IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: HUDSON 1701/1706, LLC, *et al.*, Debtors.	Chapter 11 Case No. 25-11853 (KBO) (Jointly Administered)
FIRST AMERICAN TITLE INSURANCE COMPANY, solely as Escrow Agent and not in its individual capacity, Plaintiff, v. HUDSON 1701/1706, LLC, HUDSON 1702, LLC, ALBERTO SMEKE SABA, SALOMON SMEKE SABA, CSC HUDSON LLC, and PARKVIEW FINANCIAL REIT, LP, Defendants.	Adv. Proc. No. 25-52468 (KBO)
PARKVIEW FINANCIAL REIT, LP, Cross-Plaintiff, v. ALBERTO SMEKE SABA; SALOMON SMEKE SABA; and CSC HUDSON LLC, Cross-Defendants.	
ALBERTO SMEKE SABA; SALOMON SMEKE SABA; and CSC HUDSON LLC, Counter-Plaintiffs, v. PARKVIEW FINANCIAL REIT, LP, Counter-Defendant.	

CROSS-DEFENDANTS ALBERTO SMEKE SABA, SALOMON SMEKE SABA AND CSC HUDSON LLC'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO CROSS-PLAINTIFF PARKVIEW FINANCIAL REIT, LP'S ANSWER TO THE INTERPLEADER COMPLAINT, AFFIRMATIVE DEFENSES AND CROSS-CLAIMS

Cross-defendants Alberto Smeke Saba, Salomon Smeke Saba and CSC Hudson LLC (together, the "Guarantor Parties") by and through their undersigned counsel, and for their Answer with Affirmative Defenses and Counterclaims to cross-plaintiff Parkview Financial Reit, LP's ("Cross-Plaintiff") *Answer to the Interpleader Complaint, Affirmative Defenses and Cross-Claims* [Adv. Pro. Dkt. No. 44] (the "Crossclaims")[1], state as follows:

CROSSCLAIMS

1. Admitted.

2. Denied.

3. Denied.

4. Denied.

5. The allegations in paragraph 5 are Cross-Plaintiff's characterizations of the Financial Agreement annexed as Exhibit 1 to the Crossclaims. Guarantor Parties refer the Court to Exhibit 1 of the Crossclaims for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 5 to the extent they are inconsistent with or mischaracterize Exhibit 1 to the Crossclaims.

6. Paragraph 6 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

7. The allegations in paragraph 7 are Cross-Plaintiff's characterizations of the Settlement Agreement annexed as Exhibit A to the Complaint and Escrow Agreement annexed as

[1] Capitalized terms not defined herein shall have the meanings ascribed to such terms as defined in the Crossclaims.

Exhibit B to the Complaint. Guarantor Parties refer the Court to Exhibits A and B of the Complaint for their true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 7 to the extent they are inconsistent with or mischaracterize Exhibits A or B to the Complaint.

8. Paragraph 8 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

THE PARTIES AND RELEVANT NONPARTIES

9. Guarantor Parties are without sufficient information or belief to either admit or deny the allegations in paragraph 9 and on that basis deny.

10. Admitted.

11. Admitted.

12. Admitted.

13. Guarantor Parties admit that Hudson 1702, LLC is a Delaware limited liability company with an address located at 11440 San Vicente Boulevard, 2nd Floor, Los Angeles, California 90049. Guarantor Parties are without sufficient information or belief to either admit or deny the remaining allegations in paragraph 13 and on that basis deny.

14. Guarantor Parties admit that Hudson 1701/1706, LLC is a Delaware limited liability company with an address located at 11440 San Vicente Boulevard, 2nd Floor, Los Angeles, California 90049. Guarantor Parties are without sufficient information or belief to either admit or deny the remaining allegations in paragraph 14 and on that basis deny.

JURISDICTION AND VENUE

15. Paragraph 15 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

16. Paragraph 16 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

17. Paragraph 17 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

18. Paragraph 18 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

FACTUAL ALLEGATIONS

A. The Loan

19. Admitted.

20. Admitted.

21. Denied.

22. The allegations in paragraph 22 are Cross-Plaintiff's characterizations of the Guaranty annexed as Exhibit 2 to the Crossclaims. Guarantor Parties refer the Court to Exhibit 2 of the Crossclaims for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 22 to the extent they are inconsistent with or mischaracterize Exhibit 2 to the Crossclaims.

23. The allegations in paragraph 23 are Cross-Plaintiff's characterizations of the Completion Guaranty annexed as Exhibit 3 to the Crossclaims. Guarantor Parties refer the Court to Exhibit 3 of the Crossclaims for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 23 to the extent they are inconsistent with or mischaracterize Exhibit 3 to the Crossclaims.

24. The allegations in paragraph 24 are Cross-Plaintiff's characterizations of the Security Agreement. Guarantor Parties refer the Court to the Security Agreement for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 24 to the extent they are inconsistent with or mischaracterize the Security Agreement.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

B. Guarantors' Mismanagement and Defaults

29. Admitted.

30. Admitted.

31. Paragraph 31 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

32. Guarantor Parties are without sufficient information or belief to either admit or deny the allegations in paragraph 32 and on that basis deny.

33. Admitted.

34. Admitted.

35. The allegations in paragraph 35 are Cross-Plaintiff's characterizations of the DOB Partial Stop Work Order. Guarantor Parties refer the Court to the DOB Partial Stop Work Order for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 35 to the extent they are inconsistent with or mischaracterize the DOB Partial Stop Work Order.

36. Admitted.

37. The allegations in paragraph 37 are Cross-Plaintiff's characterizations of the Fox 5 Local New York news story "Manhattan Hotel Revamp Leaves Tenants in Turmoil" (the "News Story"). Guarantor Parties refer the Court to the News Story for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 37 to the extent they are inconsistent with or mischaracterize the News Story.

38. Denied.

39. Guarantor Parties are without sufficient information or belief to either admit or deny the allegations in paragraph 39 and on that basis deny.

40. The allegations in paragraph 40 are Cross-Plaintiff's characterizations of the Loan Agreements. Guarantor Parties refer the Court to the Loan Agreements for their true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 40 to the extent they are inconsistent with or mischaracterize the Loan Agreements.

41. Admitted.

42. Admitted.

43. Admitted.

C. The UCC Sale and Financial Agreement

44. Paragraph 44 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

45. Paragraph 45 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

46. Paragraph 46 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

47. Denied.

48. Admitted.

49. Admitted.

50. Paragraph 50 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

51. Paragraph 51 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

52. Paragraph 52 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

53. Paragraph 53 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

54. Paragraph 54 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

55. Admitted.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Admitted.

D. The NY Action, the Settlement Agreement, and the Escrow Agreement

68. Admitted.

69. The allegations in paragraph 69 are Cross-Plaintiff's characterizations of the Settlement Agreement annexed as Exhibit A to the Complaint and Escrow Agreement annexed as Exhibit B to the Complaint. Guarantor Parties refer the Court to Exhibits A and B of the Complaint

for their true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 69 to the extent they are inconsistent with or mischaracterize Exhibits A or B to the Complaint.

70. The allegations in paragraph 70 are Cross-Plaintiff's characterizations of the Settlement Agreement annexed as Exhibit A to the Complaint. Guarantor Parties refer the Court to Exhibit A of the Complaint for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 70 to the extent they are inconsistent with or mischaracterize Exhibit A to the Complaint.

71. The allegations in paragraph 71 are Cross-Plaintiff's characterizations of the Settlement Agreement annexed as Exhibit A to the Complaint. Guarantor Parties refer the Court to Exhibit A of the Complaint for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 71 to the extent they are inconsistent with or mischaracterize Exhibit A to the Complaint.

72. Denied.

73. Admitted.

74. Admitted.

75. The allegations in paragraph 75 are Cross-Plaintiff's characterizations of the Escrow Agreement annexed as Exhibit B to the Complaint. Guarantor Parties refer the Court to Exhibit B of the Complaint for its true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 75 to the extent they are inconsistent with or mischaracterize Exhibit B to the Complaint.

76. Denied.

77. Denied that Guarantor Parties are in breach of the Settlement Agreement.

78. Denied.

79. Denied.

80. Denied.

81. Admitted.

82. The allegations in paragraph 82 are Cross-Plaintiff's characterizations of the Settlement Agreement annexed as Exhibit A to the Complaint and Escrow Agreement annexed as Exhibit B to the Complaint. Guarantor Parties refer the Court to Exhibits A and B of the Complaint for their true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 82 to the extent they are inconsistent with or mischaracterize Exhibits A or B to the Complaint.

83. Denied.

84. Denied.

85. Paragraph 85 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

86. The allegations in paragraph 86 are Cross-Plaintiff's characterizations of the Settlement Agreement annexed as Exhibit A to the Complaint. Guarantor Parties refer the Court to Exhibit A of the Complaint for their true and accurate content. Guarantor Parties deny the allegations set forth in paragraph 86 to the extent they are inconsistent with or mischaracterize Exhibit B to the Complaint.

87. Denied.

COUNT I

Breach of Contract
(Against Guarantors)

88. The allegations in paragraph 88 are not directed to Guarantor Parties and, therefore, Guarantor Parties deny said allegations and leave Cross-Plaintiff to its proof and denies the same.

89. Admitted.

90. Denied.

91. Denied.

92. Denied.

93. Paragraph 93 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

COUNT II

Declaratory Judgment
(Against Guarantors and Holdings)

94. The allegations in paragraph 94 are not directed to Guarantor Parties and, therefore, Guarantor Parties deny said allegations and leave Cross-Plaintiff to its proof and denies the same.

95. Admitted.

96. Denied.

97. Denied.

98. Denied.

99. Paragraph 99 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

100. Paragraph 100 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

101. Paragraph 101 consists of conclusions of law to which no response is required. To the extent there are any factual allegations they are denied.

AFFIRMATIVE DEFENSES

Guarantor Parties assert the following defenses without assuming any burden of production or proof that it would not otherwise have.

FIRST DEFENSE

Cross-Plaintiff breached its obligations under the Escrow Agreement and Settlement Agreement by, among other things, frustrating Guarantor Parties' rights under the Escrow Agreement and Settlement Agreement and manufacturing alleged defaults when none existed.

SECOND DEFENSE

The Crossclaims fail, in whole or in part, to state a claim upon which relief may be granted.

THIRD DEFENSE

The claims in the Crossclaims are barred by the doctrine of *in pari delicto*.

FOURTH DEFENSE

The claims in the Crossclaims are barred by the doctrine of unclean hands.

FIFTH DEFENSE

The claims in the Crossclaims are barred based on the existence and/or provisions of the Escrow Agreement and/or the Settlement Agreement.

SIXTH DEFENSE

The claims in the Crossclaims are barred by estoppel and waiver.

COUNTERCLAIMS AGAINST CROSS-PLAINTIFF PARKVIEW FINANCIAL REIT, LP

Guarantor Parties by and through their undersigned counsel, bring these Counterclaims (the "Counterclaims") against Cross-Plaintiff ("Parkview") alleging, as follows:

THE PARTIES

1. Defendant-Counter-Plaintiff Alberto Smeke Saba is a citizen of the State of New York.

2. Defendant-Counter-Plaintiff Salomon Smeke Saba is a citizen of the State of New Jersey.

3. Defendant-Counter-Plaintiff CSC Hudson LLC is a Delaware limited liability company with an address located at 459 Columbus Avenue, Unit #1082, New York, New York 10024, whose sole member is CSC Holding, LLC, a Delaware limited liability company. The sole members of CSC Holding, LLC are Alberto Smeke Saba and Salomon Smeke Saba.

4. Upon information and belief, Plaintiff-Counter-Defendant Parkview is a Delaware limited partnership with an address located at 11440 San Vicente Boulevard, 2nd floor, Los Angeles, California 90049.

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the District of Delaware (this "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

7. This is a core proceeding pursuant to 28 U.S.C. § 157(B)(2). The statutory and legal predicates for the relief sought in these Counterclaims include 11 U.S.C. § 105 and Bankruptcy Rule 7001.

8. Guarantor Parties consent to entry of a final order or judgment by this Court in the Counterclaims.

FACTS

A. The Project and Incentive Agreement

9. Guarantor Parties are former affiliates of Hudson 1701/1706, LLC and Hudson 1702, LLC ("Debtors"), which are currently engaged in redeveloping the former Hudson Hotel on West 57th Street into a 399-unit residential property that includes approximately 55,000 square feet of commercial space pursuant to a ground lease from 356W58 Ground Lessor, LLC (the "Project").

10. In or around May of 2022, Debtors obtained a loan from Parkview in the principal amount of up to $207 million, guaranteed in part by Guarantor Parties.

11. The subject loan agreements required Parkview to disburse funds within ten days whenever Debtors submitted an appropriate draw request consistent with an agreed project budget. Contrary to what Parkview and Debtors would have this Court believe, the problems surrounding the Project which Parkview and Debtors now complain of were not caused by Guarantor Parties. The problems at the Project were caused by Parkview's: (i) own repeated bad faith refusals to fund proper draw requests, and (ii) inability to fund certain draws as Counter Defendant lacked the liquidity to make the related advances.[2] These failures created delays and derailed the required construction work for the Project.

12. The Project has a timeline and requires intricate coordination among many different non-parties, all of whom needed to be paid to complete their part of the Project. Parkview's failures to fund were material breaches of the loan agreements that led to the general contractor and subcontractors not being paid and filing liens; design professionals and attorneys not being paid and refusing to do further work; and many other critical aspects of the Project being brought to a halt. The breaches had cascading effects which continue to this day, including lost rent, work stoppages, liens, violations, fines, penalties, carry costs, additional interest, inability to secure permits, inability to obtain inspections, noncompliance with conditions of insurance coverage, inability to meet city agency requirements, and many other issues, all of which led to massive financial losses.

[2] This is, apparently, not an isolated incident for Parkview. The Court can take judicial notice of numerous pending cases where borrowers have challenged Parkview's lending practices. *See, e.g, In re: 1060 Nepperhan Ave LLC, et al.*, Case No. 25-22056-SHL (Bankr. S.D.N.Y.); *289-301 Washington LLC, v. Parkview Financial Reit, LP*, Case No. ESX-L-004427-24 (N.J. Super. Ct., Essex County Ct.).

13. Parkview's breaches hurt the building's thirty-six (36) Single Room Occupancy ("SRO") tenants, who complained about construction dust and debris left behind when work was halted, as well as interruptions to basic services when elevator maintenance contractors, plumbers, and other essential service providers could not be paid because Parkview failed to fund. The problems suffered by the SRO tenants, which were caused by Parkview's failures to fund, led directly to the New York City Department of Housing Preservation and Development denying a Certificate of No Harassment for the project and requiring that 28% of the units in the building be offered at below-market rents, causing millions of dollars of losses to the overall project.

14. After destroying Debtors' ability to succeed on the Project through its funding failures, Parkview took over the project by exercising its right to conduct a UCC sale of the collateral, however Parkview is not a developer and does not understand the intricacies involved in the Project. As a result, Parkview entered into an "Incentive Agreement" with Guarantor Parties, whereby Parkview agreed that it would pay Guarantor Parties incentive fees if they completed certain objectives within specified timeframes in furtherance of fixing the problems that Parkview had caused. Indeed, the operative section of this agreement is called "Escrow and Bonus Incentive Payments" (the "Incentive Agreement").

15. Since Parkview was obligated to pay the fees associated with the objectives pursuant to the Incentive Agreement, Guarantor Parties wanted to complete the Project, but could not do so due to Parkview's conduct. In fact, Guarantor Parties were entitled to a $12,500,000.00 fee following their satisfaction of the J-1 Incentive provision in section 3.3(a) of the Incentive Agreement (the "$12.5 Million J-1 Fee"), which provides, *inter alia*:

> "If the Borrower shall so submit such materials to the Department of Buildings and each other applicable agency on or prior to April 25, 2025 and thereafter diligently use such commercially reasonable efforts to achieve the J-1 Unit Zoning Conversion and if the Department of Buildings and each other applicable agency

> enter into applicable required documentation confirming the granting and effectiveness of the J-1 Unit Zoning conversion on or before May 30, 2025 (the "Outside J-1 Hurdle Date"), then the Guarantor, collectively, shall be deemed to have earned a fee in an amount equal to Twelve Million Five Hundred Thousand and no/100 Dollars ($12,500,000.00) (the "J-1 Incentive Payment") (it being understood and agreed that such fee shall not be payable if any of the non-SRO Units currently classified as "J-1 Units" is not subject to, or does not have the benefit of, the J-1 Unit Zoning Conversion)."

See Incentive Agreement, section 3.3(a).

16. On May 19, 2025, Guarantor Parties' counsel accurately informed Parkview's counsel that the requirements of Section 3.3(a) of the Incentive Agreement were achieved, entitling Guarantor Parties to the $12.5 Million J-1 Fee. Two days later, on May 21, 2025, Parkview's counsel responded, asserting—incorrectly—that not all of the necessary requirements had been satisfied, but that Parkview was willing to "deem" them satisfied and make the requisite $12.5 million payment if Guarantor Parties cleared three entirely new hurdles:

- Confirmation from JAM that all objections are closed and that the plans are approved to convert the J1 units to R2. This should include backup from the DOB and any confirmation from the plan examiner;
- The DOB plan examiner should provide a note stating that all objections are resolved; [and]
- We appreciate the email from HPD that was enclosed; however, we have not seen communication from David Knight [of the HPD] confirming the sufficiency of the materials submitted by Edwin Tang [project architect] to him on May 15, 2025. Please provide such confirmation from Mr. Knight.

17. On the same date, Guarantor Parties' counsel informed Parkview's counsel via e-mail that two of the three improperly-imposed new hurdles had been cleared and provided supporting documentation. The following day, Parkview's counsel acknowledged that the two foregoing "requirements" had, in fact, been satisfied.

18. On May 30, 2025, Guarantor Parties' counsel provided Parkview's counsel with documentation that the final purported additional requirement had been satisfied—namely that

HPD had confirmed the sufficiency of certain materials submitted by the Project's architect. Nearly a week later, on June 5, 2025, Parkview's counsel finally responded, purporting—without any justification—to rescind its earlier agreement to "deem" the conditions necessary for the $12.5 Million J-1 Fee satisfied if Guarantor Parties satisfied its newly-imposed supplemental requirements:

> "We expect that both CSC and MSP will point to our May 21 email, where we expressed a willingness to fund the J-1 Conversion Fee upon the satisfaction of certain conditions. For the avoidance of any doubt, that email does not modify the Financial Agreement in any respect and, in all events, Parkview is not willing to fund the J-1 Conversion Fee for CSC and MSP's benefit in light of the foregoing considerations, including CSC's breach of the Financial Agreement—except under the terms and conditions of the Financial Agreement."

19. Parkview refused to make the applicable payment notwithstanding the express terms of the Incentive Agreement and emails from counsel on behalf of Parkview confirming that payment would be made upon the satisfaction of new objectives.

20. Following Parkview's failure to fund amounts due and owing under the Incentive Agreement, Parkview unsuccessfully sought a mandatory injunction compelling Guarantor Parties to continue working pursuant to the Incentive Agreement and achieve the objectives, namely, that Guarantor Parties work to obtain signatures (the "Cure Signature") outside of their control and argued that Guarantor Parties had the right to commence arbitration in an effort to obtain payment of the $12.5 Million J-1 Fee.

B. The Cure Fee and Defaults

21. Promptly following the New York State Supreme Court ruling against Parkview's request for a mandatory injunction, Parkview, Guarantor Parties, and Debtors entered into the Settlement Agreement pursuant to which Guarantor Parties would obtain and provide the Cure

Signature and release same in exchange for $4,637,500.00 which is defined in section 2(c) of the Settlement Agreement as the Cure Fee (the "Cure Fee").

22. Because Parkview defaulted on its payment of the $12.5 Million J-1 Fee under the Incentive Agreement, and Guarantor Parties did not believe Parkview would fund the Cure Fee upon delivery of the Cure Signature, Guarantor Parties required Parkview to escrow the Cure Fee prior to obtaining and delivering the Cure Signature.

23. Parkview sought the Cure Signature in connection with a submission to the New York Housing Preservation Department ("HPD") to obtain a Cure Agreement (the "Cure Agreement") therefrom.

24. At the signing of the Escrow Agreement, the only action Debtors and Parkview had to take in order to obtain the Cure Agreement from HPD was to submit the pre-approved Cure Agreement along with the Cure Signature and other signatures in Parkview's control.

25. Upon confirmation that the Escrow Agent (as defined in the Settlement Agreement) was in receipt of the Cure Fee in escrow, Guarantor Parties executed the Settlement Agreement and related Escrow Agreement, and delivered the Cure Signature into escrow.

26. Because Parkview did not know if anything else would be required in connection obtaining the Cure Agreement, the Settlement Agreement required that Guarantor Parties include a holdback of $1,637,500.00 from the Cure Fee (the "Escrowed Portion") to assist Debtors and Parkview with respect to the submission.

27. To that end, the Settlement Agreement included the following cooperating provision in section 2(f):

> "Guarantors agree to cooperate, as reasonably requested by Administrative Agent or Lender, including, without limitation by executing and delivering such instruments or documents, and taking such other action, as the Administrative Agent or Lender may reasonably request, ***in connection with the transactions***

> ***contemplated by this Agreement*** including, without limitation, obtaining the Cure Approval and Lifting of the Stop Work Order and obtaining the J-1 Unit Zoning Conversion."

See Settlement Agreement, section 2(f). (emphasis added).

28. Due to Parkview's conduct throughout the course of the Project, Guarantor Parties feared that Parkview would continuously withhold submission of the Cure Agreement to HPD in an effort to prevent the Escrowed Portion from being released from escrow, and so Guarantor Parties capped the related time period for release of the Escrowed Portion to ninety (90) days.

29. Accordingly, section 2(d) of the Settlement Agreement provides:

> "…provided the Guarantors have not breached this Agreement as determined by a court of competent jurisdiction, the remainder of the Cure Delivery Fee [was to] be delivered to the Guarantors within five within five (5) business days of the earlier to occur of (x) receipt by Borrower of the Cure Approval and Lifting of the Stop Work Order and the New York City Department of Buildings (the "Department of Buildings") and each applicable agency, including the New York City Department of Buildings, granting all approvals, permits and licenses required to complete the construction and development of the Project, including, without limitation, giving effect to the J-1 Unit Zoning Conversion and (y) the date that is ninety (90) days after the Effective Date."

See Settlement Agreement, section 2(d).

30. Immediately following execution of the Settlement Agreement, Guarantor Parties worked with Parkview, Debtors, and their agents to ensure that Parkview and Debtors had everything they needed, including all plans, and etc. relating to the project.

31. On September 3, 2026, Guarantor Parties received an email from Parkview asking for certain information relating to the Project but not expressly covered by the Settlement Agreement or related to the transactions contemplated by the Settlement Agreement. Although not required, within twenty-four (24) hours, Guarantor Parties provided or otherwise advised as to where Parkview already had the information sought by Parkview.

32. Upon information and belief, Parkview and Debtors never submitted the approved Cure Agreement with the Cure Signature to HPD and never requested assistance from Guarantor Parties in connection with submitting the Cure Agreement to HPD.

33. It has been ninety (90) days since the effective date as provided for under the Settlement Agreement and there has been no determination by a court of competent jurisdiction that Guarantor Parties ever breached the Settlement Agreement or Escrow Agreement.

34. Given that prior to the ninety (90) day anniversary of the Settlement Agreement, no determination by a court of competent jurisdiction that Guarantor Parties ever breached the Settlement Agreement or Escrow Agreement was made, the amount in escrow is due and owing to Guarantor Parties.

35. Now Parkview and Debtors are attempting to use this Court as a guise to not release the Escrowed Portion and to claw back the prior payment made to Guarantor Parties. This is emblematic of the bad behavior Guarantor Parties attempted to protect against with the escrow requirements they had requested.

36. Debtors improperly insisted throughout the dispute that they are a Confirming Party as defined under the Escrow Agreement, and that as a result their chapter 11 estates have an interest in the Escrowed Portion, a position Parkview has also supported.

37. The Debtors and Parkview are mistaken. Only a "Party" to the Escrow Agreement can be a Confirming Party. While Debtors are signatories to the Escrow Agreement, because they are not entitled to the any of the escrowed funds, such agreement deliberately expressly defines the term "Party" and Debtors are not included in that definition. More specifically, the definition of "Party" provides:

> ". . . Alberto Smeke Saba and Salomon Smeke Saba, each a natural person (individually and collectively, as the context may require, and jointly and severally,

> 'Guarantor'; and together with Holdings, individually and collectively as the context may require, 'Guarantor Parties'), and FIRST AMERICAN TITLE INSURANCE COMPANY, as escrow agent *(the 'Escrow Agent'; and, together with each of Administrative Agent and the Guarantor Parties, each, a 'Party')."*

See Escrow Agreement, page 1. (emphasis added).

38. Despite this glaring and purposeful definition, Debtors and Parkview continue to argue to the contrary at every opportunity and have frustrated Guarantor Parties' rights to the Escrowed Portion.

C. The Negotiation Fees

39. Additionally, Guarantor Parties have the right to earn additional fees under the Settlement Agreement by negotiating reductions in amounts liened against the property subject to the Project.

40. Since the liened amounts were unknown, Guarantor Parties agreed not to force Parkview to escrow such amounts at the signing of the Settlement Agreement.

41. Section 3 of the Settlement Agreement provides:

> Guarantors shall have the right, on behalf of the Borrower, for a period of ninety (90) days after the Effective Date, to negotiate and settle amounts claimed as payable to third parties relating to the Property and set forth on Exhibit "D" hereto (the "Existing Obligations"). Provided Guarantors comply in full with their obligations hereunder, including, without limitation, complying with the obligations set forth in Section 2 of this Agreement, then within ten (10) business days following the expiration of such ninety (90)-day period, fifty percent (50%) of agreed reductions in the Existing Obligations, as evidenced by binding settlement agreements releasing the applicable claims or liens, and removing the liens, if applicable, in form and substance reasonably acceptable to the Administrative Agent and, with respect to the removal of liens, the Title Insurer, executed and delivered by the applicable claimants on or prior to the expiration of such ninety (90)-day period, will be paid to Guarantors. For the avoidance of doubt, the Parties acknowledge and agree that the total amount of the Existing Obligations is the amounts listed in the column titled "Lien Amount" on the table included in Exhibit "D" and that reductions in the Existing Obligations shall be measured against such aggregate number (for the avoidance of doubt, no amounts listed in the column titled "Draw 3&5 Balance" on the table included as Exhibit "D" shall be included in such Existing Obligations.

See Settlement Agreement, section 3.

42. Because the form of lien releases were subject to reasonable review and approval by Parkview, following the effective date of the Settlement Agreement, Guarantor Parties, through counsel requested a form of lien release from Parkview and Debtors.

43. Despite repeated requests, both verbally and via email, Parkview and Debtors refused to provide the applicable release forms requested by Guarantor Parties.

44. Notwithstanding the foregoing, Guarantor Parties worked directly with Parkview, Debtors and their agent to negotiate settlement agreements and resolve the liens of Dolcinium, Nouveau Elevators, Gilbar, and AES, with initial savings estimated in the aggregate amount of $714,325.00, which meant that $357,162.50 became due and owing to Guarantor Parties pursuant to section 3 of the Settlement Agreement (the "<u>Initial Lienor Agreements</u>"). This would result in multiple attempts by Guarantor Parties to obtain copies of the related settlement agreements, over an approximate forty-five (45) day period, where Parkview and Debtors refused to provide copies of same. To date, Parkview has neither paid the related amounts due to Guarantor Parties nor provided copies of the Initial Lienor Agreements.

45. Although Parkview did not have the right to dictate financial terms of the potential settlement agreements with certain of the parties with liens on the Project property, Parkview, consistently attempted to condition their approval of the lien waiver on changes to the financial terms.

46. Notwithstanding Guarantor Parties' contractual rights to settle liens placed on the Project property and their entitlement to fees based on their success, when Guarantor Parties had verbal commitment from Elysium to resolve its lien in the amount of $5,028,110.00, on or around September 11, 2025, Guarantor Parties were directed by Abe Kohn on behalf of Parkview to hold

off on drafting any settlement documents since Parkview was discussing this matter with Debtors' former bankruptcy counsel, DLA Piper.

47. Guarantor Parties now understand that such direction was another delay tactic by Parkview and Debtors to avoid making any of the payments under the Settlement Agreement that Guarantor Parties were entitled to.

48. Ultimately, at cost and expense to Guarantor Parties, they executed a settlement agreement with Elysium on payment terms provided by Parkview, subject to Parkview, Debtors, and this Court's approval in the amount of $200,000.00, resulting in $2,414,055.00 due and owing to Guarantor Parties per section 3 of the Settlement Agreement (the "Elysium Agreement").

49. On October 30, 2025, Guarantor Parties, via counsel, sent a copy of the Elysium Agreement to DLA Piper for approval by Parkview and Debtors as DLA Piper represented both of these parties at the time.

50. Additionally, Guarantor Parties executed a second settlement agreement resolving the lien of Gardiner & Theobald Inc. ("G&T"), a Delaware corporation, on payment terms provided by Parkview, subject to Parkview, Debtors, and this Court's approval in the amount of $200,000.00, resulting in $164,000.00 due and owing to Guarantor Parties (the "G&T Agreement").

51. On October 30, 2025, Guarantor Parties, via counsel, sent a copy of the G&T Agreement to DLA Piper for approval by Parkview and Debtors.

52. On October 31, 2025, Guarantor Parties, via counsel, sent a copy of the G&T Agreement to DLA Piper for approval by Parkview and Debtors.

53. On November 3, 2025, Guarantor Parties learned that Hogan Lovells began representing Parkview in connection with the Settlement Agreement and forwarded the Elysium Agreement and the G&T Agreement to them for Parkview review and approve.

54. On November 4, 2025, Guarantor Parties sent the Elysium Agreement and the G&T Agreement directly to Paul Rahimian, the CEO of Parkview, and Ted Jung the Chief Credit officer of Parkview for review and approval.

55. On November 6, 2025 and November 13, 2025, Guarantor Parties, via counsel, followed up with Hogan Lovells for approval on the agreements.

56. On November 13, 2025, Hogan Lovells relayed that they were reviewing the agreements with counsel for the Parkview and Debtors.

57. On December 12, 2025, Guarantor Parties, via counsel, followed up with Hogan Lovells for approval on the agreements.

58. To date, Guarantor Parties have not received a response from Parkview or Debtors as to the agreements with Elysium or G&T.

59. Parkview and Debtors' delay tactics and refusal to respond to Guarantor Parties have frustrated Guarantor Parties' rights under the Settlement Agreement and they are accordingly in breach of the Settlement Agreement. As such, due to procuring the Initial Lienor Agreements, the Elysium Agreement, and the G&T Agreement and their entitlements to the Escrowed Portion, Guarantor Parties maintain that no less than $4,222,717.50 remains due and owing pursuant to the Settlement Agreement, and Escrow Agreement (the "<u>Contracts</u>").

<u>COUNTERCLAIM COUNT I – BREACH OF CONTRACT</u>

60. Guarantor Parties re-allege and incorporate paragraphs 1 to 59 of the Counterclaims as if fully set forth herein.

61. Pursuant to Section 2(c) of the Settlement Agreement, Parkview was obligated to deposit $4,637,600 in Escrow, which was to be released to Guarantor Parties upon satisfaction of their obligations under the Settlement Agreement.

62. Pursuant to Section 3 of the Settlement Agreement, Guarantor Parties had the right to negotiate settlements to resolve the liens on the property and receive 50% of negotiated savings as set forth above.

63. Guarantor Parties fully performed their obligations under the Settlement Agreement.

64. Guarantor Parties also negotiated settlements of outstanding liens as set forth above entitling them to compensation under section 3 of the Settlement Agreement in the amount of 50% of negotiated savings.

65. Parkview deposited $4,637,600 in Escrow and authorized the release of $3,000,000 to the Guarantor Parties. However, despite Guarantor Parties' proper demand that the balance of escrowed funds be released, Parkview wrongfully disputed the release of the balance of $1,637,600 from the escrowed funds.

66. Parkview breached the Settlement Agreement by failing and refusing to pay the Guarantor Parties the fees to which they are entitled under Section 3 of the Settlement Agreement as set forth above and by wrongfully disputing the release of the balance of the escrowed funds to which Guarantor Parties are entitled under the Section 2 of Settlement Agreement.

67. As a direct and proximate result of Parkview's breaches of the Settlement Agreement, Guarantor Parties have suffered damages of no less than the following: i) the Escrowed Portion required to be turned over to Guarantor Parties pursuant to section 4(d)(i) of the Escrow Agreement, and ii) the negotiation fees as provided for in section 3 of the Settlement Agreement

with regard to Guarantor Parties' procurement of the Initial Lienor Agreements, the Elysium Agreement, and the G&T Agreement, all which totals an aggregate amount of no less than $4,222,717.50, plus costs, and attorneys' fees.

COUNTERCLAIM II – BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

68. Guarantor Parties re-allege and incorporate paragraphs 1 to 67 of the Counterclaims as if fully set forth herein.

69. The Contracts constitute valid and enforceable contracts between Guarantor Parties, Parkview, and Debtors.

70. Under New York law, the implied covenant of good faith and fair dealing is a part of every contract, as long as an express provision of the contract has been breached.

71. Parkview has breached the Contracts by unjustifiably refusing to turnover Guarantor Parties' entitled compensation for having met its milestones and goals, and for supporting Debtors' incorrect assertion that they are a Confirming Party under the Escrow Agreement, which has caused further frustrations of Guarantor Parties' rights.

72. Parkview breached the Contracts by acting in bad faith, and with malice, in accusing Guarantor Parties of defaulting under Contracts when no such defaults exist, supporting the Debtors' clearly erroneous position that they are a Confirming Party resulting in the frustration of Guarantor Parties rights as to the Escrowed Portion, and further refusing to compensate Guarantor Parties for their procurement of the Initial Lienor Agreements, the Elysium Agreement, and the G&T Agreement.

73. The actions of Parkview caused damages to Guarantor Parties.

PRAYER FOR RELIEF

WHEREFORE, Guarantor Parties respectfully request that the Court: i) as to Counts I and II of the Counterclaims, order Parkview to pay damages to Guarantor Parties in the amount of no less than $4,222,717.50, plus costs, and attorneys' fees in an amount to be proven at trial, ii) dismiss the Crossclaims with prejudice, and iii) for such other and further relief as this Court deems necessary and just.

Dated: February 24, 2026

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