

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: ONH AFC CS INVESTORS, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 (Subchapter V) Case No. 23-10931 (CTG) (Jointly Administered)
ANNA PHILLIPS, in her capacity as the Liquidating Trustee of the ONH Liquidating Trust, Plaintiff, v. JOSMIC 2 LLC and JOSMIC HOLDINGS LLC, Defendants.	Adv. Proc. No. XX-XXXX

**COMPLAINT TO AVOID AND RECOVER TRANSFERS UNDER
11 U.S.C. §§ 544, 548, 550 OF THE BANKRUPTCY CODE AND
APPLICABLE STATE LAW, AND OTHER RELATED OR ALTERNATIVE RELIEF**

Anna Phillips, in her capacity as the Liquidating Trustee (the “Trustee”) of the ONH Liquidating Trust, commences this adversary proceeding against JOSMIC 2 LLC and JOSMIC Holdings LLC (the “Defendants”), for the relief requested below, based upon the following set of facts:

NATURE OF THE PROCEEDING

1. The Trustee seeks entry of a judgment against the Defendants: (i) avoiding Fraudulent Transfers (as defined herein) pursuant to Sections 544(b) and 548(a) of the Bankruptcy Code and applicable state law, and related subsequent transfers under Section 550 of the

¹ The last four digits of the Debtors’ federal tax identification numbers are 1199 (ONH AFC CS Investors LLC) and 6326 (ONH 1601 CS Investors LLC). The Debtors’ mailing address is 3445 Peachtree Road, Suite 1225 Atlanta, GA 30326.

Bankruptcy Code; (ii) directing the Defendants and/or any other defendant determined to be an initial, subsequent or mediate transferee, or party for whose benefit the avoided transfers were made, to pay the Trustee an amount to be determined that is not less than the amount of the Fraudulent Transfers, plus interest and costs, pursuant to Section 550(a) of the Bankruptcy Code; and (iii) as alternative relief to the fraudulent transfer claims, awarding the Trustee damages for the Defendants' unjust enrichment.

JURISDICTION AND VENUE

2. This adversary proceeding relates to the Chapter 11 cases of ONH AFC CS Investors, LLC ("ONH AFC CS") and ONH 1601 CS Investors, LLC ("ONH 1601 CS") and collectively with ONH AFC CS, the "Debtors"), which cases are pending post-confirmation before the United States Bankruptcy Court for the District of Delaware (the "Court") and are being jointly administered under Case No. 23-10931 (collectively, the "Bankruptcy Cases"). The Court confirmed the Debtors' Joint Plan of Liquidation on December 14, 2023 (Doc. No. 214 in the Bankruptcy Cases).

3. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b).

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).

5. Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

6. The Trustee consents to entry of final orders and judgments by the Court in this adversary proceeding, regardless of whether it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

7. On July 14, 2023, (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code and elected to proceed under Subchapter V of the Bankruptcy Code (Doc. No. 1 in the Bankruptcy Cases).

8. Additional factual background relating to the Debtors’ businesses and the commencement of the Bankruptcy Cases is set forth in detail in the *Declaration of Eric Lee in Support of Chapter 11 Petitions and First Day Motions* (Doc. No. 2 in the Bankruptcy Cases). Factual background more specific to this complaint is set forth below.

9. This adversary proceeding is part of the Trustee’s continuing obligation to recover assets for the benefit of the Debtors’ respective bankruptcy estates.

10. Specifically, this adversary proceeding relates to ONH AFC CS’s bankruptcy estate.

PARTIES

11. ONH AFC CS was a Delaware limited liability company. At the time of the Fraudulent Transfers (defined below), ONH AFC CS’s principal place of business was 1430 Broadway, Suite 1605, New York, New York 10018.

12. At the time of the Fraudulent Transfers (defined below), One Night Holdings LLC’s (“One Night Holdings”) principal place of business was 1430 Broadway, Suite 1605, New York, New York 10018. One Night Holdings was a limited liability company formed in Delaware.

13. Anna Phillips is the Liquidating Trustee (“Trustee”) of the ONH Liquidating Trust (“ONH Trust”).

14. The ONH Trust is the successor in interest to ONH AFC CS's claims and causes of action under the *Amended Small Business Debtors' Plan of Liquidation* (Doc. No. 202-1 in the Bankruptcy Cases) (the "Plan") confirmed by the Bankruptcy Court by an order entered December 14, 2023 (Doc. No. 214 in the Bankruptcy Cases) (the "Confirmation Order"). Under the Plan and Confirmation Order, certain investors assigned to the Trust their claims and causes of action related to the Debtors.

15. Upon information and belief, JOSMIC 2 LLC is a New York limited liability company, having an address of 4121 Avenue T, Brooklyn, New York 11234, and was formed on January 5, 2022.

16. Upon information and belief, JOSMIC Holdings LLC is a New York limited liability company, having an address of 4121 Avenue T, Brooklyn, New York 11234, and was formed on February 8, 2022.

**FACTUAL BACKGROUND RELATED
TO ONH AFC CS AND THE BANKRUPTCY CASES**

17. ONH AFC CS was formed to raise equity from third parties by representing that the money was for the purposes of investing indirectly in property holding companies that would own commercial real estate in Atlanta, Georgia.

18. ONH AFC CS's limited liability company agreement (the "ONH AFC CS Operating Agreement") provided for the governance of ONH AFC CS's affairs, the conduct of its business, and the relations among its members.²

² Section 12.3(a) of the ONH AFC CS Operating Agreement also stated: "The Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in their immediate possession or control. The Company's funds shall not be commingled with the funds of any other Person and the Manager shall not use, or permit use of, the Company's funds in any manner except for the benefit of the Company."

19. Mr. Elchonon (also known as “Elie”) Schwartz formed ONH AFC CS in 2022. Before and concurrent with the events described herein, Mr. Schwartz formed and operated several companies (collectively, the “Nightingale Group”) that invested in commercial real estate and were organized under either One Night Holdings LLC or The Nightingale Group, LLC together with One Night Holdings and their affiliates, collectively, “Nightingale”).

20. ONH AFC CS was created to raise equity from investors to fund, in part, the purchase of the Atlanta Financial Center, a large commercial real estate complex in Atlanta, Georgia, located at 3333 Peachtree Road NE, 3343 Peachtree Road NE, and 3353 Peachtree Road NE (the “Atlanta Financial Center”). Based on documents provided to investors, Mr. Schwartz stated that he intended that ONH AFC CS would enter into a series of transactions that, together with other entities, would establish a capital structure for an anticipated transaction involving the purchase of the Atlanta Financial Center.³ Mr. Schwartz stated that these transactions were to occur when all of the capital providers and entities raised their portion of capital for the overall transaction.

21. Mr. Schwartz, through the Debtors and other affiliates, informed potential investors that ONH AFC LLC (“Prop. Co.”), a similarly named legal entity, planned to purchase and renovate the Atlanta Financial Center using money raised from the following sources: (1) equity from investors whom ONH AFC CS solicited through a capital raising platform owned and operated CrowdStreet, Inc. (“CrowdStreet”); (2) equity from other investors; (3) equity from Nightingale entities; and (4) senior secured indebtedness.

22. At the time of the Offerings (defined below), ONH AFC CS’s manager was One Night Holdings.

³ The anticipated capital structure provided to investors will be explained in greater detail below.

23. Upon information and belief, One Night Holdings' manager was Mr. Schwartz.

24. ONH AFC CS planned to raise funds from accredited investors solicited using the CrowdStreet investor platform, which qualified as a private placement under Regulation D of the Securities Act of 1933.

A. The CrowdStreet Platform Arrangement

25. To begin raising equity for the Offerings (defined below), a Nightingale entity signed a marketplace services agreement with CrowdStreet (the "MSA") to access its community of accredited investors who invest using CrowdStreet's services.

26. Pursuant to the MSA, Nightingale entities would then execute additional term sheets related to specific project offerings—such as for the Atlanta Financial Center (the "CrowdStreet Term Sheet").

27. The CrowdStreet Term Sheet referred to the project offering as being categorized under "Specific Project Offerings," which limited the use of proceeds to only certain pre-identified and selected properties which were readily identifiable. CrowdStreet Term Sheet, n. 1.

28. The MSA required that all funds raised from investors be held in a segregated account until the closing of the Atlanta Financial Center project. Section 5.3 of the MSA provides:

[Nightingale] agree[s] to establish a separate bank account or escrow account for each Project Offering and to provide funding instructions to investors through the Management Console. [Nightingale] shall deposit all User contributions, funds, or subscriptions into the bank account or escrow account you establish and hold it or have it held in trust until the closing of each Project Offering. If a Project Offering fails to close for any reason, [Nightingale] agree[s] to return investor contributions in full and promptly but no later than thirty (30) calendar days following failure of the Project Offering to close.

MSA, § 5.3.

B. The Subscription Process for ONH AFC CS

29. Nightingale proceeded to obtain third-party investments through an offering for ONH AFC CS (the “AFC Offering”) placed on CrowdStreet’s website, which is known as the CrowdStreet Marketplace.

30. Upon information and belief, on or about April 25, 2022, Mr. Schwartz caused ONH AFC CS to be formed in Delaware.

31. Nightingale launched the AFC Offering on the CrowdStreet Marketplace on or about May 26, 2022.

32. Accredited investors could then review AFC Offering materials, learn more about the Atlanta Financial Center proposed transaction, and complete their investment documents through the CrowdStreet Marketplace.

33. In connection with the AFC Offering, a private placement memorandum (the “Atlanta Financial Center PPM” or “PPM”) outlined the terms of the investment and conditioned the use of the funds raised only upon closing the purchase of the property.

34. Specifically, the Atlanta Financial Center PPM stated: “The proceeds from this Offering will be used to purchase, lease, reposition, and extensively renovate [the Atlanta Financial Center].” PPM, p.8.

35. The PPM also stated that: “If the Manager elects not to close on the Property for any reason by September 11, 2022, subscription funds from potential Investors will be returned.” PPM, p. 8.

36. Accredited investors who opted to invest in response to the AFC Offering were required to execute subscription agreements (the “Subscription Agreement”) governing their

investments to fund the purchase, leasing, reposition, and renovation of the Atlanta Financial Center.

37. Furthermore, the Subscription Agreement provided: “The Company will use any proceeds from this Offering, net of any organizational and offering expenses, to fund through its direct or indirect subsidiaries” the Atlanta Financial Center “Managed by One Night Holdings LLC.” Subscription Agreement, p. 1.

38. The Subscription Agreement, PPM, and MSA each made clear that investors’ subscription money would only be used on or after the closing of the purchase of the Atlanta Financial Center and, if not so utilized, returned to investors.

39. The Subscription Agreement directed investments of capital to be deposited into ONH AFC CS’s bank account, which was controlled by Mr. Schwartz on behalf of ONH AFC CS.

40. ONH AFC CS raised approximately \$44 million (net of refunds) through the AFC Offering from 654 investors for the Atlanta Financial Center project.

41. The ONH AFC CS Operating Agreement required that ONH AFC CS only use the funds for its own “benefit” and not for the benefit of others. Specifically, Section 12.3 of the Operating Agreement provided: “[t]he Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in their immediate possession or control. The Company’s funds shall not be commingled with the funds of any other Person and the Manager shall not use, or permit use of, the Company’s funds in any manner except for the benefit of the Company.”

C. The AFC Proposed Transaction

42. On May 3, 2022, Prop. Co. entered into a purchase agreement with USPO Atlanta LLC for the acquisition of the Atlanta Financial Center (the “AFC Sale Contract”).

43. Upon information and belief, Mr. Schwartz intended that Prop. Co. would arrange senior secured debt financing in connection with that purchase. Atlanta Financial Center PPM, p. 8.

44. Upon information and belief, upon the closing of the AFC Sale Contract, Mr. Schwartz intended that ONH AFC CS would enter into certain transactions and use the solicited funds to acquire an interest as one of two members of an entity called ONH AFC CS Mezz, LLC, a Delaware limited liability company (“AFC Mezz”), and AFC Mezz would acquire the interest in Prop. Co. Atlanta Financial Center. PPM, pp. 7-8.

45. But, at no time did ONH AFC CS execute any contract that contained, or otherwise obtain, a legal right to any interest in any property (including the Atlanta Financial Center or otherwise).

46. And, at no time did ONH AFC CS acquire any of the membership interests (or right to them) as provided in the equity raise documents or contemplated deal structure.

47. From the start of the subscription process until just before the Bankruptcy Cases, Nightingale Group published notes to investors through CrowdStreet Marketplace providing updates on the Atlanta Financial Center project, including issues and difficulties encountered in closing the purchase of the property.

48. Despite never executing contracts for the purchase of assets and despite the project never closing, the Debtors caused certain Fraudulent Transfers (defined below) to be made from the funds deposited by investors.

49. After several communications to investors regarding the status of the Atlanta Financial Center transaction, on May 31, 2023, investors received an update from CrowdStreet detailing further developments on the Atlanta Financial Center, and requesting investor action to appoint a new, independent manager for ONH AFC CS.

50. Upon information and belief, ONH AFC CS and Mr. Schwartz made untrue statements of fact and/or omitted statements of material facts to investors in connection with the AFC Offering, including, without limitation, facts concerning Nightingale's financial wherewithal, Mr. Schwartz's intended use of the funds from the Offering, and his assignment of the AFC Sale Contract to a third party in order to finance the downpayment, among many other things.

D. Independent Manager

51. Ms. Anna Phillips was appointed by an overwhelming majority of the investors as independent manager of ONH AFC CS, effective June 7, 2023 (in this capacity, the "Independent Manager"). At the same time, Mr. Schwartz (as manager of One Night Holdings) resigned as manager of ONH AFC CS.

52. Ms. Phillips immediately began an independent investigation into the location and use of ONH AFC CS's assets and the funds raised through the CrowdStreet Marketplace.

53. Ms. Phillips learned that almost all of ONH AFC CS's funds had been withdrawn from bank accounts in the name of ONH AFC CS and dissipated prior to her appointment as Independent Manager.

54. Several weeks later, on July 14, 2023, the Debtors filed the Bankruptcy Cases.

55. After the appointment of the Independent Manager and during the Bankruptcy Cases, the Debtors investigated how the Debtors' funds were dissipated; conducted diligence; and

negotiated settlements and other resolutions with Mr. Schwartz, other entities held closely by Mr. Schwartz, and the Nightingale Group.

56. Through the Bankruptcy Cases, the Debtors confirmed the Plan, and the ONH Trust was formed to pursue claims and causes of action on behalf of the Debtors.

57. On October 12, 2023, the Independent Manager filed a Notice of Settlement attaching a Settlement and Conditional Release Agreement documenting the terms of a settlement reached between the Debtors, Mr. Schwartz, and entities and trusts related to Mr. Schwartz (Doc. No./ 148 in the Bankruptcy Cases) (the “Schwartz Nightingale Settlement”). Among the claims settled in the Schwartz Nightingale Settlement were the Debtor’s potential claims against Mr. Schwartz and the Schwartz Nightingale Parties “under section 544 of the Bankruptcy Code or otherwise.”

58. On May 7, 2024, following numerous breaches of the Schwartz Nightingale Settlement, the Court entered final judgments in favor of the ONH Trust (Doc. No. 271) (the “Final Judgments”).

FACTUAL BACKGROUND RELATED TO THE FRAUDULENT TRANSFERS

59. On the same date as the AFC Sale Contract, JOSMIC 2 LLC provided a loan to Mr. Schwartz in the amount of \$5 million (the “JOSMIC Loan”), executed a \$5 million promissory note related to the JOSMIC Loan (the “Note”), and took assignment of the AFC Sale Contract (the “AFC Sale Contract Assignment” and together with the Note and related JOSMIC Loan documents, referred to as the “JOSMIC Loan Documents”).

60. The AFC Sale Contract Assignment provided for a complete assignment of the AFC Sale Contract and any deposits made thereunder to JOSMIC 2 LLC, which would terminate on repayment of the JOSMIC Loan, including all fees and other costs related to the JOSMIC Loan.

61. Upon information and belief, JOSMIC 2 LLC was controlled by an attorney, Mr. Joseph Treff.

62. Upon information and belief, Mr. Treff or entities controlled by Mr. Treff have personally loaned Mr. Schwartz money in the past.

63. Upon information and belief, Ms. Sara “Rachel” Farnrog executed the JOSMIC Loan Documents on behalf of JOSMIC 2 LLC.

64. Upon information and belief, Ms. Farnrog is an employee of Mr. Treff’s law firm, Treff & Lowy PLLC.

65. Mr. Schwartz executed the JOSMIC Loan Documents on behalf of himself.

66. The JOSMIC Loan Documents required Mr. Schwartz to pay JOSMIC 2 LLC an origination fee related to the JOSMIC Loan, which increased depending on when Mr. Schwartz repaid the JOSMIC Loan.

67. The JOSMIC Loan Documents provided a prepayment penalty if a full or partial payment was made on or before July 1, 2022.

68. The JOSMIC Loan Documents provide that the JOSMIC Loan was due on the earliest of August 12, 2022, the date of closing on the AFC Sale Contract related to the Atlanta Financial Center, or when the AFC Sale Contract was terminated.

69. Upon information and belief, JOSMIC 2 LLC was formed on January 5, 2022, approximately five months before executing the JOSMIC Loan Documents.

70. Upon information and belief, JOSMIC Holdings LLC was formed on February 8, 2022, approximately four months before the JOSMIC Loan Documents were executed.

71. Based upon the Independent Manager’s investigation carried out after her appointment and during the Bankruptcy Cases, the Debtors’ books and records reflect that ONH

AFC CS transferred money to or for the benefit of the Defendants, which transfers are listed below and referred to as the “Fraudulent Transfers”:

Transferor	Amount	Transferee	Date of Transfer
ONH AFC CS Investors LLC	\$5,000,000	JOSMIC 2 LLC	June 10, 2022
ONH AFC CS Investors LLC	\$500,000	Riverside Abstract as escrow agent (for the benefit of JOSMIC 2 LLC)	June 10, 2022
ONH AFC CS Investors LLC	\$500,000	Riverside Abstract as escrow agent (for the benefit of JOSMIC 2 LLC)	July 11, 2022
ONH AFC CS Investors LLC	\$750,000	Riverside Abstract as escrow agent (for the benefit of JOSMIC 2 LLC)	September 9, 2022
ONH AFC CS Investors LLC	\$250,000	JOSMIC Holdings LLC	September 30, 2022
TOTAL:	\$7,000,000		

72. Upon information and belief, the first \$5 million Fraudulent Transfer from ONH AFC CS to JOSMIC 2 LLC was made only a few days after receiving the first investor funds.

73. Upon information and belief, ONH AFC CS was not and was never party to the JOSMIC Loan Documents.

74. Upon information and belief, JOSMIC Holdings LLC was not party to the JOSMIC Loan Documents.

75. Upon information and belief, ONH AFC CS was not and was never party to the AFC Sale Contract.

76. Upon information and belief, ONH AFC CS never received invoices for amounts due under the JOSMIC Loan Documents.

77. Upon information and belief, the Defendants had knowledge or should have known that ONH AFC CS was not and was never party to the JOSMIC Loan Documents.

78. Upon information and belief, the Defendants had knowledge or should have known that ONH AFC CS was not and was never party to the AFC Sale Contract or the AFC Sale Contract Assignment.

79. Upon information and belief, ONH AFC CS was not and was never party to any agreement with the Defendants.

80. Upon information and belief, ONH AFC CS has no relationship and never had a relationship with or to the Defendants.

81. Upon information and belief, ONH AFC CS was never party to any agreement with Prop. Co.

82. Upon information and belief, ONH AFC CS has no interest and never had an interest in Prop. Co.

83. Upon information and belief, ONH AFC CS made the Fraudulent Transfers to the Defendants to pay amounts due under the JOSMIC Loan Documents for which ONH AFC CS had no responsibility or obligation to pay, but which were the obligations of Mr. Schwartz personally.

84. ONH AFC CS received no benefit from making the Fraudulent Transfers.

85. Upon information and belief, Mr. Schwartz caused ONH AFC CS to make the Fraudulent Transfers to the Defendants to pay obligations of Mr. Schwartz under the JOSMIC Loan Documents.

86. Upon information and belief, the Fraudulent Transfers were also made when the Nightingale entities were facing default on loans that financed various real estate projects and when the Nightingale entities were threatened with foreclosure in connection therewith.

CLAIMS FOR RELIEF

COUNT I

(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendants Pursuant to 11 U.S.C. § 548(a)(1)(A))

87. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 86 above as if fully set forth herein.

88. Each of the Fraudulent Transfers constitute a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendants, or subsequent transfers thereof.

89. The Fraudulent Transfers were made with the knowledge that they would hinder, delay and/or defraud creditors, and thus with the actual intent to hinder, delay and/or defraud creditors.

90. The Fraudulent Transfers were made to satisfy obligations of Mr. Schwartz, who was an insider of and controlled ONH AFC CS at all relevant times.

91. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

92. The Fraudulent Transfers were not disclosed to third parties.

93. The Fraudulent Transfers, or certain of them, were made while ONH AFC CS attempted to keep investors satisfied through overly optimistic updates sent through CrowdStreet's online platform, which induced investors to refrain from requesting refunds of their investments.

94. The Fraudulent Transfers were made for Mr. Schwartz's personal benefit or for the benefit of those entities which he controlled (and would continue to control).

95. ONH AFC CS transferred and dissipated almost all of its funds prior to the appointment of the Independent Manager.

96. The Fraudulent Transfers were made when the Nightingale entities were facing default on loans that financed various real estate projects and when the Nightingale entities were threatened with foreclosure in connection therewith.

97. The Fraudulent Transfers are avoidable, and the Trustee is entitled to an order and judgment against the Defendants avoiding the Fraudulent Transfers.

WHEREFORE, the Trustee respectfully requests this Court enter a judgment against the Defendants: (i) finding that the Fraudulent Transfers are actually fraudulent and therefore avoidable pursuant to 11 U.S.C. § 548(a)(1)(A); (ii) avoiding the Fraudulent Transfers; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

COUNT II
(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendants Pursuant to 11 U.S.C. § 548(a)(1)(B))

98. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 97 above as if fully set forth herein.

99. Each of the Fraudulent Transfers constitute a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendants, or a subsequent transfer thereof.

100. Upon information and belief, ONH AFC CS was never legally obligated to pay any amounts to any of the Defendants and ONH AFC CS had no relationship whatsoever with any of the Defendants. Thus, the Defendants were not creditors of ONH AFC CS.

101. The Defendants did not provide goods, services, or value of any type to ONH AFC CS in exchange for the Fraudulent Transfers.

102. The Defendants did not provide ONH AFC CS with reasonably equivalent value in exchange for any of the Fraudulent Transfers.

103. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

104. At the time the Fraudulent Transfers were made, ONH AFC CS was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining constituted unreasonably small capital.

105. The Defendants were the initial transferees of the Fraudulent Transfers, or parties for the benefit of whom such Fraudulent Transfers were made.

106. The Fraudulent Transfers are avoidable, and the Trustee is entitled to an order and judgment against the Defendants avoiding the Fraudulent Transfers.

WHEREFORE, the Trustee respectfully requests this Court enter a judgment against the Defendants: (i) finding that the Fraudulent Transfers are constructively fraudulent transfers and therefore avoidable pursuant to 11 U.S.C. § 548(a)(1)(B); (ii) avoiding the Fraudulent Transfers; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

COUNT III

(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendants Pursuant to 11 U.S.C. § 544(b)(1) and NY Debt. & Cred. Law §§ 270 *et. seq* (270-281-A))

107. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 106 above as if fully set forth herein.

108. Each of the Fraudulent Transfers constitute a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendants, or a subsequent transfer thereof.

109. The Fraudulent Transfers were made with the knowledge that they would hinder, delay and/or defraud creditors, and thus with the actual intent to hinder, delay and/or defraud creditors.

110. The Fraudulent Transfers were made to satisfy obligations of Mr. Schwartz, who was an insider of and controlled ONH AFC CS.

111. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

112. The Fraudulent Transfers were not disclosed to third parties.

113. The Fraudulent Transfers, or certain of them, were made while ONH AFC CS attempted to keep investors satisfied through overly optimistic updates sent through CrowdStreet's online platform, which induced investors to refrain from requesting refunds of their investments.

114. The Fraudulent Transfers were made for Mr. Schwartz's personal benefit or to benefit those entities which he controlled and would continue to control.

115. ONH AFC CS transferred and dissipated almost all of its funds prior to the appointment of the Independent Manager.

116. The Fraudulent Transfers were made when the Nightingale entities were facing defaults on loans that financed various real estate projects and when the Nightingale entities were threatened with foreclosure in connection therewith.

117. The Fraudulent Transfers are avoidable, and the Trustee is entitled to an order and judgment against the Defendants avoiding the Fraudulent Transfers.

WHEREFORE, the Trustee respectfully requests this Court enter a judgment against the Defendants: (i) finding that the Fraudulent Transfers are actually fraudulent transfers and therefore avoidable pursuant to state law and 544(b)(1) of the Bankruptcy Code; (ii) avoiding the Fraudulent Transfers; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

COUNT IV

(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendants Pursuant to 11 U.S.C. § 544(b)(1) and NY Debt. & Cred. Law §§ 270 *et. seq* (270-281-A))

118. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 117 above as if fully set forth herein.

119. Each of the Fraudulent Transfers constitute a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendants, or a subsequent transfer thereof.

120. The Fraudulent Transfers were made with the knowledge that they would hinder, delay and/or defraud creditors, and thus with the actual intent to hinder, delay and/or defraud creditors.

121. Upon information and belief, ONH AFC CS was never legally obligated to pay amounts to the Defendants and ONH AFC CS had no relationship whatsoever with any of the Defendants. Thus, the Defendants were not creditors of ONH AFC CS.

122. The Defendants did not provide goods, services, or value of any type to ONH AFC CS in exchange for the Fraudulent Transfers.

123. The Defendants did not provide ONH AFC CS with reasonably equivalent value in exchange for any of the Fraudulent Transfers.

124. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

125. At the time the Fraudulent Transfers were made, ONH AFC CS was engaged in business or a transaction, or each was about to engage in business or a transaction, for which any property remaining constituted unreasonably small capital.

126. The Defendants were the initial transferees of the Fraudulent Transfers, or parties for the benefit of whom such Fraudulent Transfers were made.

127. The Fraudulent Transfers are avoidable, and the Trustee is entitled to an order and judgment against the Defendants avoiding the Fraudulent Transfers.

WHEREFORE, the Trustee respectfully requests this Court enter a judgment against the Defendants: (i) finding that the Fraudulent Transfers are constructively fraudulent transfers and therefore avoidable pursuant to state law and 544(b)(1) of the Bankruptcy Code; (ii) avoiding the Fraudulent Transfers; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

COUNT V

(Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550(a))

128. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 127 above as if fully set forth herein.

129. The Trustee is entitled to avoid the Fraudulent Transfers pursuant to Section 548 of the Bankruptcy Code and applicable state law.

130. Defendants were the initial transferees or subsequent transferees of the Fraudulent Transfers, or the person(s) for whose benefit the Fraudulent Transfers were made.

131. Pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, the Trustee is entitled to recover from Defendants an amount to be determined at trial that is no less than **\$7,000,000**, plus interest thereon to the date of payment.

WHEREFORE, the Trustee respectfully requests this Court enter a judgment against the Defendants: (i) allowing the Trustee to avoid and recover for the benefit of ONH AFC CS's bankruptcy estate the Fraudulent Transfers from the initial transferees, any subsequent transferee, and any party for whose benefit the Fraudulent Transfers were made; (ii) awarding pre-judgment and post-judgment interest on any of the avoided transfers at the maximum legal rate; and (iii)

granting any other and further relief as the Court determines is just and appropriate under the circumstances.

COUNT VI
(Unjust Enrichment)

132. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 131 as though fully set forth herein.

133. ONH AFC CS conferred substantial benefits on the Defendants who received a substantial amount of funds through the Fraudulent Transfers from ONH AFC CS.

134. The Fraudulent Transfers were transferred from ONH AFC CS directly to the Defendants or indirectly for the Defendants' benefit.

135. The benefits conferred on and unjustly retained by the Defendants are in the amount of **\$5,000,000**.

136. To the extent Defendants retain any of the Fraudulent Transfers, it would be unjust and against equity and good conscience to permit Defendants to keep ONH AFC CS's funds that were wrongly transferred to the Defendants.

WHEREFORE, the Trustee respectfully requests this Court enter a judgment against the Defendants: (i) finding in the Trustee's favor on her claim for unjust enrichment in the amount of **\$5,000,000**; and (ii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

RESERVATION OF RIGHTS

137. The Trustee reserves the right to bring all other claims or causes of action that the Debtors may have against Defendants, on any and all grounds, as allowed under the Bankruptcy Code, or applicable law, or in equity.

138. This Complaint is not intended to be, nor should it be construed as, a waiver of the Debtors' rights to object to any Claims or Proofs of Interest for any reason.

139. The Trustee reserves the right to amend this Complaint as new information becomes known to the Trustee at any time during the adversary proceeding, through formal discovery or otherwise, to include such information and/or assertions with respect to the Fraudulent Transfers made to the Defendants; revise Defendants' names; add additional defendants and/or additional causes of action including, but not limited to, those pursuant to 11 U.S.C. §§ 542, 544, 547, 548 and 550, (collectively, the "Amendments"), and that any and all such Amendments relate back to the date of this Complaint.

WHEREFORE, the Trustee respectfully requests that the Court enter judgment against Defendants:

- (a) Avoiding and recovering the Fraudulent Transfers for the benefit of ONH AFC CS's bankruptcy estate pursuant to 11 U.S.C. §§ 544, 548, and 550 of the Bankruptcy Code and applicable state law;
- (b) Granting judgment in favor of the Trustee and directing the Defendants, and/or any other party determined to be an initial transferee, a subsequent or mediate transferee, or a party for whose benefit the Fraudulent Transfers were made, to pay ONH AFC CS's bankruptcy estate an amount to be determined at trial that is no less than **\$7,000,000**, plus interest, pursuant to 11 U.S.C. § 550 and applicable state law;
- (c) As alternative relief to the fraudulent transfer claims, finding the Trustee is entitled to judgment for her claim for unjust enrichment in the amount of **\$5,000,000**;
- (d) Awarding pre-judgment and post-judgment interest at the maximum legal rate; and
- (e) Granting any other and further relief that is appropriate under the circumstances.

[Signature Page Follows]

Dated this 27th day of June, 2024.

LANDIS RATH & COBB LLP

/s/ Matthew R. Pierce

Adam G. Landis (No. 3407)
Matthew B. McGuire (No. 4366)
Matthew R. Pierce (No. 5946)
919 Market Street, Suite 1800
Wilmington, Delaware 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450
Email: landis@lrclaw.com
mcguire@lrclaw.com
pierce@lrclaw.com

- and -

BAKER & HOSTETLER LLP

Jorian L. Rose
(admitted *pro hac vice*)
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Email: jrose@bakerlaw.com

David J. Richardson
(admitted *pro hac vice*)
1900 Avenue of the Stars
Suite 2700
Los Angeles, CA 90067
Telephone: (310) 820-8800
Facsimile: (310) 820-8859
Email: drichardson@bakerlaw.com

*Counsel for the ONH Liquidating
Trust*