

CAUSE NO. DC-22-09833

NexPoint Diversified Real Estate Trust, a	§	IN THE DISTRICT COURT
Delaware Statutory Trust; and NexPoint Real	§	
Estate Opportunities, LLC, a Delaware	§	
Limited Liability Company,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	192nd
v.	§	_____ JUDICIAL DISTRICT
	§	
UMTH General Services, L.P.; UMTH Land	§	
Development, L.P.; UMT Holdings, L.P.;	§	
Hollis M. Greenlaw; Todd F. Etter; Ben L.	§	
Wissink; and Cara D. Obert	§	
	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

PLAINTIFFS’ ORIGINAL PETITION

Come Now, NexPoint Diversified Real Estate Trust (“NXDT”), a Delaware Statutory Trust that has elected to be taxed as a Real Estate Investment Trust (a “REIT”) for federal income tax purposes, and NexPoint Real Estate Opportunities, LLC (“NREO”), a Delaware Limited Liability Company and wholly-owned subsidiary of NXDT (collectively “Plaintiffs” or “NexPoint”) and file their Original Petition complaining of Defendants UMTH General Services, L.P., UMTH Land Development L.P., UMT Holdings, L.P., Hollis M. Greenlaw, Todd F. Etter, Ben L. Wissink, and Cara D. Obert (collectively “Defendants”), and would respectfully show the Court as follows:

OVERVIEW

Purpose of this lawsuit. This lawsuit seeks to hold accountable those individuals and entities that have perpetuated the massive multi-year deception and fraud that is the United Development Funding “investment” program (“UDF”). The Defendants ran UDF’s consecutive “investment” funds as a Ponzi scheme; sought to cover it up through an endless series of fake loans

and payments; paid themselves millions of dollars in improper fees; lied to investigators about it; got caught by the SEC and were ordered to disgorge profits and pay fines; with approval of “independent” trustees, utilized UDF shareholder funds to pay disgorgement of ill-gotten profits and prejudgment interest; were indicted by a federal grand jury on ten counts of securities, wire and banking fraud that covered an extended period of time; tried to save themselves by spending \$65 million or more of shareholder funds on legal fees, costs and payments; never disclosed to shareholders their massive expenditure of shareholder funds on their individual defense; were convicted on ten counts of securities, wire and banking fraud and still expect the shareholders to pay their legal fees while they refuse to return any of their ill-gotten profits.

Why this lawsuit is necessary. If the foregoing conduct isn’t bad enough, it gets worse. UDF’s “current” management refuses to do anything about the bad acts of UDF’s “prior” management. While one would think that *criminal convictions* of UDF’s top executives (three of whom are defendants in this case) would force UDF’s “remaining” management to re-examine its prior practices and seek repayment from the UDF wrongdoers for the damage they caused and the legal fees they improperly made the shareholders pay, that has not happened.

Why? Because “current” management is simply part of “prior” management, at all times complicit in the years of bad acts by the “prior” management. It is to UDF management’s collective interests—including the current trustees of UDF IV (James Kenney; Philip K. Marshall; J. Heath Malone; and Steven J. Finkle)—to protect themselves; eliminate or preclude any scrutiny; keep their steady stream of management fees coming; and continue to spend shareholder money on the convicted felons’ legal defense. That legal defense has been spectacularly unsuccessful over an eight-year period despite its astronomical cost for one very good reason: UDF’s

management did exactly what the SEC and the United States Department of Justice claimed they did.

Because the wrongdoers and “current” management are one and the same, even criminal convictions of some members of UDF’s management change nothing. UDF continues to refuse to provide financial information to shareholders; continues to refuse to hold an annual shareholder meeting in contravention of organizational documents and the laws of UDF IV’s jurisdiction of formation, resulting in seven years having passed since UDF IV held an election of trustees (and one of UDF IV’s current trustees has never been elected by shareholders); continues to refuse to go after prior management and hold them accountable for their bad conduct and refuses to change any of its practices.

As the lawyer for UDF’s CEO Hollis Greenlaw bragged to the jury during his opening statement in the criminal trial in January of this year: “[Y]ou will hear that UDF continues to this day to conduct its financial business in much the same way as they always have[.]”¹ And that very sentiment encapsulates both the problem addressed by the lawsuit and why the relief sought is so necessary. In short, despite being fiduciaries of NexPoint (and thousands of other shareholders), Defendants continue to put their own financial and personal interests ahead of their beneficiaries such as NexPoint.

Some of the wrongful conduct. The UDF web of funds (including UDF IV, of which NexPoint is a shareholder) are controlled by the Advisor (Defendant UMTH General Services, L.P.) and its Affiliates (the other Defendants, some of whom are Affiliates and others of whom

¹ Opening Statement by Paul Pelletier, *USA v. Greenlaw, et al.*, at 12:10-12 (January 12, 2022).

control the Advisor and its Affiliates). Just some of the many outrageous acts by Defendants that this lawsuit addresses include:

- ***Defendants used shareholder money to pay their own personal obligations under a SEC settlement.*** Defendants Hollis M. Greenlaw, Todd F. Etter, Ben L. Wissink, and Cara D. Obert (collectively the “Individual Defendants”) were obligated under an SEC settlement and court order to disgorge \$7.2 million in profits (including pre-judgment interest) they improperly made by misleading investors. But Defendants paid the “disgorgement” ***with shareholder funds***. In other words, they disgorged nothing themselves and simply used shareholder money to satisfy their own obligations.
- ***They then lied about it and tried to cover it up.*** UDF IV, which was **tightly controlled** by Defendants and which, at the time of the SEC settlement continued to be a public company with a series of securities registered with the SEC and whose common stock traded each and every day in the over-the-counter market, never disclosed publicly that it used shareholder money to satisfy the personal financial obligations of certain of the Defendants under the SEC settlement. Instead, Defendants tried to cover it up by making it look like the funds came from a “payment” from its largest borrower (Mehrdad Moayedi and his stable of companies operating under the name Centurion American). This was untrue. The money came from UDF IV’s shareholders.
- ***The ironic injustice of this conduct.*** In effect, Defendants settled the SEC lawsuit by engaging in the very act that they were sued for in the first place. The SEC (correctly) claimed that the Individual Defendants were operating a *Ponzi* scheme by taking funds raised from new investors in UDF IV; disguising them as fake loans to UDF’s largest borrower (Moayedi); who then made corresponding “fake” payments to UDF III and UDF IV solely in order to fund “fake” distributions to shareholders. But in order to settle the SEC disgorgement obligation, Defendants *engaged in the very same act for which they were being sued for in the first place* (taking UDF IV shareholder money; pretending it was a loan to Moayedi and having him make a corresponding fake payment that Defendants used to satisfy their own personal obligations under the SEC order). It is as if a bank robber paid his criminal penalty for robbing a bank by robbing the same bank a second time.
- ***Defendants improperly spent millions of dollars in shareholder money to fund their criminal defense.*** Despite knowing they engaged in the very conduct that they were ultimately indicted and convicted for, Defendants used tens of millions of dollars in shareholder funds to pay their legal fees in defending the SEC lawsuit and the resulting criminal prosecution (both of which they, actually or effectively, lost). However, payment of these fees was prohibited under the parties’ Advisory Agreement, which specifically barred indemnification of securities law violations. And even if it was allowed, because the Individual Defendants were convicted and entered into a SEC settlement, the legal fees must be repaid. Yet current management (with support by the current Board of Trustees) refuses to seek such repayment and apparently is continuing to pay the convicted felons’ legal fees for their appeal.

- ***Defendants paid themselves lucrative management fees on overvalued assets.*** Defendants continued to pay themselves lucrative advisory fees amounting to over \$8.5 million per year despite spending very little of their time on their duties as outlined in the Advisory Agreement and most of their time defending against individual legal problems. Defendants have presided over a massive diminution of value through the continuous use of UDF IV money to pay individual legal fees, disgorgement and prejudgment interest, and through their failure to hold their primary borrower, Moayed, accountable to repay loans that for many years have been non-performing.
- ***Defendants tried to hide their actions by blocking audited financials of UDF.*** Defendants misled investors by claiming that they were working on, and intended to deliver, audited financials when, in fact, they halted all such work for several years. They also knew that they would *never* issue audited financials because it would only confirm their wrongful behavior. The Defendants have refused to issue any meaningful financial information about UDF IV since November 2015.
- ***Covering up for a complicit borrower.*** Despite their largest borrower (Moayed) owing UDF entities close to \$1 billion, the Defendants have continuously refused to undertake any collection actions. NexPoint believes such actions have not been taken because the Defendants have at all times since 2014 needed for Moayed to be available to help them execute transactions and provide affirmative statements about UDF and its management in order to keep the scheme going (including as recently as 2019 with the payment of the disgorgement and pre-judgment interest in settlement of the SEC lawsuit); to have held Moayed accountable would have been to blow-up the railroad track that the UDF fraud train has barreled down since at least 2014. The massiveness of this debt, the lack of collection or enforcement action and the ever-presence of Moayed in the questionable business dealings of the UDF management team begs the question of who was in control of UDF—UDF management or Moayed?

Much of this wrongdoing first became known to the public during the criminal trial of defendants Greenlaw, Obert, Wissink and Jester. The testimony in the criminal trial included dramatic accounts of how Moayed-controlled entities acted as conduits in the execution of their fraud on investors. Ultimately, the executives were charged with securities fraud in connection with operating UDF as a *Ponzi*-like scheme. Even as that prosecution unfolded, the Defendants refused to take any actions. Instead, they continued to use shareholder money to pay their legal fees, and the criminal defendants (now felons) continued to stay on as executives.

Even after the four UDF executives were swiftly convicted on all counts, Defendants have banded together and continue to proclaim that no one at UDF has done anything wrong. The

current trustees of UDF IV (James Kenney; Philip K. Marshall; J. Heath Malone; and Steven J. Finkle) have taken no acts to correct or address this wrongful conduct. In light of this pattern of never-ending improper behavior, it is high time that those who operated and participated in the UDF web of corruption be held responsible for their brazen acts of fraud and breach of fiduciary duty. This lawsuit seeks to do just that.

DISCOVERY CONTROL PLAN

1. In accordance with TEX. R. CIV. P. § 190.4, Plaintiffs request that discovery in this case be conducted in accordance with a level 3 discovery control plan.

MONETARY RELIEF DESIGNATION

2. In accordance with TEX. R. CIV. P. § 47, Plaintiffs hereby give notice that they seek monetary relief over \$1,000,000.

JURISDICTION AND VENUE

3. Subject matter jurisdiction is properly vested in this Court because the amount in controversy falls within the jurisdictional limits of this Court.

4. The Court has personal jurisdiction over Defendants, including Defendants UMTH General Services, L.P., UMTH Land Development, L.P., and UMT Holdings, L.P. because these entities are Delaware limited partnerships with their principal places of business at 1301 Municipal Way, Suite 200, Grapevine, Texas.

5. Venue is further proper in this Court because all or a substantial part of the events giving rise to the claim occurred in Dallas County, Texas.

6. Venue is proper under Section 6.06 of the Advisory Agreement dated May 29, 2014 (the “Advisory Agreement”) between Defendant UMTH General Services, L.P., and United Development Funding IV (“UDF IV”), a company in which NexPoint is a significant shareholder. Section 6.06 of the Advisory Agreement requires that actions arising from the Advisory

Agreement be brought “exclusively” in Dallas County, Texas. Venue is proper in Dallas County, Texas as to all Defendants pursuant to Tex. Civ. Prac. & Rem. Code § 15.005 because venue is proper in Dallas County, Texas as to at least one Defendant and all claims and actions arise out of the same series of transactions and occurrences.

PARTIES

A. NexPoint Plaintiffs

7. Plaintiff NexPoint Diversified Real Estate Trust (“NXDT”), formerly known as NexPoint Strategic Opportunities Fund, is a statutory trust organized and existing under the laws of the State of Delaware that has elected to be taxed as a REIT for U.S. federal income tax purposes and is registered to do business in the State of Texas. NXDT’s offices and principal place of business are in Dallas County, Texas.

8. Plaintiff NexPoint Real Estate Opportunities, LLC (“NREO”), is a Delaware Limited Liability Company with its principal offices in Dallas County, Texas. NREO is registered to do business in the State of Texas and NREO’s offices and principal place of business are in Dallas County, Texas.

9. Plaintiff NXDT is the beneficial owner of 1,763,581 UDFI Shares by means of its 100% ownership and management control over NREO. The first purchase of UDF IV shares by NXDT was on June 9, 2017. On that day, NXDT purchased 5,000 UDF IV shares. From that date through June 21, 2019, NXDT acquired a total of 1,763,581 UDF IV shares. On December 31, 2021, in order to prepare NXDT for de-registration as a registered investment company and to qualify to elect to be taxed as a REIT, NXDT transferred all 1,763,581 UDF IV shares to NREO. Notwithstanding such transfer, NXDT has at all times since that time continued to have exclusive investment and voting power over all UDF IV shares so transferred; accordingly, NXDT remains

beneficial owner of all such shares. NREO is the current legal owner of the UDF IV shares referenced above. On information and belief, the UDF IV shares owned by NexPoint comprise approximately 5.8% of the outstanding UDF IV shares. On information and belief, the remaining UDF IV shares are owned by an estimated 30,000 shareholders, most of whom are “mom and pop” retail investors.

B. UDF Entity Defendants (UMTH General Services, L.P., UMT Holdings, L.P., UMTH Land Development, L.P.)

10. Defendant UMTH General Services, L.P. (“UMTH General” or the “Advisor”) is a Delaware Limited Partnership. UMTH General is the advisor of UDF IV and manages UDF IV’s affairs pursuant to an Advisory Agreement dated May 29, 2014. The sole general partner of UMTH General is UMT Services, Inc., a Texas corporation (“UMT Services”).

11. Defendant UMT Holdings, L.P. (“Holdings”) is a Delaware Limited Partnership that owns and controls UMTH General. UMT Services is the sole general partner of Holdings.

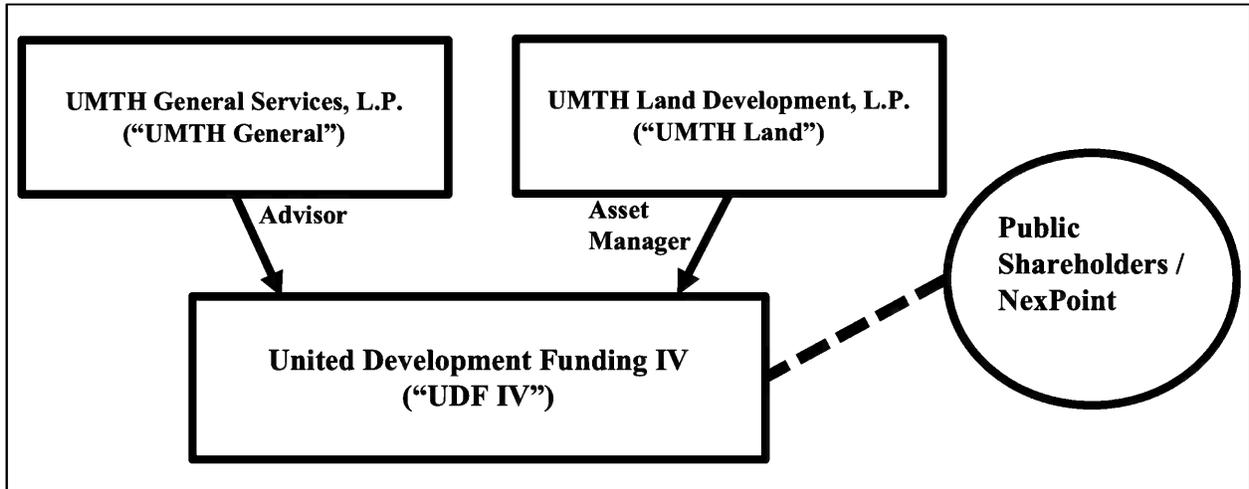
12. Defendant UMTH Land Development, L.P. (“UMTH Land”) is a Delaware Limited Partnership and serves as UDF IV’s affiliated asset manager. UMT Services is the sole general partner of UMTH Land.

13. On information and belief, UMT Services, which is the general partner of UMTH General, UMTH Land, and Holdings, is owned 50% each by Individual Defendants Greenlaw and Etter. On information and belief, UMT Services owns 0.1% of the partnership interests in Holdings, while Individual Defendants Greenlaw, Etter, Obert and Wissink collectively own 74.91% of the partnership interests in Holdings. On information and belief, UMT Services and Holdings owns 100% of the partnership interests in UMTH General and UMTH Land.

14. Accordingly, Individual Defendants Greenlaw and Etter, through their collective 100% ownership of UMT Services, control UMTH General and UMTH Land, as UMT Services

is the sole general partner of each of those limited partnerships, and the four Individual Defendants beneficially own 74.91% of UMTH General and UMTH Land.

15. UMTH General manages all the assets, investment and collection activities, operations, external reporting, and other affairs of UDF IV pursuant to the Advisory Agreement. Under that agreement, UMTH General “retained” UMTH Land to help manage UDF IV’s assets:



C. The UDF Individual Defendants (Greenlaw, Etter, Obert and Wissink)

16. Defendant Hollis M. Greenlaw (“Greenlaw”) was, at all relevant times herein, Chief Executive Officer (“CEO”) of each of the Entity Defendants. He has owned 50% of the outstanding stock of UMT Services, with Defendant Etter owning the other 50%; therefore, Defendants Greenlaw and Etter collectively owned 100% of UMT Services, the general partner of each of the Entity Defendants. He also was CEO and Chairman of the Board of Trustees for UDF IV. Greenlaw signed multiple registration statements and other SEC filings on behalf of UDF IV. Greenlaw also signed the Advisory Agreement on behalf of UDF IV. Greenlaw also served² on

² Despite being a convicted felon, it is unclear if Greenlaw has been removed from all of his positions with UDF. Neither UMTH General nor UMTH Land have indicated who, if anyone, is on the UDF IV investment committee and the last public disclosures indicated Greenlaw was a member.

the UDF IV Investment Committee and directed the UDF Entity Defendants. At all relevant times, Greenlaw was a resident of Texas.

17. Greenlaw was convicted on ten federal counts of securities fraud, wire fraud and bank fraud and is currently serving a seven-year sentence at Federal Correctional Institution in El Reno, Oklahoma.

18. Defendant Todd Etter (“Etter”) was, at all relevant times, a 50% co-owner with Defendant Greenlaw of UMT Services—the general partner of UMTH General and UMTH Land—the Executive Vice President of UMTH Land, Director and Chairman of UMT Services, and Chairman of Holdings. Through these positions, Etter has at all times actively participated in the management of each Entity Defendant. Etter is a resident of Texas.

19. Etter has not been indicted for any criminal offense but was a defendant in a lawsuit brought by the SEC and entered into a settlement agreement with the SEC in connection with such SEC lawsuit.

20. Etter also serves, or served, on the UDF IV Investment Committee. As 100% owners of UMT Services, the general partner of each Entity Defendant, and as over 60% beneficial owners of all the partnership interests of the Entity Defendants, together, Etter and Greenlaw effectively control the Entity Defendants.

21. Defendant Ben L. Wissink (“Wissink”) was the Chief Operating Officer (“COO”) of UMTH Land, as well as COO of UMTH General. He served on the UDF IV Investment Committee and, upon information and belief, also directed the Entity Defendants by reason of his position of Chief Operating Officer. Wissink is a resident of Texas.

22. Wissink was convicted on ten federal counts of securities fraud, wire fraud and bank fraud and is currently serving a five-year sentence at Fort Worth Medical Center in Fort Worth, Texas.

23. Defendant Cara D. Obert (“Obert”) was, at all relevant times, Chief Financial Officer (“CFO”) of UMTL Land, and CFO and Treasurer of UDF IV. Obert signed registration statements and other SEC filings and notices on behalf of UDF IV. Obert is also a limited partner and owner in Defendant Holdings. Obert is a resident of Texas.

24. Obert was convicted on ten federal counts of securities fraud, wire fraud and bank fraud and is currently serving a five-year sentence at Federal Prison Camp in Bryan, Texas.

25. UDF IV’s affairs are overseen by its Board of Trustees (the “Board”). During the relevant time period, Defendant Hollis M. Greenlaw was Chairman of the Board of Trustees. Philip K. Marshall, J. Heath Malone and Steven J. Finkle, who have served as trustees of UDF IV since 2009 and who, on information and belief, have extensive personal relationships with Defendant Greenlaw, currently serve on the Board as independent Trustees.

FACTS

A. The UDF “Family of Funds.”

26. Since the early 2000s, the Entity Defendants have managed and controlled various “investment fund” entities (the “UDF Funds”) operating under the name “United Development Funding.” These investment funds raised capital through the issuance of securities. The UDF Funds claimed that they deployed investor capital towards the financing of homebuilders and land developers. The UDF Funds are all managed by the same group of individuals, who are employees and/or affiliates of the Entity Defendants.

27. United Development Funding IV (“UDF IV”), a Maryland REIT, is one of the various UDF Funds. UDF IV was preceded by United Development Funding III, L.P. (“UDF III”) and followed by United Development Funding Income Fund V, a Maryland REIT (“UDF V”).

28. The stated purpose of each UDF Fund was to make high-interest loans to developers of residential real estate and then pay monthly dividends to investors from the interest supposedly earned from those loans. In reality, a UDF Fund that made such a loan did not begin to receive cash interest on such loan unless and until a property was developed and lot sales began with respect to the development project that was pledged as collateral to secure such loan.

29. In many cases, such payment of cash interest would not begin for several months, or even years, and, on information and belief, some projects that were financed months or years ago have not yet begun to pay cash interest on loans made by UDF Funds to the developers (such as Moayedi) of such projects. All interest not paid on such loans is accrued and compounded (i.e., interest is paid on interest) until payment, resulting in substantial accumulation of unpaid interest on loans until lot sales begin.

30. The portfolios of the UDF Funds were supposed to be diversified as to borrowers and developments. But behind the scenes, there was substantial overlap of borrowers between the various UDF Funds and concentrations of borrowers (i.e., blatant lack of diversification) within individual UDF Funds. For example, transactions with UDF’s largest borrower, Mehrdad Moayedi (“Moayedi”) constituted 43% of UDF III’s, 67% of UDF IV’s, and 62% of UDF V’s loans, respectively. It is now known that this significant overlap (which Defendants sought to hide by using a complex web of different entities) was the result of UDF operating in a *Ponzi*-like manner as described below.

B. The Advisory Agreement.

31. Because UDF IV had no employees, its activities were controlled, managed, and conducted by UMTH General, as its advisor, and by the Advisor's officers and employees, including the Individual Defendants. The relationship between UDF IV and UMTH General is governed by a contract known as the Advisory Agreement to which UDF IV and UMTH General were parties.

32. UDF IV delegated virtually all day-to-day management and operational responsibilities of UDF IV to the Advisor under the Advisory Agreement. Such duties included, among others, selecting and closing investments, managing and collecting principal and interest on UDF's portfolio of loan investments, ensuring compliance with covenants on such loans and pursuing remedies upon default of such loans, managing UDF IV's cash, ensuring that UDF IV was properly capitalized, including by raising money through the issuance of UDFI Shares to the public, managing the day-to-day business affairs of the REIT, preparing financial statements for UDF IV and working with UDF IV's independent auditor in its annual audit of UDF IV's financial statements, ensuring that all reports are filed with the SEC and handling all investor relations, including issuing news releases, taking investor calls and ensuring that investors are provided all information typically provided to investors in public companies. There are a few additional key facts about the Advisory Agreement that are involved in this lawsuit.

33. First, the Advisory Agreement clearly provides that UMTH General is in a fiduciary relationship with the shareholders of UDF IV, including NexPoint. Section 2.01 of the Advisory Agreement provides as follows:

“The Advisor shall be deemed to be in a fiduciary relationship to the Trust ***and its Shareholders.***”

See Advisory Agreement at § 2.01. This is significant because it means Defendants owe NexPoint and all 30,000 other shareholders of UDF IV fiduciary duties of loyalty and care. As seen

throughout this Petition, Defendants continuously and nakedly breached these duties and consistently put themselves and their own interests ahead of all UDF IV shareholders.

34. Second, as NexPoint's fiduciary, UMTH General was responsible for UDF IV's business functions, including investment underwriting and decision-making, asset management and servicing of loans (which functions include, without limitation, collection of loans and interest, monitoring of compliance with loan covenants by borrowers and pursuit of legal remedies upon loan defaults), treasury management, capital raising, accounting and financial reporting and investor relations, among other functions. *See* Advisor Agreement at § 2.02. In other words, if something improper took place with respect to UDF IV's operations, it was UMTH General and its principals, including the Individual Defendants, who directed it.

35. Third, because the Advisory Agreement defines the "Advisor" to be "any successor advisor" or "any Person to which UMTH General Services, L.P. or any successor advisor subcontracts all or substantially all of its functions," UMTH Land is also a fiduciary to NexPoint. This is because UMTH General contracted out to UMTH Land the investing and financing operations of UDF IV.

36. In reality, however, the same individuals who ran UMTH General also ran UMTH Land. The "Investment Committee" for UDF IV was made up of Defendants Greenlaw, Wissink, and Etter and were employed by UMTH Land in that capacity. These same individuals, along with Defendant Obert, ran UMTH General and owned and controlled Defendant Holdings, which in turn owned both UMTH General and UMTH Land.

37. Fourth, UMTH General and UDF IV entered into the Advisory Agreement with the intent and purpose of conferring a benefit on UDF IV's shareholders. That benefit was the management of UDF IV in the manner described in the offering documents pursuant to which

UDF IV issued UDFI Shares, including carefully adhering to the investment strategy as set forth in such offering documents, providing all the services described in the Advisory Agreement in a professional and careful manner and ultimately protecting the invested capital of, and providing promised investment income to, the UDF IV shareholders through, among other things, skillful underwriting and investment of shareholder capital, proper servicing and active collection of loans and other investments made by the Advisor on UDF IV's behalf. As a result, UDF IV's shareholders, including NexPoint, are third-party beneficiaries of the Advisory Agreement.

38. Fifth, the Advisory Agreement provides for payment of fees, including an annual Base Management Fee equal to 1.5% of UDF IV's equity ("Base Fee"), payable monthly. On information and belief, UDF IV has paid Base Fees to UMTH General every month since May 2014 on approximately \$527,000,000 of equity, or approximately \$8,500,000 per year (approximately \$708,333 per month.)³ On information and belief, the Advisor has collected approximately \$70.6 million of Base Fees since May 2014 despite spending most of that period engaged in activities other than those set forth in the Advisory Agreement, such as transferring money between UDF Funds in a *Ponzi*-type scheme and defending itself and its Affiliates against numerous civil and criminal securities fraud claims when the Defendants were caught in the act.

39. This is important because Defendants knew that UDF IV's assets were overstated but continued to charge lucrative fees based on those excessive valuations. Moreover, since at least 2016, UDF IV had no additional capital to invest, so the Defendants have performed no investment activities for UDF IV, yet they have also failed to provide the most basic services required by the Advisory Agreement, such as collecting loans, enforcing loan documents

³ On information and belief, since the initial investigation of accounting and reporting improprieties by the SEC, approximately \$54.5 million of Base Fees have been paid by UDF IV to UMTH General.

(including those with Moayedi and his web of entities), accounting for investments and income, investor relations, financial reporting and communicating with shareholders. In reality, from at least early 2016 until the present, the primary function of the Defendants has been to obscure the massive fraud they collectively perpetrated and then perpetuated, while collecting \$708,333 per month to do so.

40. Sixth, while the Advisory Agreement provides for generally broad indemnification of the Advisor, those indemnification rights are limited. Specifically, Section 5.01 of the Advisory Agreement provides that UDF IV must indemnify the Advisor (and its affiliates) for certain losses or liability but only if “such liability or loss was not the result of **negligence or misconduct** by the Advisor or its Affiliates.” *See* Advisory Agreement §5.01(a)(iii) (emphasis added).

41. Significantly, under no circumstances can the Advisor be indemnified for “any losses, liability or expenses arising from or out of an alleged violation of federal or state securities laws” unless certain conditions are satisfied including “successful adjudication on the merits” or a court approves a settlement and finds that “indemnification of the settlement should be made,” but only after the Court had “been advised of the position of the Securities and Exchange Commission.” *See* Advisory Agreement at § 5.01(a).

42. Even then, any permissible indemnification is “recoverable only out of the Trust’s *net* assets and not from Shareholders.” *Id.* (emphasis added).

43. As for advancement of legal fees, Section 5.01(b) of the Advisory Agreement provides that it may occur but only if, among conditions, (i) the legal action is initiated by a third-party who is not a shareholder and (ii) the person seeking advancement undertakes to repay the advanced funds to UDF IV, together with applicable legal rate of interest thereof, in cases in which such Advisor or its Affiliates are found not to be entitled to indemnification.

44. Finally, the Advisory Agreement provides for indemnification of UDF IV *by the Advisor* under the following section:

“5.02 Indemnification by Advisor. The Advisor shall indemnify and hold harmless the Trust from contract or other liability, claims, damages, taxes or losses and related expenses including attorneys’ fees, to the extent that (i) such liability, claims, damages, taxes or losses and related expenses are not fully reimbursed by insurance and (ii) are incurred by reason of the Advisor’s bad faith, fraud, misfeasance, misconduct, negligence or reckless disregard of its duties.”

45. The limitations in these provisions are important and were totally disregarded by Defendants.⁴ Defendants wrongfully ignored these provisions and, in the process, improperly got shareholders in UDF IV to pay, on information and belief, more than \$65 million in legal fees and indemnification expenses.

⁴ Because virtually all activities of UDF IV were delegated to the Advisor and its Affiliates under the Advisory Agreement, the indemnification and advancement provisions set forth in the Advisory Agreement, which were more restrictive than those in the corporate documents of UDF IV, were intended to supersede and limit the indemnification, advancement and liability limitation provisions set forth in UDF IV’s organizational documents as relates to the services and activities of the Advisor and its Affiliates on behalf of UDF IV.

C. Defendants Operate UDF in a *Ponzi*-like manner.

46. The criminal trial of UDF’s top four executives (three of whom are defendants in this case) exposed the actual truth of UDF’s operations.⁵ While UDF told its investors that the UDF funds were profitable and supported paying a monthly dividend as high as 9.75%, the reality was far different. In fact, UDF never generated enough cash interest income in any of its funds, including UDF IV, to pay its promised distributions.

47. As a result, Defendants simply ran UDF in a *Ponzi*-like manner. They raised money from new investors in a new fund (UDF IV; and later UDF V) and then re-cycled some of those newly-raised funds to pay fake “dividends” to investors in older funds (primarily UDF III).

48. Like all *Ponzi* schemes, a fraudulent cyclical operation ensued. Defendants had to continue raising money from new investors in order to pay older investors but accomplished this by touting the “clockwork-like” monthly dividends paid to prior investors as proof to the new investors of the safety of their investment. This in turn only increased the need of UDF IV and then UDF V to continually raise new money from new investors in order to pay the monthly dividend thereby keeping the UDF operation afloat. The returns represented by the Defendants

⁵ The UDF investment program consists primarily of United Development Funding III, L.P. (“UDF III”), a Delaware limited partnership whose limited partnership interests are, upon information and belief, held by several thousand unaffiliated holders, United Development Funding IV (“UDF IV”), a Maryland real estate investment trust whose common shares of beneficial ownership are, upon information and belief, held by several thousand unaffiliated holders and United Development Funding V, a Maryland real estate investment trust whose common shares of beneficial ownership are, upon information and belief, held by several hundred unaffiliated holders.

UDF IV is the largest of the entities by total assets and total capital raised, with, upon information and belief, approximately \$629.2 million of gross proceeds raised. UDF III, UDF IV and UDF V have at all times been externally advised by Defendant UMTH General, who is predominantly owned by the Individual Defendants. For purposes of this complaint, we refer to the Individual Defendants and the Advisor (including all persons involved in management of the Advisor) as “UDF’s Management.”

kept the public capital spigot on, which increased the fees, and so on. At all times the Defendants knew that if the capital raising stopped, the house of cards would collapse.

49. Defendants used this scheme to pay themselves tens of millions of dollars in management and transaction fees. Thus, Defendants wanted to keep the scheme alive at all costs.

50. To hide its actions, UDF devised an elaborate scheme of fake transactions. First, Defendants would raise new money in its UDF IV fund and pay themselves fees (Defendants charged a few for simply “accepting” investor money). Then every month when a dividend was due to be paid to UDF III partners, Defendants would cause UDF IV to make a fake “loan” to its largest borrower, Mehrdad Moayedí.

51. Those “loan proceeds” would then be used to make a fake “payment” on a different loan Moayedí had with UDF III. Having been infused with money from new investors in UDF IV, UDF III would take those funds and pay a dividend to its prior investors.

52. This fake loan/payment routine would take place the day before a monthly dividend had to be paid. Usually the “loan proceeds” were not even sent to Moayedí. Defendants just book-credited the loan/payment and would get Moayedí to sign documents after the “transactions” occurred.

53. This process was repeated virtually every month from 2010 through at least 2015. And, given that in January 2022, Defendant Greenlaw’s lawyer at the criminal trial told the jury that “to this day” UDF continues to operate in the same manner as before, this fraudulent conduct has continued. *See* Opening Statement by Paul Pelletier, *USA v. Greenlaw, et al.*, at 12:10-12 (January 12, 2022).

54. During the criminal trial, Special Agent Scott Martinez from the FBI proved up summary worksheets the FBI had prepared for each month, compiling relevant emails, bank

