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ATTORNEYS FOR HUNTER  
MOUNTAIN INVESTMENT TRUST

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|  |   |                         |
|--|---|-------------------------|
| In re:   | § |                         |
|  | § |                         |
| HIGHLAND CAPITAL MANAGEMENT,<br>L.P., <sup>1</sup> | § | Case No. 19-34054-sgj11 |
|  | § |                         |
| Debtor.  | § |                         |
| HIGHLAND CAPITAL MANAGEMENT,<br>L.P.,              | § |                         |
|  | § |                         |
| Plaintiff,   | § | Adversary Proceeding    |
|  | § | No. 20-03105-sgj        |
| v.   | § |                         |
|  | § |                         |
| HUNTER MOUNTAIN INVESTMENT<br>TRUST,               | § |                         |
|  | § |                         |
| Defendant.   | § |                         |

**HUNTER MOUNTAIN INVESTMENT TRUST’S RESPONSE TO  
DEBTOR’S (I) OBJECTION TO CLAIM NO. 152 OF HUNTER MOUNTAIN  
INVESTMENT TRUST AND (II) COMPLAINT TO SUBORDINATE CLAIM OF  
HUNTER MOUNTAIN INVESTMENT TRUST AND FOR DECLARATORY RELIEF**

TO THE HONORABLE STACEY G. C. JERNNIGAN, U.S. BANKRUPTCY JUDGE:

Hunter Mountain Investment Trust (“**Defendant**”) files this its Response to *Debtor’s (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to*

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



*Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief*  
 (“**Complaint**”) in the above entitled and numbered adversary proceeding and responds as follows:

1. Defendant denies that it is the Debtor’s “parent” but does acknowledge that it acquired the Class B and Class C pre-petition limited partnership interests in the Debtor. Defendant admits it entered into the Contribution Note detailed in paragraph 1 of the Complaint. Defendant is not required to admit or deny allegations as to Rand P.E. Fund, I L.P. Series I. Defendant acknowledges that there is a significant balance remaining unpaid on the Contribution Note and that the Defendant filed proof of claim number 152 and made assertions as detailed therein.

2. Defendant denies the assertions and legal conclusions set forth in paragraph 2 of the Complaint.

3. Defendant denies the legal conclusions leapt to by the Debtor with regard to the scope of Defendant’s defensive right of set off as to any claim brought by the Debtor with regard to obligations under the Contribution Note.

4. Defendant is not required to respond to assertions of the legal basis for the Debtor’s Complaint but would note that no recovery is sought against Defendant in this adversary proceeding for monetary relief relative to the Contribution Note.

5. Defendant does not contest that the relief actually sought in the Complaint arising in or relates to the Debtor’s pending case as set forth in paragraph 5 of the Complaint.

6. Defendant acknowledges that the Court has jurisdiction over the claims made in the Complaint as set forth in paragraph 6 of the Complaint.

7. Defendant acknowledges that this matter is a core proceeding and the Defendant consents to the entry of final orders in this matter as detailed in paragraph 7 of the Complaint.

8. Defendant acknowledges that venue is proper in this district as noted in paragraph 8 of the Complaint.

9. Defendant acknowledges that the descriptions of the parties is correct as detailed in paragraphs 9 and 10 of the Complaint.

10. Defendant does not contest any of the Case Background statements made in paragraphs 11 through 15 of the Complaint.

11. Defendant admits that the description of the ownership structure, inclusive of voting rights noted, set forth in paragraph 16 of the Complaint is correct.

12. Defendant admits that the description of the Class B nonvoting limited partnership interests that the Defendant acquired from the Debtor, set forth in paragraph 17 is correct.

13. Defendant admits that the description of the Class C nonvoting limited partnership interests that the Defendant acquired from prior holders of same as set forth in paragraph 18 is correct.

14. Defendant admits that the Partnership Agreement was twice amended as detailed in paragraph 19 of the Complaint.

15. Defendant would note, save for a noted omission, that Section 3.9 of the Partnership Agreement is accurately stated in paragraph 20 of the Complaint.

16. Defendant would note only that Section 4.2(e) of the Partnership Agreement is correctly stated in paragraph 21 of the Complaint and any other assertions therein are denied.

17. Defendant denies the allegations set forth in paragraph 22 of the Complaint.

18. Defendant would note that Section 6.02 of the Contribution Agreement is correctly stated in paragraph 23 of the Complaint and that Defendant made note of same in its proof of claim.

19. Defendant would note that portions of Section 6.05 of the Contribution Agreement are correctly stated in paragraph 24 of the Complaint.

20. Defendant agrees that relative to an action by the Debtor on the promissory note that was executed as part of the Contribution Agreement, the Defendant can only secure a setoff against the amount owed under that promissory note and the Defendant is not able to receive a positive recovery from the Debtor. Defendant denies that its set off rights are limited to \$1,626,099.94 as stated in paragraph 25 of the Complaint.

21. Defendant need not admit or deny any recitation set forth in paragraph 26 of the Complaint as to any legal standard by which this adversary proceeding will be governed.

22. Defendant admits that the statements set forth in paragraphs 27 and 28 of the Complaint fairly characterize its position.

23. Defendant denies the allegations set forth in paragraph 29. Defendant, by filing its proof of claim, only sought to preserve, to the fullest extent possible, any and all of its set off rights with regard to any collection action on the promissory note that was generated as part of the Contribution Agreement.

24. Defendant denies the allegations and the arguments set forth in paragraphs 30 through 38 of the Complaint and would note that Defendant seeks no positive recovery from the Debtor's estate, but only to preserve its defenses to collection on the promissory note that was generated as part of the Contribution Agreement.

25. Defendant denies that subordination under Section 510(b) as detailed in paragraphs 39-41 of the Complaint is necessary or applicable in this instance as the Defendant does not seek a positive recovery from the Debtor's estate.

26. Defendant denies that its right to set off are affected or limited as set forth in paragraphs 42 through 47 of the Complaint.

27. Defendant reserves its right to object to any supplementation or modification of the Objection or the Complaint beyond those allowed by the Federal Rules of Bankruptcy Procedure.

WHEREFORE PREMISES CONSIDERED Defendant request this Court deny any relief sought by the Debtor herein, that attempts to strip or deny the Defendant its defensive rights to set off and for such other and further relief to which the Defendant can show itself entitled to at law or in equity.

DATED: December 1, 2020

Respectfully submitted by,

/s/ E. P. Keiffer

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COUNSEL FOR HUNTER MOUNTAIN  
INVESTMENT TRUST

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 1, 2020 a true and correct copy of the foregoing Response was served on the Debtor via the Court's electronic noticing system.

/s/ E. P. Keiffer

E. P. Keiffer