IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 0151 OF 2015

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF THE WASHINGTON SPECIAL OPPORTUNITY FUND, INC

CLERK OF COURT SEP 18 2015 CAYMAN ISLANDS GOVERNMENT

GRAND COURT CAYMAN ISLANDS

JUDICIAL FINANCE $5000 SEP 18 2015 227193 CAYMAN ISLANDS GOVERNMENT

WINDING UP PETITION

TO THE GRAND COURT

The humble petition of Xena Investments Limited of Harneys Services (Cayman Limited), 4th Floor Harbour Place, 103 South Church Street, George Town, Grand Cayman KY1-1002 (the "**Petitioner**"), shows that:

Introduction

1. The Washington Special Opportunity Fund, Inc (the "**Fund**") was registered in the Cayman Islands on 8 June 2004 as an exempted limited company with registration number 136680 pursuant to the Companies Law (as amended) (the "**Law**"). The registered office of the Fund is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, Grand Cayman KY1-1104, Cayman Islands.

2. The Fund has an authorised share capital of US$ 50,000, comprising shares of US 1,000 Management Shares of US$ 1.00 par value each and 4,900,000 Participating Shares of US$ 0.01 each.

3. The investment objective of the Fund is described at page 1 of the Amended and Restated Private Offering Memorandum of the Fund dated February 2007 (the "**OM**") and is to achieve above-average returns by investing primarily in portfolios of financial, real estate and/or operating assets and/or loans and fixed-income securities secured by the same, where such investments have strong cash flow and risk-adjusted yield characteristics.

4. The Fund is managed by Patriot Investment Management, LLC (the "**Manager**").

5. Washington Special Opportunity Fund LLC (the "**Onshore Fund**") is a Delaware limited liability company managed by the Manager and is a "sister fund" to the Fund, offered primarily to US taxable investors.

The Petitioner

6. The Petitioner was registered as an exempted limited company in the Cayman Islands with registration number 220718.

7. The Petitioner holds 9,217.3367 Class R Shares in the Fund representing 17.7% of the non-voting participating shares in the Fund.

8. In addition to the Petitioner, a number of other stakeholders, including but not limited to, Eden Rock Unleveraged Finance Master Limited, Eden Rock Asset Based Lending Master Limited, Eden Rock Finance Master Limited/SFR Holdings Limited and ZAM Asset Finance Fund Limited (together the "**Investor Group**") support the Petition.

9. Together the Investor Group have a legal and/or beneficial interest in a majority of the participating shares in the Fund (51.3% of the Class R Shares).

Grounds for the Petition

10. For the reasons set out below, the Petitioner seeks a winding up order in respect of the Fund on the basis that it is just and equitable for the Fund to be wound up for the following reasons:

Oppression, Wilful Disregard and Undermining of the Petitioner's and the Investor Group's Rights and Interests

(a) The Manager continues to conduct the business of the Fund in such a way that the rights and interest of the Petitioner and the other participating shareholders have been disregarded and undermined such that it would be unjust and inequitable for them to be forced to remain as members in the Company or to be

forcibly redeemed upon the terms of the Second Dutch Auction (described in more detail at paragraph 29 below):

(i) The Manager has attempted and is attempting to force the investors to sell their shares in the Fund at a significant discount instead of properly resolving the payment issues that face the Fund, including most recently through the purported use of a reverse Dutch auction, which is prejudicial to the interests of the investors as a whole, including the Investor Group. The proposed payment date in respect of this proposed arrangement is 30 September 2015 and the deadline for submission is 21 September 2015;

(ii) The Manager has consistently attempted to pursue an uncertain, and unauthorised, reinvestment/growth strategy in respect of the Fund's remaining assets in contradiction to the Manager's mandate. For example, attempts to transfer the Fund's assets into a special purpose acquisition company or 'SPAC' (as described in more detail at paragraph 68 below), instead of finalising the limited monetisation process voted for and approved by investors in 2008;

Lack of Probity and Loss of confidence in Management

(b) The Investor Group have justifiably and irretrievably lost all trust and confidence in the Manager's ability or willingness to manage the Fund's affairs in the best interests of the Fund as a whole, without favouring its interests over those of the investors. The Manager has abused and misused its power and authority in connection with its control and management of the Fund and has acted in a manner that favours its own interests to the detriment of the interests of the investors. In particular, but without limitation:

(i) The Manager will not properly engage with investors or provide appropriate information on the status and monetisation strategy of the portfolio.

(ii) The Manager has already conducted a number of improper and illegitimate actions in order to solicit legal releases from investors including:

(1) withholding redemption payments; and

(2) making the provision of information to investors conditional on investors signing non-disclosure agreements that include a full litigation release for past and future actions of the Manager.

(iii) The Fund has retained significant amounts of cash with no apparent reason or benefit other than to allow the Manager to collect substantial management fees on cash balances (instead of making interim distributions to investors);

(iv) Dealings between the Fund and the Onshore Fund appear to have involved significant conflicts of interest by the Manager;

(v) The lack of transparency, unexplained transactions and dire financial performance of the Fund evidences the need for an independent investigation by independent official liquidators (officers of this Honourable Court) into the affairs of the Fund. Between 2008 and 2014 the Fund lost at least US$ 70 million; and

Loss of substratum

(c) The Company's substratum has been lost as the Manager is not conducting the affairs of the Fund pursuant to the Manager's mandate and instead is continuing with an unexplained and detrimental strategy. Without further capital, the Fund cannot make additional investments in accordance with the purposes set forth in its articles of association and the OM. Failed attempts to restructure the Fund into permanent capital vehicles and now the potential development of real estate projects clearly indicate that the Manager is pursuing its own agenda at the expense of investors of the Fund. The Manager has failed to complete its mandate after seven years.

The need for an Independent Investigation

(d) It is abundantly clear that independent investigation of the Fund's affairs by suitably qualified professionals is required on an urgent basis.

11. The Petitioner and the Investor Group hold participating non-voting shares in the Fund. They have no contractual or other ability to remove or change the composition of the Fund's board of directors or the Manager. The Petitioner and the Investor Group have sought to engage with the Manager through correspondence on numerous occasions but to no avail. The Petitioner's complaints can only be properly dealt with by way of the appointment of independent official liquidators who will be able to properly and independently investigate the Petitioner's (and the Investor Group's) concerns and wind up the Fund's affairs and distribute its assets in accordance with applicable law. The Petitioner has no other more suitable remedy to pursue. The Petitioner unequivocally seeks a winding up order.

Background to the Fund's affairs / loss of substratum

12. The Fund was incorporated on 8 June 2004 as an exempted company with limited liability formed under the laws of the Cayman Islands pursuant to the Memorandum and Articles of Association dated 18 June 2004 (as amended by the Amended and Restated Memorandum and Articles of Association dated (23 March 2007) (the "**Articles**").

13. In the first quarter of 2008 a significant number of investors in the Fund made redemption requests to the Manager for June and September 2008. In response to these requests, the Manager wrote to all investors on 2 June 2008 proposing that the Fund adopt amendments to its Articles which would allow for the payment in full of those redeemers over a longer period of time than provided for in the existing Articles (the "**First Slow Payment Option**") without a suspension of redemptions. This was not favoured by a significant number of the remaining investors and the Manager called an extraordinary meeting on 26 June 2008 to propose resolutions to implement the Interim Slow Payment Option. The resolutions were not passed at this meeting.

14. The Manager circulated a revised proposal on 17 July 2008 that would purportedly allow the Manager to redeem all investors "through the natural liquidation of the portfolio". The

proposed amendment to the Articles would grant the Manager the right to "slow pay" all redeeming investors via the issuance of a liquidating class of shares (the "**Class R Shares**") upon their redemption. The pace at which the slow pay would occur would be dictated by the underlying maturities of the loans in the Fund's portfolio (the "**Second Slow Payment Option**").

15. Due to large withdrawal requests and illiquid assets, investors were asked to vote in favour of the Second Slow Payment Option on 30 July 2008 and to amend Article 30b of the Articles to read as follows:

(i) *"Subject to the Company's ability to delay payment of redemption proceeds as set forth in this Article 30(b), within 30 calendar days after each Redemption Date, the Initial Payment Amount (as defined below) due to any redeeming Shareholder will be distributed. The "Initial Payment Amount" to be made to each Shareholder that has requested redemption of any Shares will equal such Shares' pro rata portion of (i) the cash and cash equivalents of the Company, and (ii) in the sole discretion of the Directors on the advice of the Investment Manager, any other liquid assets of the Company.*

(ii) *The remainder of the redeeming Shareholder's Shares (the "Remainder Shares") will be converted into Class R Shares having an aggregate Net Asset Value equal to the Remainder Shares that such redeeming Shareholder has requested to be redeemed on such Redemption Date. Such conversion will be made by a compulsory redemption of the Remainder Shares followed by a deemed subscription for Class R Shares.*

(iii) *Assets allocated to Class R Shares shall be managed and valued in accordance with the rules and procedures set out in the Articles, and shall be subject to any management fee and Performance Allocation (or other performance fee) chargeable to Shares and included in the Offering Memorandum. Upon the sale of any portion of an asset allocated to Class R Shares or the receipt of other payments (such as dividends,*

principal and interest) relating thereto, the net proceeds of such sale will be held as cash or cash equivalents, with a maturity not to extend past the end of the next scheduled Class R Redemption Date (as defined below). Notwithstanding the foregoing, the Company shall have the right to reserve from such proceeds capital to (i) fund necessary cash reserves, (ii) fund ongoing funding obligations, (iii) pay down leverage as deemed advisable and (iv) make protective investments intended to maintain the value of the assets attributable to the Class R Shares.

(iv) *The Directors shall cause the Company to redeem compulsorily Class R Shares at their current Net Asset Value to the extent of net proceeds, after deduction of any accrued management fees, Performance Allocation (or other performance fees) included in the Offering Memorandum and allocated expenses ("Available Funds"), on each Class R Redemption Date. The "Class R Redemption Date" shall be the 30th day following the end of each fiscal quarter of the Company, and such other dates (not more often than monthly) established from time to time by the Directors. To the extent Available Funds for a Series of Class R Shares are insufficient to redeem such Series in full, such redemption shall be effected pro rata among all holders of Class R Shares of such Series. On each Class R Redemption Date, each redeeming Shareholder will receive its pro rata portion of any Available Funds.*

(v) *The Directors, on the advice of the Investment Manager, may, in their sole discretion, cause the Company to compulsorily redeem at any time all or a portion of any or all Series of Class R Shares at the current Net Asset Value thereof; provided, that if only a portion of a Series of Class R Shares are redeemed, then an identical percentage, to the extent practicable, of each Shareholder's Class R Shares of that Series must be redeemed.*

(vi) *The Company may delay part or all of the payments to Investors requesting redemptions of Shares (other than Class R Shares) if the Company is unable to liquidate positions, there is a default or delay in*

payments due to the Company from banks, brokers or dealers or other entities, if raising the cash to pay such redemptions would, in the Directors' good faith judgment, be unduly burdensome to the Company or if the Directors in their sole discretion determine such delay to be in the best interest of the Company."

16. The investors passed a special resolution to amend the Articles on 30 July 2008 as above (the "**Amended Articles**").

17. Accordingly, the Manager's mandate has been effectively limited to liquidating investments and distributing the Fund's available cash to investors in accordance with the Amended Articles.

18. However, distributions to investors since the implementation of the Second Slow Payment Option have been withheld unreasonably despite large amounts of cash on the balance sheet. As of 31 December 2014, 46% of the remaining assets consisted of cash (i.e. US$ 13.6 million). Despite the substantial cash balance, no distribution whatsoever has been made to investors during 2015 to date.

New Management

19. The decision to implement the Second Slow Payment Option was made under the management of Jon Kane who resigned on 14 December 2009. No specific reasons were given to the investors for the resignation of Mr Kane except that he had decided to pursue another opportunity. The replacement of Mr Kane was not discussed with investors nor consented to by investors. John Howe, founder of the Manager, was unilaterally appointed to replace him. The investors were not informed in advance of Mr Howe's appointment.

20. Dan Harrington, head of real estate and deputy to Mr Kane, had previously resigned (for unexplained reasons). Investors were informed of his resignation by Jon Kane on 12th May 2009. When Mr Harrington resigned from the board he was replaced by Mark Warnken who is a member of the Manager. Again, the investors were not informed of this change.

21. David Bree, an independent director of the Fund from DMS Offshore, resigned in April 2011. During a phone call with investors, Mr Howe said that Mr Bree resigned over technical issues and alluded to the fact that Mr Bree felt that he was not being properly appraised by the Manager of matters involving the Fund. Martin Laidlaw from JP Fund Administration (Cayman) Ltd, replaced Mr Bree.

22. The changes to the board of the Fund demonstrate the Manager's strong influence over the decision-making of the Fund. It also shows the unwillingness of the Manager to keep the investors and independent directors updated and to consult with them on key changes to the Fund. Importantly, John Howe is also a director and consequently the board comprises two members of the Manager and only one independent director.

First Reverse Dutch Auction

23. In November 2010 the Manager designed a new scheme and proposed to conduct a so-called "reverse Dutch auction" (the "**First Dutch Auction**"), under which the Fund would repurchase its own shares at a substantial discount from investors that were seeking liquidity.

24. The First Dutch Auction presented investors with two options:

    (a) sell at a material discount, or

    (b) remain invested in a portfolio whose liquidity would be used to buyout certain investors.

25. The proposed First Dutch Auction was prejudicial to investors for the following reasons:

    (a) The proposal was contrary to the Second Slow Payment Option which stipulated that the cash available should be distributed *pro-rata* to investors (Article 30(b)(ii) of the Amended Articles). In contrast, the First Dutch Auction would have resulted in certain investors, willing to accept a discount on their interest, gaining priority over other investors;

    (b) Investors who did not wish to sell at a discount would have been exposed to an increased tail risk (i.e. the discount might not have been sufficient to

compensate investors for an increased exposure to illiquid and difficult to value assets); and

(c) Overall, the proposed First Dutch Auction was an attempt to force investors into a bidding process that necessarily discounts their interest in the Fund in order to access their money (and contrary to the terms upon which they had agreed to invest).

26. The majority of the investors opposed the First Dutch Auction as it was not considered to be in the best interests of investors as a whole and was contrary to the provisions of the terms of the Second Slow Payment Option which stipulated that available cash is to be distributed pro rata to investors.

27. On 2 November 2010, counsel on behalf of shareholders and investors representing more than 80% of the Fund wrote to the Manager explaining their opposition to the First Dutch Auction.

28. Counsel for the Manager confirmed on 5 November 2010 that due to this opposition the First Dutch Auction would not be considered any further.

Second Reverse Dutch Auction

29. Despite the fact that the First Dutch Auction was soundly rejected by over 80% of the Fund's investors, more recently, on 4 September 2015, the Manager gave notice to all investors that a resolution had been passed by holders of all the Management Shares in the Fund to hold a *second* reverse Dutch auction (the "**Second Dutch Auction**"). Under the terms of the Second Dutch Auction, those investors who return a Contingent Redemption Request indicating that they are willing to sell their participating shares at a discount of at least 15% of their 31 July 2015 NAV will be considered for a redemption in advance of other investors. The redemption payments under the Second Dutch Auction are to be paid on or before September 30, 2015.

30. Similarly to the First Dutch Auction, if the Second Dutch Auction is allowed to take place, it will be extremely prejudicial to investors because it allows those shareholders who

submit a Contingent Redemption Request to accept a discount on their interest in the Fund in return for receiving a priority over other investors.

31. Any distributions made pursuant to the Second Dutch Auction would inevitably decrease the pool of assets available to those investors who do not submit a Contingent Redemption Request. As was the case with respect to the proposed First Dutch Auction, such an arrangement is contrary to the provisions of the terms of the Second Slow Payment Option which stipulates that available cash is to be distributed *pro rata* to investors.

32. The Manager has failed to make any distributions despite at least US$ 4 million of cash being available, which is contrary to the objectives of the Second Slow Payment Option approved in 2008. Again, the Petitioner and the Investor Group consider this process is inappropriate, unauthorised and the Manager's conduct requires independent investigation.

33. Given the fact that a secondary market trade was recently executed and approved by the Manager the need for a reverse auction is highly questionable because there is clearly a viable route for investors to obtain liquidity. Furthermore, the timing of this recent secondary market trade and the timing of the Second Dutch Auction is a cause of great concern to the Investor Group.

Lack of transparency

34. The Manager refuses to engage with investors or provide appropriate information on the status and monetisation strategy of the portfolio.

35. In 2011, the Investor Group together with other investors in the Fund approached the Manager on multiple occasions to negotiate the constitution of an investor committee or the appointment of an investor representative to review the disposition process and status of the underlying assets with the Manager on a periodic basis, report to investors, inform them of the progress and relay any suggestions or concerns to the Manager. The Manager did not respond to the proposal.

36. An example of the effect of this lack of transparency preventing investors from being able to properly manage and monitor their investments in the Fund is the operation of the Fund's side-pocket. In 2008 one of the Fund's investments was written-off and transferred into a side-pocket. The Manager initiated legal action against the borrower and its ultimate parent company in order to recoup losses. However, despite multiple requests from the Petitioner and other investors, the Manager refused to disclose any information about the merits of the case, arguing that such information was privileged.

37. Despite investors' multiple requests for information, very little relevant information is contained in the Manager's infrequent and brief communications. These communications - in the form of semi-annual/annual letters - remain extremely vague and fail to provide transparency on asset status, valuations and cash flows. Furthermore, no liquidity forecasts or valuation plans have been provided (which are standard in communications to investors in a fund of this nature).

The wording of the latest communication dated 1 June 2015 illustrates the way the investors' main concern, distributions, is completely ignored with the only reference to a distribution appearing on page 2 as follows:

"As in the past, once liquidity events occur, we intend to make distributions."

38. This lack of clarity around distributions, combined with absolutely no indication of when distributions will be made is extremely concerning for a fund in wind-down that had 47% of its assets in cash five months ago (the cash position as of 31st December 2014 was US$ 13,593,055, i.e. well in excess of the minimum cash required to manage the Second Slow Payment Option).

39. The Manager's refusal to disclose information on the underlying assets prevents investors from monitoring the monetisation process and raises serious concerns about the Fund's management.

Release form requests

40. It is noteworthy that prior to January 2011 the investors were provided with information as to the activities and financial position of the Fund. During this period, upon request,

periodic conference calls and meetings were held with the Manager to review the portfolio. The status of the assets and monetisation strategy was discussed in detail. By way of example, the Manager committed by side-letter dated 31 May 2007 to provide the Petitioner with full transparency including a review of the portfolio on a position by position basis.

41. However, in January 2011, the Manager requested investors sign a non-disclosure agreement ("**NDA**") as a pre-condition to the release of any substantive information.

42. The terms of the NDA were unusual and exceedingly onerous in that they included what was purportedly a full litigation release and waiver for all past and future actions of the Manager (the "**Release**"). Such a provision is contrary to the rights of investors and not something the investors could properly agree to, without potentially compromising investors' own duties to their respective stakeholders.

43. Although the issue was raised with the Manager, it refused to remove the Release. Mr Howe's letter dated 13 April 2011 stated that the Manager was concerned by the need to provide the same information to prospective buyers and sellers because the Fund was trading in the secondary market.

44. However, The Manager's explanations were vague and incoherent and disregarded the following:

    (a) the Fund is not a publicly listed entity and accordingly is not limited by such restrictions (i.e., the secondary market is not a regulated exchange, there is no permanent quoted price and shares are not freely traded); and

    (b) holders of shares in the Fund are bound by the OM, which explicitly states at page 12 that there is no organized secondary market in the shares.

45. In addition, the proposed NDA in fact favours those investors who agreed to sign it because they gain access to information which is not disclosed to investors who are not able to sign the Release. This is contrary to the Manager's purported objective of providing all investors with the same level of information so as to avoid having certain investors benefiting from confidential disclosures.

46. Overall, the request for the Release and multiple attempts to force its execution combined with the lack of transparency raises serious concerns about the management of the Fund and potential wrongdoings.

Cash hoarding

47. The Manager has continually maintained large and unjustified cash balances, ignoring the requirements of the Second Slow Payment Option. Based on the annual audits, the average cash balance over the last 5 years has been US$ 23.4 million or 46% of total assets. Over the past four years, this has risen to approximately 50%:

	Cash Position		Following Year Distribution	Retained Cash
	$,M	%Assets		
31-Dec-10	25.0	27%	24.0	1.0
31-Dec-11	29.0	44%	4.0	25.0
31-Dec-12	30.7	52%	18.3	12.4
31-Dec-13	18.8	56%	3.5	15.3
31-Dec-14	13.6	46%	0.0	13.6

48. Although an appropriate cash balance is necessary to fund operating expenses and meet specific requirements, the Manager's primary motive to hold on to the cash appears to be maximizing the 1.5% annual management fee it charges on cash balances pursuant to a request by the Manager dated 27 October 2010, to amend the amended and restated limited liability company agreement of the Fund. The Manager confirmed in the past that it was charging management fees on cash balances. From the annual audits, it is clear that a 1.5% management fee is being charged on cash and cash equivalents.

49. Based on the figures at paragraph 47 above, it is possible that over the last five years the Manager has overcharged an estimated US$1 million to US$2 million in fees on cash balances.

50. In 2007, the Fund purchased a US$ 15 million note from an intermediary, lawyer Marc Dreier. The note was supposedly backed by real estate investments. At maturity, the Fund and the Onshore Fund received full principal repayment and interest. Mr Dreier was subsequently arrested and convicted of running a Ponzi scheme. The trustee in bankruptcy of Mr Dreier requested repayment of all money received by the Funds (i.e., principal and interest) pursuant to a fraudulent conveyance claim. The Manager opposed the clawback claim and proposed a settlement which was rejected and resulted in litigation. In order to meet the potential liability, the Fund initially established a US$ 16.65 million cash reserve (the "**Reserve**").

51. However, the Fund's auditors reported that the Fund's potential exposure to the Dreier case was US$ 13.32 million (the remaining $3.33 million relating to the Onshore Fund). The Manager was requested to:

(a) clarify why the Fund maintained the Reserve to cover the Onshore Fund's exposure;

(b) explain why it could not earmark investments to meet the costs of a potential claim, as opposed to maintaining the Reserve; and

(c) provide a legal opinion supporting its decision to reserve an amount equivalent to the principal and interest of their investment in full.

The Manager did not provide a response to any of these queries.

52. Given the extent of the Reserve (more than a quarter of the remaining assets) and the Fund's status, the Manager in conjunction with its lawyers should have investigated the court decision and taken all steps necessary to release the Reserve and proceed with a distribution. The Reserve was subsequently released with substantial delays, allowing the Manager to collect management fees of up to 1.5% on the cash during the period.

53. As the Reserve was not an accounting reserve, but merely a hold-back of cash, the Manager continued to charge fees on the full amount held in the Reserve. If the Manager had considered the risk of clawback significant (as was suggested by the withholding of cash), it should have reflected this by making a provision for it. Given that

the audit that year was not qualified, it implies that the auditors did not consider it necessary to establish a provision. If the risk was considered minimal, the money should have been distributed, leaving other assets to cover the claim. However, neither of these possible actions was followed.

54. According to the 2014 audited accounts, the Fund had a $13.6 million cash balance as of 31st December 2014. No distribution has been received to date and no specific justification for the failure to do so; all that has been provided is a vague explanation that it is necessary to provide additional funding on existing investments in order to avoid write-downs or full write-off. Meanwhile, the Manager continues to charge management fees on cash balances.

Conflicts of interest

55. Due to high leverage and poor performance, there was little equity left in the Onshore Fund. However, after years of negative performance, the Onshore Fund was up 58.4% in 2011 (by comparison, the Offshore Fund was up 3.3% that year). Certain transactions between the Fund and Onshore Fund raise concerns about the Fund's assets being potentially used to pay out onshore investors, in particular directors and employees of the Manager.

56. Based on a conversation with Mr Howe, it is believed that he and his associates personally invested in the Onshore Fund. This would result in a significant conflict of interest for the Manager, especially with regards to the SPAC proposal that was likely to significantly benefit onshore investors to the detriment of offshore investors by effectively bailing them out by combining the assets and liabilities of the Onshore and Offshore Funds. It also raises serious concerns about the propriety of the various transactions between the Onshore and Offshore Funds.

57. The Fund initially invested in non-recourse notes totaling $5.6 million issued by a subsidiary of the Onshore Fund. The terms were subsequently amended as follows:

    (a) Interest reduced from 5% to 1 year Libor;

    (b) Maturity extended from July 2010 to July 2013; and

(c) Initial repayment depended on the performance of twelve underlying hotels, then eight.

58. The current status of the underlying assets of the non-recourse notes and the maturity date is unknown. Repeated questions on the matter remain unanswered.

59. Following the Manager's decision not to meet a capital call from a senior lender on four of the underlying hotels, a US$ 2 million loan loss reserve was recorded by the Fund in 2010. The reserve was subsequently increased to US$ 3 million. Below is the investment history and outstanding amounts:

$, in thousands	31-Dec-09	31-Dec-10	31-Dec-11	31-Dec-12	31-Dec-13	31-Dec-14
Outstanding Notes	5,618	5,669	7,082	6,150	4,766	4,769
Loss Reserve	0	2,005	3,186	2,932	2,934	2,932
Net Receivable	5,618	3,664	3,896	3,218	1,832	1,837
Interest	5%	1.16%	0.76%	1.07%	0.69%	0.56%
Maturity	15-Jul-10	07-Jul-13	07-Jul-13	07-Jul-13	Not specified	Not specified

60. From the above, it seems that the Fund provided funding to a subsidiary of the Onshore Fund on unfavourable terms and failed to take any action to protect the investment that defaulted in 2014.

61. Information was requested from the Manager regarding the rationale for these investments, investment date (as these transactions might have been conducted at a time when the Fund was in wind-down), and the benefits (if any) for offshore investors. The Manager never responded.

62. An independent party is required to investigate these trades, monitor inter-fund transactions between the Fund and the Onshore Fund going forward and consider potential claims against those responsible if culpable wrongdoing is uncovered.

Audit qualification & auditors replacement

63. In 2009 and 2010 the audited financial statements of the Fund were qualified. In the 2010 auditors report, the Fund's auditors, Eisner Amper LLP, commented on their qualification of the 2009 audit. At the time they reported that the depreciation in fair value of certain investments amounting to US$ 5.3 million onshore and US$ 8.3 million offshore was not recognized. These adjustments were recorded in 2010 and resulted in losses. As per their qualification in 2009, the 2010 audit stressed that the losses should have been recognised in 2009. This indicates that there was an over-valuation of assets and an overcharging of fees in 2009.

64. The Manager subsequently changed the Fund's auditors. 2013 and 2014 audits were performed by Halpern & Associates, a small accountancy firm based in Connecticut. Given the lack of transparency, lack of independent monitoring, composition of the board, past qualifications and the replacement of auditors, Halpern & Associates' (unexplained) appointment is concerning.

Class A shares unexplained issuance & redemption

65. All existing shares of the Fund were redeemed in 2008 and converted to Class R Shares pursuant the terms of the Amended Articles. The Fund also continued to offer new Class A Shares to investors who chose to reinvest redemptions of Class R Shares and crucially to new investors.

66. In 2010, the Class A Shares realized returns of 28.9%. By comparison, the Class R Shares posted negative returns of -21%. The Investor Group together with other investors requested clarifications with regard to who exactly the investors in the Class A Shares were, the assets they were invested in and the performance. The Manager did not respond.

67. Additional explanations were requested on the redemption of the Class A Shares. Despite the Fund's lack of liquidity, the Class A Shares were fully redeemed in June 2011 for US$ 1.4 million by an unknown and undisclosed new investor. During the same period, the Fund made $1.4 million of unexplained protective advances. The Manager failed to explain the nature of these transactions. The Manager did not respond.

Attempt to force transfer of assets

68. Despite the fact that the Fund was in Second Slow Payment Option and that there was significant investor opposition, the Manager attempted to force the conversion of the Fund into a special purpose acquisition fund ("**SPAC**"), a type of publicly-traded buyout fund that raises money in order to pursue the acquisition of an existing fund.

69. In June 2010, the Manager proposed to transfer the Fund's assets into a SPAC (the "**SPAC Proposal**"). The Manager intended to create liquidity by raising new capital, investing in new assets, mostly real estate, and potentially converting the SPAC into a real estate investment trust which is a closed-end investment fund that owns assets related to real estate such as buildings, land and real estate security.

70. In addition to being contrary to the Manager's mandate to progress with the Second Slow Payment Option, the SPAC Proposal was highly unattractive to investors for the following reasons:

    (a) Illiquid investment

        Given the profile of the Fund's assets, short to medium term liquidity by way of the SPAC was likely to be worse than monetisation on an asset-by-asset basis. Future liquidity of the SPAC would have depended on the implementation of a successful growth strategy. A SPAC is a permanent capital vehicle that would have locked in investors with no liquidity opportunity. The SPAC's small size, lack of capital and distressed underlying assets implied that its shares would have been illiquid providing no exit route for investors. Substantial capital would have had to be raised in order to expand and turn the legacy non-performing assets into a viable investment business capable of potentially attracting new

investors. This business plan would have been highly uncertain and in any case an unacceptably lengthy process.

(b) Doubtful strategy

Although the Manager approached other managers for a potential transfer of assets, the board remained vague as to how it intended to raise new capital and what the investment strategy would be.

(c) Substantial cost

The SPAC had an estimated set-up cost of US$200,000. Management fees were to be the greater of 1.5% of NAV or US$ 1.5 million and a 20% incentive fee was to be charged. This contrasted with the inability of the Manager to charge performance fees under the Second Slow Payment Option. The markdowns on assets have been such that it is extremely unlikely that the Manager will ever be in a position to charge performance fees. More importantly, the shares were initially expected to trade at a 5% to 25% discount to current NAV.

71. Despite the material change from the Second Slow Payment Option, the Manager intended to proceed with the SPAC transaction *without* the consent of the offshore investors. The Manager sought majority approval from the Onshore Fund's investors instead. The SPAC Proposal would have provided the Manager with a long term capital vehicle and hence a stream of future income. This appears to have been a key motivation for Mr Howe in promoting the SPAC Proposal and appears to be in breach of Mr Howe's fiduciary duties to act in the investors' best interests. We believe that the Manager and/or connected persons are significant shareholders in the Onshore Fund.

72. The Investor Group opposed the SPAC Proposal and raised the following issues with the Manager:

(a) the conversion into a SPAC suggested a move to a highly uncertain growth strategy;

(b) the SPAC shares were expected to be illiquid and investors would be locked for an indefinite period of time;

(c) the Manager was unable to articulate a compelling business plan and strategy to raise new capital;

(d) the investors were to incur initial impairments due to the discount at which shares were expected to trade; and

(e) the SPAC would have resulted in increased fees to the Manager.

73. The Investor Group indicated that they rejected the SPAC Proposal and requested a vote on the SPAC Proposal. In response, the Manager by a letter to Pentagon dated 12 July 2010 stressed that "*a majority wished to continue discussion exploring the proposal*".

74. Therefore, the Investor Group felt that it had no choice but to instruct legal counsel to respond to the Manager and prepare for legal action. In view of the Investor Group's opposition and the threat of legal action, the Fund's directors decided to drop the SPAC Proposal. The Fund is believed to have incurred costs in excess of US$ 200,000 in respect of the failed SPAC Proposal. Of course the Investor Group incurred their own, significant legal costs in opposing the SPAC Proposal.

CONCLUSION

75. For the reasons set out above, there is no alternative remedy for the Petitioner other than liquidation. It is just and equitable that the Fund should be wound up on one or more of the following grounds:

(a) Oppression, Wilful Disregard and Undermining of the Petitioner's and the Investor Group's Rights and Interests

(i) The Manager continues to conduct the business of the Fund in such a way that the rights and interest of the Petitioner and the other participating shareholders have been disregarded and undermined such that it would be unjust and inequitable for them to be forced to remain as

members in the Company or to be forcibly redeemed upon the terms of the Second Dutch Auction:

(1) The Manager's repeated attempts to force the investors to sell their shares at a significant discount in lieu of resolving the payment issues, most recently through the Second Dutch Auction, is prejudicial to investors because it forces investors to pay for liquidity or be locked up in the Fund with no justification;

(2) The timing of the sale of certain Class R Shares to an undisclosed party at a substantial discount followed by the sudden Second Dutch Auction proposal is highly concerning. It is hard to believe the timing of these events is no more than a coincidence. The Manager's motives to suddenly force this auction should be investigated by an independent party.

(b) Lack of Probity and Loss of Confidence in Management

(i) The Manager's reluctance and/or refusal to communicate meaningfully with investors and provide transparency raises serious concerns, especially when considering the distressed profile of the portfolio, weak performance, large cash balances and unexplained transactions between the Fund and the Onshore Fund.

(ii) The insertion of the onerous Release in standard documentation reinforces the concerns of the investors and raises questions about potential mismanagement and wrongdoing on the part of the Manager.

(iii) The Fund has retained significant amounts of cash for no apparent reason apart from allowing the Manager to collect substantial management fees which it has charged on cash balances.

(iv) Dealings between the Fund and the Onshore Fund appear to have involved significant conflicts of interest by the Manager.

(c) The Need for an Independent Investigation

(i) For the reasons particularised in this Petition and specifically the unexplained and poor financial performance of the Fund, it is abundantly clear that independent investigation of the Company's affairs by suitably qualified professionals is required on an urgent basis in order to protect the interests of the investors.

(d) Loss of Substratum

(i) The Company's substratum has been lost as the Manager is not conducting the affairs of the Fund in accordance with the Second Slow Payment Option and instead is continuing with an unexplained and detrimental strategy. Without further capital, the Fund cannot make additional investments in accordance with the purposes set forth in the Articles and the OM. Failed attempts to restructure the Fund into permanent capital vehicles and now the potential development of real estate projects clearly indicate that the Manager is pursuing its own agenda at the expense of investors of the Fund. The Manager has failed to complete its mandate after seven years.

76. As a result of the matters pleaded above, the Petitioner has justifiably lost all trust and confidence in the Fund's management to manage the Fund's affairs and/or undertake the winding down of the Fund. The official liquidation of the Fund under the supervision of an independent party has become necessary to guarantee a fair and transparent monetisation of the remaining assets.

77. The Petitioner and the Investor Group hold participating non-voting shares in the Fund. They have no contractual or other ability to remove or change the composition of the Fund's board of directors or the Manager. The Petitioner and the Investor Group have sought to engage with the Manager through correspondence on numerous occasions but to no avail. The Petitioner's complaints can only be properly dealt with by way of the appointment of independent official liquidators who will be able to properly and independently investigate the Petitioner's (and the

Investor Group's) concerns and wind up the Fund's affairs and distribute its assets in accordance with applicable law. The Petitioner has no other more suitable remedy to pursue. The Petitioner unequivocally seeks a winding up order.

78. In all the circumstances, it is just and equitable that the Fund be wound up and that independent liquidators be appointed to wind up the affairs of the Fund.

Nomination of Joint Official Liquidators

79. The Petitioner nominates Margot MacInnis of Borrelli Walsh, G/F Harbour Place, 103 South Church Street, Grand Cayman, Cayman Islands, and Cosimo Borrelli of Borrelli Walsh, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong for appointment as joint official liquidators of the Fund (the "**Liquidators**"). Margot MacInnis and Cosimo Borrelli have confirmed that after making due enquiries, they are not aware of any conflicts of interest that would prevent them from accepting the appointment as Liquidators.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Fund be wound up in accordance with section 92(e) of the Law.

2. Margot MacInnis and of Borrelli Walsh, G/F Harbour Place, 103 South Church Street, Grand Cayman, Cayman Islands, and Cosimo Borrelli of Borrelli Walsh, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong be appointed as Liquidators of the Fund.

3. The Liquidators shall not be required to give security for their appointment.

4. The Liquidators shall have the power to act jointly and severally in their capacity as Liquidators of the Fund.

5. The Liquidators shall be authorised to do any acts or things considered by them to be necessary or desirable in connection with the dissolution of the Fund and the winding up of its affairs.

6. The Liquidators be authorised to exercise all the powers set out in paragraphs 1, 2, 4, 7, 8, 10 and 11 of Part 1 of the Third Schedule of the Law and section 110(2) thereof without the further sanction of this Honourable Court.

7. Without limitation to the generality of the powers specified in paragraph 6 above, it is confirmed that the Liquidators shall have the power to:

   (a) bring or defend any action or other legal proceeding in the name and on behalf of the Fund and to engage attorneys for such purposes in order to secure the assets of the Fund; and

   (b) take all action required consistent with applicable law to carry on the business of the Fund so far as may be necessary for its beneficial winding up.

8. No disposition of the Fund's property by or with the authority of the Liquidators in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Law.

9. The Liquidators be at liberty to appoint attorneys, counsel and professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of The Companies Winding Up Rules 2008 (as amended).

10. The Petitioner's costs of and incidental to the Petition shall be paid out of the assets of the Fund as an expense of the liquidation.

11. The Liquidators be at liberty to apply.

12. Such further and/or other relief as this Honourable Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 17th day of September 2015.

FILED the day of September 2015

Walkers

WALKERS
Attorneys at Law for the Petitioner

NOTE: This petition is intended to be served on:

The Fund c/o Maples and Calder, PO Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands.

This Petition is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioner whose address for service is care of their said Attorneys at Law.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on at 10:00am.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.