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

APPELLANTS' REPLY BRIEF

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PRELIMINARY STATEMENT

This Reply Brief addresses HREF's answering brief, which attempts to defend the Court of Chancery's erroneous analysis by invoking waiver, privity, and a hyper-literal reading of the word "immediately" divorced from contractual context. HREF's arguments fail because HREF ignores the HoldCo Agreement's express purpose clause, the HREF Addendum's own HUD-implementation provisions, and fundamental principles of Delaware contract interpretation requiring that all provisions be given effect.

SUMMARY OF ARGUMENT

First, the integrated contracts argument was preserved below. Appellants presented to the trial court the central legal theory that HoldCo's governance cannot be analyzed in isolation because HoldCo's sole stated purpose is to manage OpCo in accordance with the OpCo Agreement, which incorporates HUD provisions. The argument advanced on appeal is therefore not a new theory, but merely a sharpened articulation of the same legal principle preserved in the trial court. Moreover, if the integrated contracts argument was not preserved (it was), the interests of justice exception applies because the trial court's approach creates a conflict between state-law entity governance and federal regulatory oversight.

Second, Delaware contract law requires reading the HoldCo Agreement and HREF Addendum as an integrated whole. The HoldCo Agreement's purpose clause—stating that HoldCo exists to manage OpCo in accordance with OpCo's operating agreement—is a binding constraint on interpretation of manager selection provisions. The HREF Addendum itself contains express cross-references to HUD forms and HUD-recognition procedures, demonstrating that the parties integrated HUD-regulatory constraints into the governance structure. HREF's privity argument fails because the HREF Addendum itself—a contract to which HREF is a party—incorporates these HUD-facing requirements.

Third, HUD approval is a condition precedent to HREF's assumption of control. The HREF Addendum's Section 3(ii)(a) expressly requires the Project Managers to use best efforts to modify HUD forms and obtain recognition of HREF as a key principal. These are not optional post-hoc housekeeping steps; they are integral to the manner in which the parties agreed manager selection would be implemented in a HUD-regulated environment. HREF's reliance on prior after-the-fact approvals is misplaced because those instances involved breaches that HUD chose not to enforce; they did not provide authority for a change in management control in contravention to the express terms of the HUD rules and regulations that govern the Project.

ARGUMENT

I. The Integrated Contracts Argument Was Preserved Below and Is Reviewable on Appeal.

A. The Trial Court Necessarily Considered the Integrated Framework Issue.

HREF argues that Appellants waived the integrated contracts argument by not raising it explicitly in the trial court. Appellee's Answering Brief at 21-22. This argument conflates the precise terminology employed with the underlying legal theory presented. The question before the trial court was whether HUD regulations applied to HREF and Holdco. The answer to that question necessarily requires a determination as to whether the HoldCo Agreement and HREF Addendum could be construed in isolation or must be read in light of HoldCo's stated purpose to manage OpCo in accordance with the OpCo Agreement's HUD provisions. Appellants presented this theory in their trial briefs by arguing that the HoldCo Agreement incorporates the OpCo Agreement's requirements, which in turn incorporate HUD Agreements, and that HUD loan documents control in case of conflict. A2000-A2003, A2723-A2731.

The fact that Appellants frame this argument using the term "integrated contracts" does not constitute a new legal theory raised for the first time on appeal. Delaware courts review contract interpretation de novo, and the question of whether multiple agreements must be construed together is a pure question of law appropriate for appellate review. *See Salamone v. Gorman*, 106 A.3d 354, 367 (Del. 2014) ("We review questions of contract interpretation *de novo*.").

HREF's argument that the integrated contracts issue was not presented below is contradicted by the record. Appellants' trial briefs explicitly argued that the HoldCo Agreement states that HoldCo's purpose is to operate OpCo in conformance with the OpCo Agreement, which in turn states that HUD loan documents control in case of conflict. A2727-A2729. The trial court necessarily considered whether the HoldCo Agreement and HREF Addendum must be read in conjunction with the OpCo Agreement and HUD Agreements—the court erred by analyzing the HoldCo documents in isolation.

B. The Interests of Justice Exception Applies.

Even if this Court finds waiver (which it should not), the interests of justice exception warrants review. *See* Del. Supr. Ct. R. 8 ("[W]hen the interests of justice so require, the Court may consider and determine any question not so presented."). Delaware courts have found that the interest of justice exception is appropriate where: (i) the issue is outcome determinative and the issue has significant implications for future cases, and/or (ii) review would promote judicial economy by avoiding repeat litigation. *See Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 679 (Del. 2013) ("One factor in this analysis is whether an issue is outcome determinative with 'significant implications for future cases.'"); *Sandt v. Del. Solid Waste Auth.*, 640 A.2d 1030, 1034 (Del. 1994) (finding that the interests of justice required consideration to promote judicial economy and avoid the necessity of reconsidering an issue). The trial court's approach—analyzing the HREF Addendum in isolation and declaring HREF the sole manager without regard to HoldCo's stated purpose to manage OpCo in accordance with HUD constraints—creates a systemic conflict between state-law entity governance and federal regulatory oversight. Where such a conflict arises, federal law will preempt state law. *See Gonzalez v. State*, 207 A.3d 147, 154 (Del. 2019) ("Under the Supremacy Clause of the United States Constitution, 'federal law preempts contrary state law.'") (*quoting Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150, 162 (2016)). This systemic issue warrants appellate review under the interests of justice exception because it is both outcome determinative and has serious implications on future cases.

II. Delaware Law Requires Reading the HoldCo Agreement and Addendum as an Integrated Whole.

A. The HoldCo Agreement's Purpose Clause Is a Binding Constraint.

HREF argues that 6 *Del. C*. § 18-402 mandates that HoldCo's manager is determined by the HoldCo Agreement alone. Appellee’s Answering Brief at 26. This argument misreads both the statute and the HoldCo Agreement. Section 18-402 provides that an LLC's manager is chosen in the manner provided in the limited liability company agreement. 6 *Del. C.* § 18-402. The HoldCo Agreement provides that HoldCo's purpose is to manage OpCo in accordance with the OpCo Agreement. A0088. This purpose clause is not precatory or aspirational; it is a binding definition of what HoldCo is and what it does. As such, it is a controlling and enforceable contractual provision. *See In re Seneca Investments LLC*, 970 A.2d 259, 263 (Del. Ch. 2008) (judicial dissolution available where the “defined purpose of the entity was fulfilled or impossible to carry out”); *Meyer Nat. Foods LLC v. Duff*, 2015 WL 3746283, *4 (Del. Ch. June 4, 2015) (purpose clause is of “primary importance”).

Any interpretation of manager selection that would force HoldCo to violate that purpose—or to select a manager in a manner inconsistent with HUD loan document requirements that the OpCo Agreement incorporates—is commercially unreasonable and cannot reflect the parties' intent. Delaware law requires that contracts be read as a whole and that all provisions be given effect so as not to render any provision meaningless or illusory. *In re Shorenstein Hays-Nederlander*

Theatres LLC Appeals, 213 A.3d 39, 56 (Del. 2019) ("We interpret contracts 'as a whole and we will give each provision and term effect, so as not to render any part of the contract mere surplusage,' and 'will not read a contract to render a provision or term meaningless or illusory.'"). The trial court's analysis renders the HoldCo Agreement's purpose clause meaningless, and was, therefore, erroneous.

B. The HREF Addendum Itself Incorporates HUD-Facing Requirements.

HREF's privity argument fails because the HREF Addendum itself—a contract to which HREF is a party—incorporates HUD-facing requirements. Appellee's Answering Brief at 24-25. Section 3(ii)(a) of the HREF Addendum expressly requires the Project Managers to use best efforts to modify applicable HUD forms and take steps to have HREF recognized as a key principal. A0117. These provisions are not foreign obligations being imported into the HREF Addendum; they are internal textual features that the parties themselves embedded in the governing documents.

HREF's reading effectively nullifies these provisions by treating them as optional or merely post-hoc housekeeping. Under Delaware law, a court cannot read a contract to render a provision or term meaningless or illusory. *See Estate of Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) ("We will not read a contract to render a provision or term 'meaningless or illusory.'"); *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 287 (Del. 2001) ("Contracts are to be interpreted in a way that does not render any provisions 'illusory or meaningless.'"). If the HREF Addendum's HUD-implementation provisions are stripped of legal effect—if they are treated as mere recitations with no bearing on how manager selection is to be implemented—then they are rendered meaningless, in contravention of Delaware law and trigger violations of HUD rules and regulations.

C. The Integration Clause Does Not Prevent Harmonization.

HREF argues that the integration clause in the HoldCo Agreement bars any reference to HUD or OpCo terms. Appellee's Answering Brief at 25. This argument misunderstands the function of integration clauses. An integration clause prevents using extrinsic evidence to vary the terms of a written agreement. *See Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Svcs LLC*, 318 A.3d 450, 469-470 (Del. Ch. 2024) ("[A] standard integration clause does bar the admission of extrinsic evidence 'for the purpose of varying or contradicting the terms of that contract.'"). However, an integration clause does not prevent a court from reading the contract's own cross-references, internal structure, and transaction context. *See Chi. Bridge & Iron Co. N.V. v. Westinghouse Elec. Co. LLC*, 166 A.3d 912, 913 (Del. 2017) ("In giving sensible life to a real-world contract, courts must read the specific provisions of the contract in light of the entire contract.").

Here, Appellants are not seeking to introduce extrinsic evidence to vary the HREF Addendum's terms. Rather, Appellants are pointing to textual hooks and cross-references that the HoldCo Agreement (including the HREF Addendum) itself contains. The HoldCo Agreement expressly ties HoldCo's function to OpCo compliance. The HREF Addendum expressly anticipates HUD-facing modifications and key principal recognition. These are not foreign obligations being imported; they are internal textual features that the parties embedded in the governing documents.

III. HUD Approval Is a Condition Precedent to HREF's Assumption of Control.

A. Section 3(ii)(a) Contains Express Conditions Precedent.

HREF argues that the only condition precedent to HREF exercising control is the occurrence of an ARE. Appellee's Answering Brief at 36. This argument ignores Section 3(ii)(a) of the HREF Addendum, which expressly requires:

1. Modification of HUD Forms: The Project Managers must use best efforts to modify applicable HUD forms.
2. Recognition as Key Principal: HREF must be recognized as a key principal under HUD regulations.
3. Implementation of Changes: The Project Managers must take all other steps necessary to effectuate HREF's replacement as sole manager.

A0117. These are not merely obligations of the Project Managers that operate independently of HREF's step-in rights. Rather, Section 3(ii) is structured with subsection (a) describing the actions that must be taken and subsection (b) describing the result once those actions are taken. The logical reading is that (a) sets forth conditions precedent and (b) describes the consequence of satisfying those conditions.

The use of best efforts language in Section 3(ii)(a) indicates that the parties contemplated that these actions might not be completed immediately or automatically. A0117. Delaware law requires that best efforts provisions be read in the context with the agreement as a whole and cannot be interpreted to render other provisions meaningless. *See In re Viking Pump, Inc.*, 148 A.3d 633, 648 (Del. 2016)

("Under Delaware law . . . courts interpreting a contract 'will give priority to the parties' intentions as reflected in the four corners of the agreement, construing the agreement as a whole and giving effect to all its provisions.'"). The goal or objective of the best efforts provision in the HREF Addendum, in light of the agreement as a whole, was for the Project Managers to use best efforts to modify HUD forms and obtain HUD recognition in such a manner that HREF could assume control in compliance with HUD requirements. Absent satisfaction of all such conditions precedent, the trial court's ruling appointing HREF as the sole manager of the Project was improper.

B. After-the-Fact Approval Does Not Establish Contractual Meaning.

HREF argues that HUD often approves changes after-the-fact and that Defendants previously changed control without pre-approval and later obtained HUD amendments. Appellee's Answering Brief at 29-33. This argument conflates two distinct legal concepts: (1) parties acting in breach and later seeking HUD ratification, and (2) a Delaware court issuing a declaratory judgment that purports to confer immediate and exclusive control as a matter of state law.

Prior instances of after-the-fact HUD approval do not establish that HUD approval is not required by the parties' contracts. At most, they demonstrate that the parties or their predecessors previously acted in breach of their obligations and that HUD, in its discretion, chose not to accelerate remedies or declare default.

Critically, a Delaware court declaratory judgment differs fundamentally from HUD's after-the-fact approval. A state court judgment purporting to confer immediate and exclusive control as a matter of state law does not and cannot override federal regulatory requirements or the conditions precedent embedded in the parties' own agreements. *See Ayers v. Phila. Hous. Auth.*, 908 F.2d 1184, 1189 (3d Cir. 1990) (holding that HUD federal regulations preempt the application of conflicting Pennsylvania law); *see also Gonzalez v. State*, 207 A.3d 147, 154 (Del. 2019) ("Under the Supremacy Clause of the United States Constitution, 'federal law preempts contrary state law.'"). If HREF assumes control without HUD approval, it does so in violation of both the regulatory framework and the parties' contractual obligations.

C. The Word "Immediately" Describes Timing Once Conditions Are Satisfied.

HREF places great weight on the word "immediately" in Section 3(ii)(b), arguing that this makes HREF's step-in rights self-executing. Appellee's Answering Brief at 36. However, this interpretation ignores the relationship between Section 3(ii)(a) and Section 3(ii)(b). As stated above, the logical reading of Section 3(ii) is that 3(ii)(a) sets forth conditions precedent and 3(ii)(b) describes the consequence of satisfying those conditions. The word "immediately" in 3(ii)(b) describes the timing of HREF's assumption of control once the conditions in Section 3(ii)(a) are satisfied, not the timing of the conditions themselves. A0117.

A proper interpretation must give effect to all provisions of the HREF Addendum. *See Daniel v. Hawkins*, 289 A.3d 631, 663 (Del. 2023) ("[I]t is well established that a court interpreting any contractual provision ... must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument.") (internal citations omitted). Section 3(ii)(a) establishes the process that must occur—modification of HUD forms, recognition as key principal, and implementation of changes. Section 3(ii)(b) establishes that once this process is complete, HREF immediately becomes sole manager without need for further consent or action. This reading harmonizes both provisions and avoids rendering the HUD-implementation steps in Section 3(ii)(a) meaningless. *See O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 287 (Del. 2001) ("Contracts are to be interpreted in a way that does not render any provisions 'illusory or meaningless.'") (*quoting Sonitrol Holding Co. v. Marceau Investissements*, 607 A.2d 1177, 1183 (Del. 1992)).

D. Commercial Reasonableness Supports This Interpretation.

It is commercially unreasonable to interpret the parties' agreements to permit a control flip at HoldCo that necessarily flips control of OpCo (the HUD borrower) while treating HUD approval as optional. *See* generally *Blue Cube Spinco LLC v. Dow Chem. Co.*, 2021 WL 4453460, at *6 (Del. Super. Ct. Sept. 29, 2021) ("The Court's contract interpretation must be reasonable, reading the agreement 'in full and situated in the commercial context between the parties.'"). Such an interpretation would effectively read out the HREF Addendum's contemplation of HUD-recognition steps and would treat the parties' regulatory obligations as subordinate to a unilateral right to assume control.

HoldCo's sole function is to manage OpCo, the HUD borrower. A0088 at Article 4. A change in HoldCo's manager is not a mere administrative reshuffling; it is a change in control of the entity that controls the HUD borrower and the Project itself. The parties' agreements contemplate HUD-facing steps to recognize HREF as a key principal and modify HUD forms. To interpret the parties' contracts as permitting immediate control transfer without HUD approval would create an immediate conflict with federal HUD regulatory compliance—a conflict the parties expressly sought to manage through the HREF Addendum.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the judgment of the Court of Chancery and hold that HREF's step-in rights are subject to HUD rules and regulation and expressly conditioned upon satisfaction of the express contractual requirements in Section 3(ii)(a) of the HREF Addendum, including obtaining HUD approval and recognition as a key principal, and that these conditions were never satisfied.

Dated: June 10, 2026

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