IN THE CIRCUIT COURT
FOR BALTIMORE CITY

NexPoint Real Estate Opportunities, LLC Plaintiff, v. United Development Funding IV, *et al.* Defendants.	Case No. 24-C-23-004497

PLAINTIFF'S APPLICATION FOR FURTHER RELIEF UPON DECLARATORY JUDGMENT AND MOTION FOR MODIFICATION OF INJUNCTIVE RELIEF AND REQUEST FOR HEARING

Defendant United Development Funding IV ("UDF IV" or "Trust"), a Maryland real estate investment trust, must hold the annual shareholder meeting by December 31, 2024 to elect four trustees who have unlawfully held over. Plaintiff NexPoint Real Estate Opportunities, LLC ("NexPoint") has nominated a competing slate of trustees to address and correct years-long corruption and mismanagement at UDF IV, and finally maximize shareholder value. To ensure the fairness and legitimacy in this court-ordered trustee election, there must be a fair opportunity to campaign and fair procedures in the election. UDF IV has refused to provide NexPoint with a fair opportunity to campaign by denying it equal access to information concerning the identities of the company's shareholders, and it has refused to provide any information about the procedures by which the election will be conducted. NexPoint brings this application for further relief to modify this Court's April 16, 2024 judgment to compel UDF IV to compile and produce information that will identify UDF IV's shareholders, the vast majority of whom are mom-and-pop retail investors, in advance of the as-yet-unscheduled annual meeting to be held by December 31, 2024, as well as to ensure procedural fairness at that meeting.

Specifically, though UDF IV has produced to NexPoint a record shareholder list pursuant to Md. Code Ann., Corps. & Ass'ns § 2-513, that list provides NexPoint with the identities of holders of just 13 percent of the total number of accounts and just 20.6 percent of the outstanding shares. Approximately 7 percent of the shares are owned by NexPoint or Shareholder Associated Persons, as that term is defined in the Fourth Amended and Restated Bylaws of the Trust ("Bylaws"), and approximately 87 percent of the accounts and 80 percent of the shares are held in the street names of brokerage houses and therefore do not identify the beneficial owners entitled to vote in shareholder elections. NexPoint requested that UDF IV provide it with a list of beneficial owners who do not object to disclosure of their identities ("non-objecting beneficial owner" or "NOBO"), and offered to reimburse UDF IV for the expense of obtaining and preparing a NOBO list if it did not yet have one. UDF IV refused to provide the NOBO list, asserting that it did not have such a list and was not required to produce one. NexPoint's ability to contact the more than 12,000 individual shareholders whose shares are not included on the record shareholder list to solicit their proxies in this trustee-election contest is unfairly impeded where it lacks access to the vast majority of beneficial owners, and this is all the more so given UDF IV's apparent usage of compiled information on financial advisors and large shareholders to engage in shareholder outreach unavailable to NexPoint. NexPoint thus seeks production of any compiled list of non-record shareholders and shareholder financial advisors ("FA list") that UDF IV maintains or possesses, as well as the NOBO list, which UDF IV has refused to produce.

Without judicial intervention, the Trust stands to subvert the Court's decree and injunction by impeding NexPoint's ability to engage in meaningful outreach to shareholders and hold the Trust's trustees accountable for gross improprieties in corporate governance. Further, because this is the first election of Independent Trustees since June 25, 2015, NexPoint has asked UDF IV to

confirm the procedures it will employ in conducting the annual meeting to ensure those procedures are fair. At this time, UDF IV has refused to do so. Absent the relief requested herein, the election the Trust was enjoined to hold by this Court will be a hollow one, at odds with all notions of fair play and shareholder democracy. For this relief to be meaningful, NexPoint requests, and has separately requested, expedited consideration of this application, as well as a modification of the April 16, 2024 judgment to require sufficient time for NexPoint to engage in shareholder outreach before the annual meeting, which has not yet been noticed, is held.

I. BACKGROUND

UDF IV has approximately 30.6 million shares outstanding which are held by 13,847 accounts. Plaintiff NexPoint, the largest shareholder of Defendant UDF IV, brought this action to obtain declaratory and injunctive relief to stop UDF IV and its Trustees from perpetuating an unlawful corporate governance scheme that had disenfranchised shareholders like NexPoint and prevented a change of control by failing to hold the annual meetings for the election of trustees required under Maryland law.

On April 16, 2024, this Court entered a Final Declaratory Judgment and Injunction (the "Judgment"). The Court held that NexPoint's claim concerning the upcoming elections of UDF IV's trustees was appropriate for final resolution on undisputed facts. Judgment, at 2. The Court further ordered, adjudged, and decreed that "When UDF IV holds its annual meeting in 2024, all four seats of the Class II and Class III Trustees will be open for election[.]" *Id.* To effectuate that judgment, the Court ordered that "Defendant UDF IV is ENJOINED to conduct an annual meeting no later than December 31, 2024 for the purpose, among others, of electing Class II and Class III Trustees in accordance with the declarations in this Final Declaratory Judgment." *Id.* at 3.

After the Court's Judgment, the parties began to solicit proxies from the Trust's shareholders, the vast majority of whom are mom-and-pop retail investors. That is, UDF IV's

shareholders are mostly not institutional investors, but are rather individuals with a wide range of investing experience who have received scant communications from the Trust. *See* Exhibit 1, Declaration of Lucy Bannon. Since the Trust was delisted in 2016 and deregistered in 2020, it has not filed *any* quarterly or annual reports since 2015. *Id.* For this reason, the proxy solicitation process for the upcoming annual meeting requires significant investment of resources and time to contact and educate shareholders about the issues at stake and NexPoint's reasons for nominating a competing slate of trustee candidates and the experience that those candidates would bring to bear to improve shareholder returns from UDF IV. In short, this is not a Wall Street proxy contest, it's a Main Street one.

On April 18, 2024, NexPoint requested a list of shareholders of UDF IV pursuant to Md. Code Ann., Corps. & Ass'ns § 2-513. On May 28, 2024, UDF IV provided the names of its record shareholders. The record shareholder list provided by UDF IV did not identify the vast majority of beneficial owners. There are 30,663,551 outstanding shares in the Trust, which are held in 13,847 accounts. Of these, 24,357,698 (79.4 percent) are held in 12,055 accounts (87.1 percent) that are in the street name of a brokerage house. Because a further 2,098,610 shares (6.8 percent) are held by NexPoint or Shareholder Associated Persons in four accounts, the record shareholder list produced by UDF IV provided NexPoint with meaningful access to the identities of holders of just 4,207,243 shares (13.7 percent) in 1,788 accounts (12.9 percent) and therefore held limited value for communicating with the majority of actual shareholders about the stakes and issues of the coming shareholder election.

On September 19, 2024, NexPoint's General Counsel, Dennis C. Sauter, sent a Demand Letter to the Trust. Exhibit 2. In that letter, Mr. Sauter noted that NexPoint had nominated four candidates in the forthcoming election and requested that the Trust provide a verified list of

shareholders for NexPoint's inspection and copying. *Id.* Mr. Sauter further requested that the Trust provide a NOBO list setting forth the names, addresses, and security positions of the beneficial owners or, if the Trust had no such list in its possession, that the Trust direct its proxy solicitor, Innisfree M&A, to request one from the intermediary firms Broadridge and Mediant and provide it for NexPoint's inspection. *Id.* On October 4, 2024, John T. Prisbe, counsel for the Trust, replied to that letter, furnishing the record shareholder list but rejecting the NOBO list request on the grounds that UDF IV did not possess such a list and was under no legal obligation to obtain one for NexPoint's benefit. Exhibit 3.

Although UDF IV claims it does not have a NOBO list, there are indications that UDF IV possesses more information about the identities of its shareholders than does NexPoint. In the ordinary course, a company like UDF IV will build a list of financial advisors as it is contacted by those advisors to provide the company with a network to market to in the future. *See* Exhibit 4, Declaration of Charles Garske, ¶ 14. Further, the voting trend to date suggests that UDF IV has been able to target large blocks of shareholders. *Id.*, ¶ 16. For example, though UDF IV did not start soliciting proxies until 3 weeks after NexPoint had started, it has received votes from blocks of over 100,000 shares on 15 days, while NexPoint has only received such large share votes on 9 days. *Id.*

On October 14, 2024, in light of the fact that UDF IV was deregistered by the SEC and has held only one annual meeting to elect trustees in more than 8 years (the December 15, 2023 meeting to elect the Managing Trustee appointed by UDF IV's Advisor), Mr. Sauter again wrote to UDF IV on behalf of NexPoint requesting assurances that the rules and procedures for the forthcoming 2024 shareholder annual meeting would conform to standards of fairness and equity. Exhibit 5. NexPoint sought reassurances that: (1) UDF IV had retained a reputable and

experienced independent election inspector; (2) UDF IV would afford NexPoint an appropriate opportunity to move its nominations and address the Annual Meeting; (3) in the event the annual meeting is held in person, UDF IV would make provisions to accommodate NexPoint and its designees in a contiguous block; and (4) UDF IV would treat NexPoint and other attendees fairly and equitably. *Id.* at 2. NexPoint also requested UDF IV provide it with information regarding the independent election inspector's proxy-delivery procedures; a copy of the Annual Meeting agenda, rules, procedures, and ballots by October 31, 2024; and details as to the procedures for vote tabulation and the review of proxies and ballots. *Id.* On October 24, 2024, Mr. Prisbe replied on behalf of the Trust, that "[a]n announcement to all shareholders on the conduct for the annual meeting will be made once it has been scheduled." Exhibit 6. The Trust provided none of the requested reassurances or information. *See id.* The annual meeting has not yet been scheduled.

II. GOVERNING STANDARD

Maryland's Uniform Declaratory Judgment Act "permits a party to bring an action for declaratory judgment and, either in conjunction with that action or in a separate action, request further injunctive relief based on the rights determined by that judgment." *Stevenson v. Lanham*, 127 Md. App. 597, 610 (1999). "Further relief based on a declaratory judgment or decree may be granted if necessary or proper." Md. Code Ann., Cts. & Jud. Proc. § 3-412(a). The Declaratory Judgment Act is remedial and must be "liberally construed and administered." *Id.* § 3-402. This means that "a court generally has jurisdiction to grant *all* further and necessary or proper relief to effectuate the declaratory judgment entered by the court." *Nova Rsch., Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 460 (2008) (emphasis added).

Additionally, "[a] party or any person affected by a . . . final injunction may move for modification" of the injunction. Md. Rule 15-502(f).

III. ARGUMENT

The Trust must produce the requested records identifying the actual shareholders of the Trust or their financial advisors to ensure that the Judgment of this Court is not a hollow one and that the pending shareholder election comports with corporate fairness. That this election is conducted fairly is of vital importance. The annual meeting set to take place before the end of calendar year 2024 provides shareholders their first opportunity to vote on four members of the Board of Trustees' stewardship of the company after presiding over gross improprieties, which were set forth in detail in NexPoint's Complaint. Fairness in this election can only be effectuated if, in the permissible exercise of its equitable power, this Court both compels UDF IV to allow NexPoint to inspect and copy any list of financial advisors of Trust shareholders that it has compiled and compels UDF IV to obtain and make available to NexPoint for inspection and copying a list of non-objecting beneficial owners. Moreover, the Trust's decision not to obtain a NOBO list must satisfy a heightened justification standard, which it cannot do.

A. Compelling the production of these records is a permissible exercise of the Court's equitable powers.

Compelling the Trust to procure and produce a NOBO list in a proxy solicitation battle is a permissible exercise of the Court's broad equitable authority. Although a novel remedy in Maryland, New York and Delaware courts make clear that a court may order a company to obtain a NOBO list where the equities require it.[1] In the leading case, *Sadler v. NCR Corporation*, the Second Circuit affirmed a decision of the Southern District of New York compelling the defendant to obtain a NOBO list and furnish it to the plaintiff in the context of a proxy solicitation battle

[1] When similar issues have not been addressed in Maryland case law or by Maryland statute, courts in Maryland regularly rely on decisions of the Delaware courts, which are known "for their expertise in matters of corporate law." *Kramer v. Liberty Property Trust*, 408 Md. 1, 25 (2009); *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 338 n. 14 (2009).

involving a Maryland corporation. 928 F.2d 48 (2d Cir. 1991). Applying New York's shareholder inspection statute, the *Sadler* court concluded that "[e]ven if the statute might not require compilation of NOBO lists routinely, . . . compilation was properly ordered" on account of the corporation's unique 80 percent voting rule that skewed the balance between shareholders and management. *Id.* at 53. Because that voting rule had the effect of counting shares of non-voting beneficial owners for management, notwithstanding the possibility that those beneficial owners may have chosen to vote against management if the opponent shareholder had had an opportunity to solicit them, the Second Circuit concluded that denying opponents the opportunity to contact the non-objecting beneficial owners was inconsistent with the principle that management and shareholders should be on equal footing in gaining access to shareholders. *Id.*

In like fashion, Delaware's Chancery Court has left open the possibility that, in some instances, "broad concepts of fairness," such as informational inequality between management and shareholders in a proxy solicitation contest, could require a corporation to obtain a NOBO list. *Cf. R.B. Assocs. of N.J., L.P. v. Gillette Co.*, Civ. No. 9711, 1988 WL 27731, at *7 (Del. Ch. Mar. 22, 1988) (unpublished) ("broad concepts of fairness" do not "require that a corporation be forced, *in each instance*, to exercise the option [to obtain a NOBO list] created by the applicable SEC Rules at the behest of a shareholder[]" (emphasis added)).

When circumstances so require, courts routinely exercise their equitable authority to place management and opponents on an equal footing in proxy contests to ensure the fairness of shareholder elections. *See, e.g, Shamrock Assocs. v. Texas Amer. Energy Corp.*, 517 A.2d 658, 662 (Del. Ch. 1986) (compelling production of NOBO list). Where management "attempt[s] to utilize the corporate machinery and the [applicable] Law for the purpose of perpetuating itself in office; and, to that end, for the purpose of obstructing the legitimate efforts of dissident stockholders in

the exercise of their rights to undertake a proxy contest against management[,]" it acts with "inequitable purposes, contrary to established principles of corporate democracy." *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971). Such machinations, whether or not cloaked in legal authority, are subject to equitable relief. *Id.* This is so because the law "recognizes that the stockholder franchise is the 'ideological underpinning upon which the legitimacy of the directors' managerial power rests.'" *Coster v. UIP Cos., Inc.*, 255 A.3d 952, 960 (Del. 2021) (quoting *MM Cos. v. Liquid Audio, Inc.*, 813 A.2d 1118, 1126 (Del. 2003)). "Keeping a proper balance in the allocation of power between the stockholders' right to elect directors and the board of directors' right to manage the corporation is dependent upon the stockholders' unimpeded right to vote effectively in an election of directors." *Id.* (internal quotation omitted).

Here, NexPoint is engaged in a proxy solicitation contest to impress upon fellow shareholders the urgent need for a change in control after years of gross mismanagement overseen by the current Trustees. These shareholders are, in significant proportion, unsophisticated individual investors who have been specially aggrieved and preyed upon by the manipulative and unlawful practices of the Trust's incumbent management. *See* Exhibit 1, Bannon Decl. (referencing interactions with certain Trust investors); Exhibit 4, Garske Decl., ¶ 5 (stating that share breakdowns indicate that many holdings in the Trust are small scale). The Trust's small-scale, retail investors are often unaware of the upcoming shareholder election, and even when they are, they lack access to good information and analysis to make sound judgments about their investments. Given that the Trust was de-listed from any public exchanges as a result of prior management's failures, the upcoming vote has attracted no appreciable media attention; no independent, third-party validation of investor strategies or considerations; no significant professional investment firm attention; and, crucially, no oversight by the Securities and Exchange

Commission.[2] As such, the Trust's shareholders are operating in an information vacuum, largely of management's own making. Explaining the past history of this Board and the stakes of the coming election to shareholders requires a door-to-door, investor-by-investor approach. In short, it requires NexPoint to know the identities of non-objecting beneficial owners. NexPoint must make its case and contest this election through appeals to investors on Main Street, not brokerage houses on Wall Street.

Despite the seemingly obvious merits of providing small-scale investors with information and reasonable outreach, with this shareholder election, management has returned to its old playbook of manipulation and obfuscation. Once again, the Trust's Board seeks to insulate itself from any kind of accountability by thwarting NexPoint's attempts at investor outreach and leaning on existing institutional investment relationships to deliver large blocks of votes. *See* Exhibit 4, Garske Decl., ¶ 16 (explaining that a pattern of intermittent large daily totals of voted shares is indicative of management's successful outreach to large voting blocks through its contact with the shareholders' financial advisors). It is due to this Court's Judgment that the required elections will be held this year at all, and it is only through further equitable relief from this Court that these elections will be conducted in a manner that provides the Trust's most vulnerable investors a fair and informed opportunity to participate in this election. The Court has the equitable authority to level the playing field by ordering the procurement and production of the NOBO and FA lists, and the exercise of that authority is appropriate in the extraordinary circumstances presented here.

[2] As discussed in NexPoint's Complaint, the lack of oversight by the SEC was by design and part of a decade-long program of withholding information from the Trust's investors.

B. The Board's decision not to obtain a NOBO list does not preclude the Court from ordering that it do so where necessary to ensure the fairness of the upcoming mandated shareholder election.

Whether the Trust was legally permitted to avoid providing a NOBO list by declining to obtain one for itself is no excuse where such gamesmanship undercuts the fundamental fairness of the shareholder vote. "[I]nequitable action does not become permissible simply because it is legally possible." *Schnell*, 285 A.2d at 439; *see also U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 376 (Minn. 2011) ("Conduct that is technically legally permissible may nonetheless constitute a violation of rights that should be protected."). Management may not escape judicial review of its actions or inactions simply based on legal authorization for such action or inaction. *See Coster*, 255 A.3d at 960.

Under any standard, the Trust's decision not to procure a NOBO list on NexPoint's request should not be entitled to any deference. To be sure, the proper scrutiny for management's discretionary decisions affecting the fairness or effectiveness of a shareholder vote is an unsettled question under Maryland law. Although Maryland has rejected a heightened scrutiny standard in the acquisition context, *see Eastland Food Corp. v. Mekhaya*, 486 Md. 1, 21–26 (2023), and in that specific context has by statute supplied a presumption that management may rely on the deferential business judgment rule, Md. Code, Corps. & Ass'ns § 2-405.1, other courts have expressly recognized that management actions that disturb the fundamental allocation of power between a trust's shareholders and its trustees must be accompanied by heightened justification. *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659–60 (Del. Ch. 1988) ("[T]he ordinary considerations to which the business judgment rule originally responded are simply not present in the shareholder voting context. That is, a decision by the board to act for the primary purpose of preventing the effectiveness of a shareholder vote inevitably involves the question who, as between the principal and the agent, has authority with respect to a matter of internal corporate

governance."); *see Stroud v. Grace*, 606 A.2d 75, 79 (Del. 1992) (endorsing *Blasius* "heightened justification" standard but declining to apply it on factual grounds); *Liquid Audio*, 813 A.2d at 1128 (demanding enhanced scrutiny where management acts with "the *primary* purpose of impeding or interfering with the effectiveness of a shareholder vote[.]" (emphasis in original)).

Judicial scrutiny by reviewing courts must be "assiduous in carefully reviewing any board actions designed to interfere with or impede the effective exercise of corporate democracy by shareholders, especially in an election of directors." *Coster*, 255 A.3d at 960–61. And where a board of directors "deliberately employ[s] various legal strategies either to frustrate or completely disenfranchise a shareholder vote[,]" the Delaware Supreme Court has held it beyond "dispute that such conduct violates Delaware law." *Id.* at 961.

As the foregoing authority demonstrates, to the extent the Board has exercised its discretion not to obtain a NOBO list, it must provide a heightened justification for doing so, and it may not merely rely on the business judgment rule. *See Blasius*, 564 A.2d at 659. The procurement of a NOBO list is a "common and reliable tool for communicating with beneficial owners in advance of a shareholder vote" and "a tool that many entities turn to in the ordinary course." Exhibit 4, Garske Decl., ¶ 10. Companies are authorized to obtain NOBO lists. *See* 17 C.F.R. §§ 240.14b-1, 240.14b-2. Communications with beneficial owners can substantially increase participation in shareholder votes. Exhibit 4, Garske Decl., ¶ 8. Increased participation can be particularly advantageous in enfranchising shareholders for important questions of corporate governance and direction.[3] *Id.*, ¶ 7. This includes, but is not limited to, proxy solicitation contests. *Id.* Similarly,

[3] Federal law reflects an overarching policy of facilitating and increasing shareholder participation in shareholder elections through such measures as the Universal Proxy Card Rule. *See* SEC Rule 14a-19.

"most funds or investments like UDF IV will regularly compile lists of shareholder financial advisors over time to provide the company with a network to market to in the future." *Id.*, ¶ 14.

Furthermore, obtaining a NOBO list is not difficult. A company would make this request to one of two intermediary firms, Broadridge and Mediant, which store beneficial owner lists on behalf of their bank and broker clients. *Id.*, ¶ 12. In normal proxy contests, the company would inform a dissident shareholder of the cost; the dissident would send funds to cover the cost; the company would request the list from the intermediary; four to five days later, the company would be in possession of the NOBO list; and subsequently the company would provide the dissident with an opportunity to inspect and copy the list. *See id.*, ¶¶ 12, 13.

Thus, obtaining a NOBO list comes at no cost to the Trust, is an ordinary and widely used business tool, and would significantly expand shareholder participation in a critical vote. The Board's decision not to obtain a NOBO list seems to have no obvious purpose other than to obstruct NexPoint's shareholder engagement and frustrate meaningful participation in the upcoming election of trustees. In other words, the decision not to obtain a NOBO list stands to benefit the trustees—by shielding them from long overdue shareholder accountability—while providing no obvious benefit to the Trust itself. This is a paradigmatic example of a discretionary decision taken with the improper purpose of interfering with the fairness of a shareholder election. As such, the Board's decision not to obtain a NOBO list cannot satisfy the heightened justification standard and provides no legal defense against NexPoint's assertion of equitable entitlement to the NOBO and FA lists for the purposes of guaranteeing a fair shareholder election.

In any event, the Board's decision not to obtain a NOBO list is not entitled to the deference of the business judgment rule because the decision not to obtain one was plainly in bad faith and for the primary purpose of depriving NexPoint a fair and meaningful opportunity to contest this

shareholder election. *See Eastland Food*, 486 Md. at 35 (stating that section 2-405.1's presumption that trustees act in good faith "is just that—a presumption" and concluding that presumption had been overcome by allegations of bad faith) . In light of the many benefits of a NOBO list in the form of increased shareholder participation and management accountability, the Board had no good faith reason to decide not to obtain one. Indeed, the only benefit to the Board's decision redounds to management in its quest to evade accountability, while all the costs are borne by the shareholders who this decision will keep in the dark.

C. To ensure a fair election, the Court must compel UDF IV to implement fair rules and procedures with adequate notice to shareholders.

A fair election requires more than just a fair opportunity to campaign—it also requires procedural fairness in the election itself. To date, UDF IV has provided shareholders with no information about how its first contested shareholder election in years will be held, and it has rebuffed NexPoint's attempts to elicit it. Shareholders have no idea when, where, or under what rules the court-ordered annual meeting will take place. Likewise, UDF IV has not identified whether the tabulation of votes and proxies will be by an independent inspector, and if so, the identity of that firm and the procedures it will employ to ensure a fair process. These details are of great consequence, as shareholders lost the ability to rely on many procedural protections when the Trust was deregistered in 2020.

To effectuate its Judgment, the Court must compel UDF IV to implement fair rules and procedures—including hiring a reputable and independent election inspector—and to provide notice of the same by publishing the rules, procedures, and agenda for the annual meeting to shareholders no later than October 31, 2024. At that time, UDF IV must also be compelled to provide the identity of the independent inspector and the procedures by which such firm will conduct the tally of votes and proxies. NexPoint contends that fair rules and procedures for the

annual meeting require, at minimum, that NexPoint receive: (1) an appropriate opportunity to address the meeting and move for nomination; (2) contiguous accommodations at the meeting for its designees, counsel, and other advisors; (3) opportunities to ask questions of, and make comments to, management.

D. To provide meaningful consideration and relief on this Application, the Court must temporarily restrain UDF IV from noticing the annual meeting.

Under the UDF IV bylaws, the Board must provide 10 days' notice of the annual meeting date. To date, UDF IV has not provided notice of the annual meeting date. In order to provide consideration to this Application for Further Relief, as well as to provide NexPoint a meaningful opportunity to contact non-objecting beneficial owners in advance of the shareholder election, NexPoint requests that the Court modify the injunction in its Judgment and specify that UDF IV is restrained from noticing the annual meeting until December 2, 2024, and that the date of the meeting be fixed for no less than 14 days later, or December 16, 2024.

IV. CONCLUSION

For the foregoing reasons, NexPoint respectfully requests that the Court enter an order compelling the Trust to produce any compiled list of shareholder financial advisors currently within its records, as well as obtain and provide a list of non-objecting beneficial owners. NexPoint requests expedited consideration of this motion, as well as a modification of the Judgment to allow NexPoint to engage in shareholder outreach once the requested lists of shareholders and/or their financial advisors have been provided. NexPoint respectfully requests that a hearing on this Application and Motion be set as soon as practicable.

Dated: October 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Maryland Rules 1-321 and 1-323, I certify that I caused a copy of the foregoing to be served on all counsel of record through MDEC.

/s/ Sara Alpert Lawson
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