IN THE SUPREME COURT OF THE STATE OF DELAWARE

CONROE WM LLC and WM PROPERTY HOLDINGS LLC, Defendants-Below/Appellants, v. HREF SENIOR WORTHINGTON LLC, Plaintiff-Below/Appellee.	No. 89,2026 Appeal from the Court of Chancery of the State of Delaware C.A. No. 2024-1148-MTZ

[CORRECTED] APPELLANTS' OPENING BRIEF

Dated: April 30, 2026

Womble Bond Dickinson (US) LLP
Kevin J. Mangan (No. 3810)
Stephanie S. Riley (No. 5803)
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
kevin.mangan@wbd-us.com
stephanie.riley@wbd-us.com

OF COUNSEL:

Dykema Gossett, PLLC
Isaac Villarreal
5 Houston Center
1401 McKinney Street, Suite 1625
Houston, Texas 77010
Telephone: (713) 904-6900
ivillarreal@dykema.com

Counsel for Appellants Conroe WM LLC and WM Property Holdings LLC

TABLE OF CONTENTS

EXHIBITS:

<u>TABLE OF CITATIONS</u>

Cases

Statutes

Other Authorities

Regulations

NATURE OF PROCEEDINGS

This appeal arises from a determination under 6 *Del. C.* § 18-110 that Plaintiff-Below/Appellee HREF Senior Worthington LLC ("HREF") is the sole manager of WM Conroe Property Holdings LLC ("HoldCo"). *See* **Exhibits A, B**. The Court of Chancery held that the HoldCo Company Agreement and the HREF Addendum were dispositive and that, upon the occurrence of an Additional Rights Event ("ARE"), HREF's right to take control of HoldCo was automatic. Ex. A, at 36. That conclusion rests on legal determinations concerning contract interpretation and the application of 6 *Del. C.* § 18-110.

The Court of Chancery reduced a complex, multi-layered transaction into a single-document analysis and, in doing so, committed reversible legal error. At issue is a multi-tiered ownership and governance structure created to develop and operate a Department of Housing and Urban Development ("HUD")-insured senior living facility in Conroe, Texas known as Worthington Manor Senior Living Facility (the "Project"). (A0239-240). However, first, the Court of Chancery improperly confined its analysis to the HoldCo Agreement and HREF Addendum, disregarding the integrated contractual framework governing the Project. Delaware law requires related agreements executed as part of a single transaction to be read together. Second, the court erred in concluding that HUD approval requirements are inapplicable to HoldCo and HREF. The undisputed record establishes that HoldCo exists solely to manage Defendant-Below / Appellant Conroe WM, LLC ("OpCo")—the HUD borrower—and that changes in HoldCo's management necessarily effectuate changes in OpCo's control. Moreover, HUD rules and regulations extend to controlling principals who exercise ownership and control over HUD-insured projects. (A2624, A2695-696). The Court of Chancery's conclusion that HUD requirements bind only the nominal borrower in privity with the HUD Agreements elevates form over substance and circumvents HUD's consent rights and oversight authority. Third, the Court of Chancery misinterpreted the HREF Addendum by treating HREF's step-in rights as automatic and self-executing. The Addendum expressly requires further actions—including modifying HUD documents and obtaining recognition as a key principal—before HREF can assume control. Those conditions were never satisfied.

The judgment should be reversed.

SUMMARY OF ARGUMENT

1. The Court of Chancery committed reversible error by construing the HoldCo Company Agreement and the HREF Addendum in isolation, rather than as part of an integrated contractual framework governing the Project (*see* Ex. A, § II.A-B);

2. The Court of Chancery committed reversible error by disregarding undisputed contractual provisions requiring HUD approval for changes in management and control of the Project (*see id.*); and

3. The Court of Chancery committed reversible error by treating HREF's step-in rights as self-executing notwithstanding express contractual language requiring further action (*see id.*).

STATEMENT OF FACTS

A. The Integrated Structure Governing the Project

This dispute arises from the Project: a multi-tiered ownership and governance structure created to develop and operate a HUD-insured senior living facility in Conroe, Texas known as Worthington Manor Senior Living Facility. (A0239-240).

The Project was structured through a tiered entity framework designed to comply with HUD regulatory requirements while allocating economic and managerial rights among multiple stakeholders. (*Id.*).

At the operating level, OpCo (Conroe WM, LLC) serves as the borrower under a HUD-insured loan and is subject to extensive regulatory agreements governing ownership, control, and management. (A1917-918, A1924).

At the ownership level, HoldCo (WM Conroe Property Holdings, LLC) exists for a single purpose: to act as the managing member of OpCo. (A2003). HoldCo is owned by multiple entities, including Defendant-Below / Appellant WM Property Holdings, LLC ("WMPH"), who serves as its managing member and ultimately, manager of the Project. HoldCo does not conduct independent operations; its sole function is to control OpCo. (A2003).

Consistent with that structure, the agreements governing the Project were executed as part of a single, integrated transaction and included, among others, the following:

(1) the HoldCo Limited Liability Company Agreement ("HoldCo Agreement") (A2331),

(2) the OpCo Limited Liability Company Agreement ("OpCo Company Agreement") (A2373),

(3) HUD Healthcare Facility Note, HUD Regulatory Agreement-Borrower, and HUD Regulatory Agreement-Operator (collectively, the "HUD Agreements"). (A2411-422, A2457-514).

These agreements were designed to operate together. (A2568-2571, A2624-625). Control of HoldCo necessarily determines control of OpCo, and control of OpCo is subject to the HUD Agreements and HUD rules and regulations. (*Id.*).

B. HUD Oversight of the Project

The Project was financed with a HUD-insured loan and is subject to the HUD Agreements which impose strict conditions on OpCo and its controlling members, managers and principals. (A2729). Specifically, the HUD Agreements require, among other things, that OpCo: (i) designate certain individuals with relevant healthcare experience to serve as members and co-managers of HoldCo and to serve as the key management agent that would control the day-to-day operations of the Project; (ii) obtain HUD approval for any change in management, ownership or control of OpCo, its manager (HoldCo), or the Project; and (iii) ensure that the day-to-day operation of the Project be controlled by the aforementioned approved management agents. (A1925-930).

The parties structured HoldCo and OpCo with these HUD requirements in mind. (A2568, A2599, A2622-627). OpCo's Operating Agreement incorporated the HUD restrictions and made clear that if any of the OpCo's organization documents conflict with the HUD regulatory agreements, the HUD regulatory agreements controlled. (A2723-730). Because HoldCo exists solely to manage OpCo, any change in control of HoldCo necessarily affects control of OpCo, the HUD-regulated borrower. (A003-004).

C. HREF's Role in the Project

As part of its agreement to insure the loans, HUD required OpCo to fund three separate escrow accounts. (A2556-557). In order to fund those escrows, HoldCo obtained financing from HREF. (*Id.*). HREF agreed to finance the escrow accounts in exchange for a preferred membership interest in HoldCo, secured by a right to "immediately" step-in as manager of HoldCo in the event that HREF was not paid on its preferred return (an Additional Rights Event, or "ARE"). (A0016-018). This agreement was memorialized in an addendum to the HoldCo Company Agreement dated February 13, 2020 (the "HREF Addendum"). (A0116-123, A0243). Upon signing the HREF Addendum, HREF became a passive member of HoldCo without decision making power or control over HoldCo or the Project. (*Id.*). It is undisputed that HREF was aware when it entered into the HREF Addendum that the Project was funded with a HUD-insured loan and was subject to the HUD Agreements. (A2568, A2570-571, A2626, A2729-730).

HREF stopped receiving payment on its preferred return in 2024 and announced it was invoking its step-in rights, relying on the HREF Addendum to claim immediate, sole managerial authority over HoldCo and HoldCo's rights in the Project. (A0017-018). But the HREF Addendum does not grant automatic control. (A0116-123). Instead, it contemplates a series of contingent rights that arise only upon the occurrence of AREs that require further action to implement. (*Id.*).

Specifically, the HREF Addendum provides that, following an ARE, the Project Managers: (i) must use "best efforts" to modify HUD-governed documents; (ii) must take steps to have HREF recognized as a "key principal"; and (iii) must implement changes necessary to effectuate control. (A0117). These provisions reflect that any change in control requires coordination with, and approval under, the broader contractual and regulatory framework governing the Project. (*Id.*).

D. No Required Approvals or Implementation Steps Occurred

It is undisputed that HREF did not obtain HUD approval for any change in control, become a recognized Key Principal under HUD rules, or implement the contractual steps contemplated by the HREF Addendum to effectuate control. (A2073-074, A2718). Nor were the underlying agreements modified to reflect any such change. Despite these undisputed facts, HREF asserted that its control rights were automatic and self-executing. (A0008, A2567-568).

E. The Court of Chancery Litigation

HREF initiated a suit in November 2024 and filed an Amended Complaint that added a claim seeking a declaration, pursuant to 6 *Del. C*. § 18-110(a), that it is the sole manager of HoldCo (the "§ 18-110 Claim"). (A0001). In September 2025, the Court of Chancery held an expedited trial on HREF's § 18-110 Claim. (*See generally* A2545-A2707). On January 12, 2026, the Court of Chancery issued its Memorandum Opinion which held that HREF was the undisputed sole manager of HoldCo, and that: (i) the HoldCo LLC Agreement did not require that HUD approve HREF as the sole manager of HoldCo, (ii) that the HUD Agreements had no effect on HREF's right to become HoldCo's manager in the event of an ARE, (iii) that neither HoldCo nor HREF could be bound to the HUD Agreements because they were not parties to those contracts, and that (iv) the HREF Addendum was not illegal or violative of public policy. Ex. A. In reaching that conclusion, the Court of Chancery focused exclusively on the HoldCo Company Agreement and the HREF Addendum and declined to consider the OpCo Agreement and HUD-governed framework.

On January 28, 2026, the Court issued its Order Pursuant to Rule 54(b) Granting Partial Final Judgment and Implementing its January 12, 2026

Memorandum Opinion on Count V (the "Final Order"). **Ex. B**. The Final Order adjudicated the rights of the named parties, specifically declaring that HREF is the sole manager of HoldCo with decision-making authority and control over HoldCo and HoldCo's rights in the Project. *See* Ex. B. The Final Order removed WMPH and Mr. Curtis Lindsey as the manager of HoldCo and the Project. *Id.*

This appeal followed.

ARGUMENT

A. The Court of Chancery Erred By Failing to Read the Governing Agreements as an Integrated Contractual Scheme.

1. Question Presented

Did the Court of Chancery commit reversible error by construing the HoldCo Company Agreement and the HREF Addendum in isolation, rather than as part of an integrated contractual framework governing the Project? (A2723-731 [Defendants' Corrected Reply to Plaintiff HREF's Pre-Trial Brief]).

2. Scope of Review

Because this appeal turns on questions of contract interpretation, specifically corporate documents and the legal effect thereof, this Court reviews the Court of Chancery's decision *de novo*. *Genger v. TR Invs., LLC*, 26 A.3d 180, 190 (Del. 2011); *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 279 A.3d 323, 336 (Del. 2022).

3. Merits of the Argument

Delaware law requires related agreements to be read together. Delaware law is clear that the interpretation of contracts—including whether multiple agreements must be construed together as part of a single transaction—is a question of law subject to plenary review. *GMG Capital Invs., LLC v. Athenian Venture Partners I, L.P.,* 36 A.3d 776, 779 (Del. 2012) ("We review questions of contract interpretation *de novo*."); *Thompson St. Capital Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1165 (Del. 2025) ("The existence of a condition precedent is a question of contract interpretation, and therefore, of law"; interpreting multiple agreements as a unitary contractual scheme). Delaware courts adhere to the objective theory of contracts, prioritizing the parties' intentions as reflected in the language of the agreements. *See Salamone v. Gorman*, 106 A.3d 354, 367-68 (Del. 2014). When multiple agreements are executed in close temporal proximity, relate to the same subject matter, and are intended to govern a single transaction, courts will harmonize and interpret them collectively to give effect to the parties' overall intent. *Thompson St. Capital Partners*, 340 A.3d at 1165; *Segovia v. Equities First Holdings, LLC,* No. 06C-09-149-JRS, 2008 WL 2251218, at *9 (Del. Super. Ct. May 30, 2008) (holding that when the parties have executed separate documents on the same day covering the same period of time and are intended to function as parts of the same transaction, they must be treated as one contract, even if executed by different parties.); *see also Crown Books Corp. v. Bookstop, Inc.*, No. 11255, 1990 WL 26166, at *1 (Del. Ch. Feb. 28, 1990) ("[I]n construing the legal obligations created by [a] document, it is appropriate for the court to consider not only the language of that document but also the language of contracts among the same parties executed or amended as of the same date that deal with related matters"); *Flex Ltd. v. Nextracker Inc.*, No. 2025-0197-KSJM, 2026 WL 159342, at *6 (Del. Ch. Jan. 21, 2026) ("Documents evidence the same transaction when they are executed at the same time, concern the same subject matter, and have similar parties.")

The HoldCo Agreement, HUD Agreements, and the OpCo Agreement (and any amendments thereto) are undoubtably intertwined and must be read together. First, the OpCo and HoldCo Company Agreements were executed on the same day and concern the same subject matter—the ownership and management of the Project. (A0003). Moreover, the undisputed structure of the Project evidences the interdependence of the related agreements. (A2568-570, A2624-626, A2729-730). HoldCo exists solely to manage OpCo. (*Id.*). OpCo is the operator of the Project which is subject to the HUD Agreements. (*Id.*). The HUD Agreements are aimed at regulating control of the Project. (*Id.*). The HUD Agreements have to be enforceable against HoldCo or the approval requirements contained therein have no effect. (*Id.*).

The Court of Chancery's limited analysis looking solely to the HoldCo Company Agreement in determining HoldCo's manager ignored the reality of the Project's governance structure. The Court of Chancery's failure to consider that integrated framework was legal error.

B. The Court of Chancery Erred in Holding HUD Approval Requirements Are Not Applicable to HoldCo or HREF.

1. Question Presented

Whether the Court of Chancery committed reversible error by disregarding undisputed contractual provisions requiring HUD approval for changes in management and control of the Project. (A0247-248 [Joint Pre-Trial Stipulation & Proposed Order]; A1918, A1933-934 [Defendants' Corrected Opening Pre-Trial Brief]; A2723-731 [Defendants' Corrected Reply to Plaintiff HREF's Pre-Trial Brief]; A2695-697 [Trial Transcript]).

2. Scope of Review

Because this appeal turns on questions of contract interpretation, specifically corporate documents and the legal effect thereof, this Court reviews the Court of Chancery's decision *de novo*. *Genger*, 26 A.3d at 190; *Stream TV Networks,* 279 A.3d at 336.

3. Merits of Argument

The record establishes that changes at the HoldCo level necessarily change control of OpCo (the HUD Borrower). (A0003-004). Delaware courts will not adopt interpretation of contracts that produce commercially unreasonable or absurd result. *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1160 (Del. 2010). Contracts must instead be interpreted in light of their commercial context and the parties' evident intent. *Thompson St. Capital Partners*, 340 A.3d at 1165; *Torrent Pharma, Inc. v.*

Priority Healthcare Distribution, Inc., No. N18C-05-094-CEB, 2022 WL 3272421, at *9 (Del. Super. Ct. Aug. 11, 2022) (A contract interpretation is reasonable when the contract is read in full and situated in the commercial context between the parties.") (internal quotations omitted); *see also Chicago Bridge & Iron Co. N.V. v. Westinghouse Elec. Co. LLC*, 166 A.3d 912, 916-17 (Del. 2017), *as revised* (June 28, 2017).

The Court of Chancery's ruling violates these principles by concluding that the HUD approval rights set forth in the HUD Agreements and HUD regulations do not apply to HoldCo or HREF because neither were parties to the HUD Agreements and the HoldCo Company Agreement does not require such approval. (Ex. A, at 47). But the undisputed structure, as set forth above, is that HoldCo exists solely to control OpCo. (A0003, A2729). Thus, any change in the management and control of HoldCo necessarily changes the management and control of OpCo. (A0003-004).

The HUD Agreements, which are specifically incorporated by reference in the OpCo Company Agreement, require HUD approve any change in management and control. (A0236). It does not matter that HoldCo or HREF were not parties to the HUD Agreements because, by acting directly or indirectly as managers of the Project, they subjected themselves to HUD oversight. (A2625, A2695-696). Moreover, the fact that the HREF Addendum specifically contemplated HUD approval of HREF as manager of HoldCo shows that all parties—including HoldCo and HREF—understood that the HUD Agreements (and the approval requirements contained therein) applied to HoldCo as well as OpCo. (A2566-571).

By allowing control to shift at the HoldCo level while disregarding the constraints governing OpCo, the Court of Chancery's ruling permitted HoldCo and HREF to circumvent contractual and regulatory approval requirements, effectively rendering HUD's regulatory oversight and management approval rights meaningless. This was not the intent of the Parties, and is precisely the type of absurd result Delaware law rejects. *See Osborn*, 991 A.2d at 1160.

The Court of Chancery's ruling that only OpCo is bound to the HUD Regulatory Agreements ignores HUD's regulatory framework that is designed to regulate not just a HUD borrower, but also the entities and persons that control it.

HUD-insured loans arise under a comprehensive federal regulatory framework, not merely a private contract. (A2583-584, A2624-627, A2695-2696). HUD's framework is designed to regulate both entities and the individuals that control them, not just the borrower as a formal legal shell. (*Id.*). Under HUD's framework, individuals and entities are subject to HUD requirements where they exercise direct or indirect control over the borrower, where they qualify as principals or participants or participate in management, operations, or financial decisions affecting the HUD insured project. *See, e.g.*, 24 C.F.R. § 200.105 (Mortgagor Supervision), 24 C.F.R. § 200.210–.220 , 24 C.F.R. § 232.1 (HUD participation and eligibility requirements including “Controlling Participants”), HUD Notice H 2016-15 (providing details on who HUD considers to be a Controlling Principle for Previous Participation Review purposes pursuant to 24 C.F.R. part 200, subpart H); HUD Section 232 Handbook, Section III, Chapter 8 (Asset Management: Operators and Management Agents); and HUD Form 2530 (Previous Participation Certification) (requiring disclosure of all controlling participants). (A1930, A2624-626, A2695-696). HoldCo (and its managers) undoubtably fall squarely within the class of actors HUD regulates. (A1933, A2729).

The Court of Chancery’s holding that only the parties in privity of the HUD Agreements can be subject to those agreements or HUD’s regulations undermines HUD’s entire regulatory scheme and leads to the untenable result that individuals or entities could control HUD insured projects without subjecting themselves to HUD regulations simply by acting through an entity that is not the HUD borrower. Stated differently, the Court of Chancery’s holding effectively allows those who control a HUD-insured project to reap its benefits while disclaiming the federal obligations that govern it. It must be reversed.

C. The Court of Chancery Misinterpreted the HREF Addendum By Treating HREF's Step-In-Rights As Self-Executing.

1. Question Presented

Whether the Court of Chancery committed reversible error by treating HREF's step-in rights as self-executing notwithstanding express contractual language requiring further action. (A1933-34 [Defendants' Corrected Opening Pre-Trial Brief]; A2649, A2660, A2697, A2701 [Trial Transcript]).

2. Scope of Review

Because this appeal turns on questions of contract interpretation, specifically corporate documents and the legal effect thereof, this Court reviews the Court of Chancery's decision *de novo*. *Genger*, 26 A.3d at 190; *Stream TV Networks,* 279 A.3d at 336.

3. Merits of the Argument

The HREF Addendum expressly contemplates that HREF's right to control HoldCo is not automatic, but rather, requires certain actions be taken before it can be effectuated. (A0117). In particular, the HREF addendum requires that HUD forms be modified, that HREF be accepted as a Key Principal for the Project (under applicable HUD regulations), and that the Project Managers (HoldCo and MStar) take all steps necessary to cause HREF or its designee to become sole manager of HoldCo with all decision making authority of HoldCo as the manager of OpCo. (*Id.*).

Under Delaware law, contractual rights that are conditioned on future acts become operative only when the specified condition precedent is fulfilled. *See Roth v. Sotera Health Co.*, No. 2022-1192-LWW, 2024 WL 4260649, at *10 (Del. Ch. Sept. 23, 2024) ("A condition precedent 'must be performed or happen before a duty of immediate performance arises on the promise which the condition qualifies.'") (citation omitted); *Lockwood v. Capano*, No. 89,2014, 2014 WL 7009737, at *2 (Del. 2014) ("When the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed.").

The Court of Chancery ignored conditions precedent to exercising control. Despite the fact that the HREF Addendum expressly contemplated additional steps, the Court of Chancery nevertheless held that, upon the occurrence of an ARE, HREF's control rights were complete and that was the "end of the story." Ex. A, at 36. This conclusion ignores the fundamental rule that contractual rights conditioned on future acts do not become operative until those conditions are satisfied. *See, e.g., Roth,* 2024 WL 4260649, at *10. Without HUD's approval of HREF as the new and sole manager of HoldCo—and thus, the Project—HREF could not exercise its right to control HoldCo. (A2698). It was a condition precedent that was never satisfied. (*Id.*). As such, HREF's control rights did not become operative.

Moreover, the Court of Chancery's interpretation that HREF's right to step-in as manager of HoldCo is automatic upon the occurrence of an ARE renders the HREF Addendum void because such a reading, as stated above, violates the HUD Agreements and HUD regulations. (A2729-730). Under Delaware law, contracts that offend public policy, as the trial court's interpretation of the HREF Addendum does, are void. *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Tr., ex rel. Christiana Bank & Tr. Co*., 28 A.3d 1059, 1067 (Del. 2011). "The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in . . . federal statutes. . . . Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-84 (1982) (citation omitted).

Accordingly, the Court of Chancery erred by finding HREF's right to control was automatic upon the occurrence of the ARE.

CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Chancery's judgment and hold (i) the HUD Agreements, OpCo Company Agreement, and HoldCo Company Agreement are part of an integrated contractual scheme designed to govern the management and control of the Project; (ii) that HUD Agreements and HUD regulations, including the approval requirements stated therein, apply to changes in management of HoldCo; (iii) that HREF's step-in rights to manage HoldCo and the Project are conditioned upon HUD approval and are not automatic; or alternatively, (iv) the trial court should, on remand, issue rulings consistent with this Court's holdings.

Dated: April 30, 2026

OF COUNSEL:

Dykema Gossett, PLLC
Isaac Villarreal
5 Houston Center
1401 McKinney Street, Suite 1625
Houston, Texas 77010
Telephone: (713) 904-6900
ivillarreal@dykema.com

/s/ Kevin J. Mangan
Womble Bond Dickinson (US) LLP
Kevin J. Mangan (No. 3810)
Stephanie S. Riley (No. 5803)
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
kevin.mangan@wbd-us.com
stephanie.riley@wbd-us.com

Counsel for Appellants Conroe WM LLC and WM Property Holdings LLC