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# IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| CONROE WM LLC AND WM PROPERTY HOLDINGS LLC,<br><br>Defendants-Below/ Appellants,<br><br>v.<br><br>HREF SENIOR WORTHINGTON LLC,<br><br>Plaintiff-Below/ Appellee. | ) | No. 89, 2026<br><br>Court Below:<br>Court of Chancery of the State of Delaware<br><br>C.A. No. 2024-1148-MTZ |

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## NATURE OF PROCEEDINGS

This appeal centers on one straightforward question: should the manager of an LLC be determined by the terms of its limited liability company agreement? Delaware's legislature has provided the answer to this question. Per 6 *Del. C.* § 18-402, an LLC's manager is determined pursuant to the terms of its limited liability company agreement. Consistent with this legislative mandate, the Court of Chancery correctly held that the manager of HoldCo[1] is determined pursuant to the terms of its limited liability company agreement, and those plain terms designate appellee HREF as HoldCo's manager.

That should be the end of the analysis. But appellants[2] here—the Defendants in the Court of Chancery action—urge this Court to reverse the Court of Chancery's holding and look beyond the limited liability company agreement to determine HoldCo's manager. They contend an agreement that HoldCo's operating subsidiary, OpCo, has with its Lender effectively amends HoldCo's limited liability company agreement and makes Lender's approval a condition precedent to a change in HoldCo's manager. And they go so far as to contend that HoldCo's limited liability

[1] Capitalized terms are defined in the Statement of Facts.

[2] While HoldCo (i.e., WM Property Holdings LLC) is listed as an appellant, HREF, HoldCo's manager as determined by the Court of Chancery in the order being appealed that has not been stayed, has not approved WM Property Holdings taking this appeal.

company agreement is void as a matter of public policy, because it allegedly conflicts with regulations that govern the loan.

Notably, Lender was aware of HREF's investment in HoldCo and loaned money to OpCo aware of HREF's right to immediately become HoldCo's manager upon the occurrence of defined events. And when HoldCo underwent prior ownership and manager changes—resulting in Curtis Lindsey obtaining control of HoldCo and OpCo—Defendants did not seek or obtain Lender's pre-approval. Nonetheless, Defendants assert that when it comes to HREF, provisions in contracts to which HREF is not a party must be imported into the HoldCo limited liability company agreement and void HREF's bargained-for management rights.

Defendants' argument is contrary to Delaware statute, longstanding canons of contract interpretation, and Defendants' own conduct. The unambiguous terms of HoldCo's limited liability company agreement control who HoldCo's manager is. Those terms are not voided by contracts to which neither HREF nor HoldCo are parties.

The judgment of the Court of Chancery should be affirmed.

## SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly determined that canons of contract interpretation and statute dictate that the HoldCo Agreement and HREF Addendum alone identify how HoldCo's manager is chosen.

2. Denied. The Court of Chancery did not erroneously disregard contractual provisions requiring Lender approval for changes in management and control of the Project, because those are not binding on HREF and HoldCo.

3. Denied. The Court of Chancery correctly held the plain terms of the HREF Addendum make HREF's step-in rights self-executing.

## STATEMENT OF FACTS

The following facts are taken from the Court of Chancery's post-trial opinion[3] and the trial evidence that Defendants submitted to this Court in their appendix. Defendants do not dispute the trial court's factual findings.

### A. The Project's Ownership and Management Structure Before the Court's Opinion

By at least 2019, non-party Curtis Lindsey owned undeveloped land in Conroe, Texas, on which he planned to build an assisted living facility (the "Project").[4]

Defendant Conroe WM LLC ("OpCo") is a Delaware limited liability company that was formed to acquire, develop, and operate the Project.[5] OpCo has two members: WM Conroe Property Holdings LLC ("HoldCo") and Lindsey's entity Conroe Senior Living LLC ("LindseyCo").[6]

HoldCo is the majority member and manager of OpCo.[7] HoldCo was formed for the purpose of managing OpCo.[8]

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[3] *HREF Senior Worthington LLC v. Conroe WM LLC*, 2026 WL 84352 (Del. Ch. Jan. 12, 2026) (the "*Opinion*").

[4] *Id.* at *1.

[5] *Id.*

[6] *Id.*

[7] *Id.* at *1, *3, *9, *24; A0497; A0526.

[8] *Opinion* at *3.



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Defendant WM Property Holdings LLC ("WMPH") is the majority member of HoldCo, holding 62.147% of HoldCo.[9] Until December 2022, non-party CAPA Consulting LLC ("CAPA") held a significant stake in, and was the managing member of, WMPH.[10] In December 2022, Lindsey bought CAPA's stake in, and acquired ownership and managerial control over, WMPH, and thus HoldCo and OpCo.[11] The *Opinion* upended Lindsey's managerial control of HoldCo by holding that HREF, and not WMPH, is the manager of HoldCo.[12]

### B. HUD Agrees to Insure the Loan; HREF Agrees to Fund the HUD-Required Escrows.

The Project was primarily financed with a loan from Greystone Funding Company LLC ("Greystone" or "Lender") to OpCo (the "Loan").[13] The Loan to OpCo was insured by U.S. Department of Housing and Urban Development ("HUD") through its Section 232 loan program.[14] In 2019, when committing to insure the Loan to OpCo, HUD imposed certain conditions on OpCo and Greystone

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[9] A0559.

[10] A0965; A1929.

[11] *Opinion* at *9; A0240 (¶ 17); A0965; A1929.

[12] *Opinion* at *24; A0965; A1928-A1929.

[13] *Opinion* at *1.

[14] *Id*. at *2.

(the "Firm Commitment").[15] The conditions imposed were reflected in the HUD Loan Documents.[16]

HUD also required that Greystone collect separate escrows for working capital, minor moveable equipment, and an initial operating deficit.[17] Plaintiff HREF Senior Worthington LLC ("HREF") was brought in to fund the HUD-required escrow.[18]

OpCo signed, acknowledged, and agreed to the Firm Commitment on March 11, 2019.[19] HoldCo was not a party to and did not sign the Firm Commitment.[20]

### C. The Contracts Governing the Project

#### 1. The OpCo Agreement

On December 1, 2019, OpCo's limited liability company agreement was entered into and made effective (the "OpCo Agreement").[21] The agreement identified HoldCo as its manager.[22] The OpCo Agreement contains "HUD

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15 *Id.*; A0460-A0473.

16 *See* A0494 (defining HUD Loan Documents).

17 *Opinion* at *2.

18 *Id.* References in the record to MidHudson Health Worthington LLC or "MH" refer to HREF, which formerly operated under that name. *Id.* at *2 n.14.

19 A0472–A0473.

20 A0460–A0473.

21 *Opinion* at *3; A0490–A0527.

22 A0508 (§ 14.1(b)); A0491.

Provisions" in Section 14.6 that are applicable to OpCo while the HUD-insured Loan is outstanding.[23] One HUD Provision is set forth in section 14.6(h):

> *Business of the Company*. The business and purpose of the Company shall consist solely of (a) acquiring, owning, operating and maintaining the Project, (b) executing, delivering and performing its obligations under the HUD Loan Documents and (c) any lawful activities permitted under the law of the state in which the Company is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing, the Company shall not engage in any other business or activity. The Project shall be the sole asset of the Company, and the Company shall not own any other real estate other than that associate with the Project.[24]

The OpCo Agreement also refers to HoldCo's obligation to make payments to HREF, pursuant to the HoldCo Agreement.[25] HoldCo's payments to HREF were

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[23] *Opinion* at *3; A0512–A0513 (§ 14.6).

[24] A0513 (§ 14.6(h)). The OpCo Agreement defines the "HUD Loan Documents" as the Borrower Regulatory Agreement and the note, security interest, and other security agreements that OpCo executed in connection with the HUD Loan. A0494.

[25] *See Opinion* at *3, *and* A0494–A0495 (excluding "Net Cash Flow" "all amounts necessary to timely pay all amounts due to" HREF under the HoldCo Agreement); *Opinion* at *3, *and* A0502 (§ 9.1) (instructing when OpCo will make payments to or on behalf of HoldCo to satisfy HoldCo's payment obligations to HREF under the HoldCo Agreement); *Opinion* at *3, *and* A0502 (§ 9.3) (building HoldCo's redemption of HREF's investment into OpCo's liquidation waterfall).

then-addressed in a form addendum attached to the HoldCo Agreement.[26] The form addendum also addressed HREF's step-in rights.[27] HoldCo, WMPH, and Lindsey signed the OpCo Agreement.[28]

### 2. The HoldCo Agreement

Also on December 1, 2019, HoldCo's limited liability company agreement was entered into and made effective (the "HoldCo Agreement").[29] The HoldCo Agreement identifies as its members (i) WMPH (62.147%); (ii) SL1 B LLC ("SL1") (36.392%), a plaintiff below but not a party to this appeal; and (iii) non-party Shelton-Conroe, LLC ("Shelton-Conroe") (1.461%).[30]

The HoldCo Agreement provides in Article 4 that HoldCo's purpose "is to be the manager of [OpCo] and cause [OpCo] to be operated in accordance with the [OpCo Agreement]."[31] The HoldCo Agreement contains no provision adopting any contractual requirements that belong to OpCo.[32]

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[26] A0561.

[27] A0562–A0563 (§ 3).

[28] A0523–A0525.

[29] *Opinion* at *4; A0528–A0567.

[30] *Opinion* at *4; A0559.

[31] *Opinion* at *3; A0533 (art. 4).

[32] A0528–A0567.

The HoldCo Agreement designated as HoldCo's initial managers WMPH and Shelton-Conroe.[33] Shelton-Conroe was a company owned by non-party LisaAnn Shelton.[34] Among other things, HUD required that OpCo provide organizational documents reflecting, to HUD's satisfaction, that Shelton was a member and co-manager of OpCo's entity, had operational control over the facility's day-to-day management, and could not be removed without HUD's written consent.[35]

WMPH, SL1, Shelton, and HoldCo signed the HoldCo Agreement.[36]

### 3. The Addendum

The HoldCo Agreement states that HoldCo's members and HREF "intend to execute an Addendum to this agreement (the 'Addendum') substantially in the form attached to this Agreement as Exhibit B, pursuant to which [HREF] shall become a Member and agree to be bound by the terms of this Agreement."[37] The HoldCo Agreement states that Exhibit B is "an integral part of this agreement" and is "incorporated by reference herein and therein."[38] The HoldCo Agreement states:

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[33] *Opinion* at *4; A0544 (§ 14.1(d)).

[34] A0903.

[35] *Opinion* at *2; A0470 (§§ 7–8).

[36] A0558.

[37] A0533 (§ 5.1) (emphasis omitted); *see also Opinion* at *6; A0560–A0566.

[38] A0557 (§ 20.14).

"After execution of the Addendum, the terms of the Addendum shall control over any conflicting terms or inconsistencies with this Agreement."[39]

The form addendum addressed the terms of HREF's investment and HREF's step-in rights as manager.[40] The form addendum stated that in exchange for HREF's investment, HREF would hold 100% of the Special Membership Interests of HoldCo.[41] It provided that HoldCo would be required to make payments to HREF, until HREF's investment is redeemed.[42] Section 3 provided that HREF's Special Membership Interests would carry the right for HREF to immediately step-in as HoldCo's manager if an "additional rights event" ("ARE") occurs.[43] Section 3(ii)(b) of the addendum provided that upon the occurrence of an ARE:

> [HREF] shall without the consent of the Sponsor Members immediately become the sole manager of the Company with full control over all aspects of the Company and the Company's rights in the Project including, without limitation, the right to remove the Project Managers, and to remove the Sponsor Members from any and all of their management roles with respect to the Company and Project (including, without limitation, removing Sponsor Members from any and/or all of their management rights under the relevant documents of the Project Owner).[44]

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[39] *Opinion* at *4; A0533 (§ 5.1).

[40] A0560–A0566.

[41] A0561 (§ 2).

[42] A0563–A0564 (§§ 5, 6, 7).

[43] A0562–A0563.

[44] A0562.

Section 3(ii)(a) of the form addendum also provided that upon the occurrence of an ARE, the "Project Managers"—which the Addendum defines as WMPH and Shelton-Conroe, *i.e.*, HoldCo's co-managers immediately preceding HREF, *see* A0842—would modify applicable HUD forms (i.e., cause OpCo to comply with the HUD Provisions). Specifically, Section 3(ii)(a) stated that upon the occurrence of an ARE:

> [HREF] shall become attorney-in-fact to act on behalf of the Company and the Members, the Project Managers shall use best efforts to modify applicable HUD forms and any other relevant forms, and shall otherwise use best efforts to take all other steps necessary, to provide that [HREF] or its designee shall be a key principal thereunder and to cause [HREF] or its designee to replace the Project Managers as sole manager of the Company with all decision making authority of the Company as the manager of [OpCo]. Without limiting any other provision of this Addendum, the Sponsor Members[[45]] agree that they shall execute such additional documents as [HREF] may request in order to facilitate the foregoing provisions (including, without limitation, a power of attorney).[46]

The HREF form addendum contained six sub-sections defining what would constitute an ARE.[47] Section 3(i)(e) stated that an "ARE" would include the "failure

[45] The form addendum defined the "Sponsor Members" as WMPH, SL1, and Shelton-Conroe. A0561.

[46] A0562.

[47] *Id.* (§§ 3(i)(a) –(f)).

to timely pay, redeem or distribute any amount due to [HREF],” including under Sections 5, 6, and 7 of the HREF form addendum.[48]

Like the HoldCo Agreement provided, the HREF form addendum stated that, upon execution, the addendum would be part of the HoldCo Agreement. Recital B stated that the HREF form addendum: “provides for certain additional provisions and terms that, together with the [Holdco] Agreement, shall govern, regulate and manage affairs of [HoldCo] from the Effective Date and shall bind each and every present and future Member of the Company.”[49] Section 1 of the HREF form addendum provided that in the event of any conflict or inconsistency between the terms of the HoldCo Agreement and the addendum, the terms of the Addendum would “in all respects control and supersede the terms of the” HoldCo Agreement.[50] Section 12 of the form addendum also provided:

> The Project Managers and the Members agree that notwithstanding any provision in the Agreement or the Addendum to the contrary, they shall take all additional actions as are advisable or necessary (and refrain from taking such actions as advisable or necessary), in the reasonable determination of [HREF], to effectuate the provisions and intent of this Addendum, including, but not

[48] A0562.

[49] A0561.

[50] *Id.*

> limited to, executing such additional documents as [HREF] may request in order to facilitate the same.[51]

### D. The HUD Loan Documents Are Executed; the Loan Closes.

On February 1, 2020, OpCo, Greystone and HUD entered into the HUD Loan Documents.[52] As is relevant here, the Borrower Regulatory Agreement provided:

> HUD NOTIFICATION AND APPROVAL FOR REMOVAL AS LISAANN SHELTON. LisaAnn Shelton is the sole member of Shelton-Conroe,LLC, an Oregon member managed limited liability ("Shelton"). Shelton is a member and co-manager of [HoldCo], the sole manager of the Borrower. It is understood an[d] agreed by [OpCo] and HUD that LisaAnn Shelton is being relied upon to provide the relevant residential health care experience in the lease-up and operations of the proposed facility. Therefore, while any mortgage is insured or held by HUD, [OpCo] acknowledges and agrees that it must notify HUD and HUD must approve in advance and in writing any change in the [OpCo]'s organizational structure that would result in any of the following:
>
> a) LisaAnn Shelton no longer being a participant in the [OpCo] or
>
> b) Shelton[-Conroe] no longer being the co-manager of the [OpCo]'s manager or
>
> c) LisaAnn Shelton on longer being the sole member of Shelton[-Conroe].[53]

The Borrower Regulatory Agreement also provided that HUD's approval was required before OpCo's organizational documents were amended to, *inter alia*,

[51] A0565 (§ 12(i)).

[52] *Opinion* at *4.

[53] *Id.* at *5 (emphasis omitted); A0614 (§ 46.b)).

create or eliminate a Key Principal; or change the managing member.[54] The Borrower Regulatory Agreement identified as OpCo's key principals: (i) non-party Norma Upshur, the majority member of CAPA that then-controlled WMPH, (ii) SL1, and (iii) Shelton.[55]

On February 13, 2020, the Loan closed. Thus, HUD had determined that OpCo and Greystone had satisfied the conditions of HUD's Firm Commitment. Specifically, HUD had determined that OpCo's organizational documents complied with the Firm Commitments to HUD's satisfaction. That is, HUD had reviewed the OpCo Agreement and the HoldCo Agreement that referenced and contained the addendum addressing HREF's immediate step-in rights. GreyStone had obtained the required escrows—from HREF.[56]

**E. The HREF Addendum is Executed.**

Also on February 13, 2020, WMPH, SL1, Shelton-Conroe and HREF executed the final addendum (the "HREF Addendum") "as the HoldCo Agreement required."[57] Lindsey signed the HREF Addendum solely to acknowledge Conroe LindseyCo's obligation to execute an amendment that would provide for HREF's

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[54] A0606–A0607 (§ 34(i)).

[55] A0618–A0622.

[56] *Opinion* at *6.

[57] *Id.* at *5; *see* A0842–A0849.

conversion of its preferred equity into an ownership interest in HoldCo.[58] The HREF Addendum was in substantially the same form as the form addendum. Among other provisions, the provisions addressed above—Recital B and Sections 1, 3(i)(e), 3(ii)(a), 3(ii)(b), and 12—of the HREF Addendum and form addendum are identical.[59] Thus, just like the form addendum contemplated, pursuant to the HREF Addendum, upon the occurrence of an ARE, HREF immediately becomes sole-manager of HoldCo, and HoldCo's members and former managers must cooperate to address the managerial change, including with HUD.[60]

### F. HoldCo's Managerial Structure Changes Without HUD's Pre-Approval.

On June 9, 2021, WMPH removed Shelton and Shelton-Conroe as a member and co-manager of HoldCo.[61] HoldCo did not seek or obtain HUD's written approval before the removal.[62]

One-and-a-half years later, on October 27, 2022, HoldCo signed for OpCo the First Amendment to the Borrower Agreement.[63] The amendment updated the Borrower Regulatory Agreement to state that: (i) Shelton-Conroe's interests in

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[58] A0847; A0851.

[59] *Compare* A0842–A0846, *with* A0561–A0565.

[60] *See Opinion* at *6; A0842–A0849.

[61] *Opinion* at *7; A0903.

[62] *Opinion* at *7; *see* A0903–A0905; A0907–A0908.

[63] *Opinion* at *8; A0925–A0936.

HoldCo had been reassigned to MStar Conroe LLC; (ii) Shelton was no longer a Key Principal of OpCo; (iii) MStar's President Robert Sweet had and would be relied on to provide the relevant residential healthcare experience; and (iv) Sweet was a Key Principal of OpCo, along with Upshur and SL1.[64]

On November 9, 2022, HUD approved the First Amendment.[65]

### G. HoldCo's Ownership and Managership Structure Changes Again Without HUD's Pre-Approval.

In December 2022, Lindsey bought a majority stake in WMPH from CAPA, and began acting as the managing member of WMPH.[66] Thus, ownership and managerial control over WMPH, and therefore HoldCo and OpCo, passed from CAPA to Lindsey. HoldCo did not obtain HUD's written approval before Lindsey acquired CAPA's stake in WMPH, began acting as Managing Member of HoldCo, and removed Upshur.[67]

Instead, nine months later, on September 12, 2023, OpCo and HUD executed the Second Amendment to the Borrower Regulatory Agreement.[68] The second

[64] A0925–A0935.

[65] A0930.

[66] *Opinion* at *9; A0965; A1929.

[67] *Opinion* at *9.

[68] *Id.*; A0985–A0996.

amendment reflected that: (i) Upshur was no longer a Key Principal of OpCo, and (ii) Lindsey was a Key Principal of OpCo, along with SL1 and Sweet.[69]

### H. Defendants Ratify HREF's ARE Rights.

On August 13, 2023, HoldCo and HREF executed the First Amendment to Amended and Restated HREF Addendum (the "First Amendment").[70] The First Amendment extended the redemption deadline for HREF's investment to August 13, 2024.[71] The amendment did not alter HREF's ARE rights or the conditions that would constitute an ARE; instead, it ratified them.[72] Lindsey signed the amendment for HoldCo and WMPH and paid to HREF the $500,000 required by the First Amendment.[73]

### I. HREF Asserts Its Step-In Rights; Defendants Refuse to Cooperate.

In March 2024, HoldCo stopped making payments to HREF as required by the HREF Addendum.[74] This constituted an ARE, triggering HREF's step-in rights.[75]

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[69] A0985–A0996.

[70] *Opinion* at *10; A0977.

[71] *Opinion* at *10.

[72] *Id.*; A0979–A0980 (§§ 6(c), 7).

[73] A0981.

[74] *Opinion* at *11.

[75] *Id*. at *11, *24.

On November 8, 2024, HREF filed this lawsuit in the Court of Chancery to stop Lindsey from executing a self-dealing sale of the Project to an entity that he owns and controls.[76]

On November 11, 2024, HREF informed WMPH and Lindsey that HREF was exercising its ARE right to step-in as HoldCo's immediate sole manager, effective immediately.[77] HREF addressed getting WMPH's assistance in transitioning managerial functions to HREF, including by "executing documents that may be necessary or reasonable."[78] WMPH refused to recognize HREF as HoldCo's manager and undertook no efforts to transition managerial control.[79]

HREF also attempted to engage with Greystone to facilitate the transition of managerial control.[80] Lindsey instructed Greystone not to communicate with HREF, rendering any self-help impossible.[81] Greystone explained to HREF: "[O]ur borrower has advised that he doesn't want us to participate in a call with you and

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[76] A0245 (¶ 38); *see, e.g.*, A0006–A0009.

[77] *Opinion* at *11.

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] *Id*.

your team and given that there is no privity of contract with [HREF] we are obligated to comply with his wishes."[82]

### J. The Court of Chancery Proceedings

HREF filed its amended complaint on November 26, 2024.[83] Count V of the amended complaint sought a declaration that HREF is the sole manager of HoldCo, and was tried on an expedited basis. After trial on the paper record, the Court of Chancery ordered that MStar—which was not a party to the proceedings, but, per Defendants, was a HoldCo manager—to receive notice and a chance to appear.[84] After MStar received notice but did not appear,[85] the Court of Chancery issued its post-trial Opinion on January 12, 2026. On January 26, 2026, the Court of Chancery issued a partial final order, adjudicating Count V of the amended complaint.

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[82] A1749.

[83] *Opinion* at *11.

[84] *Id*.

[85] *Id*. at *12–13.

## ARGUMENT

### I. The Court of Chancery Did Not Err When Construing the Plain Terms of the HREF Addendum.

#### A. Question Presented

Defendants proffer the following question: "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?" This question was never presented below, and should not be considered on appeal.

#### B. Scope of Review

"Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."[86]

This Court will "review questions of contract interpretation *de novo*."[87]

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[86] Sup. Ct. R. 8.

[87] *GMG Cap. Invs., LLC v. Athenian Venture P'rs I, L.P.*, 36 A.3d 776, 779 (Del. 2012).

### C. Merits of Argument

#### 1. Defendants Waived Their Integrated-Contracts Argument by Not Raising It in the Court Below.

Arguments not presented to the trial court cannot be presented to this Court, and are considered waived.[88]

Defendants cite A2723–A2731 as the portion of the record where they preserved their argument that the HoldCo Agreement and the HREF Addendum are, with the HUD Agreements and OpCo Agreement, integrated contracts that must be read together. But A2723–A2731 is a portion of Defendants' pre-trial reply brief that has two different arguments.

The first argument is that MStar is still a HoldCo manager by virtue of an amendment to the HoldCo Agreement that HREF was not a party to.[89] The second argument is that because the HoldCo Agreement states that HoldCo's purpose is to operate OpCo in conformance with the OpCo Agreement—which in turn states that to the extent the OpCo Agreement conflicts with certain HUD Loan Documents, those loan documents prevail—the HoldCo Agreement requires by its own terms that the HoldCo Agreement cannot conflict with the HUD loan documents.[90] The

[88] *AT&T Corp. v. Lillis*, 953 A.2d 241, 252 (Del. 2008); Sup. Ct. R. 8.

[89] A2723–A2726.

[90] A2726–A2731.

Court of Chancery rejected both of those arguments.[91] Defendants do not appeal that portion of the court's ruling.

On appeal, for the first time, Defendants argue the "HoldCo Agreement, HUD Agreements, and the OpCo Agreement (and any amendments thereto) are undoubtably intertwined and must be read together."[92] This is a different argument that relies on holdings that contracts executed contemporaneously amongst the same party should be reconciled. None of the authority Defendants cite in support of this argument was contained in their trial briefing presented to the Court of Chancery.[93] Accordingly, this argument is waived.

### 2. Defendants Seek to Void HREF's Step-in Rights, Not an Integration of Contracts.

Defendants likely did not raise their "integrated-contracts" argument below because Defendants are not seeking to harmonize the terms of purportedly integrated contracts. Instead, Defendants are seeking to rewrite the HoldCo Agreement and Section 3(ii) of the HREF Addendum through a declaration that HREF's contractual right to "immediately" become HoldCo's sole manager is rendered void by the HUD Agreements. The trial court correctly declined to rewrite the HREF Addendum, as

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[91] *Opinion* at *15–18.

[92] [Corrected] Appellants' Opening Brief (Trans. ID 79351168) ("Opening Brief") at 16.

[93] *Compare id.*at 15, *with* A1914–A1941, *and* A1982–A2011, *and* A2708–A2737.

"it is axiomatic that courts cannot rewrite contracts."[94] HREF's step-in rights are contractually bargained-for rights that cannot be erased under the guise of contract integration.

### 3. Defendants' Integrated-Contracts Argument Fails.

Even if this Court considers Defendants' new integrated-contracts argument, it should be rejected for several reasons.

First, there is no reason to look outside of the HREF Addendum to interpret its meaning, because it is not ambiguous. "Absent some ambiguity, Delaware courts will not destroy or twist contract language under the guise of construing it. If a writing is plain and clear on its face, i.e., its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent."[95] Because Defendants do not point to any ambiguity, there is no need to look to another contract—integrated or not—to determine HREF's step-in rights under the HREF Addendum.[96]

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[94] *Murfey v. WHC Ventures, LLC*, 236 A.3d 337, 355 (Del. 2020).

[95] *ArchKey Intermediate Hldgs. Inc. v. Mona*, 302 A.3d 975, 988 (Del. Ch. 2023) (citations omitted).

[96] *RWI Acq. LLC v. Todd*, 2012 WL 1955279, at *8 n.51 (Del. Ch. May 30, 2012) ("Although, in construing the legal obligations created by a document, it is appropriate for the court to consider the language of contracts among the same parties executed or amended as of the same date that deal with related matters, this principle of contractual interpretation does not mean that the provisions of one instrument are imported bodily into another, contrary to the intent of the parties.") (cleaned up).

Second, the notion that the HUD Agreements, OpCo Agreement, and HoldCo Agreement are integrated contracts informing the interpretation of the HREF Addendum is inapt, because HREF is not a party to all of these contracts. Defendants argue that the "HoldCo Agreement, HUD Agreements, and the OpCo Agreement (and any amendments thereto) are undoubtably intertwined and must be read together."[97] Presumably, Defendants' position is that the HREF Addendum—the contract that HREF executed—is part of this integrated agreement by virtue of the HoldCo Agreement.

There is no authority for applying the transitive property to contract integration (i.e., if A=B, and B=C, then A=C). HREF is not bound by the HUD Loan Documents just because HREF has a contract with HoldCo, which has a contract with OpCo, which has contracts with HUD;[98] nor is HUD bound by the HREF

[97] Opening Brief at 16.

[98] None of the cases Defendants cite hold that a contracting party is bound by an integrated agreement not executed by that party. *Flex Ltd. v. Nextracker Inc.*, 2026 WL 159342, at *7 (Del. Ch. Jan. 21, 2026) (dismissing breach of contract claim after comparing two agreements signed by plaintiff to determine which one controlled); *Thompson St. Cap. P'rs IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151 (Del. 2025) (same parties executed merger agreement and escrow agreement); *Segovia v. Equities First Hodgs., LLC*, 2008 WL 2251218, at *9 (Del. Super. May 30, 2008) (determining if party breached agreements by construing together terms of loan agreement and pledge agreement, both of which were signed by the party); *Crown Books Corp. v. Bookstop, Inc.*, 1990 WL 26166, at *6 (Del. Ch. Feb. 28, 1990) ("Moreover, while I find no ambiguity in the Shareholders Agreement, I think it appropriate in providing a construction to the Shareholders

Addendum just because HUD has a contract with OpCo. Structures like the one here abound—a holding company is set up to manage investment and control rights, and the holding company owns the operating company, which executes contracts with third parties—and courts routinely respect the corporate form and principles of contract privity with respect to the contracts that each entity executes.

HREF is not a party to the HUD Agreements, so it is not bound by them. While a party can be bound by a provision it agreed to in one contract (typically, forum selection) when performing another contract that is part of the same transaction with the same parties, a party cannot be compelled to comply with contractual obligations it never undertook.[99]

Third, the HoldCo Agreement, which includes the HREF Addendum, contains a standard integration clause providing that, except for specifically identified documents, the contract represents the entire agreement.[100] This type of standard integration clause typically bars looking outside of the contract to vary or contradict its terms.[101] But that is precisely what Defendants ask this Court to do.

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Agreement to look to the terms of the related contacts *involving these same parties* executed or amended on (or as of) the same March 4, 1987 date." (emphasis added)).

[99] *Plaze, Inc. v. Callas*, 2019 WL 1028110, at *7 (Del. Ch. Feb. 28, 2019).

[100] A0557 (§ 20.14).

[101] *Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Svcs LLC*, 318 A.3d 470 (Del. Ch. 2024) (citations omitted).

Fourth, the agreements themselves address how conflicts are handled. The HoldCo Agreement and the HREF Addendum both direct that if the terms between the contracts conflict or are inconsistent, then the terms of the HREF Addendum control.[102] The OpCo Agreement states that if its terms conflict with or are inconsistent with the HUD Agreements, then the HUD Agreements will control. Nothing directs that the HUD Agreements will control in the event of a conflict, let alone that the HUD Agreements will override contractual agreements amongst non-signatories to the HUD Agreements. Defendants would simply have the Court mash the contracts together, with the terms of the HUD Agreements taking priority.

Finally, under 6 *Del. C.* § 18-402:

> if a limited liability company agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement.

The statute does not provide that a manager is chosen in the manner provided by a limited liability company agreement *plus* other agreements other parties executed around the same time. Here, no party disputes that the HoldCo Agreement, as amended by the HREF Addendum, clearly defines how HREF's manager is chosen. Under the statute, that ends the inquiry.

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[102] A0533 (§ 5.1); A0561 (§ 1).

For these reasons, there is no reason to look beyond the HREF Addendum to construe HREF's step-in right.

## II. The Court of Chancery Did Not Err When Construing the Plain Terms of the HREF Addendum.

### A. Question Presented

Defendants proffer the following question: "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."

### B. Scope of Review

This Court will "review questions of contract interpretation *de novo*."[103]

### C. Merits of Argument

Defendants' second question is premised on the false claim that there is an untenable contradiction between, on the one hand, HREF immediately assuming control of HoldCo, and on the other hand, HUD subsequently providing approval for the change of control at the OpCo level.

It is true that the Borrower documentation and related regulatory agreement provide that the lender must pre-approve a change in management.[104] It is also true that:

1. HUD provides for a transfer of control process when, for example, ownership changes (the "Change of Participants" for Section 232 loans: https://www.hud.gov/hud-partners/healthcare-programs-loan-servicing)[105]

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[103] *GMG*, 36 A.3d at 779.

[104] *Supra* Statement of Facts § D.

[105] *See, e.g.*, B1–B17. A change in control of the borrower in a HUD loan is considered by HUD to be a Transfer of Physical Assets ("TPA") that requires a

2. Defendants' principals, WMPH and Lindsey, twice obtained HUD approval in connection with this Property *after* there were material changes that required HUD pre-approval (first, when WMPH removed Shelton-Conroe and Shelton as managers, and second, when Lindsey purchased CAPA's interests in WMPH, began acting as WMPH's managing member, and Upshur (a Key Principal) left the Project).[106] In both instances, the change of control took place well before HUD approval was provided.[107]

3. HUD has the right to declare the Borrower in default. That declaration is discretionary, and has not been invoked in this instance (nor was it invoked with the prior to changes of control as noted above).

4. HREF is working with Greystone and HUD to obtain approval for the change in control. Both Greystone and HUD understand this to be the case. In January 2026, a representative with HUD instructed a representative of Greystone that she would "have to submit a CHOP [change of participant] for the participants [HREF's] new role and they will be reviewed just like everyone else."[108]

As reflected by HUD's after-the-fact approvals after WMPH removed Shelton as HoldCo's co-manager, and after Lindsey acquired ownership and managerial control of WMPH, the regulatory scheme imposed by HUD is pragmatic.[109] Officers can be fired or unexpectedly resign and controlling entities can have changes in

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modified review by HUD, and not the comprehensive full review that is required when the borrower conveys the mortgaged property, or dissolves, or when there is a change in the entire beneficial interest in the borrower. A1961–A1962.

[106] *Supra* Statement of Facts §§ F, G.

[107] *See id*.

[108] B20. This correspondence took place after the Court of Chancery issued its judgment being appealed, and is offered to rebut Defendants' suggestion that HUD is not aware of HREF's control of HoldCo.

[109] *Supra* Statement of Facts §§ F, G.

management and ownership. In short, borrowers are not paralyzed while HUD's review process takes place. Changes can and do take place prior to HUD approval, and then those changes are submitted to HUD for after-the-fact approval.

This is what HREF is doing in this instance, and it is what the parties to the HoldCo Addendum agreed to do, including WMPH, which Lindsey now controls. Recognizing that HUD would need to provide approval for the "immediate" control that HREF might assume as manager, the parties agreed to use "best efforts to modify applicable HUD forms," and "take all steps necessary" to effectuate HREF's replacement of the manager and Key Principals.[110]

There is no effort to "circumvent contractual and regulatory approval requirements." Nor was this the trial court's ruling. The parties to the HoldCo Agreement understood there to be approval requirements and agreed to work to obtain them. Similarly, the trial court's ruling acknowledges that there might be technical tension between the timing of HREF's rights and HUD's approval, but this did not render the HREF Addendum unenforceable.[111]

Even if the HREF Agreement and HUD Agreements are considered to be in conflict, there is no reason to void HREF's contractual right to "immediately" become HoldCo's sole manager while the parties work to change HUD forms to

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[110] A0843.

[111] *Opinion* at *22.

reflect this.[112] Contracts are construed to give each term effect.[113] Imposing a requirement for HUD approval before the step-in rights are effected violates this rule, erasing the term *immediately* from Section 3(ii)(b), and adding a new condition precedent to the section. Moreover, "where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one. This principle can be thought of as reading the specific as an exception to the general, which allows a harmonizing of otherwise conflicting provisions."[114] Under this principle, the HREF Addendum's provisions providing that when a specified event occurs (an ARE), a specified party (HREF) immediately becomes manager, while HUD is notified and HUD forms are updated, and this controls over the HUD Agreements' general notification and approval requirements.

Defendants appear to contend further that the Court of Chancery should have construed the HREF Addendum so that it complied with or furthered the goals of HUD regulations.[115] Per Defendants, the Court of Chancery's ruling "ignores HUD's regulatory framework that is designed to regulate not just a HUD borrower,

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[112] A0843.

[113] *Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010).

[114] *Thompson St.*, 340 A.3d at 1166 (citation modified).

[115] Opening Brief at 19–20. This is distinct from the argument, rejected by the Court of Chancery and repeated in Question 3, that the HREF Addendum was void as a matter of public policy because it violated HUD regulations. *Opinion* at *22.

but also the entities and persons that control it," and "undermines HUD's entire regulatory scheme."[116] In support of this, Defendants cite assorted HUD regulations. But Defendants cite no authority for their suggestion that the Court of Chancery was bound to blue-pencil an unambiguous contract in order to further HUD's goals—especially when doing so strips HREF of an essential contract right.[117]

"Parties have a right to enter into good and bad contracts, the law enforces both." [118] HUD could have entered into contracts with HoldCo, or HREF, or anyone else. HUD decided to enter into a contract with OpCo, and leave the HREF Addendum—which HUD was impliedly aware of when entering into the HUD Agreements[119]—between HREF and HoldCo. Nothing about this is bad for HUD; the HREF Amendment still requires HUD notification and modification of HUD documents to reflect HREF's manager status. Indeed, HUD has not declared an event of default on its loan to OpCo now that HREF manages HoldCo. But even if this

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[116] Opening Brief at 19–20.

[117] *Cf. C & J Energy Servs., Inc. v. City of Miami Gen. Employees' Ret. Tr.*, 107 A.3d 1049, 1072 (Del. 2014) (holding Court of Chancery could not blue-pencil merger agreement to strip party of essential term); *FrontFour Cap. Grp. LLC v. Taube*, 2019 WL 1313408, at *33 (Del. Ch. Mar. 11, 2019) (refusing to blue-pencil merger documents when "a revision of the Merger Agreements would deny Sierra the benefit of its bargain and force Sierra to comply with terms to which it never agreed").

[118] *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010).

[119] *Supra* Statement of Facts §§ B-E & Argument § II.C.1.

somehow conflicts with HUD's goals, that does not compel the Court of Chancery to rewrite the HREF Addendum.

## III. The Court of Chancery Did Not Err in Holding the HREF Addendum Gave HREF the Immediate Right to Become Sole HoldCo Manager Upon the Occurrence of an ARE.

### A. Question Presented

Appellants proffer the following question: 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?

### B. Scope of Review

The Court will "review questions of law and contractual interpretation, including the interpretation of LLC agreements, *de novo*."[120]

### C. Merits of Argument

#### 1. The Court of Chancery Gave Effect to the Plain Meaning of the HREF Addendum's Terms and Provisions.

"When the contract is clear and unambiguous, [the Court] will give effect to the plain-meaning of the contract's terms and provisions."[121] Appellants do not contest, and therefore concede, that the HoldCo Agreement, HREF Addendum, and First Amendment are unambiguous.

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[120] *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 56 (Del. 2019).

[121] *Id.* at 56–57 (quoting *Osborn*, 991 A.2d at 1159–60).

Quoting HREF Addendum Section 3(ii)(b), the Court of Chancery correctly held that "[t]he HoldCo Agreement as modified by the HREF Addendum is clear and specific."[122] The relevant language is as follows:

> Upon the occurrence of an ARE, in additional to and without limiting the applicable provisions set forth in the [HoldCo] Agreement: . . . (b) [HREF] shall without the consent of the Sponsor Members immediately become the sole manager of the Company with full control over all aspects of the Company and the Company's rights in the Project . . . .[123]

The Court of Chancery then correctly held that pursuant to HREF Addendum Section 3(ii)(b), the undisputed ARE "triggered HREF's right to immediately become HoldCo's sole manager."[124]

This was the proper reading of the plain language of Section 3(ii)(b), which repeatedly uses language to convey its self-effecting nature. First, Section 3(ii) begins: "Upon the occurrence of an ARE." Courts have long interpreted "upon the occurrence of" to mean *immediate* or *automatic*.[125] Next, "shall" is mandatory

[122] *Opinion* at *14.

[123] A0843 (§ 3(ii)(b)) (emphasis added).

[124] *Opinion* at *15; A0245 (¶ 37).

[125] *See, e.g.*, *Allstate Ins. Co. v. Spinelli*, 443 A.2d 1286, 1291 (Del. 1982) (describing "uninsured motorist benefits" as not being an "immediately assertable right" because they "become[] 'operative', not upon the occurrence of a motor vehicle accident, but only after the claimant-insured has established" a condition precedent); *Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 92 (2014) (Sotomayor, J., dissenting) ("Tying the terms together, then, 'automatic conversion' means changing an old petition into a new petition in an appropriate category upon the occurrence of some predicate event, without a further decision or contingency.").

language and the trial court properly interpreted it as such.[126] Finally, the Court of Chancery interpreted *immediately* consistent with its definition in Black's Law Dictionary: "Occurring without delay; instant."[127] The plain language of Section (ii)(b) means that, as a result of the undisputed ARE, HREF immediately became sole manager of HoldCo without a further decision, act, or contingency.

**2. The Court of Chancery Correctly Recognized the Occurrence of the ARE is the Only Condition Precedent to HREF Exercising Control.**

The Court of Chancery did not ignore conditions precedent for HREF to "become the sole manager of the Company with full control over all aspects of the Company and the Company's rights in the Project." "A condition precedent is either an act of a party that must be performed or a certain event that must happen before a contractual right accrues or a contractual duty arises."[128] Under the terms of the HREF Addendum, there is one condition precedent to HREF becoming sole manager

[126] *Opinion* at *15 n.171. *See also, e.g., City of Lewes v. Nepa*, 212 A.3d 270, 278 (Del. 2019) (interpreting "shall" as "mandatory"); *Manti Hldgs., LLC v. Authentix Acq. Co., Inc.*, 261 A.3d 1199, 1219 (Del. 2021) (same); *see also Zurich Am. Ins. Co. v. St. Paul Surplus Lines, Inc.*, 2009 WL 4895120, at *7 n.55 (Del. Ch. Dec. 10, 2009), *as revised* (Apr. 14, 2010) ("In both contracts and statutes, the term 'shall' is used to make an act mandatory.").

[127] *Immediate*, Black's Law Dictionary (12th ed. 2024).

[128] 13 Williston on Contracts § 38:7 (4th ed., May 2026 update).

of HoldCo as a matter of right—the occurrence of an ARE—which the trial court recognized.[129]

Defendants try to manufacture extracontractual conditions precedent to slow or stop a contractual result they bargained for, but now regret. The Court of Chancery properly rejected this effort.[130] The fact that HUD is mentioned elsewhere in the HREF Addendum does not mean that HUD regulations, or a contract between HUD and a nonparty to the HREF Addendum, operate as condition precedent to HREF's step-in rights.[131] In fact, doing so would impermissibly render the plain language of Section 3(ii)(b) meaningless or illusory.[132] And as Lindsey's conduct instructing Greystone to avoid communications with HREF shows, HREF's immediate management control is a material part of the bargain. It was not until the trial court's decision was issued in January 2026 that Greystone would communicate with HREF.

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[129] *Opinion* at *15.

[130] *Id.* at *15–20.

[131] *See Whittington v. Dragon Grp. L.L.C.*, 2011 WL 1457455, at *2 (Del. Ch. Apr. 15, 2011) ("Chancellor Chandler rejected th[e] argument [that the contract was not self-executing], holding 'the fact that other documents are contemplated, as this agreement in principle clearly does, cannot deprive it of being enforceable as a freestanding agreement and contract.'" (quoting *Whittington v. Farm Corp.*, C.A. No. 17380-CC, at 10 (Del. Ch. Oct. 11, 2001) (TRANSCRIPT))).

[132] *See Osborn*, 991 A.2d at 1159 ("We will read a contract as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage. We will not read a contract to render a provision or term meaningless or illusory." (internal footnotes and quotation marks omitted)).

The cases Defendants cite in support of their argument that extracontractual HUD regulations or contractual terms between HUD and a nonparty to the Addendum operate as conditions precedent to HREF Addendum Section 3(ii)(b) are inapposite.[133] The condition precedent in *Roth v. Sotera Health Company*, was express language in the same contractual section at issue.[134] That is not the case here. Defendants cite *Lockwood v. Capano* for the principle that when there are conditions precedent to a formation of a contract, a binding contract is not formed unless and until those conditions precedent are met.[135] In *Lockwood*, the parties disputed whether obtaining the signatures of all parties to a contract was a condition to that contract's formation. This Court determined that to be a factual question for the trial court to decide on remand.[136] Here, unlike *Lockwood*, the extracontractual conditions precedent Defendants argue should be imposed on HREF are from a contract between HUD and OpCo. Neither of HUD nor OpCo are signatories to the HREF

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[133] Opening Brief at 22.

[134] 2024 WL 4260649, at *10 (Del. Ch. Sept. 23, 2024) (holding "[e]xecuting a release in 'substantially the form' attached to the Senior Management Agreement," quoting Section 1(c)(ii) of the Senior Management Agreement, "was a condition precedent to Roth receiving his severance benefits and COBRA premiums," a right outlined in Section 1(c)(i) of the Senior Management Agreement).

[135] Opening Brief at 22.

[136] *Lockwood v. Capano*, 105 A.3d 989, 2014 WL 7009737, at *2–3 (Del. 2014) (ORDER) (TABLE).

Addendum, nor is HREF a signatory to the HUD Agreements. Further, the parties here do not dispute that the HREF Addendum was executed and formed.[137]

### 3. The HREF Addendum Is Not Void.

"Under Delaware common law, contracts that offend public policy or harm the public are deemed void as opposed to voidable."[138] Delaware "courts are averse to voiding agreements on public policy grounds unless their illegality is clear and certain. Furthermore, courts exercise this authority with caution, and only in cases that are free from doubt."[139]

As discussed, *supra* Section II.C, HUD routinely performs after-the fact review of TPAs, and has done it twice already for changes in HoldCo's management. But even if HREF's step-in rights violate HUD regulations, those violations do not offend public policy such that a court should void the HREF Addendum. The Restatement (Second) of Contracts provides guidance on how to weigh factors between enforcement of a contractual term and public policy:

> The strength of the public policy involved is a critical factor in the balancing process. Even when the policy is one manifested by legislation, it may be too insubstantial to outweigh the interest in the enforcement of the term in question. . . . A court should be particularly

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[137] *See* A0243 (¶ 29).

[138] *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Tr., ex rel. Christiana Bank & Tr. Co.*, 28 A.3d 1059, 1067 (Del. 2011) (emphasis omitted).

[139] *Lighthouse Behav. Health Sols., LLC v. Milestone Addiction Counseling, LLC*, 2023 WL 3486671, at *10 (Del. Ch. May 17, 2023).

> alert to this possibility in the case of minor administrative regulations or local ordinances that may not be indicative of the general welfare.[140]

Here, the HUD regulations Defendants cite are administrative and "not indicative of the general welfare."[141] Allegedly delayed compliance with timing of approvals required by HUD regulations does not rise to a level of abhorrence required by this Court,[142] and does not warrant voiding the HREF Addendum as violative of public policy.

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[140] Restatement (Second) of Contracts § 178 cmt. c (Am. L. Inst. 1981 & Supp. 2021).

[141] *Cf. Patel v. Barot*, 2000 WL 991940, at *2 (Conn. Super. Ct. June 28, 2000) (declining to void a contract as against public policy when it allegedly violated 24 C.F.R. §§ 200.213, 200.218).

[142] *See, e.g.*, *PHL Variable Ins.*, 28 A.3d at 1067; *Wilm. Tr., Nat'l Ass'n v. Sun Life Assurance Co. of Canada*, 294 A.3d 1062, 1072 (Del. 2023), *as revised* (Mar. 21, 2023) (voiding contracts where "a life insurance policy lacks an insurable interest at inception," because it violates Delaware's clear public policy against "human-life wagering").

## CONCLUSION

For the foregoing reasons, the judgment of the Court of Chancery should be affirmed.

PRICKETT, JONES & ELLIOTT, P.A.

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## CERTIFICATE OF SERVICE

I, John G. Day, hereby certify on this 26th day of May, 2026, that I caused a copy of the foregoing Appellee's Answering Brief to be served by eFiling via File & ServeXpress upon the following counsel of record:

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