

Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST (together with Hayworth Tanglewood ST, LLC, Vintage ST, LLC, The Walk ST, LLC, One On 4th ST, LLC, Hayworth Tanglewood DST, Vintage DST, and The Walk, DST, , the “Trust Defendants” and together with Versity Invest, Versity Investments, EquityCo Parent, EquityCo Parent II, EquityCo, and EquityCo II, “Versity”), and in support thereof allege as follows:

INTRODUCTION

1. This action arises out of the egregious and fraudulent misconduct of Wettengel, Muro and Nelson, who directed Versity to blatantly breach several ironclad contractual obligations owed to Plaintiffs under the terms of a Senior Secured Term Loan Agreement, dated as of May 27, 2021 (as amended as of April 12, 2022) (the “Loan Agreement”), and who engaged in an intentional scheme to misappropriate Plaintiffs’ funds and enrich themselves at Plaintiffs’ expense.

2. Versity is a real estate company owned, managed and controlled by three individuals: Blake Wettengel, Tanya Muro and Brian Nelson. Versity’s business model is to acquire real estate through a Delaware Statutory Trust (“DST”), to generate cash flows by “syndicating” (i.e., selling) the beneficial interests in the DST to investors, and to manage the real estate held by the DST on behalf of such investors. Prior to syndication, the beneficial interests for a DST are held by a wholly-owned subsidiary of Versity, the Initial Beneficiary (the “Initial Beneficiary”). Under the terms of the Loan Agreement, Plaintiffs agreed to loan Versity funds to acquire certain real estate, subject to Plaintiffs’ approval rights, which would then be held in the names of specific DSTs. The cash flow generated through the syndication of the beneficial interests in each DST is to be used to reduce the number of beneficial interests owned by the Initial Beneficiary and to repay Plaintiffs’ loan. Specifically, the Loan Agreement mandates that Versity must use the cash flows generated by syndicating the beneficial interests in each DST (net of broker dealer commissions) *first* to repay Plaintiffs, and then only *after* repayment of such loan amount

(in addition to payment of the fees, interest, and expenses associated with Plaintiffs' loan), Versity may retain profits for itself.

3. Critically, with respect to each DST, Wettengel, Muro and Nelson – through Versity's business – have complete control over the administration of the DST, the real estate assets owned by the DST, and the cash flows generated from the syndication of the beneficial interests in the DST. Thus, in order to ensure timely and accurate repayment of the funds owed to Plaintiffs and otherwise protect Plaintiffs' rights, the Loan Agreement prohibits nearly all distributions to Versity from each DST financed by Plaintiffs unless and until the fees, interest, expenses and principal owed to Plaintiffs are first repaid.

4. Notwithstanding these prohibitions, Wettengel, Muro and Nelson perpetrated a fraudulent scheme to divert and misappropriate funds owed to Plaintiffs. The goal of this scheme was plain: to siphon off syndication proceeds that Versity was contractually obligated to repay to Plaintiffs from the DSTs financed by Plaintiffs and use those proceeds for impermissible purposes (including financing other portions of Versity's business, acquiring real estate in Dana Point, California, funding the acquisition of real estate in Anaheim, California by affiliated companies controlled by Muro and Wettengel, and enriching themselves personally).

5. To enable their theft of funds, Wettengel and Muro, directly and through Versity, knowingly misrepresented to Plaintiffs that syndication of the beneficial interests in the DSTs had come screeching to a halt, such that Plaintiffs should expect repayment of Plaintiffs' loan to slow. And to conceal the fraud as long as possible, Wettengel, Muro and Nelson – through Versity – undertook a willful pattern of violating the Loan Agreement's financial reporting obligations, including by: (i) intentionally and repeatedly providing falsified financial reports to Plaintiffs reflecting lower-than-actual syndication amounts; (ii) failing to provide Plaintiffs with required audited financial reports and statements; (iii) refusing to permit Plaintiffs to audit Versity's books

and records; (iv) refusing to provide Plaintiffs with read-only access to Versity's bank accounts associated with the DSTs financed by Plaintiffs; and (v) falsely representing to Plaintiffs that an audit of its financial statements was underway when, in reality, Versity had not even engaged an auditing firm to perform such work.

6. The purported sudden and simultaneous collapse of syndications (as reported by Versity) across four of the DSTs financed by Plaintiffs – Hayworth Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST – together with Versity's refusal to comply with its financial reporting obligations under the Loan Agreement were red flags for Plaintiffs. After an independent investigation by Plaintiffs, their worst fears were confirmed – Versity was still robustly syndicating, and fraudulently concealing those sales from Plaintiffs by reporting false (lower) syndication levels to Plaintiffs in order to avoid repaying Plaintiffs in accordance with the Loan Agreement and to prevent Plaintiffs from exercising remedies as long as possible. Among other things, Plaintiffs learned that Versity had reported to a DST market research and consulting firm that it syndicated \$58 million more across the four DSTs than the syndication levels that Versity had reported to Plaintiffs. In addition, Versity's filings with the Securities & Exchange Commission confirmed that Versity had concealed from Plaintiffs approximately \$14.6 million in syndications at one of the DSTs financed by Plaintiffs.

7. As a result, Plaintiffs issued multiple default letters and declared an Event of Default under the Loan Agreement. In response, Wettengel and Muro vacillated between stonewalling and mealy-mouthed explanations. Ultimately, however, Wettengel and Muro eventually admitted their transgressions in August 2023. Specifically, Wettengel and Muro acknowledged that they intentionally concealed from Plaintiffs in excess of \$50 million of syndications across the four DSTs, and diverted and misappropriated certain of those funds as follows: (i) \$13.5 million to acquire a real estate property for a new DST that Plaintiffs declined

to finance; (ii) \$6.5 million to purchase properties in Dana Point, California; and (iii) \$14.2 million to pay themselves. Plaintiffs also learned that, during the same time, Wettengel and Muro – through a Versity affiliate – had purchased two neighboring hotels in Anaheim, California for \$20.6 million. Thereafter, Plaintiffs also learned that Wettengel, in May 2023, purchased a personal residence located in Juan Capistrano, California for \$4.5 million.

8. Thereafter, in October 2023, Wettengel and Muro directed Versity to disclose heavily redacted and incomplete monthly bank statements from accounts associated with the four DSTs financed by Plaintiffs dating back to April 2022. Though the documents concealed all transaction level detail, including all the individual outflows from those accounts, they did show the aggregate credits and debits and confirm that Wettengel and Muro’s misappropriation began as early as April 2022 when it misappropriated \$10 million in syndication proceeds owed to Plaintiffs. Wettengel and Muro – through Versity – concealed their theft for the purpose of fraudulently inducing Plaintiffs to finance two additional DSTs, resulting in loans to Versity of over \$71 million. Had Plaintiffs known of the theft at the time, they never would have financed the two additional DSTs and instead would have pursued remedies to identify and recoup the misappropriated funds. The incomplete bank statements, as compared to the fraudulent monthly servicer reports Versity prepared and provided to Plaintiffs, confirm that between April 2022 and July 2023, Wettengel, Muro, Nelson and Versity misappropriated in excess of \$56 million that belonged to Plaintiffs:

April 2022 – July 2023	DST Syndications Shown on Incomplete Bank Statements	Estimated Net of Broker Fee (9%)	DST Syndications Shown on Fraudulent Monthly Servicer Reports	Misappropriated Proceeds
TOTAL	\$164,640,152	\$149,822,539	\$93,665,258	\$56,157,281

9. Worse yet, the incomplete bank statements, fraudulent monthly servicer reports, and admissions by Wettengel and Muro confirm that the private placement memorandum prepared and disclosed by Versity to DST investors also falsely represented that the syndication proceeds would be used to reduce the beneficial interests owned by the Initial Beneficiary and to repay the loan obtained from Plaintiffs. Instead of reducing and redeeming the beneficial interests of the Initial Beneficiary to repay the loan as required, however, Versity misappropriated the syndication proceeds from the DSTs.

10. Despite being caught in the act, Wettengel, Muro, Nelson, and Versity have refused to agree to a schedule for the repayment of the over \$50 million in diverted funds or to provide assurances that it will abide by its contractual obligations going forward. Plaintiffs thus have been left with no choice but to bring this action against Wettengel, Muro, Nelson, and Versity for breach of contract, fraud, conversion, unjust enrichment and related claims. Absent judicial intervention to enforce the plain terms of the Loan Agreement and protect the assets, Plaintiffs will suffer irreparable harm and the imminent threat of losing, permanently, both their ability to determine what assets are rightfully theirs and to ever recover the amounts owed.

PARTIES

11. Plaintiff KHCA is a Delaware limited liability company with a principal place of business at 280 Park Avenue, Fl. 27E, New York, New York 10017. KHCA is registered to do business in New York. KHCA is the Administrative Agent and Collateral Agent under the Loan Agreement.

12. Plaintiff Knights Hill is an Irish Designated Activity Company with a principal place of business at Custom House Plaza Block 6, International Financial Services Centre, Dublin

1, Ireland.¹ Knights Hill is the Lender under the Loan Agreement. Knights Hill is registered to do business in New York.

13. Defendant Crew Enterprises, LLC (f/k/a Versity Invest, LLC) is a Delaware limited liability company with a principal place of business at 20 Enterprise, 4th Floor, Aliso Viejo, California 92656. Versity Invest is wholly-owned by Blake Wettengel and Tanya Muro, is a Guarantor under the Bad-Boy Guaranty (as defined herein), and is an alter ego of Wettengel, Muro and other Versity defendants, including, without limitation, EquityCo and EquityCo II.

14. Defendant Versity Investments is a Delaware limited liability company with a principal place of business at 130 Vantis, Suite 160, Aliso Viejo, California, 92656. Versity Investments is wholly-owned by Brian Nelson, is a Guarantor under the Bad-Boy Guaranty, and is an alter ego of Wettengel, Muro, Nelson and other Versity defendants, including, without limitation, EquityCo and EquityCo II.

15. Defendant EquityCo Parent is a Delaware limited liability company with a principal place of business at 20 Enterprise, 4th Floor, Aliso Viejo, California 92656. EquityCo Parent is a wholly-owned subsidiary of Versity Investments, is a Guarantor under the Bad-Boy Guaranty, and is an alter ego of Wettengel, Muro, Nelson and other Versity defendants, including, without limitation, EquityCo and EquityCo II.

16. Defendant EquityCo Parent II is a Delaware limited liability company with a principal place of business at 20 Enterprise, 4th Floor, Aliso Viejo, California 92656. EquityCo Parent II is a wholly-owned subsidiary of Versity Invest, is a Guarantor under the Bad-Boy Guaranty, and is an alter ego Wettengel, Muro, Nelson and other Versity defendants, including, without limitation, EquityCo and EquityCo II.

¹ An Irish Designated Activity Company is a type of company, established pursuant to Part 16 of Ireland's Companies Act 2014, which is incorporated for a specific, limited purpose and whose scope of permissible activities is limited by its constitution.

17. Defendant EquityCo is a Delaware limited liability company with a principal place of business at 20 Enterprise, 4th Floor, Aliso Viejo, California 92656. EquityCo is a signatory of the Loan Agreement, a wholly-owned subsidiary of EquityCo Parent, and an alter ego of Wettengel, Muro, Nelson and other Versity defendants.

18. Defendant EquityCo II is a Delaware limited liability company with a principal place of business at 20 Enterprise, 4th Floor, Aliso Viejo, California 92656. EquityCo II is a signatory of the Loan Agreement, a wholly-owned subsidiary of EquityCo Parent II, and an alter ego of Wettengel, Muro, Nelson and the other Versity defendants.

19. Defendant Hayworth Tanglewood DST is a Delaware Statutory Trust that owns the real estate property located at 1414 Wood Hollow Drive, Houston, Texas 77057. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

20. Defendant Hayworth Tanglewood ST, LLC is a Delaware limited liability company with its principal place of business in 1201 N. Orange St. Suite 7044, Wilmington, DE 19801. Hayworth Tanglewood ST, LLC is the Signatory Trustee of Defendant Hayworth Tanglewood DST and is wholly-owned and controlled by Versity Invest. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

21. Defendant Vintage DST is a Delaware Statutory Trust that owns the real estate property located at 9223 Vintage Hills Way, Winter Garden, Florida 34787. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

22. Defendant Vintage ST, LLC is Delaware limited liability company with a principal place of business of 1201 N. Orange St. Suite 7044, Wilmington, DE 19801. Vintage ST, LLC is the Signatory Trustee of Defendant Vintage ST, LLC and is wholly-owned and controlled by Versity Invest. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

23. Defendant The Walk, DST is a Delaware Statutory Trust that owns the real estate property located at 899 12th Street, Tuscaloosa, Alabama 35401. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

24. Defendant The Walk ST, LLC is a Delaware limited liability company with a principal place of business of 1201 N. Orange St. Suite 7044, Wilmington, DE 19801. The Walk ST, LLC is the Signatory Trustee of Defendant The Walk, DST and is wholly-owned and controlled by Versity Invest. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

25. Defendant One on 4th DST is a Delaware Statutory Trust that owns the real estate property located at 713 West 4th Avenue, Stillwater, Oklahoma 74074. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

26. Defendant One on 4th ST, LLC is a Delaware limited liability company with a principal place of business of 1201 N. Orange St. Suite 7044, Wilmington, DE 19801. One on 4th

ST, LLC is the Signatory Trustee of Defendant One on 4th DST and is wholly-owned and controlled by Versity Invest. It is a third-party beneficiary of the Loan Agreement and an alter ego of signatories to the Loan Agreement such that it is foreseeable that Plaintiffs would enforce against it the forum-selection clause of the Loan Agreement.

27. Defendant Brian Nelson is a citizen and resident of California. Nelson is the sole member of Versity Investments, is a Guarantor under the Bad-Boy Guaranty, and is an alter ego of the other Versity defendants, including, without limitation, EquityCo and EquityCo II.

28. Defendant Blake Wettengel is a citizen and resident of California. Wettengel is a 76% member of Versity Invest, is a Guarantor under the Bad-Boy Guaranty, and is an alter ego of the other Versity defendants, including, without limitation, EquityCo and EquityCo II.

29. Defendant Tanya Muro is a citizen and resident of California. Muro is a 24% member of Versity Invest, is a Guarantor under the Bad-Boy Guaranty, and is an alter ego of the other Versity defendants, including, without limitation, EquityCo and EquityCo II.

JURISDICTION AND VENUE

30. This Court has jurisdiction over Wettengel, Muro, Nelson and Versity pursuant to C.P.L.R. § 302(a)(1) because Plaintiffs' causes of action against defendants arise from defendants' transaction of business within the State of New York.

31. Venue is proper in this Court because (a) Plaintiff's principal place of business is in New York, New York; (b) Wettengel, Muro, Nelson and Versity conduct business in New York State; and (c) a substantial part of the misconduct and material omissions by Wettengel, Muro, Nelson, and Versity giving rise to the claims occurred in New York State.

32. Personal jurisdiction over Wettengel, Muro, Nelson, EquityCo Parent, EquityCo Parent II, Versity Invest and Versity Investments is also proper and venue is proper in this Court under C.P.L.R § 501 because each party negotiated, signed, and performed (in whole or in part)

one or more of the transactional documents that govern this case, those governing transactional documents form an integrated whole, and each of those governing transactional documents contains a forum selection clause providing that jurisdiction and venue over any disputes shall lie exclusively in the federal and state courts located in New York County, New York. As alter-egos of EquityCo and EquityCo II, or third-party beneficiaries of the Loan Agreement on which the Loan Agreement imposes obligations, the Trust Defendants each foresaw that their close relationship with EquityCo and EquityCo II—namely, that each entity is owned and/or controlled, directly or indirectly, by the same individuals, Wettengel, Muro and Nelson, as EquityCo and EquityCo II—would bind them to those forum selection clauses.

FACTUAL BACKGROUND

I. Versity's Business

33. Versity is a real estate company owned, managed, and controlled by Muro, Wettengel and Nelson. Through each DST that it sponsors, Versity acquires a single commercial real estate property. Once the property is acquired through a DST, Versity then sells beneficial interests in the DST to investors through a network of third-party selling groups and a managing broker-dealer. This process of selling beneficial interests in a DST is known as “syndication.”

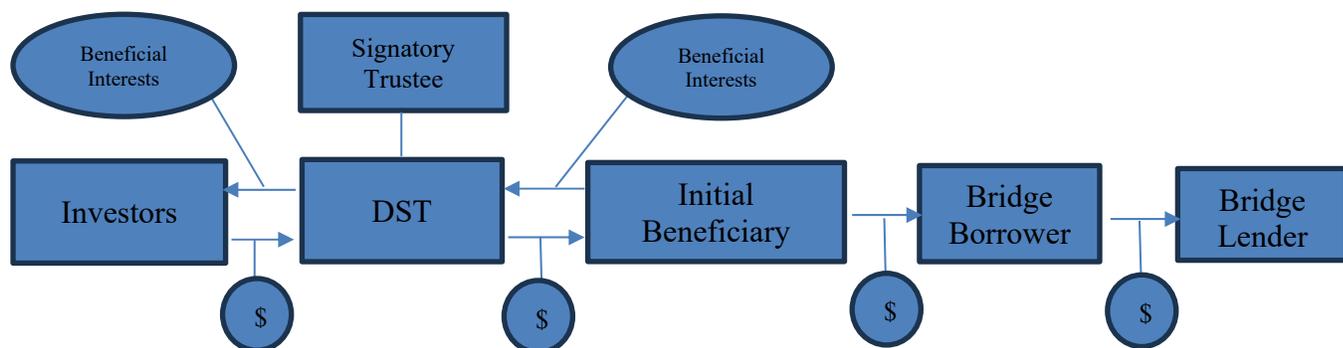
34. As part of its business model, Versity forms a wholly-owned limited liability company as the Signatory Trustee of each DST, and installs Versity Invest or Versity Investments as manager of the Signatory Trustee. This structure permits Versity to retain complete control over the administration and management of each DST, the real estate asset owned by each DST, and the cash flows generated from the syndication of beneficial interests in each DST, and the management of the applicable property.

35. Versity uses a private placement memorandum (“PPM”) to market the DST’s beneficial interests to potential investors. The PPM includes details about the offering structure,

SEC disclosures, property information, trust manager, master tenant information, investment risks, financing details, use of proceeds, conflicts of interest and investor suitability data. The PPM is required under Regulation D of the Securities Act.

36. Versity’s PPM specifically provides that prior to the sale of the beneficial interests in a DST, the beneficial interests are held by the Initial Beneficiary. The PPM further provides that in order to fund its acquisition of real estate, Versity obtains bridge equity financing from a bridge equity lender. The Initial Beneficiary is the wholly-owned subsidiary of the Versity entity obtaining the bridge financing from the bridge equity lender. The PPM further discloses to investors that upon the sale of beneficial interests in the DST to investors, the Signatory Trustee directs the DST to transfer the syndication proceeds (less the commissions and fees paid to broker-dealers) to the Initial Beneficiary in order to reduce the beneficial interests owned by the Initial Beneficiary and to repay the bridge equity loan. Figure 1 below shows the flow of syndication proceeds and beneficial interests described in the PPM.

Figure 1: Flow of Syndication Proceeds And Beneficial Interests



II. The Loan Agreement

37. In order to obtain bridge equity financing to fund its acquisition of real estate, Versity entered into the Loan Agreement with Plaintiffs. The Loan Agreement is comprised of a

Senior Secured Term Loan Agreement, dated as of May 27, 2021, and a First Amendment, dated as of April 12, 2022.²

38. Under the terms of the Loan Agreement, Plaintiffs extended a senior secured loan to Versity in the amount of \$50 million, which could be increased in an aggregate amount of up to \$200 million at Plaintiffs' discretion. Specifically, under Article 3 of the Loan Agreement, Versity may propose to Plaintiffs the acquisition of a particular commercial real estate property (a "Core Asset"), and *if* Plaintiffs approve the proposed acquisition, Plaintiffs' loan proceeds would be used to finance a portion of Versity's purchase of the Core Asset by the DST (the "Owned DST").

39. The DSTs financed by Plaintiffs are third-party beneficiaries of the Loan Agreement. The parties repeatedly refer to those DSTs – defined as an "Owned DST" – throughout the Loan Agreement and explicitly provide that the loan proceeds extended by Plaintiffs to Versity would be used to pay (a) "the cash purchase price actually paid by an Owned DST . . . or other Borrower Party to acquire [a Core Asset]"; (b) "third-party, out-of-pocket expenses incurred in connection with due diligence investigations and negotiations actually paid by such Owned DST . . . or other Borrower Party in connection with such acquisition . . ."; and (c) "all closing costs . . . actually paid by such Owned DST or other Borrower Party in connection with such acquisition" The Loan Agreement likewise contains multiple provisions imposing obligations on the Owned DSTs, including, without limitation, covenants set forth in Article 8 thereto.

40. The Signatory Trustees of the DSTs financed by Plaintiffs are also third-party beneficiaries of the Loan Agreement. The parties repeatedly refer to "Signatory Trustee" – defined

² The First Amendment was executed by each of: (i) Knights Hill (the "Lender"); (ii) KHCA (the "Administrative Agent" and "Collateral Agent"); (iii) EquityCo and EquityCo II (the "Borrowers"); (iv) Versity Investments and Versity Invest (the "Sponsors"); (v) EquityCo Parent and EquityCo Parent II (the "Parents" of the Borrowers); and (vi) Brian Nelson, Blake Wettengel, and Tanya Muro (the ultimate, individual owners of all equity interests in Versity).

as “Signatory Trustee/Manager” – throughout the Loan Agreement, explicitly provide that the loan proceeds extended by Plaintiffs would be used by the Owned DST, which would be solely managed by the Signatory Trustee, impose obligations on the Signatory Trustee vis-à-vis Plaintiffs, and annex as an exhibit the Form DST Trust Agreement setting out the responsibilities and powers of the Signatory Trustee.

41. Because the structure of Versity’s business afforded it complete control over the administration of each DST, the real estate owned by each DST, and the cash flows generated by the syndication and management of each DST, the Loan Agreement contains several material safeguards to ensure that (a) Versity would properly and transparently account for, receive, and distribute “Gross Receipts,” which include (without limitation) “all amounts received by any Borrower Party or Owned DST (including any sponsor fees) with respect to the sale or syndication of DST Interests in an Owned DST” as well as “rents, leasehold payments and similar payments received in connection with any Owned Core Asset;” (b) Plaintiffs would be repaid for each loan they extended first, and in a timely manner, as proceeds were collected; (c) Plaintiffs would be protected from improper self-dealing by Versity; and (d) Plaintiffs would have access to timely and accurate information regarding each DST’s finances.

A. Protections Against Versity Commingling Funds And Improperly Distributing Cash Flows From DSTs

42. To protect against, among other things, Versity improperly diverting syndication proceeds from the Core Asset DSTs, the Loan Agreement requires Versity to establish a segregated bank account to hold deposits of substantially all syndication proceeds generated by each DST, pending repayment of Plaintiffs’ loans.

43. Specifically, Section 10.1 of the Loan Agreement requires that Versity establish a segregated bank account (the “Collection Account”) subject to a deposit account control agreement

(“DACA”) in Plaintiffs’ favor, and certain sub-accounts for the Collection Account (the “Sub-Accounts”).

44. Section 8.17(a)(ii) also provides that Versity would not establish any other depository accounts other than the Collection Accounts and the Sub-Accounts. Further, Section 8.17(b) requires that Versity deposit into the Collection Account all Gross Receipts – defined as “all amounts received by [Versity] . . . derived from any source with respect to the Versity DST Business³ whatsoever.”

45. Section 8.18(a)(ix) likewise provides that Versity will not commingle its funds or other assets.

46. Pursuant to Section 11.1(b), Versity’s failure to perform or observe under Sections 10.1, 8.17 or 8.18 constitutes an Event of Default.

B. The Payment Waterfall Guaranteed Repayment of Plaintiffs’ Loan Before Versity Paid Itself

47. To ensure timely repayment of the funds owed to Plaintiffs, the Loan Agreement prohibits nearly all distributions of Gross Receipts from each DST financed by Plaintiffs to Versity unless, and until *after*, the principal, fees, interest and expenses of Plaintiffs’ loan associated with each DST are paid.⁴

48. Specifically, Section 9.3(a)(i)(b) requires that Gross Receipts be deposited into the Collection Account in accordance with Section 10.4(a) and Section 10.4(c), which in turn sets forth a precise order of priority pursuant to which the Gross Receipts deposited into the Collection

³ The “Versity DST Business” refers to the business of acquiring and holding a Core Asset Investment, along with syndicating the DST Interests and managing the property owned by the Owned DST.

⁴ Section 4.10 of the Loan Agreement provides that “No Affiliate Management Fee accruing under any Asset Management Agreement or Property Management Agreement shall be paid to any Borrower Party or any Affiliate thereof with respect to the ownership, operation or administration of an Owned DST . . . during period any DST Interests issued by the applicable DST to a Depositor have not been fully redeemed.”

Account are to be allocated. Section 10.4(c) requires Gross Receipts of each Core Asset to be distributed as follows:

- (i) *First*, payment to KHCA of all Administrative Fees and Expenses on the Loan then due and owing;
- (ii) *Second*, payment to KHCA of all Cash Interest due and owing on Advances made with respect to the Core Asset;
- (iii) *Third*, payment to KHCA of all PIK Interest previously added to the Principal Amount with respect to the Core Asset;
- (iv) *Fourth*, so long as no Event of Default has occurred and is continuing, payment to Versity to pay a Preferred Return on the capital contributions made by Versity to the DST;
- (v) *Fifth*, payment to KHCA of any Draw Fee then due and owing with respect to the Core Asset;
- (vi) *Sixth*, payment to KHCA of an amount equal to all aggregate Advances made to Versity with respect to the Core Asset;
- (vii) *Seventh*, if approved by KHCA, payment to DST Reserve Account until balance of such DST Reserve Account is equal to the Trust Reserve Cap for the Core Asset;
- (viii) *Eighth*, payment to KHCA of an amount equal to the aggregate Advances made to Versity with respect to any Core Asset that has failed to meet agreed-upon syndication benchmarks;
- (ix) *Ninth*, so long as no Event of Default has occurred and is continuing, payment to Versity of Sponsor Fees payable with respect to the Core Asset and to the applicable Reinvestment Account.

C. To Ensure Financial Transparency And Protect Plaintiffs' Rights, The Loan Agreement Requires Versity To Provide Timely And Accurate Financial Reporting And To Grant Read-Only Access To Its Bank Accounts

49. Because the structure of Versity's DST business leaves it with complete control over each DST financed by Plaintiffs, absent timely and accurate financial reporting and

information from Versity, Plaintiffs would not be able to verify that they are receiving the amounts required to be paid to them under the Loan Agreement.

50. To enable KHCA to confirm and verify the cash flows generated by Versity in connection with each DST, the Loan Agreement requires that Versity provide certain financial information to KHCA. Specifically, Section 8.1 requires Versity to provide, among other items, the following:

- (i) On an annual basis, audited financial statements, accompanied by the report and opinion of an independent auditor;⁵
- (ii) On a quarterly basis, unaudited balance sheet, income statements and cashflow statements;⁶
- (iii) On a monthly basis, summary of cash balances for each Account and calculations of the payment amounts set forth in Section 10.4(c);⁷
- (iv) On a monthly basis, a report of all DST interest redemptions for any Owned DST.⁸
- (v) On a quarterly basis, Compliance Certificates that, among other things, certify that no Default or Event of Default is continuing.⁹

51. Section 8.1 also requires Versity to provide read only access to each of Versity's bank accounts associated with the DSTs financed by Plaintiffs.¹⁰

52. Further, Section 8.3(a) requires Versity to provide KHCA with "such information with respect to any Owned Core Asset and the Collateral as the Administrative Agent may

⁵ Loan Agreement § 8.1(a).

⁶ *Id.* § 8.1(b).

⁷ *Id.* § 8.1(c).

⁸ *Id.* § 8.1(c).

⁹ *Id.* § 8.1(d).

¹⁰ *Id.* § 8.1(f). The bank accounts identified in Section 8.1(f) are as follows: "each Borrower's and each other Loan Party's and any Owned DST's (and its wholly owned Subsidiary's) bank accounts." (*Id.*).

request,” and Section 8.3(b) requires that Versity permit KHCA to conduct an on-site inspection (or audit) of Versity’s books and records.

53. Additionally, Section 8.12 requires Versity to deliver any “further documents . . . as may be required by [KHCA] . . . [to] further and more perfectly to effect the purposes of th[e Loan] Agreement and the other Loan Documents.”

54. Pursuant to Section 11.1(c), Versity’s failure to perform or observe any covenant or agreement contained in Section 8.1 constitutes an Event of Default if not cured within five business days of receiving notice from KHCA.

55. Likewise, pursuant to Section 11.1(d), Versity’s failure to perform or observe any covenant or agreement contained in the Loan Agreement, including those set forth in Section 8.3, constitutes an Event of Default if not cured within thirty days of receiving notice or of actual knowledge of the failure.

D. Protections Against Mismanagement Or Misappropriation By Owners

56. To ensure EquityCo and EquityCo II’s compliance with their obligations set forth in the Loan Agreement, Plaintiffs required the individuals and entities exercising control and complete dominion over those entities—Wettengel, Muro, Nelson, EquityCo Parent, EquityCo Parent II, Versity Invest, Versity Investments (the “Guarantors”)—to execute a Carve-Out Guaranty, dated as of May 27, 2021, as amended and restated by the Amended and Restated Carve-Out Guaranty, dated as of April 12, 2022 (the “Bad-Boy Guaranty”).

57. Section 1.2(a) of the Bad-Boy Guaranty imposes joint and several liability on the Guarantors for all losses of Plaintiffs arising out of, among other things:

- (i) Any act of fraud or misappropriation related to or connected with the Loan or any of the applicable individual properties owned by an Owned DST;¹¹

¹¹ Bad-Boy Guaranty § 1.2(a)(i).

- (ii) Any gross negligence or willful misconduct related to or connected with the Loan or any of the applicable individual properties owned by an Owned DST;¹²
- (iii) Any intentional breach of the Loan Agreement;¹³
- (iv) Any misappropriation or conversion of any Gross Receipts, Loan Proceeds, Collateral, or other assets;¹⁴
- (v) Any Restricted Payment made in breach of the Loan Agreement;¹⁵
- (vi) Any willful or intentional misrepresentation or intentionally misleading or incorrect certification made in connection with entering into or inducing the Secured Party to enter into the Loan Agreement or extend advances;¹⁶
- (vii) A Borrower maintaining any money in any account other than one subject to a DACA Agreement;¹⁷
- (viii) Any misapplication of funds in breach of the Loan Agreement;¹⁸ and
- (ix) A breach of the Loan Agreement's requirement that Borrowers and Depositors must cause an Owned DST to distribute cash and Gross Receipts to the Depositor and other holders of the DST Interests in the Owned DST.¹⁹

58. Further, Section 1.2(b) of the Bad-Boy Guaranty imposes full recourse personal liability on the Guarantors for Versity's repayment obligations, on a joint and several basis, upon the occurrence of, among other things, any act or omission that constitutes a breach of Section 8.18 of the Loan Agreement, any act of Versity taken in bad faith with the intent to hinder, delay, or interfere with any exercise of Plaintiffs of any of its rights, or any transfer which is prohibited

¹² *Id.* § 1.2(a)(ii).

¹³ *Id.* § 1.2(a)(iii).

¹⁴ *Id.* § 1.2(a)(iv).

¹⁵ *Id.* § 1.2(a)(v).

¹⁶ *Id.* § 1.2(a)(vi).

¹⁷ *Id.* § 1.2(a)(vii).

¹⁸ *Id.* § 1.2(a)(ix).

¹⁹ *Id.* § 1.2(a)(xiv).

under any Loan Document. And Section 1.2(c) of the Bad-Boy Guaranty imposes liability on the Guarantors for the prompt payment of all amounts from time to time due and owing to Plaintiffs under the Loan Agreement, as and when due and payable.²⁰ Pursuant to Section 1.6 of the Bad-Boy Guaranty, the Guarantors are required to pay Plaintiffs costs and expenses (including, without limitation, court costs and attorneys' fees) incurred in connection with the enforcement of the Bad-Boy Guaranty.

IV. Plaintiffs Complied With Their Contractual Obligations And Financed Versity's Acquisition of Eight Core Assets

59. From the inception of the parties' relationship under the Loan Agreement, Versity produced and provided to Plaintiffs monthly reports of purported syndication amounts and cash receipts for each of the Core Assets financed by Plaintiffs ("Monthly Servicer Reports").

60. The eight Core Assets financed by Plaintiffs are as follows:

- (i) A 306-unit Class A multifamily, located at 1688 Celebration Boulevard, Celebration, Florida 34747 known as "Astoria at Celebration" (the "Astoria DST");
- (ii) A 248-unit Class A multifamily, located at 12500 Shadowglen Trace, Manor, Texas 78653 known as the "Flats at Shadowglen" (the "Shadowglen DST");
- (iii) A 244-unit, 466-bed, garden-style, off-campus student housing property at Louisiana State University, located at 5075 Nicholson Drive, Baton Rouge, Louisiana 70820 (the "Oakbrook DST");
- (iv) A 168-unit Class A multifamily, located at 372 Fourth Avenue, San Diego, California 92101 known as the "4th + J Apartments" (the "4ANDJ DST");
- (v) a 340-unit multi-family property located at 9223 Vintage Hills Way, WinterGarden, Florida 34787 known as Vintage Horizon West (the "Vintage DST");

²⁰ To ensure these obligations can be satisfied if necessary, Section 3.2 of the Bad-Boy Guaranty explicitly requires certain of the Guarantors to "collectively maintain" a Net Worth between \$5 million and \$40 million and liquid assets worth at least \$2 million. Pursuant to the terms of the Bad-Boy Guaranty, certain of the Guarantors were required to consistently report and certify to Plaintiffs, on a quarterly and annual basis, financial statements demonstrating their compliance with the net worth and liquidity requirements.

- (vi) an 83-unit Class A, mid-rise student-housing community located adjacent to the University of Alabama at 899 12th Street, Tuscaloosa, Alabama 35401 known as “The Walk” (“The Walk, DST”);
- (vii) a 246-unit Class A, mid-rise, multi-family residential community located in the Tanglewood area of Houston at 1414 Wood Hollow Drive, Houston, Texas 77057 (the “Hayworth DST”); and
- (viii) a Class A, mid-rise, student-housing community located just south of the Oklahoma State University main campus at 713 West 4th Avenue, Stillwater, Oklahoma 74074 (the “One on 4th DST”).

61. As of May 2022, Plaintiffs had financed the acquisition of six Core Assets by Versity. On May 4, 2022, Mark Jennings of Versity sent an email to Plaintiffs attaching a Monthly Servicer Report for April 2022 reflecting syndication amounts and cash receipts totaling \$19,493,050.16 for the Vintage DST. On June 30, 2022 and July 26, 2022, Plaintiffs made loans of more than \$71 million to fund the acquisition of two additional Core Assets – Hayworth DST and One on 4th DST, respectively. In doing so, Plaintiffs relied on the fact that Versity, at all times, provided true and accurate reporting of monthly syndication amounts and cash receipts for the prior loans.

62. As of April 2024, Versity still owes Plaintiffs more than \$56 million in outstanding principal under the Loan Agreement in connection with the last four Core Assets, which are held by the Hayworth Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST.

IV. Wettengel, Muro, and Versity Fraudulently Represent That Syndications For The Core Assets Grind To Halt

63. On September 13, 2022, Plaintiffs, consistent with their contractual right to do so, declined to approve and finance Versity’s proposed acquisition of a ninth property – Apex South Creek, a 300-unit Class A, garden-style, multi-family residential community located at 3060 Southcreek Boulevard, Orlando, Florida 32824 (“Apex”).

64. In an effort to persuade Plaintiffs to reconsider its refusal, Wettengel touted the ongoing success of its existing syndications. Specifically, on September 14, 2022, Wettengel

represented to Plaintiffs that Versity's syndications were proceeding "at a very comfortable speed, with no signs of slowdown" and showed Plaintiffs that syndications across the four Core Assets would total \$114,297,700 between September 2022 and December 2022. Notwithstanding Wettengel's efforts, Plaintiffs did not approve and finance the Apex acquisition.

65. The next day, on September 15, 2022, in response to Plaintiffs' concerns with slowing syndication rates, Wettengel again represented that the syndications across the four DSTs would be robust through year end, this time specifically stating that: (i) syndication of the Vintage DST was already fully subscribed and would be complete by October 9, 2022; (ii) syndication of The Walk, DST was fully subscribed, and would be complete by the close of 2022; (iii) syndications of the Hayworth DST would total \$30 million by the end of November 2022; and (iv) syndications of the One on 4th DST would total \$10 million by the close of 2022.²¹

66. Within a matter of weeks of these representations, however, Versity sent Monthly Servicer Reports to Plaintiffs reflecting that syndications had nearly ground to a halt.

67. By November 8, 2022 – just seven weeks after Wettengel made his pronouncements concerning the health of syndications and Versity shared its \$114 million projection – Versity delivered Monthly Servicer Reports reflecting that the Hayworth DST, the One on 4th DST, and the Vintage DST all failed to meet their contractually-mandated syndication benchmarks. According to Versity's reporting, the Walk, DST followed suit a few months later. In actuality, however, syndications were not slowing; rather Versity was concealing them from Plaintiffs and misappropriating the syndication proceeds.

²¹ Further, in what it is now clear was an effort to preempt any questions from Plaintiffs as to why his representations concerning syndications would not square with the distributions they would receive in the coming months, Wettengel further emphasized that "when a deal is fully committed, we stop selling it, whether the actual cash has come into the bank account or not."

68. In the months after, Versity reported just \$14,597,656 in syndications across the four Core Assets – a shortfall of \$99,700,044 compared to the projections it provided just four months earlier.

69. During this time and continuing through Spring 2023, Muro, Wettengel, other Versity employees, including Jason Kjellson (Executive Vice President and National Sales Manager), Jennifer Welker (then-Chief Financial Officer), Bret Wilkins (current-Chief Financial Officer) and Versity’s outside counsel, Paul Mosley, participated in bi-weekly conference calls with Plaintiffs during which representations were made to Plaintiffs concerning the slowdown in syndications, displayed for Plaintiffs information that they claimed to be the purported pipeline of syndication and that confirmed the fabricated syndication amounts reflected in the Monthly Servicer Reports and claimed that “no one was more concerned about [the slowdown] than they [were]” and that they were working on various “fixes” to spur syndications. These efforts by Wettengel, Muro and Versity were intended to prevent or delay Plaintiffs from pursuing their remedies and permit the continued misappropriation of syndication proceeds.

70. Notwithstanding the purported slowdown in the syndications generated by the four Core Assets, Versity actually acquired Apex in, or about, September 2022. As Plaintiffs later learned, Wettengel and Muro, through their control and dominion over Versity, directed Versity to improperly divert and misappropriate syndication proceeds from the four Core Assets to finance, among other things, the equity component of the Apex acquisition, which Plaintiffs had declined to fund. By doing so, Wettengel and Muro effectively rendered Plaintiffs unwilling and unknowing lenders for Versity’s acquisition of Apex despite Plaintiffs’ explicit refusal to fund that acquisition.

V. Versity Breached Their Financial Reporting Obligations Under The Loan Agreement In Order To Hide Their Fraud

71. From the fall of 2022 through the spring of 2023, Wettengel and Muro sought to obfuscate and conceal the fraudulent diversion and misappropriation of monies owed to Plaintiffs by causing Versity to fail to abide by their financial reporting obligations under the Loan Agreement.²²

72. Among other failures, Versity failed to honor its obligations under the following provisions of the Loan Agreement:

- (i) in breach of Section 8.1(a) of the Loan Agreement, Versity failed to provide audited financial statements to Plaintiffs;
- (ii) in breach of Section 8.1(b) of the Loan Agreement, Versity failed to provide required quarterly financial statements to Plaintiffs;
- (iii) in breach of Section 8.1(d) of the Loan Agreement, Versity failed to provide required and complete Compliance Certificates to Plaintiffs; and
- (iv) in breach of Section 8.1(f) of the Loan Agreement, Versity failed to provide read only access to the bank accounts of the DSTs financed by Plaintiffs.

73. Plaintiffs repeatedly attempted to address or raise these breaches of the Loan Agreement with Wettengel, Muro and Versity. At every turn, however, Wettengel, Muro and Versity stonewalled Plaintiffs – failing to satisfy their disclosure and reporting obligations and refusing to acknowledge or cure their breaches.

74. For example, Versity failed to provide annual audited financial statements required under Section 8.1(a) of the Loan Agreement for the fiscal year ending December 31, 2022, and consistently represented that their auditors were causing the delay. Notwithstanding that Versity had represented to Plaintiffs that it engaged Cohn Reznick, the auditing firm, to conduct an annual audit of its financial statements, as required under the Loan Agreement, and that such audit was

²² During the same time, in contravention of its obligations under Section 8.15(b) of the Loan Agreement, Versity also failed to provide required marketing plans for the four Core Assets.

actively ongoing, Versity, in fact, failed to ever engage Cohn Reznick and misrepresented to Plaintiffs that it was actively undergoing the required audit.

75. At the same time, Plaintiffs also informed Versity in February 2023 that it would hire a nationally recognized accounting firm to conduct an inspection of Versity's books and records as permitted under Section 8.3(b).²³ Versity, however, blocked this inspection right by delaying and fabricating excuse after excuse. For instance, Versity claimed that concerns regarding the confidentiality of investors who purchased DST beneficial interests prevented it from permitting an audit of its books and records despite having agreed to Plaintiffs' audit rights in the Loan Agreement. Versity never explained, however, how this new concern would permit it to ignore contractual obligations under the Loan Agreement. Moreover, even when Plaintiffs offered multiple ways of assuaging such concerns, Versity continued to refuse the audit of its books and records or to otherwise comply with its financial access obligations under the Loan Agreement.²⁴

76. At the same time, on March 16, 2023, Muro, in an attempt to assuage Plaintiffs' concerns regarding Versity's failure to honor its financial reporting obligations, sent Plaintiffs (via email) spreadsheets purporting to disclose the syndication-level transactions and related syndication amounts for the four Core Assets. In connection therewith, Wettengel stated to Plaintiffs that "I thought Tanya's email would be sufficient to not conduct the on-site books and records inspection." In actuality, as Plaintiffs would learn months later, the spreadsheet prepared

²³ Section 8.3(b) states that "[t]he Borrowers will, during regular business hours and with prior written notice, permit the Administrative Agent, its respective agents or representatives and/or certified public accountants or other auditors acceptable to the Administrative Agent, to," among other things, "examine and make copies of and abstracts from all books and records relating to any Loan Parties, Owned DSTs and Owned Core Assets and the Collateral." (Loan Agreement § 8.3(b)).

²⁴ For example, Versity also claimed that it could not grant Plaintiffs read-only access to its bank accounts because doing so would violate the Securities & Exchange Commission's Regulation S-P, which imposes restrictions on the ability of an "investment company" to disclose personal identifiable information. But this position contradicts Versity's own Regulation A filing with the Securities & Exchange Commission, which confirms that Versity is not an "investment company" and therefore not subject to the restrictions imposed by Regulation S-P.

by Muro contained falsified and fabricated syndication levels, and Wettengel's statement was intended to delay Plaintiffs from exercising their contractual rights and permit further misappropriation of syndication proceeds.

77. Finally, in June 2023, in contravention of Section 8.3(a), Versity informed Plaintiffs that it would not respond to any additional financial questions under the patently false premise that it was not required to do so.

VI. Guarantors Fail To Comply With Bad-Boy Guaranty Obligations

78. The Guarantors likewise failed to comply with Section 3.2 of the Bad-Boy Guaranty, which required that they deliver to Plaintiffs annual financial statements and certifications setting forth the Guarantors' respective Net Worth and Liquid Assets for Fiscal Year 2022 and quarterly financials and certifications setting forth their respective Net Worth and Liquid Assets for Fiscal Quarters 1, 2, and 3 of 2023. Instead, the Guarantors belatedly delivered incomplete financial information that raised more questions than it answered. Of course, the Guarantors' compliance with their obligations under Section 3.2 would have revealed Versity's improper distributions and looting of the Gross Receipts from the Hayworth Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST for the four Core Assets.

VII. Plaintiffs' Investigation Confirms Suspicions And Reveals Wettengel, Muro and Versity's Fraud And Theft Of At Least \$56 million

79. In response to Versity's blatant breaches of its financial reporting and books and records obligations under the Loan Agreement, Plaintiffs grew suspicious and concerned regarding the veracity of the limited information that Versity had provided to them.

80. As a result, Plaintiffs initiated an investigation into Versity's finances and the DSTs. That investigation eventually confirmed Plaintiffs' worst fears: not only was Versity likely keeping at least two sets of books, but Versity was also stealing syndication proceeds from the DSTs that were owed to Plaintiffs.

81. *First*, Plaintiffs discovered that Versity's reports to Mountain Dell Consulting LLC ("Mountain Dell"), a DST market research and consulting firm, confirmed syndication amounts as of May 2023 that were substantially greater than the syndication amounts reported by Versity to Plaintiffs, including:

- (i) for Hayworth DST, Versity reported available beneficial interests to Mountain Dell of \$52 million as compared to the \$69 million it reported to Plaintiffs (or **\$17 million** more in syndication);
- (ii) for One on 4th DST, Versity reported available beneficial interests to Mountain Dell of \$7.5 million as compared to the \$22.4 million it reported to Plaintiffs (or **\$14.9 million** more in syndication);
- (iii) for The Walk, DST, Versity reported available beneficial interests to Mountain Dell of \$0 as compared to the \$11.6 million it reported to Plaintiffs (or **\$11.6 million** more in syndication); and
- (iv) for Vintage DST, Versity reported available beneficial interests to Mountain Dell of \$0 as compared to the to the \$14.6 million it reported to Plaintiffs (or **\$14.6 million** more in syndication).

82. In total, the syndication levels reported by Versity to Mountain Dell confirmed that Versity had concealed from Plaintiffs approximately \$58 million in net syndications across the four Core Assets.

83. *Second*, Versity Invest's 2022 audited financial statements that were filed with the Securities & Exchange Commission also confirmed that Versity had concealed \$14.6 million in syndications for the Vintage DST from Plaintiffs. Specifically, the audited financial statements contained a line item for "[g]ain on deconsolidation of DSTs" in an amount of \$5,906,495 for the Vintage DST. As a matter of accounting, the "gain on consolidation" line item is only included when a DST is fully syndicated,²⁵ and it thus directly contradicts numerous oral and written representations made by Versity to Plaintiffs that there were no syndications for the Vintage DST since September 30, 2022.

²⁵ The exact same line item appeared in other public filings made by Versity Invest throughout 2023.

84. Though Plaintiffs' investigation concerned the four Core Assets for which loan balances remain outstanding, upon information and belief, there is no basis to believe that Wettengel, Muro and Versity did not commence their fraud with respect to the Astoria DST, Shadowglen DST, the Oakbrook DST, and the 4ANDJ DST. Even though Plaintiffs ultimately were repaid in connection with these four DSTs, had Plaintiffs been aware that Wettengel, Muro and Versity misrepresented the receipt of syndication proceeds and/or misappropriated and diverted those proceeds in contravention of the Loan Agreement, Plaintiffs never would have financed the four Core Assets.

VIII. Plaintiffs Issue Multiple Notices For Events Of Default

85. In the summer of 2023, Plaintiffs issued multiple default letters and declared an Event of Default under the Loan Agreement.

86. On June 27, 2023, KHCA issued a Notice of Default Letter to Versity (the "Default Notice"), which identified a non-exhaustive list of Versity's defaults under the Loan Agreement.

87. On July 10, 2023, KHCA issued an Event of Default Letter to Versity, which notified Versity that certain of the defaults identified in the Default Notice now had become Events of Default.

88. On July 20, 2023, KHCA issued a third letter (the "Acceleration Letter"), which stated that Versity had failed to cure the defaults identified in the Default Notice or the Event of Default, and, as a result, pursuant to Section 11.2(a)(vii) of the Loan Agreement, the entire principal amount of the loan then outstanding, together with accrued interest thereon and all charges, fees, expenses, indemnities and other obligations owing or payable under the Loan Agreement were immediately due and payable.

89. On August 9, 2023, KHCA issued a letter to the Guarantors, demanding immediate payment under the Bad-Boy Guaranty of the amounts owed to Plaintiffs under the Loan

Agreement, and reminding the Guarantors that they may not sell or otherwise transfer any assets to anyone else, as those assets are the Plaintiffs' collateral.

IX. Wettengel and Muro Admit To Misappropriating Syndicating Proceeds Owed To Plaintiffs

90. Only after Plaintiffs had sent these numerous breach letters and notices of Events of Default and made demand on the Bad-Boy Guaranty – and after months of denying any violations existed, refusing to participate in telephone calls with Plaintiffs, and refusing to comply with ironclad contractual obligations for financial reporting and books and records – *Wettengel and Muro finally admitted that they intentionally concealed \$50+ million of syndications across the four Core Assets and improperly diverted those proceeds to finance other portions of Versity's business, to acquire real estate in Dana Point, California by affiliated companies controlled by Muro and Wettengel, and to enrich themselves personally.*

91. On August 28, 2023, Blake Wettengel, Versity Invest's Chief Executive Officer, and Tanya Muro, Versity Invest's Chief Operating Officer, acknowledged during a telephone call with their lawyers, Plaintiffs and Plaintiffs' counsel, that Versity intentionally concealed from, and failed to repay, Plaintiffs no less than \$54 million of net syndications across the four Core Assets. Specifically, Wettengel and Muro confirmed that, as of August 2023, (1) Hayworth DST had only about \$50 million remaining unsyndicated; (2) One on 4th DST had less than \$3 million remaining unsyndicated; (3) Vintage DST was fully syndicated, and (4) The Walk, DST had only about \$250,000 remaining unsyndicated, and that for months Versity had failed to pay to Plaintiffs their share of the syndication proceeds.²⁶ At around the same time, Versity's managing broker-dealer, WealthForge, which is responsible for maintaining accurate books and records of the syndication

²⁶ The admissions confirm that Versity breached multiple provisions of the Loan Agreement, including, without limitation, Section 8.17(b) of the Loan Agreement, which provides that Versity shall "deposit [] all Gross Receipts into the applicable Collection Account," and Section 10.4(a) of the Loan Agreement, which requires Versity to "cause all Gross Receipts . . . to be deposited . . . into the applicable Collection Account."

of Versity's DST offerings, confirmed that Versity had syndicated in excess of \$60 million more across the four Core Assets than had been represented to Plaintiffs.²⁷

92. Additionally, Wettengel and Muro also admitted that they had used the misappropriated syndication proceeds and how they had done so. Wettengel and Muro admitted that they commingled the misappropriated syndication proceeds with other aspects of Versity's business in order to finance its acquisition of a separate property that Plaintiffs had declined to finance – Apex – with \$13.4 million of syndication proceeds from the four Core Assets that should have been paid to Plaintiffs. Worse yet, according to a spreadsheet that Wettengel and Muro shared with Plaintiffs, (i) \$6.5 million of syndication proceeds that were owed to Plaintiffs were misappropriated and used to purchase properties in Dana Point, California; and (ii) an additional \$14.2 million of syndication proceeds owed to Plaintiffs were paid directly to Versity as an “acquisition fee.” Plaintiffs also learned that in May 2023, Wettengel purchased a personal residence located in Juan Capistrano, CA for \$4.5 million. Plaintiffs also learned that, during the same time, Wettengel and Muro – through, Sunstone Development, an affiliate of Versity – had purchased two neighboring hotels in Anaheim, California for a combined \$20.6 million. In deploying the misappropriated syndication proceeds to finance those improper acquisitions, Wettengel, Muro and Versity failed to respect corporate and trust formalities and brazenly commingled assets across various personal and business bank accounts entirely unrelated to the Core Assets financed by Plaintiffs.

93. Based on Plaintiffs' investigation into the value of the hotels and properties purchased by Wettengel and Muro with the misappropriated syndication proceeds, it is clear to Plaintiffs that those funds may not be recoverable. With respect to the real estate in Dana Point –

²⁷ Notwithstanding Versity's admission of wrongdoing, the extent of its misappropriation nevertheless remains unclear. Based on Versity's Regulation A filing with the Securities & Exchange Commission as of June 30, 2023, only 33% of the DST interests in the Hayworth DST remained unsold. This figure is inconsistent with the Versity's admissions in August 2023 that 65% of the DST interests in the Hayworth DST remained unsold.

which is located at 34311 Pacific Coast Highway, 34620 Del Obispo Street, and 5325 Dana Point Harbor Drive in Dana Point, CA 92629 – Plaintiffs’ investigation has confirmed, including through publicly available information, that a lender now has a mortgage on the property for nearly its entire fair market value. Thus, even if Plaintiffs were to sue Versity, obtain a judgment in their favor for the misappropriated funds and obtain a lien on Versity’s assets, the real estate at Dana Point would not be an asset from which Plaintiffs could seek to recover their damages. With respect to Wettengel’s personal residence, it is encumbered with a mortgage of approximately \$2.9 million; thus, assuming the home was purchased with the misappropriated syndication proceeds, homestead exemptions for certain personal residences potentially may render such funds unrecoverable homeowner’s equity. Tellingly, and consistent with their intent to frustrate Plaintiffs’ ability to recover the monies owed to them under the Loan Agreement and shield themselves from liability for their misappropriation, Wettengel and Muro recently “rebranded” Versity Invest as Crew Enterprises, which purports to be a real estate company that acquires and operates student housing. The rebrand effort amounts to a transparent effort by Versity to abscond with syndication proceeds that belong to Plaintiffs and improperly divert them into other areas of Versity’s business.

X. Incomplete Bank Statements Showing DST Syndications Confirm Versity’s Fraud and Misappropriation

94. Further, though Versity continues to refuse to provide read-only access to the bank accounts of the DSTs financed by Plaintiffs, as required by the Loan Agreement, Versity, in October 2023, did disclose heavily redacted, incomplete bank statements, which omitted all transaction level detail, but showed the opening and closing balances for such accounts beginning in April 2022, nearly one year after the first DST was financed by Plaintiffs. The truncated, incomplete statements render it impossible to determine to which individuals and/or entities the syndication proceeds were distributed or transferred from the DSTs. The bank statements,

however, confirm that the reports prepared by Versity and delivered to Plaintiffs regarding the amounts of syndications and cash receipts for the four Core Assets were false and fraudulent. Among other things, the bank statements confirmed that a Monthly Servicer Report Versity produced in May 2022 reflecting the syndication amounts and cash receipts for April 2022 – on which Plaintiffs relied when agreeing to finance the Hayworth DST and One on 4th DST – was false and concealed Versity’s misappropriation of \$10 million owed to Plaintiffs. The bank statements likewise confirmed that the spreadsheets transmitted by Muro to Plaintiffs in March 2023 – on which Plaintiffs relied when refraining to bring legal action against Versity in order to prevent additional misappropriation – were manipulated and false.

95. Pursuant to the terms of the Loan Agreement, and consistent with the PPM, save for the 9% of commissions owed to the broker dealers and selling groups selling the DST beneficial interests to investors, all of the syndication proceeds deposited into the DST bank account should have been transferred to the Collection Account for the purpose of reducing the beneficial interests held by the Initial Beneficiary and repaying Plaintiffs. However, as set forth in Figure 2 below (which summarizes the incomplete bank statements provided by Versity), the monthly deposits of syndication proceeds made into the DST bank accounts between April 2022 and July 2023 dwarfed the deposits of syndication proceeds made into the Collection Account and reported to Plaintiffs in the Monthly Servicer Reports during the same time:

Figure 2

Month	DST Syndications Shown on Incomplete Bank Statements	Estimated Net of Broker Fee (9%)	DST Syndications Shown on Fraudulent Monthly Servicer Reports	Misappropriated Proceeds
April 2022	\$30,574,278	\$27,822,593	\$17,738,676	\$10,083,917
May 2022	\$26,149,255	\$23,795,822	\$22,578,751	\$1,217,071
June 2022	\$20,290,983	\$18,464,795	\$6,622,993	\$11,841,801
July 2022	\$15,827,592	\$14,403,109	\$12,685,483	\$1,717,626
Aug 2022	\$17,750,819	\$16,153,245	\$13,991,534	\$2,161,711
Sept 2022	\$13,863,112	\$12,615,432	\$6,953,116	\$5,662,316
Oct 2022	\$15,749,645	\$14,332,177	\$702,550	\$13,629,627
Nov 2022	\$7,971,868	\$7,254,400	\$1,980,000	\$5,274,400
Dec 2022	\$4,475,647	\$4,072,839	\$3,648,200	\$424,639
Jan 2023	\$2,820,710	\$2,566,846	\$1,894,258	\$672,588
Feb 2023	\$314,636	\$286,319	\$186,446	\$99,873
Mar 2023	\$1,754,353	\$1,596,461	\$819,000	\$777,461
April 2023	\$953,035	\$867,262	\$705,000	\$162,262
May 2023	\$2,002,409	\$1,822,192	\$659,000	\$1,163,192
June 2023	\$1,227,651	\$1,117,162	\$0	\$1,117,162
July 2023	\$2,914,158	\$2,651,884	\$2,500,251	\$151,633
TOTAL	\$164,640,152	\$149,822,539	\$93,665,258	\$56,157,281

96. The incomplete bank statements, the fraudulent Monthly Servicer Reports, and admissions by Wettengel and Muro confirm that Wettengel and Muro directed the Signatory Trustees of the Hayworth Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST – which they controlled and continue to control – to transfer the syndication proceeds from the Hayworth Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST to bank accounts other than the Collection Account. In doing so, while offering the beneficial interests in the Hayworth Tanglewood DST, Vintage DST, The Walk, DST, and One On 4th DST to investors, Versity made numerous material misstatements to such investors in the respective PPM concerning the use of their syndication proceeds. Specifically, Versity’s representation that the syndication proceeds from such investors would be used to reduce the beneficial interests owned by the Initial

Beneficiary and to repay the bridge equity financing obtained from Plaintiffs was false at the time Versity made such disclosures in the respective PPM for each Core Asset. Instead of reducing and redeeming the beneficial interests of the Initial Beneficiary to repay the Plaintiffs' loan as required, Versity misappropriated the syndication proceeds from the DSTs.

XI. The Nelson Action Confirms Wettengel, Muro and Versity's Fraud and Misappropriation

97. Wettengel, Muro and Versity's fraudulent scheme was also confirmed when, on October 20, 2023, Brian Nelson filed a complaint in the Superior Court of California, Orange County, against, *inter alia*, Wettengel, Muro, Jennifer Welker (Versity's CFO),²⁸ and various entities controlled by them, including Versity Invest, Vintage DST, The Walk, DST, Hayworth DST, and One on 4th DST. Nelson alleged 18 causes of action, including, among other things, breach of contract, fraud, negligent misrepresentation, and breach of fiduciary duty. *See Brian Nelson et al. v. Blake Wettengel et al.*, Case No. 30-2023-01356667-CU-BC-CXC (Sup. Ct., Orange Cnty., Oct. 20, 2023). In the complaint, Nelson alleged that Wettengel and Muro set up various schemes to wrongfully divert Versity Investments' proceeds for their own personal benefit and to avoid paying bridge lenders such as Plaintiffs, that "Wettengel and Muro continue to impede and frustrate [the bridge lenders'] repayment," and that "Wettengel and/or Muro have continued to compensate themselves directly and indirectly instead of paying bridge lenders."

98. Thereafter, notwithstanding that Wettengel and Muro had admitted to misappropriating tens of millions of dollars, they nevertheless continued to attempt to deceive Plaintiffs. On November 15, 2023, after Plaintiffs raised concerns regarding discrepancies in the syndication amounts being provided by Versity for August 2023, Muro emailed Plaintiffs "concerning the discrepancy" and admitted that syndication proceeds had been "mistakenly

²⁸ In May 2023, Plaintiffs learned that Welker abruptly had resigned from her position.

disbursed to the wrong destination” (presumably, other bank accounts belonging to Versity, Wettengel or Muro). Consistent with their pattern of misappropriation and theft, none of Muro, Wettengel or anyone from Versity ever made any effort to retrieve the “mistakenly” distributed funds.

XII. This Action

99. From the summer of 2023 through March 2024, Plaintiffs, in good faith, engaged with Wettengel, Muro and Versity in an effort to resolve the dispute between them without the need for judicial intervention. Specifically, on July 11, 2023, the parties entered into a pre-negotiation agreement and attempted to negotiate a forbearance agreement pursuant to which Versity would repay the funds owed to Plaintiffs. Wettengel, Muro and Versity’s conduct – repeatedly manufacturing issues, re-trading on deal points after agreements had been reached, and baselessly causing delays – make plain that they never intended to negotiate in good faith. Rather, for Wettengel, Muro and Versity, the entire exercise of negotiating a forbearance agreement amounted to nothing more than another effort to cause Plaintiffs to delay enforcing their rights under the Loan Agreement and to allow Versity to rebrand in order to continue to improperly misappropriate and divert funds owed to Plaintiffs.

100. Given Versity’s pattern of systematic, continuous dishonesty to date, there is no basis to believe Versity has ceased misappropriating syndication proceeds owed to Plaintiffs or will suddenly agree to comply with its financial reporting and information access obligations under the Loan Agreement. Worse yet, given Versity’s continued refusal to comply with their financial reporting obligations or to grant Plaintiffs read-only access to the bank accounts associated with all eight of the DSTs financed by Plaintiffs, Plaintiffs have no means of (i) ascertaining the magnitude and scope of the fraud perpetrated by Versity, or the whereabouts of the funds Versity has misappropriated to date; (ii) verifying that Versity does not continue to misappropriate

syndication proceeds; or (iii) taking necessary measures to prevent Versity from exploiting the misappropriated funds or distributing them in a manner that renders Versity itself judgment proof or renders the misappropriated funds otherwise unrecoverable.

101. Plaintiffs therefore have no choice but to initiate this action and seek permanent injunctive relief.

CAUSES OF ACTION

First Cause of Action Breach of the Loan Agreement (By Plaintiffs Against All Defendants)

102. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 101 as if fully set forth herein.

103. The Loan Agreement constitutes a valid and binding contract.

104. Plaintiffs fully performed all of their obligations under the Loan Agreement.

105. As alleged herein, Wettengel, Muro and Nelson are the owners of Versity, and exercise complete domination of EquityCo and EquityCo II in connection with the Loan Agreement, the administration of the four Core Assets and the cash flows generated by the four Core Assets, such that they caused EquityCo and Equity Co II to breach their contractual obligations under the Loan Agreement and improperly divert and misappropriate funds owed to Plaintiffs pursuant to the Loan Agreement in order to permit Wettengel and Muro, through other affiliated entities, to enrich themselves personally and acquire other real estate properties, including, without limitation, the Apex property, real estate properties in Dana Point, CA, and hotels in Anaheim, CA.

106. As alleged herein, Versity breached its obligations under the Loan Agreement by, among other things, failing to comply with Sections 8.1, 8.3, 8.12, 8.15 and 8.17.

107. Versity's breaches of the Loan Agreement constitute Events of Default under the terms of the Loan Agreement. Under the Loan Agreement, in the case of the occurrence of an Event of Default, the Administrative Agent and the Lenders (Plaintiffs) are entitled to all remedies available at law or in equity, including specific performance.

108. Without full, complete, and immediate access to the bank accounts and financial reports, as well as the books and records, to which they are entitled under sections 8.1 and 8.3 of the Loan Agreement, Plaintiffs will be harmed and have no adequate remedy at law to ensure the bargained-for transparency and accurate reporting guaranteed by Versity through the Loan Agreement.

109. Due to Versity's complete control over the administration of the DST, the real estate assets owned by the DST, and the cash flows generated from the syndication of the beneficial interests in the DST, Plaintiffs are at imminent risk of irreparable harm having been stripped of their contractually guaranteed protections.

110. Accordingly, Plaintiffs are entitled to an order requiring specific performance by Versity of Sections 8.1 and 8.3 of the Loan Agreement.

111. Moreover, Versity's conduct warrants the issuance of a temporary restraining order and preliminary and permanent injunctions pursuant to C.P.L.R. §§ 6301 and 6313, (i) restraining and enjoining Versity from diverting any cash flows generated from the four Core Assets, directly or indirectly transferring them other than to the Collection Account, or utilizing them in any way other than depositing them into the Collection Account, as Versity is contractually obligated to do; (ii) directing that Versity promptly direct any such cash flows that they have received or may receive to the Collection Account; (iii) prohibiting Versity from interfering with any efforts Plaintiffs may take to enforce such an injunction consistent with their contractual rights or any order or judgment of this Court; and (iv) granting KHCA read-only access to "Borrower's and

each other Loan Party's and any Owned DST's (and its wholly owned Subsidiary's) bank accounts" as required under Section 8.1(f) of the Loan Agreement.

Second Cause of Action
Breach of the Loan Agreement
(By Plaintiffs Against All Defendants)

112. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 111 as if fully set forth herein.

113. The Loan Agreement constitutes a valid and binding contract.

114. Plaintiffs fully performed all of their obligations under the Loan Agreement.

115. As alleged herein, Wettengel, Muro and Nelson are the owners of Versity, and exercise complete dominion of EquityCo and EquityCo II in connection with the Loan Agreement, the administration of the four Core Assets and the cash flows generated by the four Core Assets, such that they caused EquityCo and Equity Co II to breach their contractual obligations of the Loan Agreement, including, without limitation, under Sections 4.10 and 10.4, and improperly divert and misappropriate funds owed to Plaintiffs pursuant to the Loan Agreement in order to permit Wettengel and Muro, through other affiliated entities, to enrich themselves personally and acquire other real estate properties, including, without limitation, the Apex property, real estate properties in Dana Point, CA, and hotels in Anaheim, CA.

116. As a direct and proximate result of Wettengel, Muro, Nelson and Versity's breach of the Loan Agreement, Plaintiffs have suffered, and continue to suffer, damages in an amount to be proven at trial, but in any event not less than \$56 million, plus default interest, pre- and post-judgment interest and attorneys' fees as provided for in the Loan Agreement.

117. Without full, complete, and immediate freeze on and attachment of the funds to which Plaintiffs are entitled under the Loan Agreement, Plaintiffs will be harmed and have no adequate remedy at law because Wettengel, Muro, Nelson and Versity will dissipate those assets

and, as a result, Plaintiffs are at imminent risk of irreparable harm having been stripped of their contractually guaranteed right to the cash flows generated from the syndication of the beneficial interests in the DSTs.

118. Accordingly, Wettengel, Muro and Versity's conduct warrants the issuance of a temporary restraining order and preliminary and permanent injunctions pursuant to C.P.L.R. §§ 6301 and 6313, restraining and enjoining Versity from diverting any cash flows generated from the four Core Assets, directly or indirectly transferring them other than to the Collection Account, or utilizing them in any way other than depositing them into the Collection Account, as Versity is contractually obligated to do; directing that Versity promptly direct any such cash flows that they have received or may receive to the Collection Account; and prohibiting Versity from interfering with any efforts Plaintiffs may take to enforce such an injunction consistent with their contractual rights or any order or judgment of this Court; and (ii) appointing a temporary receiver of Versity's bank accounts associated with the four Core Assets pursuant to C.P.L.R. §§ 6401 *et seq.*

Third Cause of Action
Breach of Contract: Breach of the Bad-Boy Guaranty
(By Plaintiff KHCA Against Guarantors)

119. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 118 as if fully set forth herein.

120. As set forth above, the Guarantors executed the Bad-Boy Guaranty in favor of KHCA as of May 27, 2021, as amended as of April 12, 2022.

121. The Bad-Boy Guaranty constitutes a valid and binding contract.

122. Plaintiff KHCA fully performed all of its obligations under the Bad-Boy Guaranty.

123. As alleged herein, Plaintiffs have made a demand on the Guarantors and Guarantors breached the Bad-Boy Guaranty by failing to make payment to Plaintiffs of the amounts owed by Versity under the Loan Agreement.

124. As a direct and proximate result of these material breaches of the Bad-Boy Guaranty, Plaintiffs have suffered, and continue to suffer, damages in an amount to be proven at trial, but in any event not less than \$56 million, plus default interest, pre- and post-judgment interest and attorneys' fees as provided for in the Bad-Boy Guaranty.

Fourth Cause of Action
Fraudulent Inducement
(By Plaintiffs Against Wettengel, Muro and Versity)

125. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 124 as if fully set forth herein.

126. As alleged herein, Versity fraudulently induced Plaintiffs to finance the Hayworth DST and One on 4th DST by misrepresenting the syndication proceeds and cash receipts for the Vintage DST in April 2022. In doing so, Versity concealed their misappropriation of \$10 million of syndication proceeds and cash receipts owed to Plaintiffs. Had Plaintiffs known that Versity misrepresented syndication proceeds and cash receipts for the Vintage DST in April 2022 and misappropriated nearly \$10 million of monies owed to Plaintiffs, Plaintiffs would not have agreed to finance the Hayworth DST and One on 4th DST in June 2022 and July 2022, respectively.

127. As a direct and proximate result of Wettengel, Muro and Versity's fraud, Plaintiffs have suffered monetary damages in an amount to be determined at trial, plus pre- and post-judgment interest and attorneys' fees as provided for in the Loan Agreement.

Fifth Cause of Action
Unjust Enrichment
(By Plaintiffs Against All Defendants)

128. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 127 as if fully set forth herein.

129. As alleged herein, Versity enriched itself at the expense of Plaintiffs by diverting and misappropriating funds owing to Plaintiffs to purchase the Apex property for \$13.4 million,

real estate properties in Dana Point, CA for \$6.5 million, hotels in Anaheim, CA for \$20.6 million, a personal residence for \$4.5 million, and to pay themselves approximately \$15 million.

130. In equity and good conscience, Versity should not be allowed to retain the money they stole from Plaintiffs or the property into which they funneled those stolen funds.

131. Accordingly, Plaintiffs are entitled to a judgment for the full amount by which Wettengel, Muro, Nelson and Versity have been unjustly enriched, in an amount to be determined at trial, but in any event not less than \$56 million, plus default interest, pre- and post-judgment interest and attorneys' fees as provided for in the Loan Agreement. In addition, based upon Versity's egregious conduct as alleged herein, including, without limitation, the fraudulent scheme to misappropriate tens of millions of dollars that were owed to Plaintiffs for the purpose of enriching themselves and to conceal its malfeasance by repeatedly misrepresenting facts to Plaintiffs, Plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial.

Sixth Cause of Action
Conversion
(By Plaintiffs Against All Defendants)

132. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 131 as if fully set forth herein.

133. In the alternative to the foregoing Causes of Action, Plaintiffs have a possessory right in the Gross Receipts, as defined in the Loan Agreement, pursuant to Sections 4.10, 8.17, 9.3(a)(i), and 10.4(a)-(d) of the Loan Agreement.

134. The Gross Receipts consist of a specific, identifiable fund pursuant to the definition of Gross Receipts contained in the Loan Agreement.

135. Versity was obligated to treat the Gross Receipts in a specific manner and provide the Gross Receipts to Plaintiffs pursuant to Sections 4.10, 8.17, 8.18, 9.3(a)(i), and 10.4(a)-(d) of the Loan Agreement.

136. However, Versity has failed to honor their obligations to return the Gross Receipts to Plaintiffs, and instead have unlawfully asserted dominion and control over the Gross Receipts. Indeed, Versity has admitted, among other things, that that the proceeds of syndications were used to finance the Apex purchase, the purchase of properties in Dana Point and in Anaheim, CA, the payment of an “acquisition fee” to Versity itself, and various other uses.

137. Versity has interfered with and deprived Plaintiffs of their possessory right of the Gross Receipts.

138. As a direct and proximate result of Wettengel, Muro, Nelson and Versity’s unauthorized assertion of dominion and control over the Gross Receipts, Plaintiffs have suffered monetary damages in an amount to be determined at trial, but in any event not less than \$56 million, plus default interest, pre- and post-judgment interest and attorneys’ fees as provided for in the Loan Agreement.

139. In addition, based upon Defendants’ egregious conduct as set forth herein, Plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial.

Seventh Cause of Action
Fraud
(By Plaintiffs Against Wettengel, Muro and Versity)

140. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 139 as if fully set forth herein.

141. As alleged herein, Wettengel, Muro and Versity knowingly made numerous misrepresentations to Plaintiffs concerning, among other things, syndication levels for the four

Core Assets for the purpose of concealing their scheme to divert and misappropriate funds owed to Plaintiffs.

142. In reliance on those representations, Plaintiffs failed to exercise its rights and remedies under the Loan Agreement, or to seek judicial intervention to prevent Wettengel, Muro, Nelson and Versity's theft of tens of millions of dollars.

143. Plaintiffs reasonably relied upon the materially false and misleading information provided to them by Wettengel, Muro, and Versity.

144. As a direct and proximate result of Wettengel, Muro and Versity's fraud, Plaintiffs have suffered monetary damages in an amount to be determined at trial, but in any event not less than \$56 million, plus pre- and post-judgment interest and attorneys' fees as provided for in the Loan Agreement.

145. In addition, based upon Wettengel, Muro and Versity's egregious conduct as alleged herein, including, without limitation, the fraudulent scheme to misappropriate tens of millions of dollars that were owed to Plaintiffs for the purpose of enriching themselves and to conceal its malfeasance by repeatedly misrepresenting facts to Plaintiffs, Plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial.

Eighth Cause of Action
Civil Conspiracy
(By Plaintiffs Against All Defendants)

146. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 145 as if fully set forth herein.

147. Versity reached a plan and agreement among themselves to defraud Plaintiffs.

148. As alleged, Versity did, in fact, defraud Plaintiffs by providing Plaintiffs with materially false and misleading information regarding the amount of syndications of the four Core Assets.

149. Versity intentionally participated in providing Plaintiffs with materially false and misleading information regarding the amount of syndications of the four Core Asset, in furtherance of their plan and agreement to defraud Plaintiffs.

150. As a direct and proximate result of Versity's conspiracy to defraud Plaintiffs, Plaintiffs have suffered monetary damages in an amount to be determined at trial, but in any event not less than \$56 million, plus default interest, pre- and post-judgment interest and attorneys' fees as provided for in the Loan Agreement.

151. In addition, based upon Versity's egregious conduct as set forth herein, Plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial.

Ninth Cause of Action
Constructive Trust
(By Plaintiffs Against Trust Defendants)

152. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 151 as if fully set forth herein.

153. Plaintiff, on the one hand, and the Trust Defendants, on the other, had a confidential relationship centered around Versity's ownership and management of the Core Assets. The Trust Defendants knew of Plaintiff's existence as a lender to Versity and that the funds advanced by Plaintiff were necessary to fulfill the purposes of the Trust Defendants.

154. Versity's misappropriation of funds owed to Plaintiffs unjustly enriched the Trust Defendants by diverting funds that should have been paid to Plaintiff under the Loan Agreement to the owners of the Trust Defendants.

155. In reliance upon Versity's obligation under the Loan Agreement that funds generated by the Trust Defendants would be used to repay its obligations according to the explicit payment structure, Plaintiff advanced to Versity approximately \$145 million in the form of the

Loan and Versity, in turn, used those funds to acquire the real estate properties that constitute the entirety of the Trust Defendants' assets, thereby unjustly enriching the Trust Defendants.

156. It is against equity and good conscience to permit the Trust Defendants to retain these misappropriated funds that Versity agreed to remit to Plaintiff to repay the Loan.

157. Accordingly, the Court should impose a constructive trust over the Trust Defendants and all of their bank accounts.

Tenth Cause of Action
Accounting
(By Plaintiffs Against Versity)

158. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 157 as if fully set forth herein.

159. As alleged herein, Versity diverted and misappropriated tens of millions of dollars owed to Plaintiffs under the Loan Agreement for the purpose of other real estate properties and enriching Wettengel and Muro.

160. All of the information relating to the cash flows generated by the four Core Assets is in Versity's possession, custody, and control.

161. Versity contracted to provide this information to Plaintiffs, but has failed to do so.

162. Moreover, Versity contracted to provide to Plaintiffs information regarding the assets of the Guarantors, but Guarantors have failed to do so.

163. By reason of the foregoing, an accounting of Versity is appropriate, and is required to determine, among other things, the extent of Versity's breach of their obligations under the Loan Agreement, the true amount of the diverted funds, and the value of Plaintiff's claim for damages.

Eleventh Cause of Action
Permanent Injunctive Relief
(By Plaintiffs Against Versity)

164. Plaintiffs repeat and reallege the allegation in paragraphs 1 through 163 as if fully set forth herein.

165. As alleged herein, the Guarantors have breached the Bad-Boy Guaranty, Versity has breached the Loan Agreement, has converted Plaintiffs' funds, has defrauded Plaintiffs out of tens of millions of dollars, and has been unjustly enriched at Plaintiffs' expense. Versity has improperly diverted and misappropriated funds owed to Plaintiffs pursuant to the Loan Agreement, and will continue to do so absent judicial intervention.

166. Unless permanent injunctive relief is granted, Plaintiffs will be irreparably harmed. Plaintiffs lack an adequate remedy at law for the reasons set forth above.

167. As a result, Plaintiffs are entitled to an injunction permanently restraining and enjoining Versity from diverting any cash flows generated from the four Core Assets, directly or indirectly transferring them other than to the Collection Account, or utilizing them in any way other than depositing them into the Collection Account, as Versity is contractually obligated to do; directing that Versity promptly direct any such cash flows that they have received or may receive to the Collection Account; and prohibiting Versity from interfering with any efforts Plaintiffs may take to enforce such an injunction consistent with their contractual rights or any order or judgment of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiffs and against Defendants:

- a. Ordering specific performance by Versity of Sections 8.1 and 8.3 of the Loan Agreement, requiring Versity to fulfill their reporting requirements and allow read-only bank account access and an on-site inspection (or audit) of Versity's books and records;
- b. Imposing a constructive trust upon, and the appointment of a receiver over, the operations and assets in the possession, custody, and/or control of Trust Defendants;
- c. Order an accounting of Versity to determine, among other things, the extent of its breach of their obligations under the Loan Agreement, the true amount of the diverted funds, and the damage resulting therefrom;
- d. Awarding damages in an amount to be determined at trial, but in any event not less than \$56 million plus default interest;
- e. Awarding reasonable costs and expenses incurred in this action, including attorneys' fees, in an amount to be determined at trial;
- f. Awarding pre- and post-judgment interest on all such damages; and
- g. Awarding such other, further, and different relief as the Court deems just and proper.

Dated: August 13, 2024
New York, New York

KING & SPALDING LLP

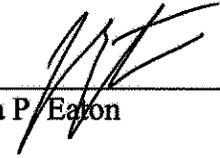
By: /s/ Sarmad Khojasteh

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*Attorneys for Plaintiffs KHCA Funding LLC
and Knights Hill Ireland II DAC*

4. To the extent the allegations in the Verified First Amended Complaint concern the actions of parties other than plaintiffs, I believe those allegations to be true and correct.



Joshua P. Eaton

Sworn to before me this

13th day of August 2024



Notary Public

SEAN M. SIGILLITO
Notary Public, State of New York
No. 02SI6445863
Qualified in Queens County
Commission Expires January 03 2027