IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

STEPHEN N. FOX & NORA FOX JTWROS, individually and on behalf of all others similarly situated,	§	
Plaintiffs,	§	
v.	§	**Civil Action No. 4:20-cv-00150-O**
UNITED DEVELOPMENT FUNDING III, L.P., UMT SERVICES, INC., UMTH GENERAL SERVICES, L.P., UMTH LAND DEVELOPMENT, L.P., UMT HOLDINGS, L.P., HOLLIS M. GREENLAW, TODD ETTER, CARA D. OBERT, and BEN L. WISSINK,	§	
Defendants.	§	

ORDER

Before the Court is the Unopposed Motion for Judgment Based on ADR Settlement (ECF No. 148), filed January 5, 2021. Having considered the Motion, the Court finds it should be **GRANTED.**

Lead Plaintiffs Stephen N. Fox and Nora Fox, JTWROS ("Lead Plaintiffs"), on behalf of themselves and the Class, and (b) defendants United Development Funding III, L.P. ("UDF III"), UMT Services, Inc., UMTH General Services, L.P., UMTH Land Development, L.P., UMT Holdings, L.P. (together, the "UDF Entity Defendants"), Hollis M. Greenlaw, Todd Etter, Cara D. Obert, and Ben L. Wissink (collectively, and together with the UDF Entity Defendants, the "Defendants" and, together with Lead Plaintiffs, the "Parties") have determined to settle all claims asserted against Defendants in this Action with prejudice on the terms and conditions set

forth in the Stipulation and Agreement of Settlement dated January 5, 2021 (the "Stipulation"), subject to the approval of this Court (the "Settlement").

Unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

IT IS HEREBY ORDERED:

1. Proposed Class Certification for Settlement Purposes – The Parties have proposed the certification of the following Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and solely for purposes of effectuating the proposed Settlement: all Persons who or which purchased units of limited partnership interest in UDF III pursuant to the DRIP between November 21, 2013 and November 21, 2018, inclusive (the "Class Period"), and allegedly were damaged thereby. Excluded from the Settlement Class are (i) Defendants, their officers and directors as applicable, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest; and (ii) those Persons who are found by the Court to have timely and validly requested exclusion from the Settlement Class.

2. Class Findings – Solely for purposes of the proposed Settlement of the Action, the Court finds, pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure, that it will likely be able to certify the Settlement Class for purposes of the proposed Settlement. Specifically, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met or will likely be met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiffs in the Action are

typical of the claims of the Settlement Class; (d) Lead Plaintiffs and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

3. The Court also finds, solely for purposes of the proposed Settlement of the Action and pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure, that it will likely be able to certify Lead Plaintiffs as class representatives for the Settlement Class and appoint Lead Counsel as class counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

4. Preliminary Approval of the Settlement – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, and finds, pursuant to Rule 23(e)(1)(B)(i) of the Federal Rules of Civil Procedure, that it will likely be able to finally approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the Class, subject to further consideration at the Settlement Fairness Hearing to be conducted as described below.

5. Settlement Fairness Hearing – The Court will hold a settlement hearing (the "Settlement Fairness Hearing") on Tuesday May 13, 2021 at 9:00am at the United States District Courthouse, 501 West 10th Street, 2nd Floor, Fort Worth, TX 76102-3673, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (b) to determine whether, for purposes of the proposed Settlement only, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiffs should be certified as class representatives for the Settlement Class, and Lead Counsel should be appointed as class counsel for the Settlement Class; (c) to determine whether a

Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered, dismissing the Action with prejudice against Defendants; (d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Fairness Hearing shall be given to Settlement Class Members as set forth in paragraph 7 of this Order.

6. The Court may adjourn the Settlement Fairness Hearing without further notice to the Class, and may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

7. Retention of Claims Administrator and Manner of Giving Notice – Lead Counsel is hereby authorized to retain Strategic Claims Services (the "Claims Administrator") to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as more fully set forth below. Notice of the Settlement and the Settlement Fairness Hearing shall be given by Lead Counsel as follows:

(a) within ten (10) business days of the date of entry of this Order, Defendants shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel, or the Claims Administrator) a list of persons identified as potential Settlement Class Members based upon the records available to the Defendants, which list shall include known contact information for each Settlement Class Member including name, mailing address, email address if any and information concerning the number and dates of DRIP units acquired during the Class Period;

(b) not later than thirty (30) business days after the date of entry of this Order (the "Notice Date"), the Claims Administrator shall mail both the Notice and the Proof of Claim / Statement of Eligible Units form in the forms attached as Exhibits A-1 and A-2, respectively, to the Stipulation of Settlement;

(c) not later than seven (7) calendar days prior to the Settlement Fairness Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

8. Approval of Form and Content of Notice – The Court (a) approves, as to form and content, the Notice and the Proof of Claim / Statement of Eligible Units Form attached to the Stipulation of Settlement as Exhibit A-1 and A-2 and (b) finds that the mailing of the Notice and the Proof of Claim / Statement of Eligible Units Form in the manner and form set forth in paragraph 7 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, of their right to object to the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Fairness Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Settlement Fairness Hearing shall be included in the Notice before it is mailed.

9. Participation in the Settlement – Settlement Class Members who wish to participate in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund will be deemed to have agreed with the number of shares indicated on the Proof of Claim / Statement of Eligible Units Form if they take no steps to object or opt-out (exclude themselves) from the Settlement. Proof of Claim / Statement of Eligible Units Forms will be deemed complete and submitted by those Settlement Class Members who do not object or opt-out on or before the date twenty-one (21) calendar days prior to the Settlement Fairness Hearing. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim and the subject matter of the Settlement.

10. Each Proof of Claim / Statement of Eligible Units form must appear substantially in the form attached to the Stipulation as Exhibit A-2 and include the number of units purchased by the Settlement Class Member during the Settlement Class Period pursuant to the UDF III DRIP program. Any Settlement Class Member who or which does not object to the Proof of Claim / Statement of Eligible Units from will be deemed to have indicated his, her or its intention to become a Claimant and to have waived any objection to the number eligible shares attributed to such Settlement Class Member for purposes of determination of his, her or its share of the Net Settlement Fund.

11. Any Settlement Class Member who or which does not opt out of the Settlement in the manner set forth below will be deemed to have indicated his, her or its intention to become a Claimant.

12. Exclusion From the Settlement Class – Any member of the Settlement Class who wishes to exclude himself, herself, or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received no later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing, to: United Development Funding III DRIP Litigation, c/o Strategic Claims Services, 600 N. Jackson St., Suite 205, P.O. Box 230, Media, PA 19063, and (b) each request for exclusion must (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Class in the UDF III DRIP Litigation"; (iii) be signed by the person or entity requesting exclusion or an authorized representative of such person or entity. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court.

13. Any person or entity who or which timely and validly requests exclusion from the Settlement Class in compliance with the terms stated in this Order and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or judgments in the Action, and shall not receive any payment out of the Net Settlement Fund.

14. Each Defendant shall have, in his, her or its sole and absolute discretion, the option to terminate the Settlement in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in the Defendants' supplemental agreement with Plaintiffs (the "Supplemental Agreement"), in accordance with the

terms of that agreement. The Supplemental Agreement shall be filed under seal with the Court, or in redacted format as the Court directs, and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between Plaintiffs and the Defendants concerning its interpretation or application, in which event the Parties shall submit the Supplemental Agreement to the Court *in camera* and request that the Court afford it confidential treatment.

15. Lead Counsel may seek retraction of any request for exclusion at any time prior to the Settlement Hearing. Any such retraction must be in writing and signed by the person or entity seeking to retract his, her or its request for exclusion, or an authorized representative. Not later than seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court a listing of all persons or entities who or which timely and validly requested exclusion from one or both of the Settlement Classes (and who have not retracted such request), which listing shall: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; and (ii) state number of UDF III units of limited partnership interest that the person or entity requesting exclusion purchased pursuant to the DRIP during the Settlement Class Period..

16. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and Settlement and all proceedings,

determinations, orders, and judgments in the Action, including, but not limited to, the Judgment and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining, or prosecuting any of the Plaintiffs' Released Claims against any of the Defendants' Released Persons, as more fully described in the Stipulation and Notice.

17. Appearance and Objections at Settlement Fairness Hearing – Any Settlement Class Member who or which does not request exclusion from the Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to both Lead Counsel and Defendants' Counsel, at the addresses set forth below, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Lead Counsel.

18. Any Settlement Class Member who or which does not request exclusion from the Settlement Class may file a written objection to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and appear and show cause, if he, she, or it has any cause, why the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses should not be approved; provided, however, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation, and/or the motion for attorneys' fees and reimbursement of Litigation Expenses unless that person or entity has filed a written objection with the Court and served copies of such objection on Lead Counsel and

Defendants' Counsel at the addresses set forth below such that they are received no later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing.

Lead Counsel:	Wolf Haldenstein Adler Freeman & Herz LLP Attn: Matthew M. Guiney 270 Madison Avenue New York, New York 10016 Telephone: (212) 545-4600 Email: guiney@whafh.com
Defendants' Counsel:	K&L Gates LLP Attn: Paul J. Walsen 70 West Madison Street, Suite 3300 Chicago, Illinois 60602-4207 Telephone: (312) 372-1121 Facsimile: (312) 827-8000 Email: paul.walsen@klgates.com (*Counsel for the UDF Entity Defendants*) Burleson, Pate & Gibson LLP Attn: Michael P. Gibson 900 Jackson Street, Suite 330 Dallas, Texas 75202 Telephone: (214) 871-4900 Facsimile: (214) 871-7543 Email: mgibson@bp-g.com (*Counsel for Hollis M. Greenlaw*) Law Offices of Michael J. Uhl Attn: Michael J. Uhl 500 North Akard Street, Suite 2150 Dallas, Texas 75201 Telephone: (214) 237-0900 Email: mike@mikeuhllaw.com and Law Offices of R. Ritch Roberts Attn: R. Ritch Roberts 500 North Akard Street, Suite 2150 Telephone: (214) 237-0900 Email: roberts@rrobertslaw.com (*Counsel for Todd Etter*) Jones Day Attn: Evan P. Singer 2727 North Harwood Street

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Facsimile: (800) 404-3970
Email: matthew.nielsen@bracewell.com
(*Counsel for Ben L. Wissink*)

19. Any objections, filings, and other submissions by the Settlement Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must state with specificity the grounds for the Settlement Class Member's objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (c) must include documents sufficient to prove membership in the Class. Objectors who enter an appearance and desire to present evidence at the Settlement Fairness Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

20. Any Settlement Class Member who or which does not make his, her, or its objection in the manner provided herein may be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or

adequacy of the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

21. Stay and Temporary Injunction – Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Lead Plaintiff, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Plaintiffs' Released Claims against each and all of the Defendants' Released Persons.

22. Settlement Administration Fees and Expenses – All reasonable costs incurred in identifying Settlement Class Members and notifying them of the Settlement as well as in administering the Settlement shall be paid as set forth in the Stipulation without further order of the Court.

23. Settlement Fund – The contents of the Settlement Fund held by Signature Bank (which the Court approves as the Escrow Agent) shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

24. Taxes – Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

25. Termination of Settlement – If the Settlement is terminated as provided in the Stipulation, the Settlement is not approved, or the Effective Date of the Settlement otherwise fails to occur, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of Lead Plaintiffs, the other Class Members, and Defendants, and the Parties shall revert to their respective positions in the Action as of the date immediately prior to the execution of the Stipulation, as provided in the Stipulation.

26. Use of this Order – Neither this Order, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall be offered against any of the Defendants' Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Released Persons with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Released Persons or in any way referred to for any other reason as against any of the Defendants' Released Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall be offered against any of the Plaintiffs' Released Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by

any of the Plaintiffs' Released Persons that any of their claims are without merit, that any of the Defendants' Released Persons had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Released Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; provided, however, that if the Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement.

25. Supporting Papers – Lead Counsel shall file and serve the opening papers in support of the proposed Settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses no later than thirty-five (35) calendar days prior to the Settlement Fairness Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

26. Jurisdiction – The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED on this **25th day** of **January, 2021.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE