SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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| CK OPPORTUNITIES FUND I, L.P.<br>KNIGHTHEAD (NY) FUND, LP,<br>KNIGHTHEAD ANNUITY & LIFE ASSURANCE COMPANY,<br>KNIGHTHEAD MANAGED OPPORTUNITIES FUND, LP,<br>KNIGHTHEAD MASTER FUND, LP,<br>KNIGHTHEAD CAPITAL MANAGEMENT, LLC,<br>KNIGHTHEAD OPPORTUNITIES CAPITAL MANAGEMENT, LLC, and<br>CERTARES OPPORTUNITIES LLC,<br><br>Plaintiffs,<br><br>-against-<br><br>MORGAN STANLEY SENIOR FUNDING, INC.,<br>BRIGHTLINE HOLDINGS LLC,<br>AAF JACKSONVILLE SEGMENT LLC,<br>BRIGHTLINE MANAGEMENT LLC,<br>BRIGHTLINE PROPERTY HOLDINGS LLC,<br>NEW FLAGLER DEVELOPMENT LLC,<br>BL WEST HOLDINGS LLC,<br>BL TRAIN HOLDINGS WEST LLC,<br>BREVARD FGT LLC,<br>FLAGLER MANAGEMENT LLC,<br>FLAGLER MANAGEMENT WEST LLC,<br>BL PROPERTY HOLDINGS WEST LLC,<br>LV PROPERTY HOLDINGS ONE LLC,<br>VICTORVILLE PROPERTY HOLDINGS LLC, and<br>DXE MANAGEMENT LLC,<br><br>Defendants. | **FIRST AMENDED COMPLAINT**<br><br>Index No. 654526/2023 |

The Plaintiffs listed above, by and through their undersigned counsel, allege the following against defendants Morgan Stanley Senior Funding, Inc. ("Morgan Stanley"), Brightline Holdings LLC ("Brightline Holdings"), and the other defendants named in the above caption.

## INTRODUCTION

1. Plaintiffs—who are lenders under a credit agreement (the "Credit Agreement") and their investment managers—bring this action to remedy fraudulent and grossly negligent acts and contractual breaches by Morgan Stanley, in its capacity as the Administrative Agent and lender under the Credit Agreement, and by defendant Brightline Holdings (the borrower under the Credit Agreement) and its subsidiaries. The Credit Agreement provides for the payment of a "Make-Whole Amount," based upon the present value of future interest payments, which is triggered by prepayment of the loan. The amount due to plaintiffs under the Make-Whole calculation here (including repayment of principal) is at least approximately $750 million (plus additional accrued interest from untimely repayment). This case is about how Brightline Holdings and Morgan Stanley fraudulently and in breach of the Credit Agreement schemed to avoid having to pay plaintiffs the promised Make-Whole Amount.

2. Under the Credit Agreement, Brightline Holdings—a high-speed railroad company—borrowed hundreds of millions of dollars. Morgan Stanley made the initial loan and also served as the Administrative Agent under the Credit Agreement. Plaintiff CK Opportunities Fund I, L.P. ("CK Opportunities Fund")—a fund co-managed by plaintiffs Knighthead Opportunities Capital Management, LLC ("Knighthead") and Certares Opportunities LLC ("Certares")—initially bought from Morgan Stanley approximately $191 million in exposure to the Brightline Holdings loan, under the terms of the Credit Agreement. Morgan Stanley pitched the Make-Whole Amount as an attractive feature of the loan, and representatives of Brightline Holdings' private-equity owners led plaintiffs to expect that subsidiaries of Brightline Holdings would incur debt that would trigger payment of the Make-Whole Amount. The CK Opportunities Fund (as well as other funds managed and/or advised by an affiliate of

Knighthead, in a subsequent purchase) purchased the loan in significant part based on the strength of the Make-Whole language in the Credit Agreement.

3. Morgan Stanley, as the seller of the loan and in a principal capacity, also undertook an ongoing obligation to inform the CK Opportunities Fund of any action, decision or vote relating to the CK Opportunities Fund's loan and to act in accordance with CK Opportunities Fund's written instructions on any such matters. Morgan Stanley also agreed that, as to any act, decision or vote relating to the loans Morgan Stanley still held that could materially or adversely affect CK Opportunities Fund's loan or its rights or remedies under the Credit Agreement, Morgan Stanley would inform CK Opportunities Fund and act in accordance with the CK Opportunities Fund's written direction with respect to any such action, decision or vote. The terms of the documents governing the loan purchases (as described below) made clear that Morgan Stanley was required to obtain and follow CK Opportunities Fund's (and, pursuant to an additional trade described below, other Knighthead-managed funds') written instructions as to both any matter relating to the loans the Plaintiff funds purchased and also as to any matter relating to any loans Morgan Stanley still held, if the matter could materially or adversely affect the CK Opportunities Fund's loan. As to that broad scope of matters, Morgan Stanley was neither free to withhold information from Plaintiffs nor free to act on Morgan Stanley's own accord.

4. The loans under the Credit Agreement are guaranteed by the other defendants in this case (all direct or indirect subsidiaries of Brightline Holdings), and Brightline Holdings and the other guarantor defendants pledged capital stock they owned as security for the loans.

5. In December 2022, as part of the unlawful scheme, BL West Holdings LLC ("BL West Holdings") (a key subsidiary of Brightline Holdings) issued preferred LLC units to an

affiliated entity, in a transaction that violated the Credit Agreement in multiple ways. A purported upshot of this transaction was to release BL West Holdings and other Brightline subsidiaries from their obligations as guarantors under the Credit Agreement. Morgan Stanley improperly ratified and authorized the release. It did so in violation both of its duties as Administrative Agent and its ongoing obligation to inform CK Opportunities Fund of the release and subsequently follow CK Opportunities Fund's written directions on matters that could materially or adversely impact the loan or CK Opportunities Fund's rights or remedies. The value of the purportedly released guarantors conservatively totaled approximately $1.3 billion, and Morgan Stanley also approved the termination of the liens on those entities' property. As relevant to the Make-Whole Amount, Morgan Stanley and Brightline would claim that the preferred-unit offering meant that BL West Holdings (and its subsidiaries) ceased to be "Subsidiaries" under the Credit Agreement, a claim that—if correct—would allow Brightline Holdings to argue that payment of the Make-Whole Amount would not be triggered if and when new financing were raised at BL West Holdings or its subsidiaries.

6. To conceal the improper BL West Holdings preferred-unit offering and that Brightline intended to renege on its promise to pay the Make-Whole Amount, Morgan Stanley failed to inform CK Opportunities Fund of the transaction as required and then fraudulently swapped out a signature page of plaintiff CK Opportunities Fund and placed it onto an amendment to the Credit Agreement containing language about the prohibited transaction that plaintiffs had neither seen nor agreed to. Then months later, Morgan Stanley—in selling its remaining approximately $90 million in exposure to the loan—again lied to plaintiffs and concealed the fact of the prohibited preferred-unit transaction and improper releases of the subsidiary guarantors.

7. When the unlawful acts were revealed after the $90 million trade was signed and about to close, Morgan Stanley and Brightline Holdings initially sought to defend the purported release of BL West Holdings and its subsidiaries as guarantors based on a highly flawed interpretation of the Credit Agreement that even a cursory review shows was clearly wrong. Recognizing that the original rationale for the release was botched, Morgan Stanley and Brightline Holdings later backed into an alternative justification for the release that was just as faulty. This alternative (and still incorrect) justification also conveniently would permit Brightline Holdings to attempt to avoid paying the Make-Whole Amount if and when the purportedly released subsidiary guarantors (or their subsidiaries) took on debt that otherwise would have triggered payment of the Make-Whole Amount.

8. The defendants' wrongful acts are clearly designed to allow Brightline Holdings to attempt to escape having to pay the plaintiff investment funds the "Make-Whole Amount" if and when Brightline Holdings or its subsidiaries take on financing that would require Brightline Holdings to prepay the loan. But the consequence of Brightline Holdings and Morgan Stanley breaching the Credit Agreement by engaging in and approving these prohibited transactions is that, in this Action, the plaintiff investment funds that purchased the loan can, under applicable New York law, require Brightline Holdings to prepay the loan with the corresponding Make-Whole Amount (and additional accrued interest). And all the defendants are jointly and severally liable to plaintiffs for the fraud.

9. Plaintiffs now seek relief for the contractual breaches and the fraud, including an order of specific performance requiring Brightline Holdings to prepay the loan purchased by the plaintiff funds along with the corresponding Make-Whole Amount (and additional accrued interest). Plaintiffs also seek a declaratory judgment declaring that, among other things, the

preferred-unit offering violated the terms of the Credit Agreement, that the releases of the five subsidiary guarantors were invalid, ineffective, unenforceable, and void, and that those entities were and are Guarantors and Subsidiaries under the terms of the Credit Agreement. Plaintiffs also seek injunctive relief to implement the terms of the declarations, including requiring Morgan Stanley to revoke its approval of the releases, to re-file any liens that were terminated, and requiring the parties, including the Brightline entities, to execute any documents necessary or appropriate to confirm that the released guarantors were and remain Subsidiaries and Guarantors under the Credit Agreement.

**THE PARTIES**

10. Plaintiff CK Opportunities Fund I, L.P. is a limited partnership organized under the laws of the Cayman Islands. Approximately 35% of the funds invested in CK Opportunities Fund came from Morgan Stanley's retail platform and were raised prior to Morgan Stanley's initial outreach to plaintiffs regarding Morgan Stanley's desire to sell the Brightline Holdings loan from its own balance sheet. This means that when Morgan Stanley engaged in its deceitful acts to the detriment of CK Opportunities Fund, Morgan Stanley also harmed the interests of its own retail customers.

11. Plaintiff Knighthead (NY) Fund, LP is a limited partnership organized under the laws of Delaware.

12. Plaintiff Knighthead Annuity & Life Assurance Company is an entity organized under the laws of the Cayman Islands.

13. Plaintiff Knighthead Managed Opportunities Fund, LP is a limited partnership organized under the laws of the Cayman Islands.

14. Plaintiff Knighthead Master Fund, LP is a limited partnership organized under the laws of the Cayman Islands.

15. The Plaintiffs identified in the above four paragraphs are funds or entities managed or advised by plaintiff Knighthead Capital Management, LLC, which has offices in New York, New York.

16. Plaintiff Certares Opportunities LLC is a Delaware limited liability company. It is a co-manager of plaintiff CK Opportunities Fund with plaintiff Knighthead Opportunities Capital Management, LLC.

17. Defendant Morgan Stanley Senior Funding, Inc. is a Delaware corporation with, upon information and belief, its principal place of business in New York, New York.

18. Defendant Brightline Holdings LLC is a Delaware limited liability company and the "Borrower" under the Credit Agreement.

19. Each of the remaining defendants is a Delaware limited liability company. Each of the remaining defendants is a direct or indirect subsidiary of Brightline Holdings LLC, and each remaining defendant is a "Guarantor" under the Credit Agreement.

**JURISDICTION AND VENUE**

20. Jurisdiction is proper pursuant to New York Civil Practice Law and Rules ("CPLR") §§ 301 and 302. Morgan Stanley has its principal place of business in New York, New York, and all defendants consented to jurisdiction in New York under section 9.12 of the Credit Agreement.

21. Venue is proper in New York County under CPLR § 503 because Morgan Stanley resides in New York County, and because all defendants consented, under section 9.12 of the Credit Agreement, to venue in New York County. A substantial part of the events or omissions giving rise to the claims also occurred in New York County.

## FACTUAL ALLEGATIONS

### Brightline Holdings and the Credit Arrangement

22. Brightline Holdings builds and operates high-speed rail systems in the U.S.

23. Brightline Holdings operates a rail system in Florida and is developing another rail system in the western United States, intended to connect Los Angeles, California and Las Vegas, Nevada.

24. Private-equity funds managed by private-equity firm Fortress Investment Group LLC ("Fortress") own Brightline Holdings.

25. In about September 2022 (as discussed further below), plaintiff CK Opportunities Fund agreed to acquire approximately $191 million of the loan to Brightline Holdings under the terms of the Credit Agreement, which Morgan Stanley marketed to CK Opportunities Fund.

26. A copy of the fourth amended version of the Credit Agreement, which was adopted as of the same date when CK Opportunities Fund acquired the approximately $191 million of the loan, is attached as **Exhibit 1.** A copy of the purported fifth amended version of the Credit Agreement (a portion of which, as discussed below, was fraudulently not shown or agreed to by CK Opportunities Fund before it was purportedly fully executed) is included as **Exhibit 2**.

27. The Credit Agreement is among Brightline Holdings (as "Borrower"), "The Guarantors from Time to Time Party Hereto," "The Several Lenders from Time to Time Party Hereto," and Morgan Stanley, "as Administrative Agent," "Lead Arranger and Lead Bookrunner."

28. Under a Guarantee Agreement referenced in the Credit Agreement, the various Guarantors guaranteed Brightline Holdings' obligations under the Credit Agreement.

29. Brightline Holdings' and the other Guarantors' obligations were also secured by a first-priority security interest in all of the capital stock held by Brightline Holdings and the other Guarantors.

30. The guarantees and security interests were granted in favor of Morgan Stanley, as the Administrative Agent, for the benefit of the lenders under the Credit Agreement.

31. When CK Opportunities Fund agreed to acquire the approximately $191 million of the loan in September 2022, the guarantors under the Credit Agreement were the following direct or indirect subsidiaries of Brightline Holdings (all of whom have been named as defendants):

a. AAF JACKSONVILLE SEGMENT LLC

b. BRIGHTLINE MANAGEMENT LLC

c. BRIGHTLINE PROPERTY HOLDINGS LLC

d. NEW FLAGLER DEVELOPMENT LLC

e. BL WEST HOLDINGS LLC

f. BL TRAIN HOLDINGS WEST LLC

g. BREVARD FGT LLC

h. FLAGLER MANAGEMENT LLC

i. FLAGLER MANAGEMENT WEST LLC

j. BL PROPERTY HOLDINGS WEST LLC

k. LV PROPERTY HOLDINGS ONE LLC

l. VICTORVILLE PROPERTY HOLDINGS LLC

m. DXE MANAGEMENT LLC

32. Morgan Stanley served and serves as the Administrative Agent under the Credit Agreement and also acted as Lead Arranger and Lead Bookrunner.

33. Morgan Stanley was also itself a lender (and originally the sole lender) under the Credit Agreement.

34. Morgan Stanley and its affiliates have a long-standing relationship with Fortress and Brightline Holdings. Morgan Stanley or its affiliates, for example, provided investment-banking services to Brightline Holdings and its affiliates, including by acting as underwriter on well over a $1 billion of bonds between approximately 2017 and 2022. Brightline Holdings and its affiliates were investment-banking clients of Morgan Stanley or its affiliates. Morgan Stanley also earned substantial fees from its lending and investment-banking relationships with Brightline Holdings, its affiliates, and other companies associated with Fortress.

35. Though the credit agreement was entered as of June 30, 2022, the original loan from Morgan Stanley was made years earlier, in about 2020. The loan's maturity was then extended or refinanced, eventually leading to the Credit Agreement at issue in this case. Morgan Stanley agreed to these extensions and refinancings given its relationship with Brightline and based on Morgan Stanley's assessment of the possibility of future lucrative investment-banking business from Brightline Holdings or its affiliates.

36. Morgan Stanley, acting as a lender in a principal capacity, sold the initial $191 million in exposure to CK Opportunities Fund, pursuant to a Loan Syndications and Trading Association ("LSTA") trade confirmation, as explained below (the "First Trade").

37. Under the First Trade, CK Opportunities Fund's $191 million loan purchase represented the purchase of 100% of the "Tranche B" loans under the Credit Agreement. In connection with the fourth amendment to the Credit Agreement, CK Opportunities Fund's "Tranche B" loans were converted into "Initial Extended Term Loans" as those terms are defined in the Credit Agreement.

38. Following CK Opportunities Fund's initial purchase in the First Trade, Morgan Stanley continued to own 100% of the "Tranche A" loans under the Credit Agreement. Tranche A loans are not entitled to Make-Whole payments. But as described below, Morgan Stanley sold these loans to CK Opportunities Fund and certain other Knighthead funds in February 2023, pursuant to other LSTA trade confirmations (the "Second Trade"), and in connection with the transaction, the loans became "Additional Extended Term Loans" (which are entitled to Make-Whole payments).

39. Because CK Opportunities Fund owned and continues to own more than 50% of the outstanding loans under the Credit Agreement, CK Opportunities Fund constitutes the "Required Lenders," as that term is defined in the Credit Agreement.

**Credit Agreement Provisions Governing the Release of Guarantors**

40. Under section 8.10(a) of the Credit Agreement, the lenders authorize Morgan Stanley, as Administrative Agent, to release liens or guarantors, but only "in each case as provided in section 9.20." Section 8.10(a) provides as follows:

> Each of the Lenders irrevocably authorizes the Administrative Agent to release or evidence the release of any Lien on any property granted to or held by the Administrative Agent under any Loan Document, to release any Guarantor from its obligations under a Guarantee Agreement or any Loan Document or to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document, in each case as provided in Section 9.20.

41. Section 9.20(b), in turn, provides the requirements for release of a guarantor that are relevant here. Under that provision, the "Administrative Agent agrees that":

> Any Guarantor shall be released from its obligations under a Guarantee Agreement or any other Loan Document if such Person ceases to be a Subsidiary of the Loan Parties or becomes an Excluded Subsidiary as a result of a transaction permitted hereunder; provided that no such release shall occur if such Guarantor continues to be a guarantor in respect of any other Indebtedness expressly subordinated to the Obligations.

42. The provision makes a release of a "Guarantor" from its obligations under a "Guarantee Agreement" or any "Loan Document" (which include any pledge agreement for a security interest) contingent on the person either "ceas[ing] to be a Subsidiary of the Loan Parties" or "becom[ing] an Excluded Subsidiary"—and in each case "as a result of a transaction permitted" under the Credit Agreement.

43. The term "Guarantor" is defined in part as "the collective reference to the Subsidiary Guarantors, together with (i) any other Subsidiary of the Loan Parties added as a Guarantor at the election of the Borrower."

44. The term "Subsidiary Guarantor" is in turn defined as follows:

> each Subsidiary of the Loan Parties that is a Wholly Owned Subsidiary providing a guarantee of the Obligations pursuant to a Guarantee Agreement. For the avoidance of doubt, no Excluded Subsidiary shall be a Subsidiary Guarantor; provided that **in no event shall a Subsidiary Guarantor be released from its obligations under the Guarantee Agreement or any other Loan Document by virtue of it becoming an Excluded Subsidiary pursuant to clause (b) of the definition thereof.**
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> (bold emphasis added.)

45. The definition of "Excluded Subsidiary" includes several different clauses that explain when an entity is considered an "Excluded Subsidiary," but as relevant here, clause (b) of the definition (referenced in the definition of "Subsidiary Guarantor") defines an "Excluded Subsidiary" as "each non-Wholly Owned Subsidiary of the Loan Parties."

46. The language in section 9.20 and the relevant definitions in the Credit Agreement—most significantly the bolded language above in the definition of "Subsidiary Guarantor"—make clear that a Guarantor is not permitted to be released by becoming a non-wholly owned subsidiary of a Loan Party.

47. As for the "ceases to be a Subsidiary" language of section 9.20(b), the Credit Agreement defines "Subsidiary" as:

> as to any Person: (a) any corporation of which more than 50% of the outstanding Capital Stock having ordinary voting power to elect the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned (i) by such Person, (ii) by such Person and one or more Subsidiaries of such Person, or (iii) by one or more Subsidiaries of such Person; or (b) any limited liability company, trust, partnership, joint venture or other Person as to which such Person, or one or more Subsidiaries of such Person, owns more than 50% of the voting ownership, equity or similar interest of such limited liability company, trust, partnership, joint venture or other Person, as the case may be. Unless otherwise specified, references to "Subsidiaries" in this Agreement shall be references to Subsidiaries of the Loan Parties.

48. And as to the "as a result of a transaction permitted" under the Credit Agreement portion of section 9.20(b), the Credit Agreement, in section 6.4, prohibits "the Loan Parties or any Subsidiary," from "issu[ing] or sell[ing] any shares of the Loan Parties' or such Subsidiary's Capital Stock to any Person," subject to certain enumerated exceptions. The term "Loan Parties" is defined as "the collective reference to the Borrower and each Guarantor," and the prohibitions in section 6.4 apply to those "Loan Parties" as well as their "Subsidiaries," whether or not they are also Guarantors.

49. In addition, section 6.8 of the Credit Agreement prohibits the Loan Parties and their Subsidiaries from entering into "any transaction" over $2 million with any "Affiliate," unless the transaction is "upon terms no less favorable" than the Loan Parties or Subsidiaries "would obtain in a comparable arm's-length transaction" with a non-Affiliate. The term "Affiliate" is defined to include "any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person."

50. If a transaction does not comply with either section 6.4 or 6.8 (among other provisions), it cannot trigger a release of a subsidiary guarantor.

51. Section 9.20(f) describes Morgan Stanley's substantive role in the process of releasing a Guarantor.

52. Section 9.20(f) provides that Morgan Stanley as Administrative Agent:

> will promptly execute, authorize or file such documentation as may be reasonably requested by any Grantor to release, or evidence the release (in registrable form, if applicable), its Liens with respect to any Collateral or the guarantee obligations of any Guarantor as set forth in this Section 9.20; ***provided that the foregoing shall be*** … ***in form and substance reasonably satisfactory to the Administrative Agent***.
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> (emphasis added.)

53. Under section 9.20(f), Morgan Stanley's sign-off is required "to release" a Guarantor, and the documentation to do so must be "in form and substance reasonably satisfactory" to Morgan Stanley. Morgan Stanley thus has a duty—which it breached, as described below—to ensure that the substance of any request to release a Guarantor is reasonably satisfactory.

**CK Opportunities Fund's Initial Purchase of the Brightline Loan and the Make-Whole Amount**

54. In mid-September 2022, Morgan Stanley contacted CK Opportunities Fund about the potential opportunity to purchase part of the Brightline loan under the Credit Agreement, which Morgan Stanley then owned and which Morgan Stanley was under pressure to get off its balance sheet.

55. As part of the pitch, Morgan Stanley touted the payment of a "Make Whole Amount" as one of the attractive aspects of purchasing the Brightline loan, and Morgan Stanley also helped facilitate the conversion of the "Tranche B" term loans being sold into "Extended

Term Loans" to ensure that CK Opportunities Fund would be entitled to payment of the Make-Whole Amount.

56. The Make-Whole Amount is a payment equal to the present value of the remaining interest payments that would accrue through the loan's maturity date. Under section 2.13(b) of the Credit Agreement, payment of a Make-Whole Amount is required whenever there are any voluntary or mandatory prepayments of "Extended Term Loans," which CK Opportunities Fund (and later certain other Knighthead funds) purchased. Voluntary prepayments are governed by section 2.10, and section 2.10(a)(i)(C) permits Brightline Holdings to prepay "Extended Term Loans." Mandatory prepayments are governed by section 2.11.

57. One circumstance triggering a mandatory prepayment (and corresponding payment of the Make-Whole Amount), is set forth in section 2.11(d) of the Credit Agreement and occurs if the "Loan Parties or any of their Subsidiaries" (*e.g.*, the Brightline defendants) incur indebtedness that is not permitted under section 6.1 of the Credit Agreement.

58. Under this section 2.11(d), if a "Subsidiary" incurs impermissible debt, a mandatory prepayment is triggered (and corresponding payment of the Make-Whole Amount), regardless of whether the Subsidiary is also a "Guarantor" under the Credit Agreement. But if the entity incurring the debt no longer qualified as a "Subsidiary," then Brightline Holdings and Morgan Stanley could attempt to claim that the incurrence of debt did not trigger a mandatory prepayment and corresponding payment of the Make-Whole Amount.

59. In conversations between Knighthead and representatives of Brightline Holdings' private-equity owners at Fortress in September 2022, Fortress explained that defendant BL West Holdings (one of the "Subsidiary Guarantors" under the Credit Agreement) or one of its Subsidiaries expected to incur indebtedness in 2023 that was not permitted under section 6.1, and

which would trigger a mandatory prepayment and corresponding payment of the Make-Whole Amount. Fortress acknowledged that the Make-Whole payment would be substantial but, at the time, also claimed that they considered it a drop in the bucket compared to Fortress's equity investment in Brightline Holdings and the $2-3 billion in government grants they expected Brightline Holdings or its subsidiaries (including BL West Holdings) to receive.

60. Indeed, the amount due under the Make-Whole calculation (including repayment of principal plus the Make-Whole Amount) on the amounts of the loan that CK Opportunities Fund and the other Knighthead funds would purchase is at least approximately $750 million (plus additional accrued interest due from untimely repayment).

61. The conversion of the loans into Extended Term Loans (entitled to Make-Whole payments) and their sale to CK Opportunities Fund was significant to Brightline Holdings and Fortress. That is because Morgan Stanley, as lender, would not have enforced the payment of the Make-Whole Amount (even if it owned a portion of the loan that was entitled to the Make-Whole Amount, which it did not), given the nature of its lending business and its relationship with Brightline and Fortress. Another lender, however—in this case CK Opportunities Fund—would require payment of the Make-Whole Amount upon prepayment, generating a substantial payment obligation due from Brightline Holdings. The prospect of payment of the Make-Whole Amount following the sale of the loans to CK Opportunities Fund upset Brightline and/or Fortress, which had acknowledged the substantial amount of the Make-Whole Amount.

62. Based in significant part on the strength of the Make-Whole language in the Credit Agreement (as well as the negative covenants prohibiting "Subsidiaries" from issuing capital stock or taking on debt), CK Opportunities Fund made the initial purchase—approximately $191 million of the loan—on September 30, 2022.

63. To effect this purchase, Morgan Stanley, acting in a principal capacity, and CK Opportunities Fund entered into the First Trade. A true and correct copy of the trade confirmation for the First Trade is attached as **Exhibit 3** (the "September 2022 Trade Confirmation"). The September 2022 Trade Confirmation is a binding contract.

64. In the September 2022 Trade Confirmation, Morgan Stanley made certain representations and undertook certain ongoing obligations. Of significance here, Morgan Stanley agreed to inform CK Opportunities Fund and to act at its written direction with respect to either (i) any action relating to the loans CK Opportunities Fund was purchasing, and (ii) any action relating to the Tranche A loans still held by Morgan Stanley that could materially or adversely affect CK Opportunities Fund's loan or its rights or remedies under the Credit Agreement.

65. Specifically, Morgan Stanley (defined as the "Seller" in the September 2022 Trade Confirmation) agreed as follows:

> (5) Seller agrees that it will act or refrain from acting in respect of any request, act, decision or vote to be made by the Seller relating to the Purchase Amount of the Debt solely in accordance with the written instructions of the Buyer from and including the Trade Date (collectively, the "Buyer's Direction"). The Buyer and the Seller agree that the Buyer's Direction is a condition to the purchase by Buyer of the Purchase Amount of the Debt and the consummation of the Transaction contemplated by this Trade Confirmation and any agreement, including any side letter and/or LSTA Participation Agreement to be entered into between the Buyer and the Seller, will grant to Buyer, the Buyer's Direction;
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> (6) In addition, in connection with any request, act, decision or vote to be taken in respect of Tranche A Term Loans that could materially or adversely affect the Extended Term Loans or any of the Buyer's rights and/or remedies under the Credit Agreement, Seller agrees that it will act or refrain from acting in respect of any request, act, decision or vote to be made by the Seller solely in accordance with the written instructions of the Buyer from and including the Trade Date (collectively, the "Buyer's Extended Term Loan Direction"). The Buyer and the Seller agree that the Buyer's Extended Term

> Loan Direction is an additional condition to the purchase by Buyer of the Purchase Amount of the Debt and the consummation of the Transaction contemplated by this Trade Confirmation and any agreement, including any side letter and/or LSTA Participation Agreement to be entered into between the Buyer and the Seller, will grant to Buyer, the Buyer's Extended Term Loan Direction[.]

66. Under this provision, Morgan Stanley had an obligation "from and including the Trade Date" (*i.e.*, September 30, 2022) to seek CK Opportunities Fund's written instruction (and to act in accordance with that instruction) as to "any request, act, decision or vote" that "could materially or adversely affect" CK Opportunities Fund's loans or its "rights and/or remedies under the Credit Agreement." Accordingly, from and after September 30, 2022, upon any request made to Morgan Stanley relating to any act, decision or vote relating to the Tranche A loans (which Morgan Stanley continued to hold) that could materially impact CK Opportunities Fund's rights and remedies, or as to any decision at all relating to the Extended Term Loans, Morgan Stanley was obligated to inform CK Opportunities Fund and seek its direction as to how to act or not act. As described below, Morgan Stanley breached this obligation.

67. This provision gave the CK Opportunities Fund the benefit of controlling all decisions relating to the Extended Term Loans it purchased, as well as controlling decisions relating to the Tranche A loans, which Morgan Stanley continued to hold, that could materially or adversely affect the Extended Term Loans or CK Opportunities Fund's rights or remedies under the Credit Agreement.

68. The same day the September 2022 Trade Confirmation was entered—and without informing Knighthead or Certares or seeking their written direction—Morgan Stanley and Brightline Holdings facilitated the purported release of one of the Subsidiary Guarantors that was a subsidiary of BL West Holdings—an entity called BL Train Holdings West LLC.

69. CK Opportunities Fund funded the September 30, 2022 initial purchase on about November 14, 2022.

70. From there, Morgan Stanley and Brightline Holdings embarked on a series of wrongful acts apparently designed to escape the obligation to pay the plaintiff funds the Make-Whole Amount.

**Morgan Stanley Fraudulently Affixes CK Opportunities Fund's Signature Page to an Amendment to the Credit Agreement that It Did Not Agree To.**

71. On or about December 15, 2022, Morgan Stanley's outside counsel sent Knighthead a draft amendment to the Credit Agreement, which included a draft "Amendment No. 5," and an amended version of the Credit Agreement (the "Draft Fifth Amended Credit Agreement"). Morgan Stanley personnel were copied on the communication. A copy of the Draft Fifth Amended Credit Agreement and a redline showing the changes (both as sent by Morgan Stanley's outside counsel) are attached as **Exhibit 4 and 4a.**

72. The Draft Fifth Amended Credit Agreement included the following new language, added as proposed section 2.11(h), in the section relating to mandatory prepayments:

> Sale of Preferred Equity. On or prior to December [22], 2022, the Borrower shall prepay Tranche A Term loans in an aggregate amount of $25,000,000. For the avoidance of doubt, the Borrower shall make such prepayment regardless of the ability of the Borrower to directly apply any applicable proceeds from the sale of Capital Stock of the Borrower or any of its Subsidiaries to prepay Tranche A Term Loans.

73. This amendment—providing for a prepayment only of Tranche A loans—would impact (and result in payment to) only Morgan Stanley, as the then-holder of 100% of the Tranche A loans.

74. The Draft Fifth Amended Credit Agreement also provided for an extension of the maturity date on the Tranche A loans, which represented an accommodation by Morgan Stanley

to Brightline Holdings, consistent with Morgan Stanley's historical practice (as described above) and motive (described below) to benefit Brightline Holdings in order to position Morgan Stanley to obtain lucrative investment-banking business from the Brightline entities and their private-equity owners at Fortress.

75. In section 10 of the draft cover amendment accompanying the Draft Fifth Amended Credit Agreement, each of the Loan Parties, including BL West Holdings and its subsidiaries, affirmed that the liens and security interests on its property would remain in effect even after any transactions "contemplated" under the proposed Fifth Amendment.

76. Specifically, each of the Loan Parties, including BL West Holdings and its subsidiaries: "acknowledges and agrees that the grants of liens and security interests by the Loan Parties contained in the Security Documents are, and shall remain, in full force and effect after giving effect to this Fifth Amendment and the transactions contemplated hereby and thereby." (Ex. 4, section 10.)

77. This statement was misleading because Brightline Holdings and Morgan Stanley were simultaneously and knowingly preparing to execute or executing documents to release those liens and security interests, in direct violation of that section 10 of the purported Fifth Amendment Agreement.

78. In addition, because the maturity date on Morgan Stanley's Tranche A loans was then set for December 15, 2022, Morgan Stanley was in a rush to execute the amendment as soon as possible to satisfy Morgan Stanley's clients Fortress and Brightline. Morgan Stanley pushed and pressured Knighthead to execute the amendment within hours of sending the first draft.

79. Later in the day on December 15, Morgan Stanley re-sent the original draft containing the language quoted above, even though Morgan Stanley, by that time, already had

received an edited version containing new and different language in section 2.11(h). Morgan Stanley knowingly re-sent a by-then-outdated version to Knighthead in order to conceal the newly added language.

80. After Knighthead and Certares reviewed the Draft Fifth Amended Credit Agreement and provided it to outside counsel for review, Knighthead emailed Morgan Stanley and its outside counsel, attaching a signature page for CK Opportunities Fund.

81. Yet when Morgan Stanley's outside counsel returned a purportedly "fully executed" version of the amendment (copying Morgan Stanley personnel) on December 16, 2022, the supposedly fully executed version included important language in the new section 2.11(h) that Knighthead and Certares had not before seen and had not agreed to.

82. Section 2.11(h) of the purportedly "fully executed" version of the fifth amended credit agreement stated (relevant new language in bold):

> Sale of Preferred Equity. **Notwithstanding any other provision of this Section 2.11, in connection with the sale or issuance of Capital Stock of BL West Holdings LLC on or about December 15, 2022**, the Borrower shall prepay Tranche A Term Loans in an aggregate amount of $25,000,000 on or prior to December 22, 2022. For the avoidance of doubt, the Borrower shall make such prepayment regardless of the ability of the Borrower to directly apply any applicable proceeds from the sale of Capital Stock of the Borrower or any of its Subsidiaries to prepay Tranche A Term Loans.
>
> (Ex. 2 (emphasis added).)

83. Before receiving this purportedly fully executed amendment, Knighthead and Certares had not been provided a draft containing the bold language and had not been notified that BL West Holdings—one of the "Subsidiary Guarantors" under the Credit Agreement—was planning to issue capital stock on December 15, 2022. Nor had Morgan Stanley otherwise told Knighthead or Certares that any "Subsidiary" planned to issue capital stock to supposed

outsiders as part of financing efforts or that Brightline Holdings and Morgan Stanley intended to claim that issuance of capital stock would cause a Subsidiary to cease to be a Subsidiary; indeed, the idea that a Subsidiary Guarantor would issue stock was directly contrary to Morgan Stanley's representations. Morgan Stanley also did not disclose or seek CK Opportunities Fund's written direction as to the proposed Guarantor release, despite Morgan Stanley's obligation and duty under the September 2022 Trade Confirmation to do so.

84. The purported "fully executed" version had a further suspicious anomaly in that one of the guarantors listed on the Draft Fifth Amended Credit Agreement (defendant BL Train Holdings West LLC) was no longer listed on the signature page of the purported fully executed version; no explanation was provided nor did Morgan Stanley notify Knighthead or Certares of this substantial change.

85. Neither Morgan Stanley nor its counsel sought CK Opportunities Fund's, Knighthead's, or Certares's consent to this new and different version before surreptitiously and fraudulently affixing CK Opportunities Fund's signature page to this changed version of the amended Credit Agreement and seeking to pass it off as the "fully executed" version.

86. For its part, Brightline Holdings was aware of the drafts sent to Plaintiffs and was thus aware that Plaintiffs had not received a draft containing the new language in section 2.11(h).

87. In addition, the purported "fully executed" version of the fifth amended credit agreement—in the revised version of section 2.11(h)—clearly "contemplated" the issuance of preferred units by BL West Holdings LLC. In section 10 of the cover amendment to the purported fifth amendment agreement, as noted above, the Loan Parties promised that the liens and security interests "shall remain[] in full force and effect after" that transaction. (Ex. 2,

section 10.) By attempting to release those liens and security interests anyway (as described below), the Brightline defendants and Morgan Stanley breached this provision of the agreement.

88. Given Morgan Stanley's concealment, the changed language in section 2.11(h) went undetected for months until February 2023, when, as discussed below, Morgan Stanley revealed what had occurred following further fraudulent conduct on its part.

89. Consistent with standard document draft exchange practices that Morgan Stanley itself also follows, the purported "fully executed" version was not reviewed in its entirety, because Plaintiffs relied on their counterparty not to misapply CK Opportunities Fund's signature page to a document with language Plaintiffs previously had not seen and which they were not asked to approve.

90. The new language in section 2.11(h)—referring to an apparently contemplated stock offering by a Subsidiary Guarantor—was significant. Under section 6.4 of the Credit Agreement, the Loan Parties (including Subsidiary Guarantors) and their Subsidiaries are prohibited from issuing or selling "Capital Stock" to "any Person," subject to certain limited exceptions. And under section 6.8, the Loan Parties and their Subsidiaries are prohibited from entering certain transactions with Affiliates unless specific requirements are met. Sections 6.1 and 6.7 impose additional restrictions that the transaction also violated (as explained below). The fraudulently inserted language into the Credit Agreement, however, did not indicate whether any of the relevant exceptions were applicable, and based on facts Knighthead and Certares would subsequently learn (and as described below), none of the exceptions applied.

91. Morgan Stanley fraudulently inserted language into the Credit Agreement relating to a transaction that was not permissible under other terms of the agreement, thus depriving Knighthead and Certares of the ability to investigate it and challenge it at the time.

92. Morgan Stanley inserted this language despite (a) having a duty to disclose the details and to act in accordance with CK Opportunities Fund's written direction under the September 2022 Trade Confirmation; and (b) general corporate drafting practices whereby drafting parties notify their counterparty of any changes and do not apply signature pages that were sent in good faith to documentation that not had been previously seen and reviewed.

93. Morgan Stanley also had a duty to disclose the details of the preferred-unit issuance under section 5.2(e) of the Credit Agreement. That section requires Brightline Holdings to "[f]urnish to the Administrative Agent [Morgan Stanley] for delivery to each Lender … promptly, from time to time, such other customary information regarding the operations, business affairs and financial condition of the Loan Parties and their Subsidiaries and their compliance with the terms of any Loan Document, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender)." Thus, when Morgan Stanley requested any information about the preferred-unit transaction and the Guarantor releases, it was obligated to "deliver[]" that information "to each Lender," including CK Opportunities Fund.

94. Morgan Stanley requested and received substantial information about the transaction and the releases. Such materials—concerning an important subsidiary of the borrower engaging in a transaction that supposedly would result in its release under the Credit Agreement—constitute customary information regarding the operations, business affairs and financial condition of the Loan Parties and their Subsidiaries and their compliance with the terms of any Loan Document. Morgan Stanley thus had a duty to disclose them to the Plaintiffs, which it failed to do and in fact worked to conceal the facts from Plaintiffs.

95. Worse, the $25 million prepayment to Morgan Stanley was paid through the proceeds of the impermissible stock offering by BL West Holdings that Morgan Stanley concealed from Knighthead and Certares.

96. Had Knighthead and Certares been shown the language that Morgan Stanley fraudulently withheld, they would not have approved the amendment.

**A Key Brightline Subsidiary Improperly Issues Capital Stock, and Morgan Stanley and Brightline Holdings Improperly Approve a Release of Five Guarantors from their Guarantee Obligations and Releases of the Liens on their Collateral.**

97. The same day Morgan Stanley fraudulently affixed CK Opportunities Fund's signature page to an amended agreement it never agreed to, Morgan Stanley and Brightline Holdings—unbeknownst to Knighthead or Certares—also improperly purported to release five of the subsidiary guarantors from their obligations as guarantors and to release any liens on their property used to secure those obligations. As Knighthead and Certares would later learn (this information was fraudulently concealed from them at the time), the purported releases were given based on the issuance of preferred LLC units by Brightline Holdings' subsidiary BL West Holdings, which itself violated multiple provisions of the Credit Agreement.

**The Impermissible Preferred Unit Offering**

98. The Credit Agreement includes numerous "negative covenants" that restrict what the Borrower (Brightline Holdings) and its Subsidiaries (including BL West Holdings) can do. Each negative covenant must separately be complied with. Even if a transaction could be permissible under one negative covenant, that transaction will still constitute an improper breach if it violates a different negative covenant. Here, the preferred-unit issuance violated multiple negative covenants, as explained below.

***Section 6.4 Violation***

99. Section 6.4 of the Credit Agreement prohibits the "Loan Parties" (*i.e.* the Borrower and Guarantors, including BL West Holdings) and their Subsidiaries from issuing or selling any shares of their "Capital Stock" (including the preferred LLC units at issue) subject to certain exceptions, none of which are applicable here.

100. Knighthead and Certares later would learn that Brightline Holdings sought to rely on an exception in section 6.4(n), which provides an exception for certain "Dispositions" of "Property" meeting certain criteria.

101. Section 6.4(n), however, does not authorize issuances of Capital Stock like the preferred-unit issuance that BL West Holdings apparently made here. Section 6.4 distinguishes between (and prohibits) (i) Dispositions of Property by the Borrower, the Loan Parties, and Subsidiaries, on the one hand, and (ii) "issu[ing] or sell[ing] any shares of the Loan Parties' or such Subsidiary's Capital Stock to any Person," on the other. Section 6.4 then provides certain exceptions to those prohibitions, which themselves distinguish between Dispositions of Property (on the one hand) and sales or issuances of Capital Stock (on the other hand) (*e.g.*, subsections (c), (d)). Unlike the exceptions that expressly reference sales or issuances of Capital Stock, subsection 6.4(n) does not do so. Consistent with the language and structure of section 6.4, section 6.4(n) applies only to non-Capital Stock transactions and does not authorize the preferred-unit issuance by BL West Holdings.

102. And even if section 6.4(n) could be read to authorize issuances of Capital Stock, the criteria for doing so under 6.4(n) were not met here. For example, under section 6.4(n)(ii), "the consideration" for the "Disposition" must be "at least equal to the fair market value of such Property or assets at the time of such Disposition."

103. Yet the preferred units were not issued in exchange for consideration worth "at least equal to the fair market value" of the units. In the preferred-unit offering, BL West Holdings issued 259,611 preferred units, representing about 40.46% of the total units (the remaining 59.54% of the units were common units that continued to be held by Brightline Holdings). BL West Holdings issued those preferred units for $259,611,000. Purchasing approximately 40% of the entity for about $260 million implies an overall equity value of $640 million for BL West Holdings.

104. Yet the fair market value of BL West Holdings was far more than $640 million. For example, in late 2020, when Brightline West announced it was getting ready to finance and commence construction, Brightline represented that DesertXpress Enterprises LLC—an indirect wholly owned subsidiary of BL West Holdings—had an equity value that, at cost, was valued at approximately $2.47 billion. Brightline further indicated that DesertXpress had a current equity market value of $6 billion, and future equity market value of between $8.49 billion and $23.49 billion. And based on information Brightline Holdings provided in September 2022 when Knighthead was considering CK Opportunities Fund's initial purchase, BL West Holdings had a fair market value of at least about $1.3 billion, more than double the value implied by the terms of the preferred-unit purchase. That $1.3 billion fair market value consisted of a $1.1 billion value for the corridor of land on which the Brightline West railroad would be built, $140 million value for Las Vegas land, and $89 million of grants for stations. Moreover, fair market value of $1.3 billion was a conservative estimate, as it did not account for the billions in additional value that BL West Holdings and its subsidiaries expected to obtain through government grants. The fair market value of the preferred-unit issuance was thus far in excess of the $640 million valuation at the preferred-unit issuance occurred.

105. The $640 million valuation of the preferred-unit purchase was not "at least equal to" fair market value, meaning that the transaction flunks the applicable condition under section 6.4(n)(ii).

106. In addition, Brightline Holdings did not determine that the transaction was done at fair market value.

***Section 6.8 Violation***

107. The preferred-unit issuance also violated the limitations on transactions with "Affiliates" of the Loan Parties or their Subsidiaries as set forth in section 6.8 of the Credit Agreement. Under section 6.8, the Loan Parties and their Subsidiaries are prohibited from entering "into any transaction involving payments in excess of $2,000,000 in the aggregate … with any Affiliate," unless the transaction is "upon terms no less favorable" than "in a comparable arm's-length transaction." The term "Affiliate" is defined to include "any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person."

108. According to BL West Holdings' amended LLC agreement, the purchaser of the preferred units was an entity called BL West Investment LLC, whose managing member is one of the principals of Fortress, whose funds own Brightline Holdings. The managing member of BL West Investment is Wes Edens ("Mr. Edens").

109. BL West Investment LLC (the preferred-unit purchaser) is an "Affiliate" of Brightline Holdings and/or BL West Holdings because they are under common control. BL West Investment LLC's managing member (Mr. Edens) is a principal and co-founder of Fortress, and as BL West Investment LLC's managing member, has the power to direct the management and policies of BL West Investment LLC. Brightline Holdings acknowledges in public

documents that Mr. Edens controls BL West Investment LLC. Individuals or entities associated with Fortress also make up at least about half the assets invested into BL West Investment LLC.

110. Brightline Holdings (the Borrower), meanwhile, is owned by funds managed by Fortress, and Fortress's principal Mr. Edens (who serves as managing member of BL West Investment LLC) is a member of Fortress's management committee and board of directors and is responsible for Fortress's private-equity business. Brightline Holdings is also one of Fortress's largest private-equity investments, and Mr. Edens is personally very involved with Brightline Holdings. Mr. Edens has been publicly described as the founder and Chairman of Brightline, and decisions relating to Brightline West—including relating to financing, construction, and other issues—do not get made without Mr. Edens's input and approval. Mr. Edens therefore has the power, directly or indirectly, to direct or cause the direction of the management and policies of Brightline Holdings and its subsidiaries, including BL West Holdings.

111. Accordingly, the preferred-unit offering is a transaction with an Affiliate and therefore was required to have been made on terms "no less favorable" than "in a comparable arm's-length transaction" with a non-Affiliate. But the preferred-unit transaction purported to give the purchaser the ability to elect a majority of the board of managers by permitting the preferred-unit holders to elect one more manager than the common unit holders. Because board control is not something that would have been offered to a non-Affiliate on the same terms, the preferred-unit transaction did not meet the applicable standard, thus rendering it impermissible under section 6.8 of the Credit Agreement. It also did not meet the required standard because, as discussed above, it was done at less than fair market value.

112. While section 6.8 also uses the parenthetical "(as reasonably determined by the Borrower)" to modify the phrase regarding obtaining terms no less favorable than in an arm's

length transaction, Brightline Holdings did not make any determination that the terms of the preferred-unit issuance were no less favorable to BL West Holdings than it could have obtained in a comparable arm's length transaction with a non-Affiliate.

113. In addition, any determination that the transaction was on terms comparable to an arm's-length transaction would have been unreasonable. First, as the facts set forth above show, the transaction was not done at fair market value. Second, the transaction resulted in the immediate transfer of control of BL West Holdings to BL West Investment based on a purchase of *less than* a majority (approximately 40%) of the entity's overall units. Third, the transaction gave away control of an entity expected to be highly profitable and over which Mr. Edens exercised control and oversight. Upon information and belief, Brightline Holdings would not have given away control to a third party that was independent of Mr. Edens, given Mr. Edens's history and role with the Brightline project.

***Section 6.7 Violation***

114. The preferred-unit issuance also violated section 6.7(c) of the Credit Agreement.

115. Under section 6.7(c) of the Credit Agreement, neither the Borrower nor its Subsidiaries, including BL West Holdings, may "amend its certificate of incorporation or other organizational documents in any manner that is materially adverse to the Lenders."

116. The preferred-unit issuance here was achieved by BL West Holdings amending its LLC agreement, which is an "other organizational document[]" of BL West Holdings.

117. A copy of BL West Holdings' Amended and Restated Limited Liability Company Agreement is attached as **Exhibit 5** (the "BL West Holdings Amended LLC Agreement").

118. The amendments to the BL West Holdings Amended LLC Agreement that facilitated the preferred-unit offering included: (i) an amendment that authorized the creation and issuance of the preferred units, which did not exist previously and were created through the

amendment; and (ii) an amendment giving the holders of preferred units the ability to control the company, by allowing the holders of preferred units to elect one more member of the board of managers than the holders of the common units. Specifically, section 4.2 of the BL West Holdings Amended LLC Agreement provided that:

> so long as Preferred Units are outstanding, a Preferred Majority in Interest shall appoint at least one Manager … more than the number of Managers appointed by a Common Majority in Interest; provided further that, at any time in which no Preferred Units are outstanding, a Common Majority in Interest shall appoint all Managers.

119. These amendments were materially adverse to the Lenders, including CK Opportunities Fund and the other plaintiff funds, because they formed the basis for Brightline Holdings' and Morgan Stanley's purporting to release BL West Holdings and its subsidiaries as Guarantors and to release the associated liens on their property, as explained below.

120. The loss—as a result of the amendments to the LLC agreement—of Guarantors and liens bearing a fair market value in the billions of dollars was materially adverse to the lenders.

121. Moreover, the assertion that BL West Holdings and its Subsidiaries ceased to be Subsidiaries as a result of the control shift brought about by the amendment is materially adverse to the Lenders because, if accepted, it would mean that future debt incurred by BL West Holdings or its Subsidiaries would not trigger a mandatory prepayment and, in the case of the Extended Term Loans owned by the plaintiff funds, payment of the Make-Whole Amount.

122. Because these materially adverse consequences were achieved through BL West Holdings amending its organizational document, Brightline Holdings and BL West Holdings violated section 6.7(c) of the Credit Agreement.

***Section 6.1 Violation***

123. The preferred-unit issuance also violated section 6.1 of the Credit Agreement because the preferred units constitute "Disqualified Capital Stock," and therefore impermissible "Indebtedness," for which there is no exception under section 6.1.

124. Under section 6.1 of the Credit Agreement, Brightline cannot "[c]reate, incur or assume any Indebtedness," except as expressly enumerated in section 6.1. The term "Indebtedness" is defined in the Credit Agreement to include "all obligations … contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Disqualified Capital Stock of such Person." There is no carve out from section 6.1's prohibition on Indebtedness that would permit BL West Holdings to issue "Disqualified Capital Stock."

125. Yet that is what BL West Holdings did in the preferred-unit issuance. Under the Credit Agreement, "Disqualified Capital Stock" is defined as:

> **any Capital Stock** of such Person **which, by its terms** (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), **or upon the happening of any event or condition, (a) matures or is mandatorily redeemable** (other than solely for Capital Stock which is not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, merger, consolidation, amalgamation, liquidation or asset sale (collectively, a "Fundamental Change") so long as any rights of the holders thereof upon the occurrence of such Fundamental Change shall be subject to the satisfaction of the Termination Conditions) …. [or] **(c) provides for the scheduled payment of dividends in cash,** or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the latest possible Maturity Date.
>
> (emphasis added.)

126. The preferred units are "Disqualified Capital Stock," both because they "mature[] or [are] mandatorily redeemable" and because they "provide[] for the scheduled payment of dividends in cash."

127. Under section 2.3(d) of the BL West Holdings Amended LLC Agreement (attached as Exhibit 5)—titled "Liquidating Distribution"—if BL West Holdings sells substantially all its assets or control of the company (defined as a "Sale of the Company"), the preferred unit holders "shall be entitled to receive, in respect of each such Preferred Unit" a contractually determined payment amount. Through such a mandatory liquidating payment, the preferred units "mature[]" and are redeemed, under the Credit Agreement's definition of "Disqualified Capital Stock."

128. While the Credit Agreement provides an exception in subsection (a) of the Disqualified Capital Stock definition for redemptions resulting from "Fundamental Changes" so long as "any rights of the holders thereof upon the occurrence of such Fundamental Change shall be subject to the satisfaction of the Termination Conditions," that exception is inapplicable. Nothing in the BL West Holdings Amended LLC Agreement ensures that following the redemption, any holders of the rights are subject to the "Termination Conditions" defined in the Credit Agreement, most significantly, the condition to ensure full payment of the loans under the Credit Agreement.

129. The preferred units also "provide[] for the scheduled payment of dividends in cash." (Ex. 1 at 10.) Under section 3.1(b) of the BL West Holdings Amended LLC Agreement, preferred unit holders "shall be entitled to receive, in respect of each outstanding Preferred Unit, cumulative distributions in respect of each calendar quarter equal to" a contractually defined amount, and which the agreement defines as a "Preferred Quarterly Distribution." While BL West Holdings' board has "discretion" to pay the Preferred Quarterly Distribution "in Preferred

PIK Units or in cash" under section 3.1(b) of the BL West Holdings Amended LLC Agreement, the terms still "provide[] for the scheduled payment of dividends in cash" under the Disqualified Capital Stock definition in the Credit Agreement. That is yet a further reason why the preferred units constitute Disqualified Capital Stock.

130. Because the preferred units constitute Disqualified Capital Stock, the obligation to "purchase, redeem, retire or otherwise acquire for value" those units is considered Indebtedness, as defined in the Credit Agreement, for which there is no carveout in section 6.1, and BL West Holdings breached the Credit Agreement by issuing them.

131. By engaging in this voluntary transaction in breach of the Credit Agreement, Brightline Holdings, under New York law, opened itself up to liability that would require prepayment of the loan and corresponding payments of the Make-Whole Amounts.

**The Impermissible Releases of Subsidiary Guarantors and Security Interests**

132. Purportedly based on the preferred-unit offering, Morgan Stanley and Brightline Holdings also improperly released Subsidiary Guarantors and security interests under the Credit Agreement.

133. Brightline Holdings asked Morgan Stanley—indeed, the same legal entity bearing the obligations under the September 2022 Trade Confirmation—to agree to and accept the release of BL West Holdings and four of its direct or indirect subsidiaries as Guarantors based on the preferred-unit issuance, and then to release the liens held on those entities' property. The release would have released BL West Holdings and the subsidiaries as Guarantors of all the then-outstanding Tranches of loans, including the Tranche A loans Morgan Stanley still held, and the Extended Term Loans held by CK Opportunities Fund. Based on information Brightline Holdings provided to Knighthead before CK Opportunities Fund's initial investment, the released guarantors were valued (conservatively) at approximately $1.3 billion, prior to

accounting for substantial value from government grants that all parties understood Brightline Holdings to be pursuing and which it expected to receive.

134. The proposed releases were an act to be made by Morgan Stanley relating to the Extended Term Loans, as the releases would affect those loans. In addition, given the substantial value of the Guarantors and their liens, the potential release of the Guarantees and associated liens was an act that could have a material or adverse effect on CK Opportunities Fund's loan and its rights and remedies under the Credit Agreement. Indeed, as Morgan Stanley understood, if BL West Holdings were released as a Guarantor, CK Opportunities Fund would no longer have a remedy against that entity as a Guarantor. Such a development would be material and/or adverse to the Extended Term Loans and to CK Opportunities Fund's rights and remedies under the Credit Agreement.

135. Pursuant to the September 2022 Trade Confirmation, the proposed release was a request, act, decision or vote to be taken in respect of Tranche A Terms Loans that could materially or adversely affect the Extended Term Loans or any of CK Opportunities Fund's rights and/or remedies under the Credit Agreement.

136. Nonetheless, Morgan Stanley did not inform Plaintiffs about the preferred-unit issuance at BL West Holdings or the proposed Guarantor release or the related release of liens, and did not seek CK Opportunities Fund's written instruction with respect to the releases. These failures breached Morgan Stanley's obligations under the September 2022 Trade Confirmation.

137. In improperly releasing these guarantors, Morgan Stanley was, at a minimum, grossly negligent and appears to have engaged in bad faith and willful misconduct.

138. On or about December 16, 2022, Morgan Stanley and Brightline Holdings—without informing Knighthead or Certares—executed and approved a "Release Confirmation" purporting

to release BL West Holdings and four of its direct or indirect subsidiaries from their obligations as guarantors and agreeing to release the liens on those entities' property. The improperly released guarantors were defendants BL West Holdings, DXE Management LLC, BL Property Holdings West LLC, Victorville Property Holdings LLC, and LV Property Holdings One LLC.

139. A copy of the Release Confirmation is attached as **Exhibit 6**. The Release Confirmation does not mention section 6.4(n) of the Credit Agreement, the section of the agreement that Brightline Holdings and Morgan Stanley would later claim authorized the preferred-unit issuance.

140. The highly flawed rationale for the release was that, as a result of BL West Holdings issuing the preferred units, BL West Holdings would no longer be a wholly owned subsidiary of Brightline Holdings, thus making it an "Excluded Subsidiary" entitled to be released under section 9.20(b) of the Credit Agreement.

141. As described above, under section 9.20(b), Morgan Stanley (as Administrative Agent) agreed to release a guarantor "if such Person ceases to be a Subsidiary of the Loan Parties or becomes an Excluded Subsidiary as a result of a transaction permitted hereunder."

142. As articulated in the Release Confirmation that Morgan Stanley and Brightline Holdings improperly executed, the claimed basis for the release was that each of BL West Holdings and the four other entities "will become an Excluded Subsidiary pursuant to clause (b) of the definition thereof as a result of a transaction permitted under the Credit Agreement."

143. Clause (b) of the Excluded Subsidiary definition in the Credit Agreement defines as an "Excluded Subsidiary" "each non-Wholly Owned Subsidiary of the Loan Parties."

144. Thus—according to Brightline Holdings and as improperly agreed by Morgan Stanley—since the sale of preferred units to supposed outsiders would render BL West Holdings

a non-wholly owned subsidiary of Brightline Holdings, BL West Holdings would become an "Excluded Subsidiary" under clause (b) and therefore would be entitled to a release.

145. The core problem with that rationale is that it is directly contrary to the clear terms of the Credit Agreement, which makes unmistakably clear that becoming a non-wholly owned subsidiary is not a basis for release. Specifically, in the definition of "Subsidiary Guarantor," the Credit Agreement provides that "in no event shall a Subsidiary Guarantor be released from its obligations under the Guarantee Agreement or any other Loan Document by virtue of it becoming an Excluded Subsidiary pursuant to clause (b) of the definition thereof."

146. As BL West Holdings and the four direct or indirect subsidiaries were "Subsidiary Guarantors" as defined in the Credit Agreement, they could not be released as guarantors simply by virtue of becoming non-wholly owned subsidiaries.

147. In approving a release in direct violation of the Credit Agreement's unambiguous terms, Brightline Holdings and Morgan Stanley breached the Credit Agreement, and Morgan Stanley breached its obligations as Administrative Agent through conduct that was, at a minimum, grossly negligent and, at worst, indicative of bad faith and willful misconduct.

148. The release was also improper for the additional reason that the preferred-unit offering that supposedly rendered BL West Holdings and the four other entities non-wholly owned subsidiaries was impermissible under the Credit Agreement, as discussed above.

149. Under section 9.20(b) of the Credit Agreement, releasing a guarantor that becomes an Excluded Subsidiary is not appropriate if the guarantor does not become an Excluded Subsidiary "as a result of a transaction permitted hereunder." If the guarantor becomes an Excluded Subsidiary through a prohibited transaction, then no release can be given. Yet that is

what Morgan Stanley and Brightline Holdings approved. Because the preferred-unit issuance was not a "transaction permitted" under the Credit Agreement, it could not trigger a release.

150. As administrative agent, Morgan Stanley had a duty under section 9.20(f) of the Credit Agreement to ensure that the "form and substance" of the release request were "reasonably satisfactory." A reasonably satisfactory release request was a prerequisite "to release" any Guarantor under section 9.20.

151. Morgan Stanley breached section 9.20(f) because it made no effort to determine whether the release confirmation was in form and substance reasonably satisfactory. For the reasons explained, the confirmation was highly flawed and, even on its face, did not articulate a valid basis for release.

152. Morgan Stanley could not have determined in good faith that the request was reasonably satisfactory in form and substance. Worse, Morgan Stanley did not disclose the request to CK Opportunities Fund despite Morgan Stanley's obligation to do so.

153. In approving the release anyway, Morgan Stanley, acting with gross negligence (or willfully and in bad faith), and Brightline Holdings breached their obligations for this additional reason.

154. As described above, the release also represented a request, act, decision or vote to be taken in respect of the Extended Term Loans, and a request, act, decision or vote to be taken in respect of the Tranche A Terms Loans that could materially or adversely affect the Extended Term Loans or any of CK Opportunities Fund's rights and/or remedies under the Credit Agreement. By approving it without informing CK Opportunities Fund and without seeking its written direction, Morgan Stanley deprived CK Opportunities Fund of the benefit of the September 2022 Trade Confirmation, which gave CK Opportunities Fund the sole authority to

direct Morgan Stanley in such matters. Especially given the utterly baseless rationale for the purported the release, CK Opportunities Fund was materially harmed by this aspect of Morgan Stanley's breach.

155. Of course, even if the entities were released as "Guarantors," they would still be "Subsidiaries" and thus would trigger a mandatory prepayment and payment of the Make-Whole Amount if and when, for example, they took on financing that would require a mandatory prepayment under section 2.11. As discussed below, Brightline Holdings and Morgan Stanley would later attempt to back into an alternative rationale to claim that the entities were no longer Subsidiaries at all, a move clearly designed to attempt to avoid having to pay the Make-Whole Amount.

**Morgan Stanley Lies About the Improper Release of the Guarantors in Selling CK Opportunities Fund and Other Knighthead Funds an Additional $90 Million of Brightline Holdings' Loan.**

156. After improperly approving the release of BL West Holdings and the other four guarantors in December 2022, Morgan Stanley and Brightline Holdings concealed the impermissible preferred-unit offering and misrepresented the status of the guarantors and subsidiaries when Morgan Stanley was negotiating to sell CK Opportunities Fund and other Knighthead funds an additional approximately $90 million of the Brightline loan that Morgan Stanley then owned as a lender.

157. The $90 million represented all or nearly all of Morgan Stanley's remaining exposure to the loans, so Morgan Stanley had a motive to lie about its improper releases of the guarantors so it could offload the rest of the debt on terms favorable to Morgan Stanley.

158. In February 2023, Morgan Stanley and Knighthead discussed having some of Knighthead's funds purchase from Morgan Stanley this additional $90 million in exposure to the

Brightline loan. In such a transaction, Morgan Stanley would be acting in its capacity as lender and in a principal capacity.

159. In connection with the purchase, the Tranche A loans that Morgan Stanley then owned and was selling (and which, as Tranche A loans, were not entitled to Make-Whole payments) were converted into Extended Term Loans (which, critically, would be entitled to Make-Whole Amounts). Morgan Stanley knew that the Make-Whole provision was a critical consideration for plaintiffs in this purchase, yet Morgan Stanley lied and concealed that Morgan Stanley and Brightline Holdings and its subsidiaries had engaged in breaches of the Credit Agreement aimed at depriving the plaintiff investment funds of the ability to receive the Make-Whole Amount.

160. On or about February 23, 2023—over two months after Morgan Stanley's and Brightline Holdings' improper approval of the guarantor release and preferred-unit issuance—Morgan Stanley sent Knighthead a draft of a sixth amended version of the credit agreement, along with the draft Second Trade confirmations and assignment-and-acceptance agreements for CK Opportunities Fund's and Knighthead's funds' additional purchase of the loan from Morgan Stanley.

161. The draft of the sixth amended version of the credit agreement contained false statements about the status of the guarantors and subsidiaries, by listing *all* the guarantors—including BL West Holdings and the other four guarantors that Morgan Stanley had purported to release two months before—as guarantors on the signature pages of the relevant drafts and by containing the representation that all liens and security interests were—and would remain—in full force and effect after giving effect to the proposed amendments.

162. Brightline Holdings was involved in preparing the misleading draft signature pages, and thus Brightline Holdings knew that they misrepresented the current status of the Guarantors (based on the improper purported releases executed in December 2022).

163. Morgan Stanley's representative compounded the misleading nature of these drafts by describing the amendments as being designed to "just reflect" the transition of Tranche A loans into Extended Term Loans, while concealing that Morgan Stanley and Brightline Holdings and its subsidiaries had purported to release five of the guarantors months earlier in an effort to allow them to avoid paying the Make-Whole Amount.

164. In the trade confirmations, Morgan Stanley also expressly (and falsely) represented, among other things, that all covenants and provisions in section 6 of the Credit Agreement (which includes sections 6.1, 6.4, 6.7, and 6.8, discussed above) and section 2.13 (which includes the provision requiring payment of the Make-Whole Amount) had not been amended, modified, waived, or restated in any manner. That statement was, of course, false and misleading, because Morgan Stanley and Brightline Holdings and its subsidiaries had violated and allowed violations of (among other provisions) sections 6.1, 6.4, 6.7, and 6.8 in connection with the preferred-unit issuance and release of the subsidiary guarantors, in an effort to hollow out the benefits of the Make-Whole Amount required to be paid under section 2.13.

165. Four days later, on February 27, 2023, Morgan Stanley repeated the same false and misleading statements by circulating proposed "execution versions" of the sixth amended credit agreement still listing all of the guarantors as guarantors. The proposed "execution versions" were versions that Morgan Stanley was representing were ready to be signed. Morgan Stanley's representation was designed to induce Knighthead into authorizing documents that misstated the apparent state of the guarantors on the loan.

166. That same day, and in reliance on Morgan Stanley's misrepresentations, Knighthead sent Morgan Stanley signature pages for the additional $90 million purchase, by the plaintiff funds herein other than CK Opportunities Fund. The following day, February 28, 2023, Knighthead sent Morgan Stanley updated signed trade confirmations and updated signed assignment-and-acceptance agreements reflecting updated allocations to also include CK Opportunities Fund, in addition to the other four plaintiff Knighthead funds.

167. Morgan Stanley then returned fully executed trade confirmations and assignment-and-acceptance agreements for the approximately $90 million trade, thus completing that transaction for plaintiffs CK Opportunities Fund, Knighthead (NY) Fund, LP, Knighthead Annuity & Life Assurance Company, Knighthead Managed Opportunities Fund, LP, and Knighthead Master Fund, LP. Copies of these trade confirmations are attached as **Exhibit 7**.

168. As set forth in the trade confirmations, the purchased loans were "Additional Extended Term Loans" under the Credit Agreement.

169. The February 2023 trade confirmations also included a commitment by Morgan Stanley that it would act or refrain from acting in accordance with the buyers' (*i.e.*, the plaintiff investment funds) written instructions with respect to any request, act, decision or vote to be made by Morgan Stanley relating to the loans being sold. This commitment required Morgan Stanley to seek Plaintiffs' written direction with respect to *any* action relating to the loans, no matter how minor. Morgan Stanley breached this obligation as explained below.

170. Through the Second Trade confirmations and related communications, the plaintiff funds (*i.e.*, CK Opportunities Fund, Knighthead (NY) Fund, LP, Knighthead Annuity & Life Assurance Company, Knighthead Managed Opportunities Fund, LP, and Knighthead Master Fund, LP) entered into valid and binding trades with Morgan Stanley to purchase the

approximately $90 million of Additional Extended Term Loans, including under the terms represented, with all Subsidiaries and Subsidiary Guarantors and security interests in place and unchanged.

171. Under the September 2022 Trade Confirmation for the First Trade and the February 2023 trade confirmations for the Second Trade, Morgan Stanley was obligated to act in accordance with Plaintiffs' written instructions with respect to *all matters* relating to the Brightline loans. With the trades agreed and completed, Morgan Stanley could not take any action with respect to the loans without seeking and following Plaintiffs' written instructions. Morgan Stanley continued to breach that obligation as explained below.

172. Along with sending the fully executed trade documents, Morgan Stanley also provided, for the first time, edits to the sixth amended credit agreement showing the removal of BL West Holdings, the other four entities, and also BL Train Holdings West LLC (an entity not identified on the Release Confirmation) from their role as guarantors.

173. Morgan Stanley misleadingly sought to minimize the significance of this revelation by describing the changes as "a couple clean-up nits." In reality, these were substantive changes to the credit arrangement reflecting improper actions that Morgan Stanley and Brightline Holdings had approved months before and concealed. And Morgan Stanley lied to Knighthead about them when negotiating Knighthead's purchase for its funds and CK Opportunities Fund of an additional $90 million in exposure to the Brightline loan.

174. Only through Morgan Stanley's revelation in this February 28, 2023 communication (*after* the trade confirmations were fully executed) did plaintiffs learn about the purported releases, and only in subsequent communications from Morgan Stanley did they learn, for the first time, about the issuance of preferred units by BL West Holdings.

175. Knighthead immediately questioned the change and refused to authorize its signature pages for the Credit Agreement to be released to finalize the proposed amendments to the Credit Agreement.

176. To date, given Morgan Stanley's fraud, Knighthead and Certares have not caused the plaintiff funds to fund the $90 million trade, but, in connection with signing the trade confirmations, they reserved the cash to do so and it continues to be available. Knighthead and Certares remain ready, willing, and able to cause the plaintiff funds to fund the completed $90 million trade on the terms that Morgan Stanley represented, namely that the Subsidiaries and Subsidiary Guarantors and respective security interests all remained intact and unchanged. Plaintiffs seek to require Morgan Stanley to close the $90 million trade in connection with remedying the Defendants' improper conduct through the relief sought in this action.

177. Under the LSTA's Standard Terms and Conditions for Par/Near Par Trade Confirmations governing the February 2023 purchases, even though the trades have not yet been funded, a valid and binding obligation to settle the transaction continues to exist. That obligation includes settling the transaction on the terms represented and agreed—namely with all Subsidiaries and Subsidiary Guarantors and security interests in place and unchanged. If Morgan Stanley is unable to deliver the loans on the terms represented and agreed, Morgan Stanley is still obligated, under the applicable terms, to settle on the basis of an alternative structure or other arrangement that affords the Plaintiff buyers and Morgan Stanley as seller the economic equivalent of the agreed-upon trades. Morgan Stanley and/or its affiliates are full members of the LSTA and are aware of and familiar with the standard terms for par trades. A copy of the LSTA's Standard Terms and Conditions for Par/Near Par Trade Confirmations is attached as **Exhibit 8**.

**Recognizing the Bogus Rationale for Releasing the Guarantors, Brightline Holdings and Morgan Stanley Change Their Story and Manufacture an Equally Incorrect Rationale.**

178. Later in the evening of February 28, 2023, Morgan Stanley sent Knighthead, for the first time, a copy of the December "Release Confirmation" that Morgan Stanley approved months earlier to release BL West Holdings and the four other guarantors.

179. When sending the document, Morgan Stanley offered the same faulty rationale articulated in the Release Confirmation itself: that BL West Holdings' preferred-unit offering was permitted under section 6.4(n) of the Credit Agreement and, as a result, BL West Holdings and the other entities became "Excluded Subsidiaries" by virtue of becoming non-wholly owned subsidiaries, which, Morgan Stanley claimed, required them to be released under section 9.20(b) of the Credit Agreement.

180. Days later, in recognition of the botched rationale for the release, Morgan Stanley's counsel provided Knighthead with a different rationale for the release, supposedly offered by Brightline Holdings. This rationale was no better than the original, and in fact, appeared designed to allow Brightline Holdings to avoid the obligation to pay the Make-Whole Amount if and when any of the purportedly released subsidiary guarantors or their subsidiaries took on financing that otherwise would have required payment of the Make-Whole Amount.

181. The new rationale was that, because BL West Holdings amended its operating agreement in connection with the preferred-unit offering to provide that preferred-unit holders would be able to elect one more member of the board of managers than the common unit holders, BL West Holdings had ceased to be a "Subsidiary" at all under the Credit Agreement, thus supposedly requiring release under the "ceases to be a Subsidiary" portion of section 9.20(b).

182. As noted above, the Credit Agreement defined "Subsidiary" as follows:

> as to any Person: (a) any corporation of which more than 50% of the outstanding Capital Stock having ordinary voting power to elect the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned (i) by such Person, (ii) by such Person and one or more Subsidiaries of such Person, or (iii) by one or more Subsidiaries of such Person; or (b) any limited liability company, trust, partnership, joint venture or other Person as to which such Person, or one or more Subsidiaries of such Person, owns more than 50% of the voting ownership, equity or similar interest of such limited liability company, trust, partnership, joint venture or other Person, as the case may be. Unless otherwise specified, references to "Subsidiaries" in this Agreement shall be references to Subsidiaries of the Loan Parties.

183. Because BL West Holdings was a limited liability company, only clause (b) of the definition is applicable to determining whether BL West Holdings ceased to be a "Subsidiary."

184. But after the preferred-unit offering, Brightline Holdings continued to own 59.54% of the units in BL West Holdings, which constituted 100% of the common units. And those common units had voting rights. Indeed, under the BL West Holdings Amended LLC Agreement, the common units and preferred units vote together as a single class. Brightline Holdings' attempt to modify BL West Holdings' structure to allow preferred-unit holders to elect one more manager than the common units does not change the fact that Brightline Holdings continued to own over 50% of the units with voting rights and more than 50% of the "equity or similar interest" in BL West Holdings. So even after the offering, Brightline Holdings continued to "own[] more than 50% of the voting ownership, equity or similar interest" of BL West Holdings, meaning that BL West Holdings continued to constitute a "Subsidiary" of Brightline Holdings and was not entitled to a release under section 9.20(b).

185. And even if BL West Holdings somehow did cease to be a "Subsidiary," it did not cease to be a subsidiary "as a result of a transaction permitted" under the Credit Agreement, as

required under section 9.20(b), since the preferred-unit issuance was not permitted under sections 6.1, 6.4, 6.7, or 6.8, for the same reasons described above.

186. Brightline Holdings' and Morgan Stanley's attempt to back-in to a valid explanation for the previously botched release was just as ineffective as their first attempt.

187. To compound these problems, Brightline Holdings and Morgan Stanley did not prepare an updated "Release Confirmation" reflecting the changed explanation. No documentation exists as required under section 9.20(f) "to release" the Guarantors reflecting the revised basis Brightline Holdings and Morgan Stanley agreed on after the fact for the purported releases. As a result, the releases are invalid for this additional reason, and the lack of updated documentation is further proof of Morgan Stanley's gross negligence and bad faith.

188. Knighthead brought the flaws in the release to the attention of Morgan Stanley and/or its outside counsel, but Morgan Stanley has done nothing to fix its (at a minimum) grossly negligent mistake.

189. In conversations with Morgan Stanley around April 2023, Knighthead told Morgan Stanley that the releases should be undone and that the released guarantors' obligations should be restored. Morgan Stanley indicated that it agreed with the idea and would undertake to discuss it with Brightline Holdings' owners at Fortress.

190. In follow up communications in May and June 2023, Morgan Stanley continued to assure Knighthead that it was pursuing a restoration of the released guarantors' obligations.

191. Despite these assurances, Morgan Stanley has not undone the (ineffective) releases.

192. Morgan Stanley never disputed the validity of the February 2023 Second Trade, and the February 2023 Second Trade remains valid and binding. Instead of working in good-faith to settle the Second Trade, Morgan Stanley acted in its own interests and in service of Brightline's

and Fortress's interests, including by pursuing and obtaining repayment for itself of a portion of the outstanding loans that it had already sold to Plaintiffs in February 2023. Morgan Stanley, in breach of the representations and requirements in the February 2023 Second Trade confirmations, failed to inform Plaintiffs about that action relating to the loans and failed to seek their written instruction as to how to act or refrain from acting in respect of the loans that Plaintiffs had purchased in February 2023. Morgan Stanley's breaches under the trade confirmations do not nullify its obligation to settle the Second Trade on the terms agreed or in an alternative structure that affords the Plaintiff buyers and Morgan Stanley, as seller, the economic equivalent of the agreed-upon trades.

193. The Second Trade is valid, Morgan Stanley cannot terminate it, Morgan Stanley breached its obligations relating to the Second Trade, and Plaintiffs are entitled to the economic benefits of the Second Trade.

194. On top of that, Morgan Stanley has retaliated against plaintiff Certares for raising these issues and seeking to enforce CK Opportunities Fund's and the other plaintiff funds' rights under the Credit Agreement. In or around August 2023, Certares went out of its way to bring Morgan Stanley in as a source of financing on a real-estate transaction unrelated to Brightline Holdings. A Morgan Stanley credit committee approved Morgan Stanley's participation in the transaction, recognizing the business merits of the deal. But a higher-level Morgan Stanley committee then rejected the deal because of the ongoing (and unrelated) dispute about Brightline Holdings. This kind of retaliation is unfair and unbecoming of a global financial institution that advertises "do[ing] the right thing" and "put[ting] clients first" as core values.

**The Make-Whole Amount and Morgan Stanley's Motive**

195. As described above, the plaintiff funds purchased the Brightline loan in large part based on the strength of the Make-Whole provisions. And based on statements made to

Knighthead and Certares, Knighthead and Certares understood that BL West Holdings expected to incur indebtedness in 2023 that was not permitted under section 6.1, which would trigger a mandatory prepayment and corresponding payment of the Make-Whole Amount.

196. But under Brightline Holdings' and Morgan Stanley's faulty and post-hoc argument that BL West Holdings no longer qualified as a Subsidiary at all, they may claim that the incurrence of debt by the purportedly released BL West Holdings (or its Subsidiaries) would no longer trigger a mandatory prepayment or a corresponding payment to CK Opportunities Fund or the other Knighthead funds of the Make-Whole Amount, thus attempting to save Brightline Holdings from this significant expense.

197. Morgan Stanley and Brightline Holdings had a motive to improperly release the guarantors under a faulty rationale based on an impermissible preferred-unit offering and to conceal that fact from plaintiffs, including so that Brightline Holdings could attempt to avoid paying the Make-Whole Amount (worth hundreds of millions of dollars); so that Morgan Stanley could sell Knighthead's funds the remaining $90 million in exposure Morgan Stanley still held; and so that Morgan Stanley could position itself for future lucrative investment-banking business with Brightline Holdings and its private-equity owners at Fortress, including through handling municipal debt transactions for Brightline Holdings which could generate sizeable fees for Morgan Stanley.

**Brightline Holdings Must Pay Plaintiffs' Attorneys' Fees and Costs in this Action.**

198. Under section 9.5 of the Credit Agreement, Brightline Holdings, as Borrower, is obligated to "pay or reimburse" or "to pay, indemnify or reimburse" CK Opportunities Fund's (as Lender) costs and attorneys' fees in this action.

199. Section 9.5(a)(ii), for example, provides in relevant part that the "Borrower agrees":

> to pay or reimburse each Lender and the Agents for all their reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith, including all costs and expenses incurred during any legal proceeding ….

200. Under section 9.5(a)(ii), since plaintiff CK Opportunities Fund, a Lender, has brought this action to "enforce[] or preserv[e]" rights under the Credit Agreement and "other Loan Documents," Brightline Holdings is required to "pay or reimburse" CK Opportunities Fund for "all their reasonable and documented out-of-pocket costs and expenses," including attorneys' fees.

201. Under section 9.5(a)(iii), Brightline Holdings is required to "pay, indemnify or reimburse each Lender" for "costs" or "expenses" incurred "arising out of, in connection with, or as a result of … the execution, enforcement or delivery of" the Credit Agreement or related documents, as well as "any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing."

202. The Brightline defendants that are Guarantors are liable for any amounts that Brightline Holdings does not pay.

## FIRST CAUSE OF ACTION

Breach of Contract
(Against All Defendants)

203. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

204. Plaintiffs and Defendants are parties to the Credit Agreement, which (other than the portions fraudulently not shown to plaintiffs) is a valid and binding agreement.

205. Plaintiffs have fully performed their obligations under the Credit Agreement.

206. Defendants have breached the Credit Agreement by voluntary conduct, including by:

a. Issuing preferred units in BL West Holdings in violation of sections 6.1, 6.4, 6.7, and 6.8 of the Credit Agreement.

b. Releasing and/or approving the release of guarantors and subsidiaries in connection with the preferred-unit offering, in violation of sections 8.10 and 9.20 of the Credit Agreement, and section 10 of the purported cover amendment to the fifth amended credit agreement.

c. Releasing security interests or liens in connection with the preferred-unit offering, in violation of sections 8.10 and 9.20 of the Credit Agreement, and section 10 of the purported cover amendment to the fifth amended credit agreement.

207. Given these breaches, plaintiffs are entitled under New York law to specific performance requiring Brightline Holdings to prepay the loan that the plaintiff funds purchased (including the approximately $90 million February 2023 trade) and pay the corresponding Make-Whole Amount, together with additional contractual interest due to untimely payment, as well as pre-judgment and post-judgment interest. Plaintiffs have no adequate remedy at law.

208. Alternatively, plaintiffs have been damaged in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**
Breach of Contract
(Against Morgan Stanley Senior Funding, Inc.)

209. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

210. Plaintiff CK Opportunities Fund and defendant Morgan Stanley Senior Funding, Inc. are parties to the September 2022 Trade Confirmation.

211. The September 2022 Trade Confirmation is a valid contract.

212. CK Opportunities Fund has fully performed its obligations under the September 2022 Trade Confirmation.

213. Morgan Stanley breached its obligations under the September 2022 Trade Confirmation, including by failing to inform and seek written direction from (and act in accordance with written direction from) CK Opportunities Fund in connection with the purported release of BL West Holdings and its subsidiaries as Guarantors.

214. CK Opportunities Fund has been harmed by these breaches and is entitled to damages in an amount to be determined at trial, including in an amount equal to at least the Make-Whole Amount and additional interest, together with pre-judgment and post-judgment interest.

215. Plaintiffs CK Opportunities Fund, Knighthead (NY) Fund, LP, Knighthead Annuity & Life Assurance Company, Knighthead Managed Opportunities Fund, LP, and Knighthead Master Fund, LP entered into valid purchase contracts with Morgan Stanley with respect to the additional approximately $90 million of Additional Extended Term Loans in February 2023.

216. Those Plaintiffs have performed their obligations under the February 2023 trade agreements, including by maintaining the cash to close and being ready, willing, and able to do so, including on the terms represented, namely, with all Subsidiaries and Subsidiary Guarantors and security interests in place and unchanged.

217. Morgan Stanley breached its obligations under the February 2023 Second Trade agreements, including by failing to close the trades on the terms represented, by taking no steps

to work toward closing them on the terms represented, by not taking steps to close the transactions on terms that afford the buyers and seller the economic equivalent of the agreed-upon trade, and by not informing Plaintiffs and acting in accordance with their written direction with respect to actions relating to the loans.

218. Plaintiffs CK Opportunities Fund, Knighthead (NY) Fund, LP, Knighthead Annuity & Life Assurance Company, Knighthead Managed Opportunities Fund, LP, and Knighthead Master Fund, LP have no adequate remedy at law for these breaches. Accordingly, Morgan Stanley should be ordered to close the trades on the terms represented, namely with all Subsidiaries and Subsidiary Guarantors and security interests in place and unchanged.

219. Alternatively, pursuant to the standard terms of the LSTA governing the purchases, Morgan Stanley should be ordered to settle the trades in an alternative structure that affords the buyers and seller the economic equivalent of the agreed-upon trade.

220. Alternatively, Plaintiffs have been harmed in an amount to be determined at trial, including in an amount equal to at least the Make-Whole Amount and additional interest, together with pre-judgment and post-judgment interest.

**THIRD CAUSE OF ACTION**
Fraud
(Against All Defendants)

221. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

222. Defendants participated in a fraudulent scheme to allow Brightline Holdings and its subsidiaries to evade paying the Make-Whole Amount as required by the Credit Agreement.

223. Rather than repurchasing the plaintiff funds' debt (and paying the Make-Whole Amount) so that BL West Holdings could issue Capital Stock, Brightline Holdings and BL West Holdings instead secretly issued the Capital Stock in violation of the Credit Agreement.

224. Morgan Stanley, for its part, concealed BL West Holdings' (improper) issuance of preferred units and lied about the follow-on releases of the Subsidiary Guarantors, despite having an obligation to disclose the relevant facts, including pursuant to its obligations under the September 2022 Trade Confirmation.

225. Defendants knowingly omitted the fact of the BL West Holdings preferred-unit issuance when they proposed the fifth amendment to the Credit Agreement to CK Opportunities Fund in December 2022.

226. Once defendants secured CK Opportunities Fund's signature page for the Draft Fifth Amended Credit Agreement, they secretly added language into the Credit Agreement disclosing the BL West Holdings preferred-unit issuance and appended CK Opportunities Fund's signature to make it appear as though CK Opportunities Fund had approved the improper transaction. Brightline Holdings was aware of the drafts sent to Plaintiffs and was aware that Plaintiffs were not provided a draft that referred to BL West Holdings issuing preferred LLC units.

227. Thereafter, Morgan Stanley and Brightline Holdings issued a release purporting to release BL West Holdings and other Subsidiary Guarantors from their obligations as Guarantors and/or Subsidiaries in violation of the Credit Agreement, and Morgan Stanley—using false and misleading signature pages prepared by Brightline Holdings—then lied to plaintiffs about the wrongful actions when negotiating to sell the plaintiff funds Morgan Stanley's additional approximately $90 million in exposure to the loan in February 2023.

228. Plaintiffs relied on defendants' misrepresentations and would not have executed any of the amendments to the Credit Agreement had they known that defendants had engaged in the BL West Holdings preferred-unit offering and fraudulently circumvented Brightline Holdings'

contractual duty to pay them the Make-Whole Amount if they wanted to engage in the preferred-unit transaction.

229. Plaintiffs have been harmed by this fraud and are entitled to damages in an amount to be determined at trial, including in an amount equal to at least the Make-Whole Amount and additional interest, together with pre-judgment and post-judgment interest.

230. All defendants, including Morgan Stanley, are jointly and severally liable for the fraud.

231. Morgan Stanley should also be ordered to close the $90 million February 2023 transaction on the terms represented, namely, that the Subsidiaries and Subsidiary Guarantors and security interests remained intact and unchanged; or alternatively, to settle the trades in an alternative structure that affords the buyers and seller the economic equivalent of the agreed-upon trade.

## FOURTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against All Defendants)

232. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

233. If the Court determines that the Credit Agreement did not expressly prohibit their actions, the defendants breached their obligation to act in compliance with the implied covenant of good faith and fair dealing that is contained, as a matter of law and equity, in every contract.

234. The Credit Agreement (other than the portions fraudulently not shown to plaintiffs) is a valid and binding contract.

235. Defendants, in bad faith, purported to exercise supposed contractual rights as part of a scheme to deprive the plaintiffs of the benefit of their bargain, including payment of the Make-Whole Amount.

236. BL West Holdings—a key subsidiary of Brightline Holdings—issued the preferred units to an Affiliate entity at a below-fair-market-value price, in a transaction that purported to give the purchasing entity control of BL West Holdings while still allowing Brightline Holdings' private-equity owners at Fortress to assert control over BL West Holdings as if it remained a "Subsidiary" as defined under the Credit Agreement.

237. This preferred-unit offering clearly appeared designed to allow Brightline Holdings and Morgan Stanley to claim that BL West Holdings (and its subsidiaries) were no longer "Subsidiaries" under the Credit Agreement (though they remained under Fortress's control), such that Brightline Holdings could attempt to avoid paying the Make-Whole Amount if and when BL West Holdings or its subsidiaries took on financing that otherwise would have required payment of the massive Make-Whole Amount.

238. Avoiding payment of the Make-Whole Amount would benefit Brightline Holdings by saving it substantial money and would deprive plaintiffs of the benefit of their bargain.

239. As part of the scheme, Morgan Stanley engaged in bad-faith conduct to misrepresent and conceal the events relating to the preferred-unit offering and related subsidiary-guarantor releases from plaintiffs, including mishandling CK Opportunities Fund's signature page to create the appearance that plaintiffs were aware of and approved the preferred-unit offering.

240. Plaintiffs have been harmed by the breaches of the implied covenant and are entitled to damages in an amount to be determined at trial, including in an amount equal to at least the

Make-Whole Amount and additional interest, together with pre-judgment and post-judgment interest.

241. All defendants, including Morgan Stanley, are jointly and severally liable for the harm.

**FIFTH CAUSE OF ACTION**
Declaratory Judgment
(Against All Defendants)

242. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

243. Pursuant to CPLR § 3001, there is a justiciable controversy as to the rights and other legal relations of the parties concerning whether the preferred-unit offering by BL West Holdings was permissible under the Credit Agreement, whether BL West Holdings and the other direct or indirect subsidiaries were properly released from their obligations as guarantors and/or subsidiaries, and whether liens on their property were properly released under the terms of the Credit Agreement.

244. Plaintiffs request declaratory relief stating:

d. The Release Confirmation and the purported releases of BL West Holdings, DXE Management LLC, BL Property Holdings West LLC, Victorville Property Holdings LLC, LV Property Holdings One LLC, and BL Train Holdings West LLC (the "Improperly Released Guarantors") from their obligations under any Loan Documents (as defined in the Credit Agreement) (including under any Guarantee Agreement, Pledge Agreement, or other agreement) are invalid, ineffective, unenforceable, and void.

e. The purported releases of the Improperly Released Guarantors were given in violation of the terms of the Credit Agreement.

f. The preferred-unit offering by BL West Holdings violated section 6 of the Credit Agreement, including sections 6.1, 6.4, 6.7, 6.8, and section 10 of the purported cover amendment to the fifth amended credit agreement.

g. Any terminations of any liens on property of the Improperly Released Guarantors given as a result of the purported releases are invalid, ineffective, unenforceable, and void.

h. The Improperly Released Guarantors are and have been at all relevant times (including during the time period since the purported releases were given) "Subsidiaries" and/or "Subsidiary Guarantors" as those terms are defined in the Credit Agreement.

245. To give effect to the declarations sought and given the absence of an adequate remedy at law for the improper releases, Plaintiffs also seek injunctive relief requiring:

a. Morgan Stanley to revoke its approval of the Release Confirmation.

b. Morgan Stanley to re-file and perfect any liens that were released, terminated, or cancelled pursuant to the Release Confirmation.

c. The parties to execute any other documents necessary or appropriate to memorialize that the Improperly Released Guarantors and their subsidiaries are and have been at all relevant times (including during the time period since the purported releases were given) "Subsidiaries" and/or "Subsidiary Guarantors" as those terms are defined in the Credit Agreement.

d. Morgan Stanley to close the $90 million February 2023 transaction on the terms represented, namely, that the Subsidiaries and Subsidiary Guarantors and security interests remained intact and unchanged; or alternatively, to settle

the trades in an alternative structure that affords the buyers and seller the economic equivalent of the agreed-upon trade.

**SIXTH CAUSE OF ACTION**
Contract Reformation
(Against All Defendants)

246. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

247. With respect to the fifth amendment to the Credit Agreement circulated in December 2022, the parties had reached agreement on terms that Knighthead and Certares reviewed and for which they provided the signature page for CK Opportunities Fund.

248. Unknown to Knighthead or Certares but known to Morgan Stanley (who misled Knighthead and Certares by applying CK Opportunities Fund's signature page to a version of the agreement that had new and different language that Knighthead and Certares did not agree to), the purported fully executed version does not properly express that agreement.

249. And with respect to the sixth amendment to the Credit Agreement in February 2023, Morgan Stanley and Brightline Holdings fraudulently misled Knighthead about the status of the guarantors that Morgan Stanley had improperly released months earlier.

250. The Court should order reformation of the Credit Agreement to reflect the actual agreement of the parties, including restoring the Improperly Released Guarantors as parties, guarantors, and/or subsidiaries to the Credit Agreement, along with their related obligations under any Loan Documents that were improperly released.

251. In connection with ordering reformation, the Court should also order relief to put the parties in the positions they would have enjoyed absent the fraud.

**SEVENTH CAUSE OF ACTION**
Indemnification
(Against the Brightline Defendants)

252. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

253. Under section 9.5 of the Credit Agreement, Brightline Holdings, as Borrower, is obligated to "pay or reimburse" or "to pay, indemnify or reimburse" CK Opportunities Fund's costs and attorneys' fees in this action.

254. In connection with this action and the dispute giving rise to it, Plaintiffs have incurred, under section 9.5(a)(ii), costs and expenses, including legal fees, in connection with the enforcement or preservation of the plaintiffs' rights under the Credit Agreement, the Loan Documents, and any other documents prepared in connection therewith.

255. In connection with this action and the dispute giving rise to it, Plaintiffs have incurred, under section 9.5(a)(iii), costs and expenses, including legal fees, "arising out of, in connection with, or as a result of … the execution, enforcement or delivery of" the Credit Agreement or related documents, as well as "any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing."

256. Brightline Holdings accordingly must pay, indemnify, or reimburse Plaintiffs for their legal fees and costs, yet Brightline Holdings has failed to do so.

257. The Brightline defendants that are Guarantors are liable under the Guarantee agreement for any amounts Brightline Holdings does not cover.

258. Plaintiffs are entitled to order directing Brightline Holdings to pay their costs and expenses, including attorneys' fees.

## PRAYER FOR RELIEF

Plaintiffs demand a judgment in their favor against all Defendants granting the following relief:

1. An order of specific performance requiring Brightline Holdings to prepay the loan that the plaintiff funds purchased (including the approximately $90 million February 2023 trade) and pay the corresponding Make-Whole Amount, together with additional contractual interest due to untimely payment, as well as pre-judgment and post-judgment interest.
2. An order requiring Morgan Stanley to close the February 2023 trades on the terms represented, namely with all Subsidiaries and Subsidiary Guarantors and security interests in place and unchanged; or, alternatively, to settle the trades in an alternative structure that affords the buyers and seller the economic equivalent of the agreed-upon trade.
3. Damages in an amount to be determined at trial.
4. Declaratory relief stating:
    a. The Release Confirmation and the purported releases of the Improperly Released Guarantors from their obligations under any Loan Documents (as defined in the Credit Agreement) (including under any Guarantee Agreement, Pledge Agreement, or other agreement) are invalid, ineffective, unenforceable, and void.
    b. The purported releases of the Improperly Released Guarantors were given in violation of the terms of the Credit Agreement.
    c. The preferred-unit offering by BL West Holdings violated section 6 of the Credit Agreement, including sections 6.1, 6.4, 6.7, 6.8, and section 10 of the purported cover amendment to the fifth amended credit agreement.

d. Any terminations of any liens on property of the Improperly Released Guarantors given as a result of the purported releases are invalid, ineffective, unenforceable, and void.

e. The Improperly Released Guarantors are and have been at all relevant times (including during the time period since the purported releases were given) "Subsidiaries" and/or "Subsidiary Guarantors" as those terms are defined in the Credit Agreement.

5. Injunctive relief to implement the declarations, requiring:

   a. Morgan Stanley to revoke its approval of the Release Confirmation.

   b. Morgan Stanley to re-file and perfect any liens that were released, terminated, or cancelled pursuant to the Release Confirmation.

   c. The parties to execute any other documents necessary or appropriate to memorialize that the Improperly Released Guarantors are and have been at all relevant times (including during the time period since the purported releases were given) "Subsidiaries" and/or "Subsidiary Guarantors" as those terms are defined in the Credit Agreement.

   d. Morgan Stanley to close the $90 million February 2023 transaction on the terms represented, namely, that the Subsidiaries and Subsidiary Guarantors and security interests remained intact and unchanged; or, alternatively, to settle the trades in an alternative structure that affords the buyers and seller the economic equivalent of the agreed-upon trade.

6. Reformation of the Credit Agreement.

7. Attorneys' fees and costs incurred in connection with this action, including pursuant to section 9.5(a)(ii) and (iii) of the Credit Agreement.
8. Pre-judgment and post-judgment interest.
9. Such other relief as the Court determines just and proper.

Dated: August 30, 2024

*s/ Brian T. Burns*

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