, among other information, the fact that (i) over 95% of the loans made to CTMGT by UDF IV are not repaid when the loans mature and become due; (ii) CTMGT recently defaulted on a first lien loan due to a third-party lender and a second lien loan due to UDF IV that was secured by land in Denton County, Texas; (iii) several mechanics and materialman's liens have been filed related to CTMGT in various North Texas counties, and (iv) the apparent inability of CTMGT to service \$585 million in debt (outstanding principal balance) owed to UDF III and UDF IV (exclusive of any other debts owed to other entities) as well as approximately \$75 million of contractually obligated annual interest expense.
- k. 100% of UDF IV loans are classified as fully collectable, which is likely a material misrepresentation if the largest borrower is insolvent.
- l. UDF III and UDF IV's second largest "non-affiliated" borrower is a Buffington Land. Six UDF IV loans to Buffington Land and its

affiliates have matured without being repaid or their maturity date extended based on disclosures in the Form 10-Q filed for the quarter ended September 30, 2015. Buffington Land and its affiliates appears to account for approximately 10% of UDF IV's total loan assets and has past due loans owed to UDF III that represent approximately 25% of UDF III's portfolio. The impact of this borrower appears to be material as it is the second largest "non-affiliated" borrower of both UDF III and UDF IV.

- m. On or about October 30, 2015, a lawsuit was filed in Travis County, Texas, against, among others, UDF IV, Buffington Land and several of its affiliates, and Mr. Buffington individually. *See Hanna/Magee L.P. #1 v. BHM Highpointe Ltd., et al.* (Cause No. D-1-GN-15-004985). The complaint contains allegations of fraud, breach of contract, tortious interference and fraudulent transfer and also includes specific claims that multiple entities controlled by Mr. Buffington (that have received loans and currently have outstanding balances owed to UDF IV) are insolvent.
- n. On November 30, 2015, UDF III filed an involuntary bankruptcy petition against Lennar Buffington in the United States Bankruptcy Court for the Western District of Texas. *See In re Lennar Buffington Stonewall Ranch, L.P.* (W.D. Texas 15-11548-hcm). The amount of the claim by UDF III against Lennar Buffington was \$106.5 million, which represented approximately 25% of UDF III's total assets. Buffington Land and/or its affiliates have had, and continue to have, a material amount of loans past due owed to both UDF III and UDF IV. It appears that UDF III has failed to disclose: (i) the litigation; (ii) the reality of the poor financial condition of its second largest "non-affiliated" borrower; and (iii) the material effect that this bankruptcy filing may have on the financial conditions of UDF III and UDF IV.
- o. There are disclosure issues regarding the percentage of loans that appear to be secured by unimproved real property. UDF III and UDF IV's largest borrower, CTMGT, has received over 75 acquisition and development loans that typically bear interest at 13% or higher. In numerous instances, CTMGT has not broken ground on the development for 2, 3, 5 and 10 years after having received the 13% loan. This leads to questions about the use of the loan proceeds (and

potential misappropriation if not used for developments) and the value of the underlying collateral.

- p. UDF V's principal business activity appears to involve issuing loans to specific CTMGT entities that have (or had) loans due to UDF III and UDF IV. UDF V funds appear to be used to repay loans owed to UDF III and UDF IV by CTMGT, which is not disclosed to UDF V shareholders. Similar to a Ponzi scheme, it appears that UDF V investor capital is being used to return capital to UDF III and UDF IV investors.
- q. UDF V loans are made to UDF III and UDF IV's largest borrower, CTMGT, and the relationship between CTMGT and UDF V's affiliates is not disclosed. UDF V's Filings include express statements that it will not make loans to, or participate in loans with, affiliates. However, it appears that UDF V's business activity contradicts these statements or, at the very least, contradicts the spirit of the disclosures as UDF V is indirectly, but effectively, refinancing past UDF III and UDF IV loans while not directly acquiring the loans from UDF III and UDF IV.
- r. Insiders have made loans to themselves through affiliates of UMT at interest rates below the 10-Yr US treasury rate in the form of unsecured deficiency notes and recourse obligations totaling \$73 million as of the quarter ended September 30, 2015. Insiders lend to themselves at an interest rate of 1.75% to the detriment of shareholders while the same form of unsecured deficiency notes issued to non-affiliated parties bear interest at 14%.
- s. UDF III had \$392 million of assets and \$10 million of debt as of the quarter ended September 30, 2015. Despite having a nominal amount of debt relative to its assets (which are principally interest-bearing loans), UDF III consistently disclosed that it had not made payments on its debt in a timely manner. This raises obvious questions about the financial condition of UDF III.

272. On November 30, 2015, UDF V released a Form 8-K disclosing that Kahane, a director of UDF V's Board of Directors, had resigned. Kahane's

resignation was effective as of November 24, 2015, which was the same day that UDF V released a Form 8-K disclosing that Whitley Penn would no longer be the companies' auditor. Kahane is affiliated with AR Capital, RCS Capital and Schorsch. AR Capital is or was a co-sponsor and external advisor of UDF V. RCS Capital raised capital as the dealer manager for UDF IV and is raising or was raising capital as the dealer manager of UDF V. Like Whitley Penn, UDF V's Form 8-K disclosing Kahane's resignation claimed that the resignation was "not a result of any disagreement with the Board or the Trust on any matter relating to the Trust's operations, policies or practices." The timing of Whitley Penn's resignation and Kahane's does not appear to be coincidental and further raises questions about the veracity of Whitley Penn's representations to shareholders and the market.

273. As Hayman stated in December 2015:

[The red flags] raise significant questions about (i) the legitimacy of the UDF structure, (ii) the financial condition of the Companies, (iii) Whitley Penn's prior audit work and (iv) the accuracy of the Companies' claims and Whitley Penn's acknowledgement regarding there not being any disagreements between Whitley Penn and the Companies and there not being any reportable events. Further questions are also raised about whether these or other red flags may have been willfully or otherwise ignored, whether deficient audits may have been conducted, and whether professional audit standards may have been violated. In the absence of any disagreements between the Companies and Whitley Penn or any reportable events, especially in light of the observations detailed above, it begs the question as to why Whitley Penn is not continuing as the auditor of the Companies.

274. Whitley Penn was, for years, fully immersed in every aspect of the Fiduciary Defendants' violations of both fiduciary duties to UDF III and contractual obligations. Nevertheless, Whitley Penn stood by and idly permitted the conduct to persist without question

275. For years, the PCAOB identified deficiencies in Whitley Penn's audits, with the most inspection report dated October 19, 2015. The PCAOB is a nonprofit corporation established by Congress to protect investors and the public interest by promoting informative, accurate, and independent audit reports and to oversee the audits of public companies and broker-dealers. *See*, <http://pcaobus.org/Pages/default.aspx>. The PCAOB establishes auditing standards for registered public accounting firms to follow when preparing and issuing audit reports, and it inspects such firms to assess compliance with SOX, PCAOB rules, SEC rules, and professional standards. The PCAOB's standards clearly define the responsibilities of an independent auditor to evaluate the aspects of an entity's operations that could support a misstatement or prevent detection of information that has or could cause a misstatement. Risk and fraud detection and prevention are integral components of the PCAOB standards.

276. Whitley Penn has been the subject of five PCAOB inspections with reports issued on March 14, 2007, December 22, 2008, September 2, 2009, December 5, 2011 and October 29, 2015. The October 29, 2015 Inspection

Report (“Inspection Report”) was issued just days prior to Whitley Penn’s resignation as auditor of the affiliated entities. See,

<https://pcaobus.org/Inspections/Reports/Documents/2014-Whitley-Penn.pdf>. The

Inspection Report identifies deficiencies of Whitley Penn and its audits, including but not limited to:

- a. “One of the deficiencies identified was of such significance that it appeared to the inspection team that the Firm, at the time it issued its audit report, had not obtained sufficient appropriate audit evidence to support its opinion that the financial statements were presented fairly, in all material respects, in accordance with the applicable financial reporting framework. In other words, in this audit, the auditor issued an opinion without satisfying its fundamental obligation to obtain reasonable assurance about whether the financial statements were free of material misstatement.” Page 3-4 of the Inspection Report.
- b. “Whether or not associated with a disclosed financial reporting misstatement, an auditor's failure to obtain the reasonable assurance that the auditor is required to obtain is a serious matter. It is a failure to accomplish the essential purpose of the audit, and it means that, based on the audit work performed, the audit opinion should not have been issued.” Page 4 of the Inspection Report.
- c. “Issuer A- the failure to perform sufficient procedures to test the occurrence and valuation of revenue, including the use of sampling with an inadequate sample size developed without consideration of appropriate factors and the inadequate performance of substantive analytical procedures...” Page 4 of the Inspection Report.
- d. The deficiency described above could relate to several applicable provisions of the standards that govern the conduct of audits, including [the] audit deficiencies involve a lack of due professional care.....[which] requires the independent auditor to plan and perform his or her work with due professional care and sets forth aspects of that requirement ...[including] the exercise of professional skepticism. These standards state that professional skepticism is an

attitude that includes a questioning mind and a critical assessment of the appropriateness and sufficiency of audit evidence.....Sufficiency is the measure of the quantity of audit evidence, and the quantity needed is affected by the risk of material misstatement (in the audit of financial statements) and the quality of the audit evidence obtained. The appropriateness of evidence is measured by its quality; to be appropriate, evidence must be both relevant and reliable in support of the related conclusions.” Page 4-5 of the Inspection Report.

XVII. Defendants Have Concealed Their Wrongdoing from UDF III and the Limited Partners by Making False and Misleading Representations in UDF III’s SEC Filings

277. Among other material items, the Fiduciary Defendants have concealed: (1) the ultimate purpose of UDF III’s lending activities; (2) the financial condition of UDF III and its portfolio and assets; (3) the financial condition of Buffington Land, CTMGT and their affiliates; (4) the fact that UDF III’s lending to Buffington Land, CTMGT and their affiliates has been commercially impractical and that capital provided to develop the real estate securing the loans was often used for purposes other than real estate development; (5) UDF III’s poor financial condition; (6) that the contractual 20% limitation on lending to individual borrowers has been exceeded in three instances; (7) that UDF III’s mortgage loans have often been secured by grossly inadequate collateral; (8) that the Fiduciary Defendants directed the Developer Borrowers to use loan proceeds received from UDF III to make loan payments to earlier UDF-affiliated entities and that these earlier-affiliated entities used those proceeds to pay

distributions to their investors; (9) that when UDF III made loans to the Developer Borrowers, in many instances the money was transferred directly to earlier UDF-affiliated entities that were creditors of the Developer Borrowers; (10) that the Fiduciary Defendants initiated UDF III's lending to the Developer Borrowers according to the capital needs of UDF III's earlier affiliates to make distributions to their investors; and (11) that UDF III's loan to Buffington Land was unrecoverable no later than March 2013.

278. UDF III's SEC filings since its inception have described its business purpose as follows:

Our principal purpose is to originate, acquire, service, and otherwise manage, either alone or in association with others, a diversified portfolio of mortgage loans on real property (including mortgage loans that are not first in priority, participation interests in mortgage loans, and mezzanine loans) and to issue or acquire an interest in credit enhancements, such as guaranties or letters of credit.

We intend to seek to make or acquire loans primarily with respect to projects where the completed subdivision will consist of homes at or below the median price of the U.S. housing market.

279. UDF III's SEC filings conceal Defendants' true objectives: (1) to bail out earlier affiliated entities that faced massive losses as a result of their exposure to real estate development loans when the real estate bubble began to collapse; (2) to bail out the earlier creditors of affiliated entities including Buffington Land, CTMGT and their affiliates; (3) to conceal losses suffered by affiliated entities; (4) to create the false appearance of viability of the affiliated entities in order that new

investor capital could be raised through the sale of securities to retail investors and management fees garnered; and (5) to conceal the existence of their ongoing scheme.

280. The Fiduciary Defendants have caused UDF III to conceal Defendant UMT's financial condition. UDF III's SEC filings neither contain any disclosure, similar to the disclosure in UMT's 10-K filing for the 2007, that the UMT Loan would likely be unrecoverable if the financial crisis deepened, nor do these filings contain any disclosures that UDF I's ability to repay the loan is contingent upon its receipt of additional loans. UDF III would invest more than \$70 million in the UMT Participation Interest in the UMT Loan, and would make several additional loans to Defendant UDF I, its subsidiaries and joint ventures. In addition, Defendants have caused UDF III to conceal that the UMT Participation Interest is unrecoverable.

281. The Fiduciary Defendants have caused UDF III to conceal material information concerning UDF III's lending practices. For example, UDF III's SEC filings do not disclose that land securing its loans sat undeveloped for several years and that the capital provided through its loans was not used for development or other value enhancing activity. In the case of Shahan Prairie, real estate development loans have been made by Defendant UDF I, and then UDF III, and then Defendant UDF V; after more than 10 years, there were no signs of

development. It appears that CTMGT and Moayedhi has used the capital to make payments on loans on behalf of other CTMGT affiliates. The Fiduciary Defendants have concealed the use of the loan proceeds provided by UDF III as well as the poor financial condition of CTMGT and its affiliates.

282. The Fiduciary Defendants concealed the financial condition of Buffington Land and its affiliates. The documents filed in Lennar Buffington's bankruptcy proceeding indicate that it has only \$8 million in assets and \$143 in liabilities and that UDF III's loan balance to the entity was over \$122 million. UDF III never recorded any impairment on this loan nor disclosed that Lennar Buffington and Buffington Land are insolvent. The SEC has alleged that by March 2014, UDF III's controllers had possession of Buffington Land's financial projections demonstrating Buffington Land's inability to pay its loan balance to UDF III. (SEC Compl. ¶ 38). The SEC further alleges that UDF III's controllers permitted the principal loan balance to increase from approximately \$77 million as of March 2013 to more than \$122 million by January 2017, despite their knowledge that the loan was unrecoverable, while concealing the loan impairment from UDF III's Unit holders. (SEC Compl. ¶¶ 35-40).

283. The SEC alleges that the Partnership's controllers withheld the projections from UDF III's outside auditor, and provided the auditor with fabricated projections. (SEC Compl. ¶ 38). In addition, the SEC alleges that

“UDF III violated GAAP because it recognized no specific impairment on its loan to [Buffington Land] in UDF III’s 2013 Form 10-K ... and in all subsequent periodic reports.” (SEC Compl. ¶ 39). Further, the SEC alleges “[i]mpairment of the loan to [Buffington Land] was material to investors because it affected the status of the loan for UDF III’s second-largest borrower.” (SEC Compl. ¶ 39). The SEC also alleges that certain of the Fiduciary Defendants concealed their scheme from investors whereby they directed the Developer Borrowers to use loan proceeds from UDF IV to pay down principal and interest on the borrowers’ outstanding loans to UDF III in order that the controllers could continue to raise capital and generate fees. (SEC Compl. ¶¶ 25-34).

284. As discussed in *supra*, UDF III’s controllers engaged in this same scheme in relation to UDF III’s offering proceeds: they used UDF III’s funds to make loans to the Developer Borrowers. The Developer Borrowers used the loan proceeds to pay down principal and interest on their outstanding loans to earlier affiliates of UDF III. And then UDF III’s earlier affiliates used these proceeds to fund distribution payments to their investors. UDF III’s controllers concealed this scheme from the Limited Partners.

285. On December 14, 2015, the Fiduciary Defendants caused UDF III to make an 8-K filing containing the following representations concerning the Lennar Buffington bankruptcy proceeding:

On November 30, 2015, UDF III filed an involuntary bankruptcy petition against a borrower that owns one specific development project in order to protect UDF III's collateral position after an approximately \$3 million senior lender posted the property for foreclosure. The value of the project is significantly greater than the amount of debt owed to the senior lender. The involuntary bankruptcy filing by UDF III as a creditor was a strategic move to protect the value of the collateral for UDF III investors.

This disclosure misrepresented the circumstances of the bankruptcy proceeding.

286. Through an 8-K filing made on December 14, 2015, the Fiduciary Defendants made the following false and misleading representations concerning the reasons why real estate developers have used funds from affiliated entities to repay loans from earlier affiliated entities:

The refinancing of land acquisition or earlier development stage loans by later development stage loans is an ordinary course activity in the residential single family development life cycle. Lenders, including third party lenders or UDF, may invest in different loans relating to the same development project in the ordinary course of business. Secured lenders that have made loans to borrowers during earlier development stages of a project, which may be either third-party lenders or UDF, will receive payments from the borrower in return for a partial or full release of the collateral that is proceeding through the residential development life cycle. UDF capitalizes on the advantage of investing in projects previously underwritten and actively monitored by UDF as those projects move through the development stages. Investments in later development stages benefit from UDF's earlier underwriting and portfolio monitoring activities.

287. The Fiduciary Defendants' practice of causing affiliated entities to loan to insolvent developers in order that these developers may repay loans to

earlier affiliated entities is not in fact “ordinary course activity in the residential single family development life cycle.”

288. The Fiduciary Defendants have concealed UDF III’s financial condition. For example, on November 9, 2015, the Fiduciary Defendants caused UDF III to send a letter to its limited partners which recommended the rejection of a tender offer which provided limited partners the opportunity to sell LP Units at the price of \$14.50 per unit, a 27.5% discount to the offering price of \$20.00 per unit. In this letter, the Fiduciary Defendants made misleading representations concerning UDF III’s financial condition:

Furthermore, some of the reasons why the Fund strongly believes the offer is not in the best interests of the limited partners are as follows:

- Our general partner believes that the offer price is less than the current and potential long-term value of the Units;
- The Fund believes that the Mini-Tender Offer represents an opportunistic attempt to purchase at a low price and make a profit and, as a result, deprive the limited partners who tender Units in the Mini-Tender Offer of the potential opportunity to realize the full long-term value of their investment in the Fund;
- The Fund believes that Peachtree Partners’ statement that it “is always a concern” that a portion of the Fund’s loans “are related to general partner entities” is misleading, because such loans to affiliates are consistent with the Fund’s business model and, the general partner believes, beneficial to the Fund’s limited partners;
- The Fund believes that Peachtree Partners’ statement that “you may prefer to receive cash now rather than waiting for

the partnership to liquidate” is misleading and intended to pressure limited partners into making hasty decisions without taking adequate time to consider all of the facts relating to the Mini-Tender Offer;

- Limited Partners who tender their Units would no longer receive distributions paid by the Fund on or after October 19, 2015; distributions are currently paid to limited partners monthly at a 9.75% annualized return on a pro rata basis based on the Fund’s most recent estimated valuation of \$20.00 per Unit; and
- The Fund has formed a special committee comprised of independent advisors to evaluate potential strategic alternatives for the Fund. Although there is no set timetable and there can be no assurances that the review process will result in any transaction(s) being announced or completed, we remain committed to providing liquidity to our limited partners at the time and in the manner that will maximize the limited partners’ value.

In summary, we believe that you should view Peachtree Partners as an opportunistic purchaser that is attempting to acquire your Units in order to make a profit and, as a result, deprive you of the potential long-term value of your Units

In reality, the LP Units had little value as of November 2015, as UDF III’s loan portfolio was badly impaired. Further, the characterization that UDF III’s lending to affiliates as beneficial to the Limited Partners is false and misleading. For example, as discussed in detail above, the Fiduciary Defendants saddled UDF III with the impaired UMT Loan which UDF I has no ability to repay.

289. Through the December 14, 2015 8-K filing, the Fiduciary Defendants made false and misleading statements concerning UDF III's investments in Shahan Prairie:

Shahan Prairie illustrates the allocation of financing opportunities through the lifecycle of a single-family residential development, from land acquisition and development to the sale of finished lots to homebuilders.

Shahan Prairie consists of approximately 102 acres of land in Denton County that is being developed into 402 single-family detached lots. The offsite roads, water and sewer for this project are subject to a joint development agreement with an adjacent property. In 2004, United Development Funding, L.P. ("UDF I") originated a loan to fund the land acquisition. At that time, the owners of Shahan Prairie and the owners of the adjacent property were working jointly on development agreements and contracts to bring offsite roads, water and sewer to both properties.

Upon completion of these agreements, the borrower sought additional financing to fund the commencement of the development in 2007. At this time, UDF I had completed its capital raising activities and its capital was fully invested. In accordance with the participation agreement between the UDF funds, UDF III originated a subordinated development loan in 2007 to the borrower to fund excavation on 211 of the 402 planned lots. UDF I was repaid by the borrower at this time and the UDF I collateral was released. Mass grading was completed and a plat for these 211 lots was prepared.

After this point, the adjacent property underwent several ownership changes over the next few years, which delayed the completion of the offsite improvements. The owner of Shahan Prairie continued to add value to the property by obtaining enhancements to the entitlements associated with the 102 acres.

Upon completion of the off-site improvements, the borrower sought financing for the completion of the development. At this time, UDF III had completed its capital raising activities and its capital was fully

invested. In accordance with the allocation policy agreement between the UDF funds, UDF V provided a subordinated development loan in June 2015 to the borrower for the completion of 402 lots. As a result, the borrower repaid the UDF III loan and the UDF III lien was released.

All 402 lots in Shahan Prairie are currently under option contracts to two builders – a national homebuilder and a large regional homebuilder.

The Fiduciary Defendants have concealed that Shahan Prairie is simply a vehicle for which CTMGT and Moayeddi have received loan proceeds from which to pay other CTMGT affiliates.

290. UDF III's December 14, 2015 8-K also contains the false general representation that UDF III's "business model is sound" as the Fiduciary Defendants knew that the Partnership's loans were uncollectible and impaired.

291. The Fiduciary Defendants caused UDF III to falsely represent in its SEC filings during the period between 2012 and 2015 that UDF III had not exceeded the 20% Offering Proceeds Limit. UDF III has exceeded this limit with respect to its lending to UDF I between 2010 and 2014; has exceeded the limit with respect to its lending to CTMGT since at least 2011; and has exceeded the limit with respect to its lending to Buffington Land and/or Lennar Buffington since 2014.

292. In its Form 10-Q for the period ended September 30, 2015 ("2015 3d Q Form 10-Q") the Fiduciary Defendants misleadingly stated that UDF III "may

invest in multiple secured loans that share a common borrower” [Pages 35, 49]. The Fiduciary Defendants falsely stated that: (a) UDF III’s “investments in loans to or from any one borrower will not exceed an amount greater than 20% of the total capital contributions raised in the Offering”; and (b) “as of September 30, 2015, our largest investment in a loan to or from any one borrower was equal to 7% of the total capital contributions raised in the Offering.”

293. UDF III’s SEC filings have contained similar misstatements for the past several years. For example:

Our investments in loans to or from any one borrower will not exceed an amount greater than 20% of the total capital contributions raised in the Offering, and as of December 31, 2014, our largest investment in a loan to or from any one borrower was equal to 16% of the total capital contributions raised in the offering. Our investments in loans to or from any one borrower are calculated based on the aggregate amount of capital contributions raised in the Offering actually used to make or invest in loans with such borrower. (2014 Form 10-K.);

Our investments in loans to or from any one borrower will not exceed an amount greater than 20% of the total capital contributions raised in the Offering, and as of December 31, 2013, our largest investment in a loan to or from any one borrower was equal to 16% of the total capital contributions raised in the offering. Our investments in loans to or from any one borrower are calculated based on the aggregate amount of capital contributions raised in the Offering actually used to make or invest in loans with such borrower. (2013 Form 10-K.);

Our investments in loans to or from any one borrower will not exceed an amount greater than 20% of the total capital contributions raised in the Offering, and as of December 31, 2012, our largest investment in a loan to or from any one borrower is equal to 15% of the total capital contributions raised in the offering. Our investments in loans to or from any one borrower are calculated based on the aggregate amount

of capital contributions raised in the Offering actually used to make or invest in loans with such borrower. (2012 Form 10-K.); and

Loans to or from any one borrower will not exceed an amount greater than 20% of the total capital contributions raised in the Offering, and as of December 31, 2011, our largest loan to or from any one borrower is equal to 20% of the total capital contributions raised in the Offering. (2011 Form 10-K.)

CLASS ACTION ALLEGATIONS

294. Plaintiffs bring this action on their own behalf and as a class action, pursuant to Rule 23 of the Rules of the Court of Chancery, on behalf of all holders of units of limited partnership interest of UDF III who have been and are being harmed by Defendants' actions described herein (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any Defendant, including but not limited to Officers and Directors of each entity Defendant.

295. This action is properly maintainable as a class action.

296. The Class is so numerous that joinder of all members is impracticable. As of November 6, 2015, UDF III had approximately 19.9 million LP Units outstanding held by approximately 8,900 Limited Partners.

297. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include the following:

- a. Whether the Fiduciary Defendants have breached their fiduciary duties to the Plaintiffs and to the members of the Class through their failure to cause UDF III to distribute Cash Available for Distribution to the Limited Partners since January 2016;
- b. Whether Land Development has breached the Partnership Agreement through its failure to cause UDF III to distribute Cash Available for Distribution to the Limited Partners since January 2016;
- c. Whether the Fiduciary Defendants have breached their fiduciary duties to the Plaintiffs and to the members of the Class through their omissions and misstatements of material information concerning the Partnership and its assets; and
- d. Whether Land Development breached the Partnership Agreement when it failed to send the Limited Partners an annual report for 2016, quarterly reports for the first three quarters of 2016, and a report of the estimated value of the LP Units since November 2015.

298. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs will fairly and adequately represent the Class.

299. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class and establish incompatible standards of conduct for the party opposing the Class.

300. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

DERIVATIVE ALLEGATIONS

301. Plaintiffs assert claims derivatively to redress injuries suffered by UDF III as a direct result of the breaches of fiduciary duties by the Fiduciary Defendants as aided and abetted by the Aiding and Abetting Defendants and breaches of the Partnership Agreement by Land Development.

302. Plaintiffs have owned LP Units of UDF III continuously before and throughout the time of the wrongful course of conduct by the Defendants alleged herein and continue to hold LP Units of UDF III.

303. Plaintiffs will adequately and fairly represent the interests of UDF III and its LP Unit holders in enforcing and prosecuting its rights and has retained counsel competent and experienced in shareholder derivative litigation.

DEMAND ON LAND DEVELOPMENT IS EXCUSED AS FUTILE WITH RESPECT TO EACH OF THE CHALLENGED TRANSACTIONS

304. Plaintiffs assert claims derivatively to redress injuries suffered by UDF III as a direct result of the breaches of fiduciary duty by the Fiduciary Defendants and breaches of the Partnership Agreement by Land Development. Plaintiffs specifically challenge transactions between UDF III on the one hand and the following entities (including certain of their affiliates and subsidiaries) on the

other hand: Land Development, UDF I, UDF X, UMT, UDF IV, Buffington Land, and CTMGT.

305. As set forth in detail *supra*, Plaintiffs have not made a demand on Land Development to bring the derivative claims herein because demand upon Land Development is excused with respect to each of the challenged transaction set forth herein. Land Development lacks both disinterestedness and independence with respect to each of these challenged transactions. Further, none of these challenged transactions was the product of a valid exercise of business judgment or consistent with the Partnership's objectives or the best interests of the Partnership and the Limited Partners.

A. Demand is Excused with Respect to Each Challenged Transaction Between UDF III and Land Development

306. Plaintiffs challenge the mortgage servicing fees that Land Development, and the other Fiduciary Defendants, caused UDF III to pay to Land Development. As set forth in detail *supra*, (¶¶ 258-260), Land Development inflated loan balances and thereby caused UDF III to pay Land Development improperly inflated fees.

307. Land Development is neither disinterested nor independent with respect to these transactions. Land Development stood on both sides of these challenged transactions and directly benefited from the inflation: Land Development controlled UDF III, inflated the fees, and caused UDF III to pay

these fees to itself. Land Development also received material financial benefits from these challenged transactions. In addition, Land Development faces substantial personal liability for its breaches of fiduciary duties in relation to these challenged transactions. Further, Land Development's decision to cause UDF III to waste Partnership assets by paying inflated mortgage servicing fees to itself was not the product of reasonable business judgment.

B. Demand is Excused with Respect to Each Challenged Transaction Between UDF III and UDF I and Its Subsidiaries

308. Plaintiffs challenge the transactions between UDF III and Defendant UDF I and its subsidiaries including: (1) all loans from UDF III to UDF I and its subsidiaries including the 2006 UDF I Loan (§ 109) and the UDF NP Loan (§§ 110); (2) UDF III's funding of principle advances to UDF I under the UMT Loan (§ 101); (3) the modification of collateral-sharing agreements with UDF I with respect to the CTMGT Loan (§§ 142-143); (4) UDF III's guaranty agreement whereby UDF III has guaranteed repayment of one of UDF I's loans (§ 118); and (5) the concentration of more than 20% of UDF III's offering proceeds in loans to UDF I and its subsidiaries, which includes UDF III's purchase of the UMT Loan to UDF I through the UMT Participation Interest, in violation of the concentration limit set forth in the Partnership Agreement (§§ 176-181).

309. Land Development lacks disinterestedness and independence with respect to the transactions between UDF III and UDF I and its subsidiaries for

numerous reasons. First, Land Development owns a 49.99% subordinated profits interest in UDF I; the individuals who ultimately own Land Development also ultimately own this subordinated profits interest. Second, Defendants Etter and Greenlaw have a combined ownership of 67.50% of UDF I, Inc., the general partner of UDF I, while also owning the majority of Land Development through their combined 60.00% ownership of UMT Holdings, and while also owning 100% of UMT Services, the general partner of Land Development that controls Land Development. Third, the individuals who control Land Development also control UDF I. These individuals: (1) serve as officers and/or directors of Land Development; (2) serve as officers and directors of UMT Services which in turn controls Land Development; and (3) serve as officers and directors of UDF I, Inc, which in turn controls UDF I. Fourth, Land Development provides UDF I with asset management services for which it receives substantial compensation.

310. Defendant Etter owns 33.75% of UDF I, Inc. and serves as UDF I, Inc.'s chairman. In addition, Etter owns 30.00% of Defendant UMT Holdings which in turn owns a 99.9% interest in Land Development, and which in turn owns a 49.99% subordinated profits interest in UDF I. Etter also owns 50.00% of UMT Services, has served as Land Development's executive vice president since 2003, and has served as chairman and a director of UMT Services since its formation.

311. Defendant Greenlaw owns 33.75% of UDF I, Inc. In addition, Greenlaw owns 30.00% of UMT Holdings which in turn owns a 99.9% interest in Land Development, and which in turn owns a 49.99% subordinated profits interest in UDF I. Greenlaw also owns 50.00% of UMT Services, has served as Land Development's chief executive officer since 2003, served as Land Development's president from March 2003 until June 2011, and has served as the president and chief executive officer of UMT Services since March 2003.

312. Defendant Wissink serves as a director of UDF I, Inc. In addition, Wissink owns 10.09% of UMT Holdings which in turn owns a 99.9% interest in Land Development, and which in turn owns a 49.99% subordinated profits interest in UDF I. Wissink has also served as Land Development's president since June 2011, served as Land Development's chief operating officer from March 2007 until June 2011, and serves as the chief operating officer of UMT Services.

313. Defendant Wilson serves as a director of UDF I, Inc. In addition, Wilson owns 7.41% of UMT Holdings which in turn owns a 99.9% interest in Land Development, and which in turn owns a 49.99% subordinated profits interest in UDF I. Wilson also serves as executive vice president of UMT Services, and has served as a director of UMT Services since August 2005.

314. Defendant Obert serves as treasurer and chief financial officer of UDF I, Inc. In addition, Obert owns 4.82% of UMT Holdings which in turn owns a

99.9% in Land Development, and which in turn owns a 49.99% subordinated profits interest in UDF I. Obert also serves as Land Development's chief financial officer, and serves as the treasurer of UMT Services.

315. Defendant Youngblood owns 4.83% of UMT Holdings which in turn owns a 99.9% interest in Land Development, and which in turn owns a 49.99% subordinated profits interest in UDF I. Youngblood also serves as Land Development's chief operating officer, and serves as the executive vice president of UMT Services.

316. Land Development stood on both sides of all transactions between UDF III and UDF I for the following reasons: (1) Land Development has owned a 49.99% subordinated profits interest in UDF I at all relevant times and the individuals who ultimately own Land Development therefore also ultimately own the subordinated profits interest in UDF I; (2) the individuals who own the majority of UDF I, Inc. also ultimately own the majority of Land Development and own UMT Services in its entirety; (3) the individuals who control Land Development also control UDF I; and (4) Land Development not only controls UDF III but also provides UDF I with asset management services. In addition, Land Development and its owners and controllers received material financial benefits from the challenged transactions which favored UDF I at UDF III's expense: these transactions increased the value of Land Development's

subordinated profits interest in UDF I. Further, Land Development and its controllers face a substantial threat of personal liability as a result of their breaches of fiduciary duties in relation to the transactions between UDF III and UDF I and its subsidiaries challenged herein.

317. Additionally, none of the challenged transactions between UDF III and UDF I and its subsidiaries was the product of reasonable business judgment. As set forth in detail *supra* (¶¶ 106,111, 120) the Fiduciary Defendants' decisions to cause UDF III to make loans to UDF I and its subsidiaries, to increase the principal amounts of the loans, and to extend the maturity dates of the loans, and their decision to cause UDF III to enter guaranty agreements for the repayment of debt by subsidiaries of UDF I, were the products of malfeasance and self-interestedness. In addition, the Fiduciary Defendants' decision to over-concentrate the Partnership's Offering Proceeds in loans to UDF I and its subsidiaries in violation of the Partnership Agreement was not consistent with the Partnership's objectives or the best interests of the Partnership or the Limited Partners.

C. Demand Is Futile with Respect to Each Transaction Between UDF III and UDF X

318. Plaintiffs challenge the transactions between UDF III and Defendant UDF X and its subsidiaries including: (1) UDF III's making of loans to UDF X including the UDF X Loan, the extensions of the maturity dates of the UDF X

Loan, and UDF III's failure to assert rights with respect to the UDF X Loan (¶¶ 112-117).

319. Land Development lacks disinterestedness and independence with respect to the transaction between UDF III and UDF X for numerous reasons. First, UDF X is a wholly-owned subsidiary of Land Development; the individuals who ultimately own Land Development also ultimately own UDF X. Second, the individuals who control Land Development also control UDF X. These individuals: (1) serve as officers and/or directors of Land Development; (2) serve as officers and directors of UMT Services which in turn controls Land Development; and (3) serve as officers and directors of UDF X, Inc. which is the general partner of UDF X and controls UDF X.

320. Defendant Etter serves as executive vice president of UDF X, Inc., the general partner of UDF X. Etter also owns 30.00% of Defendant UMT Holdings, which in turn owns a 99.9% interest in Land Development, and which in turn owns UDF X. In addition, Etter is a 50% owner of UMT Services, has served as Land Development's executive vice president since 2003, and has served as chairman and a director of UMT Services since its formation.

321. Defendant Greenlaw serves as chief executive officer and a director of UDF X, Inc. Greenlaw also owns 30.00% of UMT Holdings, which in turn owns a 99.9% interest in Land Development, and which in turn owns UDF X. In addition,

Greenlaw is a 50% owner of UMT Services, has served as Land Development's chief executive officer since 2003, served as Land Development's president from March 2003 until June 2011, and has served as the president and chief executive officer of UMT Services since March 2003.

322. Defendant Wissink has served as executive vice president and a director of UMT Services since August 2005. Wissink also owns 7.41% of UMT Holdings, which in turn owns a 99.9% interest in Land Development, and which in turn owns UDF X.

323. Defendant Wilson serves as a director of UDF X, Inc. Wilson also owns 7.41% of UMT Holdings, which in turn owns a 99.9% interest in Land Development, and which in turn owns UDF X. In addition, Wilson has served as executive vice president and a director of UMT Services since August 2005.

324. Defendant Obert serves as the treasurer of UDF X, Inc. Obert also owns 4.82% of UMT Holdings, which in turn owns a 99.9% interest in Land Development, and which in turn owns UDF X. In addition, Obert has served as Land Development's chief financial officer since August 2006 and serves as the treasurer of UMT Services.

325. Defendant Youngblood is chief executive officer and assistant secretary of UDF X, Inc. Youngblood also owns 4.83% of UMT Holdings, which in turn owns a 99.9% interest in Land Development, and which in turn owns UDF

X. In addition, Youngblood has served as Land Development's chief operating officer since June 2011 and serves as executive vice president of UMT Services.

326. Land Development stood on both sides of all transactions between UDF III and UDF X because: (1) Land Development owns UDF X and the individuals who ultimately own Land Development therefore also ultimately own UDF X; and (2) the individuals who control Land Development also control UDF

X. In addition, as set forth in detail *supra*, Land Development and its ultimate owners received material financial benefits from the challenged transactions which favored UDF X at UDF III's expense: these transactions increased the value of Land Development's ownership interest in UDF X. Further, Land Development and its controllers face a substantial threat of personal liability as a result of their breaches of fiduciary duties in relation to the transactions between UDF III and UDF X challenged herein.

327. Additionally, none of the challenged transactions between UDF III and UDF X was the product of reasonable business judgment or were consistent with the Partnership's objectives or the best interests of the Partnership and the Limited Partners. As set forth in detail *supra* (¶¶ 116-117), the Fiduciary Defendants' decisions to cause UDF III to make a loan to UDF X, and their decision to extend the maturity date of the loan multiples times and to allow interest to accrue rather than enforcing UDF III's rights with respect to the loan

against Land Development were the products of malfeasance and self-interestedness.

D. Demand Is Futile with Respect to Each Transaction Between UDF III and UMT and Its Subsidiaries

328. Plaintiffs challenge the transactions between UDF III and UMT and its subsidiaries including: (1) UDF III's investment in the UMT Participation Interest and exercise of the UMT Loan Option (¶¶ 99-106); and (3) UDF III's entry of guaranty agreements whereby UDF III has guaranteed repayment of loan by various UMT subsidiaries (¶ 118).

329. Land Development lacks disinterestedness and independence with respect to each and every transaction between UDF III and UMT and its subsidiaries. First, UMT Holdings owns both Land Development and UMTH General, the external advisor to UMT that controls UMT. The individuals who own UMT Holdings therefore ultimately own both Land Development and UMTH General. Second, the individuals who control Land Development also control UMT. As set forth in detail *supra*, these individuals: (1) serve as officers and/or directors of Land Development; (2) serve as officers and directors of UMT Services which controls Land Development and which also controls UMTH General, UMT's advisor and controller. Further, as alleged *supra*, UMTH General controls UMT's day-to-day operations, its assets, and the acquisition and disposition of its investments. The individuals who serve as officers and directors

of UMT Services, the entity that controls UMTH General, caused UMT to enter the challenged transactions.

330. Land Development stood on both sides of all transactions between UDF III and UMT because: (1) Land Developer's ultimate owners are also the ultimate owners of UMTH General; and (2) the individuals who control Land Development also control UMTH General and UMT's business and investments. UMTH General and its controlling persons caused UMT to enter into the challenged transactions. In addition, Land Development's owners and controllers received material financial benefits from the challenged transactions between UDF III and UMT. As set forth in detail *supra*, each of the challenged transactions that Land Development caused UDF III to enter with UMT increased the value of UMT's mortgage portfolio. UMTH General received an annual trust administration fee of approximately 1% of the value of UMT's mortgage loan portfolio. When Land Development caused UDF III to enter these transactions, Land Development increased the amounts of trust administration fees that UMT paid to UMTH General, an entity ultimately owned by Land Development's owners and controllers. Further, Land Development and its controllers face a substantial threat of personal liability as a result of their breaches of fiduciary duties in relation to the transactions between UDF III and UMT.

331. Additionally, none of the challenged transactions between UDF III and UMT and its subsidiaries was the product of reasonable business judgment or consistent with the Partnership's objectives or the best interests of the Partnership and its Limited Partners. As set forth in detail *supra* (§§ 106, 120), the Fiduciary Defendants' decisions to cause UDF III to enter the UMT Loan Participation Agreement, to cause UDF III to fund principal advances under the UMT Loan, and to cause UDF III to enter guaranty agreements for the repayment of debt by UMT subsidiaries were the products of malfeasance and self-interestedness.

E. Demand Is Futile with Respect to Each Transaction Between UDF III and UDF IV and Its Subsidiaries

332. Plaintiffs challenge the transactions between UDF III and UDF IV which include UDF III's entrance into agreements whereby UDF III has guaranteed the repayment of loans by various UDF IV subsidiaries (§ 118).

333. Land Development lacks disinterestedness and independence with respect to each and every transaction between UDF III and UDF IV and its subsidiaries. First, UMT Holdings owns 99.9% of the interests in Land Development and UMTH General, the external advisor to UDF IV that controls UDF IV. The individuals who own UMT Holdings therefore ultimately own both Land Development and UMTH General. Second, the individuals who control Land Development also control UDF IV. As set forth in detail *supra*, these individuals: (1) serve as officers and/or directors of Land Development; (2) serve

as officers and directors of UMT Services which controls Land Development and which controls UMTH General, UDF IV's advisor and controller. Further, as alleged *supra*, UMTH General controls UDF IV's day-to-day operations, investments and financing activities and underwrite its transactions. The individuals who serve as officers and directors of UMT Services, the entity that controls UMTH General, caused UDF IV to enter the challenged transactions.

334. Land Development stood on both sides of all transactions between UDF III and UDF IV because: (1) the individuals who ultimately own Land Development also ultimately own UMTH General; and (2) the individuals who control Land Development also control UDF IV. UMTH General and its controlling persons caused UDF IV to enter into the challenged transactions. In addition, Land Development's owners received material financial benefits from the challenged transactions between UDF III and UDF IV and its subsidiaries. As set forth in detail *supra*, UDF IV paid debt financing fees to UMTH General in the amount of 0.25% of the primary loan amount for all loan financing that UDF IV and its subsidiaries obtained. When Land Development caused UDF III to enter guaranty agreements that permitted UDF IV to obtain loan financing, Land Development increased the amounts of debt financing fees that UDF IV paid to UMTH General, an entity ultimately owned by Land Development's owners and controllers. Further, Land Development and its controllers face a substantial threat

of personal liability as a result of their breaches of fiduciary duties in relation to the transactions between UDF III and UDF IV and its subsidiaries.

335. Additionally, none of the challenged transactions between UDF III and UDF IV and its subsidiaries was the product of reasonable business judgment or consistent with the Partnership's objectives or the best interests of the Partnership and the Limited Partners. As set forth in detail *supra* (§ 120) the Fiduciary Defendants' decisions to cause UDF III to enter guaranty agreements for the repayment of debt by UDF IV's subsidiaries were the products of malfeasance and self-interestedness.

F. Demand Is Futile with Respect to Each Transaction Between UDF III and Buffington Land and Its Affiliates and Between UDF III and CTMGT and Its Affiliates

336. Plaintiffs challenge each of UDF III's transactions with Buffington Land, CTMGT, and their affiliates (i.e, the Developer Borrowers), which transactions include: UDF III's lending to these entities; UDF III's agreements to increase the principal amounts of the loans; and UDF III's agreements to extend maturity dates of the loans (§§ 122-133). Plaintiffs also assert that the concentration of more than 20% of UDF III's offering proceeds in loans to Buffington Land, and the concentration of more than 20% of UDF III's offering proceeds in loans to CTMGT, violated the concentration limit specified in the Partnership Agreement (§§ 186-187).

337. Land Development, the general partner of UDF III, is controlled by its general partner, UMT Services. Individual Fiduciary Defendants Etter and Greenlaw own 100% of UMT Services and constitute two-thirds of its directors (§§ 32-33). Individual Fiduciary Defendant Wilson is the third director (§ 34). Etter and Greenlaw, constituting two-thirds of the UMT Services' board of directors, would therefore control the consideration of a demand on Land Development.

338. Land Development, Etter, and Greenlaw each lack disinterestedness and independence with respect to each of the challenged transactions between UDF III and the Developer Borrowers. First, Land Development, Etter and Greenlaw stood on both sides of UDF III's transactions with the Developer Borrowers. As alleged in detail *supra*, earlier affiliates of UDF III (including UMT, UDF I, UDF II) made loans to the Developer Borrowers prior to UDF III's formation, and the Developer Borrowers needed liquidity to make loan payments to these earlier affiliates. Land Development, Etter, and Greenlaw control UDF I and UDF II: Etter and Greenlaw control Land Development which provides asset management services to UDF I and UDF II (§ 29); Etter is the chairman of UDF I's general partner and the chairman of UDF II's general partner (§ 32); and Greenlaw is the president and chief executive officer of UDF I's general partner and the president and chief executive officer of UDF II's general partner (§ 33). In addition, Greenlaw and Etter control UMT: Greenlaw and Etter control UMT Services,

which is the general partner of UMT General, which is the external advisor of UMT (§ 40). Further, Etter, Greenlaw and Land Development have economic interests in UDF III's earlier affiliates as outlined *infra* (§ 341). Plaintiffs allege that the Fiduciary Defendants directed the Developer Borrowers to make loan payments to UDF III's earlier affiliates upon their receipt of UDF III's loan proceeds. Plaintiffs allege that in other instances, the money was transferred directly from UDF III to UDF III's earlier affiliate¹⁰. Plaintiffs also allege that it was the Fiduciary Defendants rather than the Developer Borrowers who initiated the transactions. Plaintiffs additionally allege that the Fiduciary Defendants caused UDF III to make these loans to the Developer Borrowers when the Fiduciary Defendants knew that UDF III's earlier affiliates required capital to make distributions to their investors. Land Development, Etter, and Greenlaw therefore stood on both sides of the transactions: they directed the transfer of money from UDF III to the Developer Borrowers and then to UDF III's earlier affiliates (or the transfer of money directly from UDF III to its earlier affiliates) according to the earlier affiliates' capital needs; UDF I and UDF II are controlled by Land Development, Etter, and Greenlaw; UMT is controlled by Etter and Greenlaw; and

¹⁰ Likewise, the SEC determined, upon completion of its multi-year investigation, that the Fiduciary Defendants directed the borrowers to use loan proceeds from UDF IV to make loan payments to UDF III and in many instances caused UDF IV to transfer money directly to UDF III.

Etter, Greenlaw and Land Development have economic interests in the earlier UDF-affiliated entities.

339. Second, Land Development, Etter and Greenlaw were conflicted and had divided loyalties in the decisions to make, extend and increase UDF III's loans to the Developer Borrowers. Land Development, Etter and Greenlaw controlled UDF I and UDF II and thus owed obligations to these entities and their limited partners. Etter and Greenlaw controlled UMT and thus owed obligation to this entity and its stockholders. The loans from UDF III to the Developer Borrowers were made for the purpose of materially benefiting UMT, UDF I and UDF II at the expense of UDF III; the Fiduciary Defendants directed the Developer Borrowers to use the loan proceeds from UDF III to make loan payments to UMT, UDF I, and UDF III, and in other instances caused the money to be transferred directly from UDF III to these earlier affiliates. Thus, the Fiduciary Defendants who would consider a demand have divided and conflicted loyalties which constitute disabling interests.

340. Third, Etter, Greenlaw, and Land Development had special material financial interests in the fees, compensation and profits resulting from UDF III's lending to the Developer Borrowers which were not enjoyed generally by unaffiliated LP Unit holders. These financial interests include as follows:

- a. Land Development (of which Defendants Etter and Greenlaw are ultimate owners) owns a 49.99% subordinated profits interest in UDF I and provides asset management services for UDF I for which it receives compensation (§ 29). The ability of Buffington Land, CTMGT and their affiliates to make loan payments to UDF I and its subsidiaries had a direct impact upon the value of UDF I's loan portfolio and therefore a direct impact upon the value of Land Development's economic interests in UDF I. In addition, the interest payments that Buffington Land, CTMGT and their affiliates made to UDF I funded UDF I's payment of distributions to Land Development. When Land Development caused UDF III to make loans to Buffington Land, CTMGT and their affiliates, Land Development increased the value of its subordinated profits interest in UDF I and increased the amount of cash that UDF I would have available to distribute to Land Development.
- b. Land Development owns a 49.95% subordinated profits interest in UDF II and provides asset management services for UDF II for which it receives compensation (§ 29). The ability of Buffington Land, CTMGT and their affiliates to make loan payments to UDF II had a direct impact upon the value of UDF II's loan portfolio and therefore a direct impact upon the value of Land Development's subordinated profits interest in

- UDF II. In addition, the interest payments that Buffington Land, CTMGT and their affiliates made to UDF II funded UDF I's payment of distributions to Land Development. When Land Development caused UDF III to make loans to Buffington Land, CTMGT and their affiliates, Land Development increased the value of its subordinated profits interest in UDF II and increased the amount of cash that UDF II had available to distribute to Land Development.
- c. Etter and Greenlaw are also ultimate owners of UMTH General (§§ 31-32). UMTH General receives a trust administration fee of approximately 1% of the value of UMT's mortgage loan portfolio (§ 40). The ability of Buffington Land, CTMGT and their affiliates to make loan payments to UMT had a direct impact upon the value of UMT's loan portfolio and therefor a direct impact upon the amounts of trust administration fees that UMT paid to UMTH General. Therefore, when Land Development's controllers caused UDF III to lend to Buffington Land, CTMGT and their affiliates, Land Development's controllers increased the amounts of fees that UMT paid to UMTH General, an entity ultimately owned by Land Development's controllers.

341. In addition to the financial interests of Land Development, Etter, and Greenlaw discussed above, the Fiduciary Defendants' business model and profits

was materially dependent upon the UDF-affiliated entities' lending to the Developer Borrowers. As of September 30, 2015, approximately 44% of the Partnership's loan portfolio was concentrated in loans to CTMGT and its affiliates, and as of December 2016, over \$122 million of its loan portfolio (approximately 31%) was concentrated in a loan to Buffington Land. UDF I and UDF II made at least 27 loans to Buffington Land and its affiliates, and at least 13 loans to CTMGT and its affiliates. Approximately 67% of UDF IV's loans were to CTMGT and its affiliates, and approximately 10% of its loans were to Buffington Land and its affiliates as of September 30, 2016. Approximately 62% of UDF V's loans were to CTMGT as of September 30, 2015. The total balance of the Fiduciary Defendant-controlled entities' loans to CTMGT and its affiliates was in excess of \$585 million as of September 30, 2015. The extensive and dominant practice of the Fiduciary Defendants to cause the controlled entities to lend to the Developer Borrowers generated massive compensation and profits to the Fiduciary Defendants including Etter and Greenlaw. As determined by the SEC following its investigation, the Fiduciary Defendants used the Developer Borrowers to continue to generate fees and compensation for themselves in this business model.

342. Fourth, the Fiduciary Defendants (including Defendants Land Development, Etter, and Greenlaw) face a substantial threat of personal liability as a result of their breaches of fiduciary duties in relation to the challenged

transactions between UDF III and the Developer Borrowers. None of the challenged transactions was the product of reasonable business judgment, was consistent with the Partnership's objectives, or was in best interests of the Partnership and Limited Partners. As set forth in detail *supra* (¶¶ 123-139), the Fiduciary Defendants' decisions to cause UDF III to make loans to the Developer Borrowers, to cause UDF III to increase the principal amounts of the loans, and to extend the maturity dates of these loans were the products of malfeasance and self-interestedness. For example, according to the SEC, in March 2014 the Fiduciary Defendants "knew or should have known that full collectability from [Buffington Land] was not probable and, at best, highly uncertain." (SEC Compl. ¶ 37). However, according to the SEC, the Fiduciary Defendants concealed this loan impairment from the Limited Partners by providing UDF III's auditor with fabricated projections which showed Buffington Land paying off the loan in full. (SEC Compl. ¶ 38). The Fiduciary Defendants then caused UDF III to increase its loan commitment to Buffington Land, permitting the loan balance to grow from approximately \$77 million to over \$122 million between March 2013 and December 2016 before causing UDF III to forgive the entire loan amount. (SEC Compl. ¶¶ 38-40). In addition, the Fiduciary Defendants' decisions to over concentrate the Partnership's Offering Proceeds in loans to CTMGT, and in a loan

to Buffington Land, in violation of the Partnership Agreement were not the products of reasonable business judgment.

343. Further, the sudden emergence of systemic disease in the Partnership in late 2015 is inconsistent with the exercise of valid business judgment by the Fiduciary Defendants in causing the Partnership to make, extend and increase loans to the Developer Borrowers (which constituted over 69% of the Partnership's loan portfolio as of September 30, 2015). This sudden emergence of system disease is also inconsistent with the full disclosure of all material information to the LP Unit holders pursuant to the Fiduciary Defendants' fiduciary duties. The Partnership has not provided financial statements, has not provided unit valuations, has not made SEC filings, and has not otherwise made available any financial reports following the resignation of the Partnership's auditor in 2015. Federal warrants and subpoenas supported by probable cause were served regarding the UDF III's operations, and the SEC ultimately brought an action against UDF III and certain of its controllers, including Defendants Etter, Greenlaw, Wissink and Obert, following its multi-year investigation. The Partnership ceased distributions to LP Unit holders to preserve cash for possible needs of the Partnership's borrowers, despite that the Fiduciary Defendants just two months earlier urged LP Unit holders to reject a \$14.50 per Unit tender offer, in order that the LP Unit holders could continue to receive their distributions, among other reasons. Despite

that the vast majority of the Partnership's loans and loan-related commitments were scheduled to mature by the end of 2016, the Partnership lacked liquidity and reserved cash to address its obligations to borrowers. Plaintiffs' particularized allegations of disloyal use of assets to fund the Developer Borrowers' liquidity, defective disclosure regarding the Partnership's loans to the Developer Borrowers and unfairness to the Partnership demonstrate the Fiduciary Defendants' self-dealing, evidence waste, and therefore rebut the presumptions of the business judgment rule.

344. Although a precise calculation of damages is not possible based on current information, the Fiduciary Defendants who would consider a demand (Land Development, Etter, and Greenlaw) are exposed to material liability for damages to the Partnership resulting from the loans to the Developer Borrowers which represented more than 69% of the Partnership's loan portfolio as of September 30, 2015. Unlike most corporate cases where a Section 102(b)(7) charter provision is in place, the Partnership Agreement provides no limitation of liability or indemnification for misconduct or negligence by the General Partner or its affiliates. As alleged, there is reasonable doubt that the Fiduciary Defendants who would consider a demand could do so disinterestedly and independently in the face of their personal exposure to material liability and evidence of misconduct and injury.

G. Demand Is Futile with Respect to the Allegations that the Fiduciary Defendants Failed to Enforce UDF III's Rights Under the UDF X Loan Against UMT Holdings

345. As set forth *supra* (§ 117), the Fiduciary Defendants failed to enforce UDF III's rights under the UDF X Loan by seeking repayment from UMT Holdings. Land Development lacks disinterestedness and independence with respect to these allegations and with respect to UDF III's claim that UMT Holdings was thereby unjustly enriched. Land Development's control persons, the Individual Fiduciary Defendants, own the majority of interests in UMT Holdings, and therefore benefited from the Fiduciary Defendants' failure to cause UDF III to seek repayment against UMT Holdings. Further, Land Development is itself owned by UMT Holdings.

H. Demand Is Futile Because There Was a Strong Possibility at the Time This Action Was Initiated that the SEC Would Hold Land Development and Its Controlling Persons Liable for Their Misconduct In Relation to UDF III As Alleged Herein

346. As set forth *supra*, in April 2014 the SEC began a nonpublic fact-finding investigation of potential wrongdoing in connection with UDF III's operations. At the time that Plaintiffs initiated this action, the SEC's investigation was ongoing, and Land Development's controllers (Defendants Etter and Greenlaw) faced the strong possibility that the SEC would bring an action seeking disgorgement against them, and the imposition of civil penalties against them, as a result of the same misconduct alleged herein.

347. On October 18, 2016 Land Development and certain individuals associated with it received Wells Notice from the SEC stating that the SEC staff had made a determination to recommend that the SEC file an enforcement action alleging violations of the Securities Act and the Exchange Act.

348. On July 3, 2018, the SEC filed the SEC Action against UDF III, UDF IV, and certain of Land Development's controllers including Defendants Etter, Greenlaw, Wissink, and Obert. The SEC determined that they acted in bad faith by among other things, permitting the balance of UDF III's loan to Buffington Land to balloon to over \$122 million despite their knowledge by March 2013 that Buffington Land had no ability to satisfy the loan, by failing to cause UDF III to record impairments with respect to the loan, and by concealing the impairment of the loan from investors. According to the SEC, by March 2014, the controllers had possession of Buffington Land's own projections showing the inability to pay, withheld the projections from the outside auditor and provided the auditor with fabricated projections.

349. The SEC also determined that Defendants Etter, Greenlaw, Wissink, and Obert directed the Developer Borrowers to use loan proceeds from one UDF affiliate to pay down principal and interest on the borrowers' outstanding loans to another UDF affiliate, in order that the controllers could continue to raise capital

and generate fees. The SEC determined that in other instances, they caused the money to be transferred directly from one UDF affiliate to another.

350. As set forth in detail *supra*, Plaintiffs allege that Land Development's controllers, including Defendants Etter and Greenlaw, engaged in this same scheme in their operation of UDF III: they caused UDF III to make loans to the Developer Borrowers in order that the Developer Borrowers could pay down loans to UDF III's earlier affiliates, and in order that these earlier affiliates could make distribution payments to their investors, including the Fiduciary Defendants and their affiliates.

351. The SEC determined that Defendants Etter, Greenlaw, Wissink, and Obert violated the Securities Act and Exchange Act by among other things causing UDF III to make false statements in order to conceal their wrongdoing in connection with their operation of UDF III. The Consent Judgment entered against these individuals in July 2018 require them to pay disgorgement on a joint and several basis of \$6,809,282 plus interest of \$390,718, and require each of them to pay a civil penalty of \$250,000.

352. Land Development and its controllers who would consider a demand (Defendants Etter and Greenlaw) therefore lacked independence at the time that this action was initiated, and continue to lack independence, with respect to all of transactions and conduct alleged herein due to their personal exposure to liability.

COUNT I

DERIVATIVE CLAIM, ON BEHALF OF UDF III, FOR BREACH OF FIDUCIARY DUTY

(AGAINST DEFENDANTS ETTER, GREENLAW, WILSON, WISSINK, OBERT, YOUNGBLOOD, UMT SERVICES AND LAND DEVELOPMENT (THE “FIDUCIARY DEFENDANTS”))

353. Plaintiffs incorporate by reference and reallege every allegation set forth above, as though fully set forth herein. As alleged herein, the Partnership Agreement expressly retains and prohibits the contractual limitation of common law fiduciary duties.

354. Defendants Etter and Greenlaw, as ultimate controllers and owners of UMT Services, owed fiduciary duties to UDF III and exercised their control to use UDF III and its capital and assets in the conflicted and self-dealing conduct as alleged herein, at the wrongful expense of UDF III.

355. Defendants Etter, Greenlaw and Wilson, as directors and officers of UMT Services and controllers of the decisions and conduct which injured UDF III, owed fiduciary duties to UDF III and exercised their control and authority as directors and officers of UMT Services and controllers of UDF III to use UDF III and its capital and assets in the conflicted and self-dealing conduct as alleged herein, at the wrongful expense of UDF III.

356. Defendant UMT Services, owed fiduciary duties to UDF III as the general partner of Land Development (UDF III’s General Partner). UMT Services

exercised its control and authority to use UDF III and its capital and assets in the conflicted and self-dealing conduct as alleged herein, at the wrongful expense of UDF III.

357. Defendant Land Development owed fiduciary duties to UDF III as the General Partner of UDF III and exercised its control and authority to use UDF III and its capital and assets in the conflicted and self-dealing conduct as alleged herein, at the wrongful expense of UDF III.

358. Defendants Wissink, Obert and Youngblood, as senior executive decision-makers concerning the conduct that injured UDF III, owed fiduciary duties to UDF III and exercised their control and authority to use UDF III and its capital and assets in the conflicted and self-dealing conduct as alleged herein, at the wrongful expense of UDF III.

359. As a direct and proximate result of the breaches of fiduciary duty by the Fiduciary Defendants, UDF III and has sustained damages, as alleged herein.

COUNT II

DIRECT CLAIM, ON BEHALF OF THE CLASS, FOR BREACH OF FIDUCIARY DUTIES

(AGAINST THE FIDUCIARY DEFENDANTS)

360. Plaintiffs incorporate by reference and reallege every allegation set forth above, as though fully set forth herein. As alleged herein, the Partnership

Agreement expressly retains and prohibits the contractual limitation of common law fiduciary duties.

361. Defendants Etter and Greenlaw, as ultimate controllers and owners of UMT Services, owed fiduciary duties to UDF III's Limited Partners.

362. Defendants Etter, Greenlaw and Wilson, as directors and officers of UMT Services and controllers of the decisions and conduct which injured the Limited Partners, owed fiduciary duties to UDF III's Limited Partners.

363. Defendant UMT Services, as the general partner and controller of UDF III, owed fiduciary duties to UDF III's Limited Partners as the General Partner of the General Partner of UDF III.

364. Defendant Land Development owed fiduciary duties to UDF III's Limited Partners as the General Partner of UDF III.

365. Defendants Wissink, Obert and Youngblood, as senior executive decision-makers concerning the self-dealing conduct that injured UDF III's Limited Partners, owed fiduciary duties to UDF III's Limited Partners.

366. The Fiduciary Defendants breached their fiduciary duties owed to the Limited Partners by their decision to cease distributions to the Limited Partners and their failure to cause UDF III to distribute Cash Available for Distribution to the Limited Partners based on an independent consideration of relevant factors and in accordance with the requirements of the Partnership Agreement during the

period from January 2016 to the present. Further, the Fiduciary Defendants breached fiduciary duties owed to the Limited Partners when they omitted and misstated material information provided to the Limited Partners concerning the Partnership and its assets.

367. As a direct and proximate result of the breaches of fiduciary duties by the Fiduciary Defendants, UDF III's Limited Partners have sustained damages, as alleged herein.

COUNT III

DERIVATIVE CLAIM, ON BEHALF OF UDF III, FOR WASTE OF PARTNERSHIP ASSETS

(AGAINST THE FIDUCIARY DEFENDANTS)

368. Plaintiffs incorporate by reference and reallege every allegation set forth above, as though fully set forth herein.

369. As alleged herein, the Fiduciary Defendants caused UDF III: to make numerous loans to UDF III's affiliated entities and to the Developer Borrowers and their affiliates; to agree to increase the principal amounts of the loans and to fund principal advances; to enter into a loan participation agreement with UMT; and to enter into guaranty agreements for the repayment of its affiliates' loans. The Fiduciary Defendants caused UDF III to enter these transactions for their own benefit. These transactions involved economic terms so one-sided as to create an inference that no person acting in a good faith pursuit of UDF III's interests could

have approved the terms. Moreover, there was no rational basis for the Fiduciary Defendants to have concluded that these transactions were likely to have benefitted UDF III. In addition, the Fiduciary Defendants failed to enforce UDF III's rights under loan agreements. There was no rational basis for the Fiduciary Defendants not to enforce UDF III's rights under the loan agreements and no person acting in a good faith pursuit of UDF III's interests could have failed to enforce them.

370. The Fiduciary Defendants wasted UDF III's assets when they caused it to enter into the challenged transactions and when they failed to enforce UDF III's rights under loan agreements.

371. By their conduct as alleged herein, the Fiduciary Defendants wasted UDF III's assets.

372. As a result of Defendants' waste of UDF III's assets, the Fiduciary Defendants are liable to UDF III.

COUNT IV

DERIVATIVE CLAIM, ON BEHALF OF UDF III, FOR AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

**(AGAINST DEFENDANTS UMT, UMT HOLDINGS, UMTH GENERAL, UDF I, UDF IV, AND UDF X
(THE "AIDING & ABETTING DEFENDANTS")**

373. Plaintiffs incorporate by reference and reallege every allegation set forth above, as though fully set forth herein.

374. Each of the Aiding & Abetting Defendants is a knowing participant and conspirator in the breaches by the Fiduciary Defendants alleged herein.

375. Defendants UMT, UMT Holdings, UMTH General, UDF I, UDF IV, and UDF X knew and substantially assisted in the wrongful conduct which resulted in the breaches of the Fiduciary Defendants' respective fiduciary duties to UDF III as described above in Counts I. As such, UMT, UMT Holdings, UMTH General, UDF I, UDF IV, and UDF X are jointly and severally liable to UDF III for the breaches of fiduciary duty.

376. As a direct result of the Aiding & Abetting Defendants' aiding and abetting the breaches of fiduciary duties described herein, the Aiding & Abetting Defendants harmed UDF III.

COUNT V

DERIVATIVE CLAIM, ON BEHALF OF UDF III, FOR BREACH OF CONTRACT

(AGAINST DEFENDANT LAND DEVELOPMENT)

377. Plaintiffs incorporate by reference and reallege every allegation set forth above, as though fully set forth herein.

378. UDF III and the Limited Partners as admitted entered into the Partnership Agreement with Defendant Land Development.

379. The Partnership Agreement restricts the concentration of the Partnership's assets in loans to individual buyers:

The Partnership may not invest in or make mortgage loans to or from any one borrower that would exceed, in the aggregate, an amount greater than 20% of the Offering proceeds. (Partnership Agreement, 11.3(b))

380. As alleged herein, Defendant Land Development breached the Partnership Agreement when it caused UDF III to invest in and/or to make mortgage loans to each of UDF I and/or its wholly-owned subsidiaries, to Buffington Land, and to CTMGT that in the aggregate exceeded 20% of UDF III's offering proceeds.

381. Defendant Land Development breached the Partnership Agreement when it failed to obtain the appraisals required in connection with the UMT Participation Interest and UMT Option.

382. UDF III has fulfilled all of its obligations under the Partnership Agreement.

383. UDF III was thereby substantially damaged.

COUNT VI

DIRECT CLAIM, ON BEHALF OF THE CLASS, FOR BREACH OF CONTRACT

(AGAINST DEFENDANT LAND DEVELOPMENT)

384. Plaintiffs incorporate by reference and reallege every allegation set forth above, as though fully set forth herein.

385. By its failure to distribute Cash Available for Distribution to the Limited Partners from January 2016 to the present, its failure to provide the Limited Partners an annual report for UDF III for 2016, quarterly reports for UDF III for the first three quarters of 2016, and a report of the estimated value of the LP Units since November 2015, Defendant Land Development breached the Partnership Agreement.

386. As a result of the actions of Defendant Land Development, Plaintiffs and the Class have been harmed.

COUNT VII

DERIVATIVE CLAIM, ON BEHALF OF UDF III, FOR UNJUST ENRICHMENT

(AGAINST ALL DEFENDANTS)

387. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

388. By their wrongful acts and omissions, each Defendant was unjustly enriched at the expense of and to the detriment of UDF III.

389. Plaintiffs, on behalf of UDF III, seek restitution from the Defendants, and each of them, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by the Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

390. The Fiduciary Defendants violated and breached their fiduciary duties as alleged herein and were unjustly enriched at the expense of UDF III and the Aiding & Abetting Defendants knowingly participated in and unjustly benefitted from the breaches..

391. Plaintiffs, on behalf of UDF III, have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, UDF III and the Limited Partners of UDF III, demand judgment as follows:

- A. Declaring this action properly maintainable as a class and derivative action;
- B. Against the Fiduciary Defendants and in favor of UDF III for the amount of damages sustained by UDF III as a result of the Fiduciary Defendants' breaches of fiduciary duties owed to UDF III and their waste of corporate assets;
- C. Against the Fiduciary Defendants and in favor of Plaintiffs and the Class for the amount of damages sustained by Plaintiffs and the Class as a result of the Fiduciary Defendants' breaches of fiduciary duties owed to the Limited Partners;
- D. Against the Aiding and Aiding and Abetting Defendants and in favor of UDF III for the amount of damages sustained by UDF III as a result of the Aiding and Abetting Defendants' aiding and abetting of the Fiduciary Defendants' breaches of fiduciary duties owed to UDF III;
- E. Against Land Development and in favor of UDF III, the Plaintiffs and the Class for the amount of damages sustained by UDF III, the Plaintiffs and the Class as a result of Land Development's breaches of the Partnership Agreement;

- F. Directing UDF III to seek the removal of Land Development as its General Partner;
- G. Awarding such other extraordinary equitable and/or injunctive relief as is appropriate, including attaching, impounding, imposing a constructive trust on, or otherwise restricting Defendants' assets so as to assure that Plaintiffs on behalf of UDF III and the Class have an effective remedy;
- H. Awarding to UDF III restitution from the Defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the Defendants;
- I. Awarding Plaintiff and the Class pre- and post-judgment interest at the statutory rate;
- J. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses;
- K. Imposing a constructive trust on all benefits Defendants improperly obtained as a result of the wrongs alleged;
- L. Ordering the Fiduciary Defendants, jointly and severally, to account to Plaintiffs and UDF III for all damages suffered and to be suffered by UDF III and the Limited Partners as a result of the wrongs complained of herein, including pre- and post-judgment interest;
- M. Enjoining Defendants, temporarily and permanently, from taking any steps necessary to continue their scheme until after a trial on the merits of the above claims; and,
- N. Granting such other and further relief as the Court deems just and equitable.

Dated: April 29, 2019

**CHIMICLES SCHWARTZ KRINER &
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