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7 Proposed Attorneys for Chapter 11 Debtor  
 and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**  
 9 **DISTRICT OF NEVADA**

11  
 12 In re  
 13 Front Sight Management LLC,

Case No. 22-11824-abl

Chapter 11

**Date:** OST Requested

**Time:** OST Requested

**Place:** TBD

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 21 **EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I)**  
 22 **AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING, (II) GRANTING**  
 23 **PRIMING LIENS AND ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING**  
 24 **THE DEBTOR’S USE OF CASH COLLATERAL, (IV) MODIFYING THE AUTOMATIC**  
 25 **STAY, AND (V) GRANTING RELATED RELIEF**

26 Front Sight Management LLC dba Front Sight Firearms Training Institute, the chapter 11  
 27 debtor and debtor in possession herein (the “Debtor”), hereby files its emergency motion (the  
 28 “Motion”) pursuant to sections 105(a), 361, 363 and 364 of Title 11 of the United States Code  
 (“Bankruptcy Code”), for entry of an interim order substantially in the form attached hereto as

**Exhibit 1** (the “Interim Order”) and following a final hearing, a final order (the “Final Order”). By

1 the Motion, the Debtor seeks the following: (1) interim approval of post-petition financing from FS  
2 DIP, LLC (the “Lender”), (2) granting priming liens and administrative expense claims, (3)  
3 authorization to use cash collateral on an interim basis, (4) the setting of a final hearing on the relief  
4 requested in the Motion, and (5) final approval of the debtor in possession financing and use of cash  
5 collateral after a final hearing on the Motion.

6 As set forth more fully below, the Debtor employs approximately 135 employees and  
7 provides firearms training courses which promote the defensive use of various firearms. Courses are  
8 offered to the general public, members of law enforcement and military members. In order to enable  
9 the Debtor to operate its business in such a way as to avoid immediate and irreparable harm and to  
10 fund operations upon a final hearing on the Motion, the Debtor respectfully requests that the Court  
11 grant the relief requested by the Motion as set forth below.

### 12 Interim Relief Requested on an Emergency Basis

13 Per the Motion, the Debtor seeks entry of an Interim Order:

14 i. Approving the debtor in possession financing (the “DIP Financing”) set forth in the  
15 term sheet attached as **Exhibit 2** hereto;

16 ii. Authorizing the Debtor to borrow money and grant priming liens and administrative  
17 expense claims under the DIP Financing pursuant to the Interim Order and to execute and/or deliver  
18 the related agreements, instruments, and documents, as they may be amended, supplemented or  
19 otherwise modified from time to time, by and between the Debtor, as borrower, and the Lender, as  
20 the post-petition lender;

21 iii. Pending the final hearing on the Motion pursuant to Rule 4001(c) of the Federal  
22 Rules of Bankruptcy Procedure (“FRBP”), authorizing the Debtor to use cash collateral and to obtain  
23 DIP Financing on a final basis from the Lender as provided in the projections attached as **Exhibit 3**  
24 hereto and as **Exhibit B** to the Declaration of Anthony Piazza (the “Piazza Decl.”) filed concurrently  
25 herewith and authorizing the Debtor to deviate from the total expenses contained in the projections  
26 by no more than 15% on a cumulative basis and to deviate by categories (without the need for a  
27 further Court order);

28 iv. Granting to the Lender (a) first priority priming liens and security interests, senior to  
all other secured and unsecured creditors of the Debtor’s estate in all pre-petition and post-petition

1 property of the Debtor (including avoidance actions); and (b) super priority administrative expense  
 2 treatment of the post-petition Lender’s claims against the estate to secure repayment of the Debtor’s  
 3 obligations under the DIP Financing, except with respect to any carve-out for professional fees that  
 4 may be approved by the Court;

5 v. Determining that the security interests of any existing lienholders are adequately  
 6 protected, pursuant to Sections 364(d)(1)(B), 361 and 363(e) of the Bankruptcy Code;

7 vi. Modifying the automatic stay established pursuant to Section 362 of the Bankruptcy  
 8 Code to permit the post-petition lender to take certain actions as described more fully below;

9 vii. Waiving any stay of the effectiveness of the Interim Order and providing for the  
 10 immediate effectiveness of the Interim Order and

11 viii. Scheduling a final hearing.

12 **Relief Requested on a Final Basis Pending a Further Hearing**

13 In addition to the interim relief requested above, the Debtor also requests that the Court set a  
 14 continued, final hearing on the Motion so that the Debtor may seek entry of a final order approving  
 15 the DIP Financing, approving priming liens and administrative expense claims, approving the  
 16 Debtor’s use of cash collateral and approving the related relief requested herein.

17 This Motion is made and based upon the following Memorandum of Points and Authorities,  
 18 the concurrently filed Piazza Decl. and evidence appended thereto, the arguments of counsel and  
 19 other admissible evidence properly brought before the Court at or before the hearing on this Motion.

20 **BANKRUPTCY RULE 4001 STATEMENT**

Summary of Material Terms	Reference in the Interim Order
<b><u>Borrower:</u></b> Debtor Front Sight Management LLC	p. 1
<b><u>Lender:</u></b> FS DIP, LLC	p. 2, line 14
<b><u>Maximum DIP Loan Commitment:</u></b> Up to \$5,000,000 in new funding, with \$1,000,000 available on an interim basis	p. 7, ¶1
<b><u>Interest Rate:</u></b> 9.5% per annum, payable in-kind (except for Lender’s fees and costs which are paid per the Loan Documents)	p. 8, ¶16

Summary of Material Terms	Reference in the Interim Order
<p><b>Maturity Date:</b> Seven months after the initial draw; it will be an event of default if a plan of reorganization is not confirmed on or before one hundred and eight (180) days after the initial draw.</p>	p. 8, ¶15
<p><b>Proposed Use of DIP Financing:</b> (1) Immediate working capital needs, (2) general corporate purposes and (3) administrative and professionals costs and expenses in this case</p>	p. 8, ¶4
<p><b><u>FRBP 4001(c)(1)(B)(i) - grant of priority or a lien on property the estate under § 364(c) or (d):</u></b></p> <p>(1) Grant of allowed super-priority administration claim under § 364(c)(1), subject to any carve-out;  (2) Grant of automatically perfected security interests under §§ 364(c)(2) and (c)(3); and  (3) Grant of liens priming pre-petition liens under § 364(d).</p>	p. 10, ¶¶ 9 & 10
<p><b><u>FRBP 4001(c)(1)(B)(ii) - providing priority for a claim that arose before the commencement of the case</u></b></p>	N/A
<p><b><u>FRBP 4001(c)(1)(B)(ii) - a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or any lien securing the claim</u></b></p>	N/A
<p><b><u>Administrative Expense Claim Carve Out:</u></b></p> <p>The carve-out (“Carve-Out”) is as follows: (i) in an amount not to exceed the amount set forth for such period in the accrual portion of the Approved Budget, the aggregate amount of any allowed but unpaid fees, costs and expenses of the Debtor’s counsel, the Debtor’s financial advisor, and counsel to any committee, all of which are payable under Sections 330 or 331, and were accrued or incurred prior to any Event of Default Notice Date; plus (ii) such fees, costs and expenses accrued or incurred on or after an Event of Default Notice Date in an aggregate amount not to exceed \$250,000; plus (iii) the payment of fees pursuant to 28 U.S.C. § 1930.</p>	p. 11, ¶11

Summary of Material Terms	Reference in the Interim Order
<p><b><u>Events of Default:</u></b></p> <p>Customary events of default, including:</p> <p>(1) failure to confirm a plan within one hundred and eighty (180) days from the initial draw;</p> <p>(2) entry of an order modifying the terms of the DIP Financing; the Interim or Final Orders or other loan documents;</p> <p>(3) appointment of a chapter 11 trustee or examiner with special powers, or dismissal or conversion of this case;</p> <p>(4) entry of an order granting relief from or modifying the automatic stay to allow another creditor to perfect, execute upon, or enforce a lien on any of the collateral, or entry of an order granting any administrative claim or lien with priority equal or superior to that provided to the lender (exclusive of any carve-out);</p> <p>(5) the filing of any pleading by the Debtor seeking to impair any of the Lender's rights;</p> <p>(6) an action or proceeding against the Lender by any committee to modify or amend the Interim Order or Final Order;</p> <p>(7) termination or lapse of Debtor's exclusive period;</p> <p>(8) removal of the Debtor's Chief Restructuring Officer; and</p> <p>(9) failure to meet certain milestones.</p>	<p>(1) p. 8, ¶5</p> <p>(2) p. 12, ¶12</p> <p>(3) p. 15, ¶18</p> <p>(4) p. 10, ¶10; p.12 ¶13</p> <p>(5) p. 12, ¶12;</p>
<p><b><u>FRBP 4001(c)(1)(B)(iv) - waiver/modification of the automatic stay:</u></b></p> <p>Automatic stay is modified to permit lender to perfect DIP liens and exercise rights upon an event of default.</p>	<p>p. 10, ¶10; p. 13, ¶14</p>
<p><b><u>FRBP 4001(c)(1)(B)(v) - waiver/modification of Debtor's rights regarding chapter 11 plan, cash collateral or post-petition financing:</u></b></p> <p>Debtor may not seek financing under § 364(b), (c) or (d) unless it pays the DIP Financing in full.</p>	<p>p. 12, ¶12</p>
<p><b><u>FRBP 4001(c)(1)(B)(vi) - establishment of deadlines for filing plan, for hearing on confirmation, or entry of a confirmation order :</u></b></p> <p>Absent the lender's consent, failure to meet the following deadlines constitutes an event of default:</p> <p>(1) within 30 days of the Debtor's initial draw, the Debtor must file its plan and disclosure statement; and</p> <p>(3) effective date of a plan of reorganization no later than 180 days after the Debtor's initial draw.</p>	<p>p. 13, ¶15</p>

Summary of Material Terms	Reference in the Interim Order
<p data-bbox="191 233 207 254">2</p> <p data-bbox="191 302 207 323">3</p> <p data-bbox="191 371 207 392">4</p> <p><b><u>FRBP 4001(c)(1)(B)(vii) - waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate:</u></b> Lender's DIP liens will be automatically perfected.</p>	<p data-bbox="1235 302 1359 323">p. 10, ¶10</p>
<p data-bbox="191 432 207 453">5</p> <p><b><u>FRBP 4001(c)(1)(B)(viii) - release/waiver of claims:</u></b> N/A.</p>	<p data-bbox="1268 432 1326 453">N/A</p>
<p data-bbox="191 495 207 516">6</p> <p data-bbox="191 564 207 585">7</p> <p data-bbox="191 613 207 634">8</p> <p><b><u>FRBP 4001(c)(1)(B)(ix) - the indemnification of any entity:</u></b> The Debtor's indemnification of Lender is in the Deed of Trust (Exhibit 4) and in the Environmental Indemnification Agreement (Deed of Trust)</p>	<p data-bbox="1128 495 1459 688">No reference in the Interim Order but included in the Deed of Trust and Environmental Indemnification Agreement (both Exhibit 4)</p>
<p data-bbox="191 711 207 732">9</p> <p data-bbox="191 749 207 770">10</p> <p><b><u>FRBP 4001(c)(1)(B)(x) - release/waiver of any right under § 506(c):</u></b> N/A</p>	<p data-bbox="1268 732 1326 753">N/A</p>
<p data-bbox="191 816 207 837">11</p> <p data-bbox="191 875 207 896">12</p> <p><b><u>FRBP 4001(c)(1)(B)(xi) - lien/claim on avoidance actions:</u></b> Lender will receive a lien on all avoidance actions</p>	<p data-bbox="1235 837 1359 858">p. 10, ¶10</p>

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. JURISDICTION AND VENUE**

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1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Local Bankruptcy Rule 1001(b)(1). Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Local Bankruptcy Rule 9014.2, the Debtor consents to entry of a final order or judgment by the bankruptcy judge.

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2. Venue in this Court is property pursuant to 28 U.S.C. §§ 1408 and 1409.

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3. The statutory bases for the relief requested herein are Sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Rules 2002, 4001 and 9014 of the FRBP, and Local Bankruptcy Rule 4001.

### **II. FACTUAL BACKGROUND**

#### **A. General Case Background**

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4. On May 24, 2022, Front Sight Management LLC dba Front Sight Firearms Training Institute, a Nevada limited liability company, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee,

1 examiner, or committee has been appointed in the Debtor's chapter 11 case.

2 **B. Description of the Debtor's Business**

3 5. The Debtor was founded in 1996 by Ignatius Piazza. Mr. Piazza owns, either directly  
4 or indirectly, 100% of the Debtor. The Debtor was originally formed as a California business and  
5 operated near Bakersfield, California from its formation in 1996 until 2002. In 1998, the Debtor  
6 purchased 550 acres of raw land 45 minutes from Las Vegas, acquired approximately 500 acre feet  
7 of water rights and began building what is now the finest and largest private firearms training facility  
8 in the world (the "Front Sight Property").

9 6. In 2012, the Debtor became a Nevada limited liability company. The Debtor's  
10 primary place of business is the Front Sight Property located at 1 Front Sight Road, Pahrump,  
11 Nevada 89061, Nye County Assessor's Parcel Nos. 045-481-05 and 045-481-06.

12 7. The Front Sight Property is accessed by a four-mile, two lane paved road, and is  
13 currently comprised of 50 outdoor firearms training ranges, live fire tactical training simulators, an  
14 8,000 square foot classroom and pro shop, and assorted accessory buildings, bathrooms, three water  
15 wells and thousands of square yards of completed grading for future development.

16 8. The Debtor provides firearms training courses which promote the defensive use of  
17 various firearms. Courses are offered to the general public, members of law enforcement and  
18 military members.

19 9. The Front Sight Firearms Facility is the most successful of its type in the United  
20 States. The Debtor provides classes and instruction annually to upward of 40,000 gun and weapons  
21 enthusiasts. The Debtor is considered the leader in its field, and provides additional training and  
22 instruction for numerous city and state agencies seeking to improve performance of their respective  
23 law enforcement departments.

24 10. Over the last 25 years, the Debtor has trained a million students and currently has  
25 over 261,000 members.

26 11. As of January 19, 2022, the Front Sight Property (including the land, water rights and  
27 improvements but excluding equipment and inventory) was appraised at \$25,260,000 "as is." A  
28 copy of this appraisal is attached as **Exhibit D** to the Piazza Decl. The Debtor believes that its gun

1 and ammunition inventory, its customer list of 283,000 members and its intellectual property have a  
2 value of no less than \$2 million, if not considerably more.

3 12. Historically, the Debtor has operated its business by selling lifetime memberships at  
4 an amount ranging from \$250 to \$50,000, courses and ancillary products. The Debtor's business  
5 model centered around a major expansion plan that was intended to build the Front Sight Vacation  
6 Club & Resort (vacation residences, a RV park, etc.), a retail area adjacent to the vacation club and a  
7 pavilion. The Debtor's intent was that the discounted lifetime memberships and other promotional  
8 benefits (like "Front Sight bucks" [money to be used on limited items at Front Sight], certificates [to  
9 be used for 2 day or 4 day training courses], etc.) would lead to a "captive" customer base that would  
10 be more likely to take advantage of the Vacation Club & Resort which would then bring increased  
11 revenue to the Debtor.

12 **C. Disputed Lending Transaction & the Reasons Behind the Debtor's Bankruptcy**  
13 **Filing.**

14 13. With that goal in mind, the Debtor began researching its financing options. Financing  
15 from traditional banks was largely unavailable to the Debtor due to its business centering around the  
16 use of firearms. In 2012, the Debtor was approached by Robert W. Dziubla ("Dziubla") John  
17 Fleming ("Fleming"), doing business as Las Vegas Development Fund LLC ("LVDF"), who  
18 represented themselves as like-minded, pro-gun patriots who told the Debtor that they would be able  
19 to obtain a financing package for the Debtor to raise up to \$150 million (at a low interest rate) to  
20 build and bring to market, among other things, the Vacation Club & Resort. Dziubla, Fleming and  
21 LVDF stated that all they needed from the Debtor was \$300,000 in fees needed to secure approval  
22 from the United States Customs and Immigration Service ("USCIS") and \$100,000 in marketing  
23 costs to solicit foreign investors to participate in an EB-5<sup>1</sup> immigration investment plan.

24 14. The Debtor initially declined the Dziubla, Fleming and LVDF offer twice. Dziubla  
25 and Fleming persisted and promised the Debtor that due to their vast experience raising foreign  
26 investments, their personal connections in China, and their desire to help the Debtor complete its  
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<sup>1</sup> An "EB-5" investment allows qualified foreign investors who meet specific capital investments and job creation requirements to potentially obtain permanent residency.



1 development, that they could raise the necessary funds within a year.

2 15. After months of solicitation and misrepresentations, Front Sight unwittingly accepted  
3 Dziubla's and Fleming's proposal. Front Sight paid the requested \$300,000 in fees to secure  
4 approval from the USCIS to market the EB-5 investment project. Instead of taking a year as  
5 promised to secure the USCIS approval, it took over two years. Front Sight paid the aforementioned  
6 \$100,000 in marketing fees, as well as another \$120,000 in marketing fees, but the promised funding  
7 never materialized.

8 16. Four years later, in 2016, Dziubla and Fleming continued their misrepresentations by  
9 stating they had secured the first \$2.5 million in investor funding, and had hundreds of investors in a  
10 pipeline to invest in the construction project, but needed to execute a construction loan document to  
11 start the flow of investment money. In October of 2016, after three months of negotiating a  
12 construction loan agreement, the Debtor was induced into signing the agreement with the  
13 expectation that full funding would follow shortly thereafter. Dziubla and Fleming produced only  
14 \$6.3 million dollars in funding over the next two years, all of which was used by Front Sight under  
15 the parameters of the construction loan agreement. During this time period, the Debtor paid the  
16 interest payments on the money every month on time and in full. By 2018, the Debtor became  
17 suspicious that the funds advanced to Dziubla and Fleming (the \$300,000 in fees and \$220,000 for  
18 marketing) had not actually been used to secure USCIS approval and for marketing the project to  
19 foreign investors, and requested that Dziubla and Fleming produce such evidence.

20 17. Dziubla and Fleming refused to show proof of where the funds the Debtor paid had  
21 been spent and apparently in retaliation for its demands, Dziubla and Fleming fraudulently claimed  
22 that the Debtor was in default on a number of terms of the construction loan agreement (which the  
23 Debtor was not in default).

24 18. To sum up a very complex history, Dziubla, Fleming and LVDF defaulted on their  
25 obligations, failed to raise the funds necessary to complete the Vacation Club & Resort, and  
26 litigation was commenced by the Debtor against Dziubla, Fleming, LVDF and related affiliates  
27 (collectively, the "LVDF Parties") in August of 2018, styled *Front Sight Management, LLC v. Las*  
28 *Vegas Development Fund LLC et al.*, Case No. A-18-781084-B, which is pending before the Eighth  
Judicial District Court in Clark County, Nevada (the "LVDF Litigation"). In the LVDF Litigation,

1 the Debtor asserts claims for, among other things, fraud in the inducement, intentional  
2 misrepresentation, breach of fiduciary duty and conversion against the LVDF Parties. Dziubla,  
3 Fleming, and LVDF then filed a fraudulent foreclosure action against the Debtor. The judge in the  
4 civil action initially placed a temporary restraining order on the foreclosure action but that has  
5 recently been lifted due to the Debtor's inability to obtain a bond.

6 19. The LVDF Litigation has been pending for nearly four years, and the LVDF Parties  
7 recently filed a notice of foreclosure against the Front Sight Property.

8 20. While the Debtor believes it will ultimately prevail in the litigation, the Debtor's legal  
9 fees related to the LVDF Litigation and foreclosure action have exceeded one million dollars to date  
10 and now there is a looming foreclosure sale. Furthermore, the most damaging consequences arising  
11 out of the LVDF Parties malfeasance are (a) the loss of momentum the Debtor has suffered in  
12 completing the development of its project, (b) the loss of member confidence the Debtor has suffered  
13 due to all the delays in the project, (c) the resulting reduction in membership sales, and (d) the  
14 increased difficulty for the Debtor to obtain additional financing to complete the project.

15 21. As 2021 came to an end, the Debtor solicited its members to participate in a number  
16 of marketing offers in an attempt to raise sufficient funds to complete the aforementioned litigation.  
17 Unfortunately, the Debtor was not able to raise sufficient funds.

18 22. Because (i) the Vacation Club & Resort and related project has not yet materialized,  
19 (ii) the Debtor's ability to obtain traditional financing to complete the construction is impossible  
20 while the LVDF Litigation is pending and (iii) a foreclosure sale is imminent, the Debtor has  
21 determined that it must reorganize its business to generate sufficient cash flow on an ongoing basis  
22 to support itself and to continue to litigate the LVDF Litigation.

23 23. While the Debtor has not yet finalized all the details of its plan of reorganization, the  
24 Debtor intends on implementing certain annual fees and other costs while giving members an  
25 opportunity for profit participation in the reorganized Debtor.

26 24. The Debtor hopes that the ability to participate in profits post-bankruptcy will  
27 incentivize its current members to continue their membership with the Debtor.  
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1           25.     Without the filing of this bankruptcy, the Front Sight Property would be foreclosed  
2 upon and the Debtor would have no choice but to immediately fire all of its employees and close its  
3 business.

4           **D.     The Debtor's Prepetition Lienholders**

5           26.     **LVDF**: LVDF is the Debtor's only pre-petition lender (albeit a disputed one). On  
6 May 18, 2022, LVDF recorded a notice of election to sell against the Front Sight Property. The  
7 most recent statement from LVDF dated April 25, 2022 is for \$11,027,956.26, which includes (i)  
8 unpaid principal of \$6,375,000, (ii) late fees of \$955,695, (iii) interest of \$1,817,130, (iv) attorneys'  
9 fees of \$1,744,853.19 and (v) past due foreclosure costs of \$131,364.

10          27.     The Debtor vehemently believes that it will ultimately be successful in its significant  
11 claims against LVDF. In January of 2020 in connection with denying a motion brought by LVDF,  
12 the Nevada state court made the following conclusions of law: (a) the Debtor's expenses on the  
13 construction project far exceed the amount of the LVDF loan; (b) LVDF's assertion that the Debtor  
14 improperly used loan proceeds is without merit; and (c) LVDF failed to establish that in January of  
15 2020 that the Debtor was in breach of the construction loan agreement.

16          28.     In litigation brought by certain of LVDF's insiders against the Debtor and its insiders  
17 alleging intentional infliction of emotion distress, a jury recently found (on May 10, 2022) the  
18 following, (i) the Debtor's conduct was not outrageous, (ii) Ignatius Piazza's conduct was not  
19 outrageous, and (iii) neither the Debtor nor Ignatius Piazza engaged in conduct with malice,  
20 oppression or fraud.

21          29.     While LVDF appears to have perfected its deed of trust against the Front Sight  
22 Property by recording a deed of trust, LVDF appears to not have any interest in the Debtor's cash  
23 collateral. While the deed of trust includes an assignment of rents, the Debtor can only find an initial  
24 UCC recorded in Nye County in 2016, and no continuation statement has been filed as of the  
25 Petition Date (and the initial UCC filing expired within five years). Attached as **Exhibit E** to the  
26 Piazza Decl. is a title report as of May 20, 2022 on the Front Sight Property. Attached as **Exhibit F**  
27 to the Piazza Decl. is a UCC / judgment lien search of Nye County records as of May 20, 2022.  
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1 Attached as **Exhibit G** to the Piazza Decl. is a Nevada UCC search as of April 2022. The Debtor  
2 believes that between Exhibit E, F and G, all entities which assert any liens or may assert any liens  
3 are disclosed.

4 30. **Mechanic's Lien.** On December 30, 2021, M2 EPC ("M2") filed a mechanic's lien  
5 in Nye County in the amount of \$614,000, of which \$146,993.19 remains unpaid as of the Petition  
6 Date. M2 does not have any interest in the Debtor's cash collateral.

7 31. **Bankgroup Financial Services.** On March 22, 2021, Bankgroup Financial Services  
8 ("BFS"), an entity owned by the Debtor's former CFO Michael Meacher ("Meacher"), pursuant to  
9 which BFS asserts a security interest in certain guns either owned or maintained by the Debtor. The  
10 Debtor is investigating the alleged security interest of BFS as well as various agreements entered  
11 into by the Debtor, BFS, Meacher and other affiliates while Meacher was an insider and CFO.  
12 Bankgroup does not have any interest in the Debtor's cash collateral.

13 32. Other than the secured creditors disclosed above, the Debtor does not believe that any  
14 other party has a secured claim against the Debtor or its assets

15 **E. The Debtor's Other Indebtedness**

16 33. Aside from the Debtor's secured obligations as described above, the Debtor has an  
17 additional approximately \$7.6 million in general unsecured debt which is owed to approximately  
18 2,900 entities or individuals.

19 **F. The Need for DIP Financing and No Credit Available on More Favorable Terms**

20 34. **Need for DIP Financing.** The Debtor does not have sufficient available sources of  
21 working capital and financing to carry on the operation of its business without the DIP Financing  
22 and authorized use of cash collateral. As a result of the Debtor's financial condition, which  
23 deteriorated for an extended period of time prior to the Petition Date due to the ongoing LVDF  
24 Litigation, the use of cash collateral alone will be insufficient to meet the Debtor's immediate  
25 postpetition liquidity needs. The Debtor's ability to continue to operate its business, pay its  
26 employees, maintain business relationships with its members, suppliers and customers, purchase  
27 materials and provide services, and otherwise finance its operations is essential to the Debtor's  
28 continued viability. The Debtor's ability to finance its operations and its chapter 11 case is essential  
to preserving the going concern value of the Debtor's business and ultimately maximizing the value

1 of its estate for the benefit of all stakeholders, and approval of the DIP Financing is in the best  
2 interests of the Debtor, its estate, and its creditors.

3       35.     **No Credit on More Favorable Terms.** As set forth in the Piazza Decl., the Debtor  
4 is unable to obtain sufficient financing from sources other than from the Lender on terms and subject  
5 to conditions more favorable than under the DIP Financing, and is not able to obtain unsecured  
6 credit allowable as an administrative expense under Sections 364(b) and 503(b)(1) of the Bankruptcy  
7 Code. The Debtor is also unable to obtain secured credit under Sections 364(c)(1), 364(c)(2),  
8 364(c)(3) and 364(d) without granting to the Lender, subject to the Carve Out, (i) priming first  
9 priority, valid, binding, enforceable and non-avoidable post-petition security interests and liens  
10 (collectively, the “DIP Liens”), senior and superior in priority to all other liens existing on the  
11 Petition Date in all of the Debtor’s assets, (ii) a superpriority claim under Section 364(c)(1), (iii)  
12 automatically perfected liens under 364(c)(1), 364(c)(2), 364(c)(3) and 364(d), and (iii) the other  
13 protections set forth in the Loan Documents (defined below).

14       36.     In light of the circumstances of this case, the Debtor submits that the proposed DIP  
15 Financing is fair and reasonable and far superior to any financing that is otherwise available in the  
16 market place. The Debtor and its professionals spent significant time prepetition looking for  
17 financing and the only available financing (other than from the Lender) was significantly more  
18 expensive in that the interest rate and fees were higher.

19       37.     The proposed financing is not predatory, its economic terms are beneficial to the  
20 Debtor, and the contemplated financing is necessary to preserve the Debtor’s business through to the  
21 consummation of the contemplated reorganization.

### 22 **III. RELEVANT TERMS OF THE DIP FINANCING**

23       By this Motion, the Debtor is seeking entry of a Court order authorizing the Debtor to obtain  
24 credit and incur debt in the form of a multiple draw secured credit facility (previously defined as the  
25 “DIP Financing”) in the aggregate commitment of up to \$5,000,000, comprised of up to \$1,000,000  
26 in post-petition funding subject to the terms and provisions of the Interim Order. True and correct  
27 copies of the proposed secured promissory note and security agreement (collectively, with all related  
28 loan documents and any amendments or modifications thereto, the proposed “Loan Documents”) are  
attached hereto as **Exhibit 4**.

1 The Loan Documents and Interim Order provide, in relevant part, as follows:<sup>2</sup>

- 2 i. **Maximum Loan Amount:** Up to \$5,000,000 on a final basis and up to \$1,000,000  
3 pursuant to the Interim Order. The Debtor submits that DIP Financing of \$5 million  
4 is sufficient to cover any financing needs that it may need during its chapter 11 case.
- 5 ii. **Interest Rate:** The rate of interest to be charged on advances under the DIP  
6 Financing shall be 9.5% per annum and shall accrue as payment in kind except the  
7 Lender's fees and costs, which shall be paid as set forth in the Loan Documents. The  
8 Debtor submits that this interest rate is reasonable and more favorable than any other  
9 interest rate that it could obtain from a different postpetition lender.
- 10 iii. **DIP Financing Fee:** Section 4(a) of the promissory note provides that the Debtor  
11 shall pay a \$50,000 up front loan fee due at the closing to the Lender. Upon  
12 confirmation of the Debtor's plan, the Debtor shall pay a second \$50,000 fee to  
13 Lender. The Debtor submits that the DIP Financing fees are equal or less to any fees  
14 that it would be required to pay from a different postpetition lender.
- 15 iv. **Maturity Date:** Section 1 of the promissory note provides that the "Maturity Date"  
16 is on or before seven (7) months from the Closing Date (defined below). The Debtor  
17 believes that it will be able to confirm a chapter 11 plan of reorganization on or  
18 before 7 months from the Closing Date.
- 19 v. **Superpriority Administrative Expenses:** Pursuant to Paragraph 9 of the Interim  
20 Order and in accordance with Section 364(c)(1) of the Bankruptcy Code, the Lender  
21 shall have a superpriority administrative expense claim for the DIP Obligations under  
22 the Interim Order (the "Superpriority Claim") against the Debtor, with priority in  
23 payment over any and all administrative expenses, adequate protection claims,  
24 diminution claims and all other claims against the Debtor, now existing or hereafter  
25 arising, of any kind whatsoever, including, without limitation, any and all  
26 administrative expenses or other claims of the kinds specified or ordered pursuant to

27  
28  

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<sup>2</sup> To the extent there is any inconsistency between this Motion, the Interim Order or any of the DIP Loan Documents, the terms of the Interim Order shall control.

1 any provision of the Bankruptcy Code; provided, however, that the Superpriority  
2 Claim (i) shall be subject to the Carve Out.

3 vi. **Grant and Priority of Post-Petition Liens:** As security for the DIP Financing,  
4 Lender shall be granted first-priority, priming, valid, enforceable, non-avoidable fully  
5 perfected security interests and liens against all of the Collateral. See, Paragraph 10  
6 of the Interim Order.

7 vii. **Carve-Out:** Paragraph 11 of the Interim Order provides that the DIP Liens and  
8 Superpriority Claim granted under the Interim Order shall be subject to the prior  
9 payment of the following amounts (the “**Carve Out**”): (i) in an amount not to exceed  
10 the amount set forth for such period in the accrual portion of the Approved Budget,  
11 the aggregate amount of any allowed but unpaid fees, costs and expenses of the  
12 Debtor’s counsel, the Debtor’s financial advisor, and counsel for any committee, all  
13 of which are payable under Sections 330, 331, or 363(b), or other provision of the  
14 Bankruptcy Code, as applicable, and were accrued or incurred prior to the Event of  
15 Default Notice Date; *plus* (ii) such fees, costs and expenses accrued or incurred on or  
16 after the Event of Default Notice Date in an aggregate amount not to exceed  
17 \$250,000.00; *plus* (iii) the payment of fees pursuant to 28 U.S.C. § 1930.

18 viii. **Events of Default:** Paragraph 14 of the promissory note sets forth an extensive list  
19 of events which constitute an “Event of Default”: (a) failure to make payment of  
20 principal or interest when any such payment is due; (b) the failure to duly keep,  
21 perform and observe, within five (5) business days following written notice from  
22 Lender, any covenant, condition or agreement in the Loan Documents; (c) the  
23 occurrence of any one or more defaults under any of the Loan Documents and the  
24 expiration of applicable grace and/or cure periods, if any; (d) an order shall have  
25 been entered by the Bankruptcy Court (i) dismissing the Bankruptcy Case, (ii)  
26 converting the Bankruptcy Case to a chapter 7 case, or (iii) appointing a chapter 11  
27 trustee or examiner or responsible officer; (e) any failure to timely comply with the  
28 Bankruptcy Case Benchmarks; (f) any sale of assets outside of the ordinary course of  
business; (g) any encumbering of Lender’s collateral without Lender’s consent and



1 Bankruptcy Court approval; or (h) the business ceases operations.

- 2 ix. **Remedies in the Event of Default:** In the case of the occurrence and during the  
3 continuance of any Event of Default, the Lender shall have the right to elect, upon  
4 notice to the Debtor, to: (i) declare the principal balance remaining unpaid and all  
5 unpaid interest accrued thereon and other sums secured by the Loan Documents,  
6 immediately due and payable in full, (ii) upon ten (10) days notice to the Debtor and  
7 the Debtor having the right to seek emergency relief from the Bankruptcy Court,  
8 foreclose either on both the Deed of Trust and the security interests; and/or (iii) upon  
9 ten (10) days' notice to the Debtor and the Debtor having the to seek emergency relief  
10 from the Bankruptcy Court, exercise any and all other rights and remedies available at  
11 law or in equity or under the Deed of Trust or the other Loan Documents.
- 12 x. **Stalking Horse Remedy:** In the event the Debtor does not comply with either the:  
13 (i) Plan Benchmark; or (ii) Confirmation Benchmark, or if the Plan contemplates a  
14 sale of Debtor's assets, then the Debtor agrees to modify its Plan to a sale (as set forth  
15 in Section 15 of the promissory note), whereby Lender will serve as the stalking horse  
16 bidder (the "Stalking Horse Bidder") for the Debtor's assets in the amount of: (x)  
17 14,000,000.00, plus the amount due and owing under the Loan at the time of auction,  
18 or (y) \$19,000,000.00, whichever is greater. In the event Lender is not the winning  
19 bidder at the auction for the Debtor's assets, Lender shall be entitled to a break-up fee  
20 in the amount of three percent (3.0%) of the final purchase price, plus an actual  
21 expense reimbursement in the amount not to exceed \$235,000.00. The Debtor  
22 submits that this provision ensures that LVDF is more than adequately protected as a  
23 \$19 million sale (assuming the Debtor borrows the full \$5 million) results in sale  
24 proceeds of \$14 million to the estate – which is an amount more than sufficient to pay  
25 LVDF's disputed claim in full.
- 26 xi. **Immediate Entry of Order:** Paragraph 23 of the Interim Order provide the Interim  
27 Order shall be effective immediately upon entry notwithstanding Bankruptcy Rules  
28 4001(a)(3), 6004(h) and 7062.



1 The Debtor submits that the proposed DIP Financing is fair and reasonable and is better than  
 2 any other postpetition financing that the Debtor has found. The Debtor further submits that the  
 3 projections set forth on the Budget, subject to the variances, represent the minimum amount needed  
 4 on a weekly basis to maintain operations and the viability of Debtor's business.

5 **IV. THE DEBTOR HAS SATISFIED THE REQUIREMENTS NECESSARY TO OBTAIN**  
 6 **CREDIT**

7 **A. DIP Financing.**

8 The Debtor proposes to obtain the DIP Financing by providing first priority priming security  
 9 interests and other liens as set forth above and in the Interim Order pursuant to section 364 of the  
 10 Bankruptcy Code. Pursuant to Bankruptcy Code § 364(c), a debtor may, in the exercise of its  
 11 business judgment, incur secured debt if the debtor has been unable to obtain unsecured credit and  
 12 the borrowing is in the best interest of the estate. *See, e.g., In re Simasko Production Co.*, 47 B.R.  
 13 444, 448-9 (D. Colo.1985) (authorizing interim financing agreement where debtor's business  
 14 judgment indicated financing was necessary and reasonable for benefit of estate); *In re Ames Dept.*  
 15 *Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts "permit  
 16 debtors-in-possession to exercise their basic business judgment consistent with their fiduciary  
 17 duties"). *See also* 2 Collier on Bankruptcy ¶ 364.04, at 364-9-11 (15th ed. 1991). Section 364(c)  
 18 provides, in pertinent part. that:

19 (c) If the trustee [or debtor in possession] is unable to obtain  
 20 unsecured credit allowable-under section 503(b)(1) of this title as  
 21 an administrative expense, the court, after notice and a hearing,  
 may authorize the obtaining of credit or the incurring of debt –

22 (1) with priority over any and all administrative expenses  
 of the kind specified in section 503(b) or 507(b) of this title:

23 (2) secured by a lien on property of the estate that is not  
 24 otherwise subject to a lien; or

25 (3) secured by a junior lien on property of the estate that is  
 26 subject to a lien.

27 Section 364(d)(1) of the Bankruptcy Code governs the incurrence of senior secured debt or  
 28 "priming" loans. Pursuant to Section 364(d)(1), the Court may, after notice and a hearing, authorize  
 the obtaining of credit or the incurring of debt secured by a senior or equal lien only if—

(1) the trustee is unable to obtain such credit otherwise; and

(2) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

In satisfying the standards of Section 364, a debtor need not seek credit from every available source, but should make a reasonable effort to seek other sources of credit available under § 364(a) and (b). *See, e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (trustee had demonstrated by good faith effort that credit was not available without senior lien by unsuccessfully contacting other financial institutions in immediate geographic area; “the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *Ames, supra*, 115 B.R. at 40 (finding that debtors demonstrated the unavailability of unsecured financing where debtors approached four lending institutions).

As indicated above, Section 364(c) of the Bankruptcy Code also enumerates certain incentives that a court may grant to post-petition lenders. The Section 364(c) list, however, is not exhaustive. Courts frequently have authorized the use of inducements not specified in the statute. *See, e.g., In re Ellingsen MacLean Oil Co.*, 834 F.2d 599 (6th Cir. 1987) (affirming financing order which prohibited any challenges to the validity of already existing liens); *In re Defender Drug Stores*, 126 B.R. 76 (Bankr. D. Ariz. 1991) (authorizing enhancement fee to post-petition lender), *aff’d* 145 B.R. 312, 316 (Bankr. 9th Cir. 1992) (“[b]ankruptcy courts . . . have regularly authorized postpetition financial arrangements containing lender incentives beyond the explicit priorities and liens specified in section 364”); *In re Antico Mfg. Co.*, 31 B.R. 103 (Bankr. E.D.N.Y. 1983) (authorizing lien on pre-petition collateral to secure post-petition indebtedness). The Debtor has granted Lender such enhancements as set forth above and in the Interim Order. The Debtor believes that such enhancements are plainly reasonable requests by Lender in return for the DIP Financing and all potential post-petition lenders that the Debtor negotiated with required that the Debtor prime all other liens.

**B. Even Absent Consent, The Priming Liens Are Authorized By The Bankruptcy Code.**

The proposed priming liens are authorized by the Bankruptcy Code, even absent consent

1 from disputed lienholders such as LVDF. Bankruptcy Code § 364(d)(1)(B) requires the furnishing  
2 of adequate protection in favor of lien holders which assert an interest in collateral. Neither this nor  
3 any other Bankruptcy Code provision specifically defines the term “adequate protection.” However,  
4 as discussed below in the cash collateral section of this Motion, Bankruptcy Code § 361 provides  
5 that adequate protection is furnished to the extent the debtor’s “use, sale, lease or grant results in a  
6 decrease in the value of such entity’s interest in such property.” 11 U.S.C. §§ 361(1), (2), (3)  
7 (emphasis added). Stated succinctly, adequate protection protects a secured creditor against a  
8 decrease in the value of its collateral. *See e.g., In re Planned System, Inc.*, 78 B.R. 852, 861-62  
9 (Bankr. S.D. Ohio 1987). This standard applies equally with respect to a proposed “priming”  
10 financing under section 364(d)(1)(B). *See, e.g., In re Hubbard Power & Light*, 202 B.R. 680, 685  
11 (Bankr. E.D.N.Y. 1996) (“The goal of adequate protection for purposes of the provision entitling a  
12 debtor to obtain financing secured by liens senior to all other interests is to safeguard the secured  
13 creditor from diminution in the value of its interests.”); *In re Aqua Assoc.*, 123 B.R. 192, 196 (Bankr.  
14 E.D. Pa. 1991); *In re Beker Ind. Corp.*, 58 B.R. 725, 741-42 (Bankr. S.D.N.Y. 1986). There is no  
15 diminution in the value of the collateral securing the amounts allegedly owed to LVDF, and the DIP  
16 Financing itself ensures that result. LVDF is thus adequately protected as a result of the proposed  
17 DIP Financing. LVDF is also adequately protected by the “Stalking Horse Remedy” set forth in  
18 Section III.x above. If the Debtor is not successful in its reorganization attempt or otherwise defaults  
19 under the terms of the DIP Financing, the Debtor’s assets will be purchased by the Lender for a  
20 minimum of \$19 million, which results, after payment of the DIP Financing, in process of \$14  
21 million, which is more than sufficient to pay LVDF’s \$11 million disputed claim.

22 The Court has broad discretion to determine whether adequate protection is furnished. *See*  
23 *e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992). Whether the party  
24 entitled to such protection is over or undersecured is not dispositive of whether adequate protection  
25 is furnished. As the court *in Aqua Assoc.*, 123 B.R. 192, noted:

26 Therefore, we believe that, while the presence of an equity cushion  
27 should be a relevant factor, it should not be a determinative factor  
28 in any “adequate protection” analysis, and particularly one relating  
to § 364(d)(1)(B). The important question, in determination of  
whether the protection to a creditor’s secured interest is adequate,  
is whether that interest, whatever it is, is being unjustifiably  
jeopardized.

1 *Id.* at 196 (approving priming financing where interest rate was 5% over prime and loan likely would  
2 enhance value of estate). *Accord, In re Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*,  
3 789 F.2d 1085, 1087-90 (4th Cir. 1986).

4 The infusion of priming and superpriority post-petition financing allows the continued  
5 operations of the Debtor and for the Debtor to restructure its business plan to provide for additional  
6 operating revenue. The Debtor submits that this will not only maintain the value of the Debtor's  
7 collateral value but will likely increase it. Further, LVF's (disputed) interest in the Debtor's  
8 collateral is adequately protected from diminution by virtue of the DIP Financing, which maintains  
9 the value of the Debtor's collateral and preserves the Debtor's assets and by the Stalking Horse  
10 Remedy. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (approving "priming" financing  
11 for real property improvements; "Although appraisers for both sides disagree as to what the value of  
12 the building would be following the infusion of approximately \$600,000, there is no question that  
13 the property would be improved by the proposed renovations and that an increase in value will  
14 result.")

15 In short, Debtor respectfully submits that the DIP Financing satisfies the Section 363(c) and  
16 Section 364(d) standards. As indicated above, no other source of funding on more attractive terms  
17 has been found or is available to the Debtor. The best credit available to Debtor is the DIP  
18 Financing. Thus, Debtor believes that it is fair, reasonable and necessary to enter into the DIP  
19 Financing. In addition to representing the best terms presently available to Debtor, the DIP  
20 Financing is also in the best interests of the Debtor's estate. The DIP Financing preserves the going  
21 concern value of the Debtor's assets and allows the Debtor to continue its operations and keep  
22 employees employed. The DIP Financing therefore is plainly in the best interests of Debtor's estate.

23 **V. THE DEBTOR HAS SATISFIED THE PROCEDURAL REQUIREMENTS**  
24 **REGARDING AUTHORITY TO OBTAIN CREDIT**

25 Bankruptcy Rule 4001(c) sets forth procedural requirements for obtaining credit. Bankruptcy  
26 Rule 4001(c)(1) requires that: "A motion for authority to obtain credit shall be made in accordance  
27 with Rule 9014 and shall be served on . . . the creditors included on the list filed pursuant to Rule  
28 1007(d), and on such other entities as the court may direct. The motion shall be accompanied by the  
copy of the agreement." A copy of the Motion has been served by email, overnight mail and/or fax

1 to the Debtor's 20 largest unsecured creditors, the Office of the United States Trustee, and all  
2 creditors with an alleged security interest in the Debtor's assets and/or cash collateral. Accordingly,  
3 the Motion complies with the requirements of Bankruptcy Rule 4001(c)(1), and thus the Debtor  
4 requests that the Court authorize the Debtor to enter into the DIP Financing.

5 **VI. THE DEBTOR HAS SATISFIED THE REQUIREMENTS FOR USE OF CASH**  
6 **COLLATERAL**

7 **A. Unless Secured Creditors Consent To The Use Of Cash Collateral, The Debtor**  
8 **Must Adequately Protect The Secured Creditors' Interest**

9 The Debtor's use of property of the estate is governed by Section 363 of the Bankruptcy  
10 Code. Section 363(c)(1) provides, in pertinent part:

11 If the business of the debtor is authorized to be operated under  
12 section . . . 1108 . . . of this title and unless the court orders otherwise,  
13 the trustee [or debtor-in-possession] may enter into transactions,  
14 including the sale or lease of property of the estate, in the ordinary  
course of business, without notice or hearing, and may use property of  
the estate in the ordinary course of business without notice or hearing.

15 The Bankruptcy Code establishes a special requirement, however, regarding the debtor-in-  
16 possession's use of "cash collateral," defined as "cash, negotiable instruments, documents of title,  
17 securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an  
18 entity other than the estate have an interest . . . ." 11 U.S.C. § 363(a).

19 Bankruptcy Code § 363(c)(2) permits the debtor-in-possession to use, sell or lease "cash  
20 collateral" under subsection (c)(1) only if either of two alternative circumstances exist:

- 21 (A) each entity that has an interest in such cash collateral consents; or  
22 (B) the court, after notice and a hearing, authorizes such use, sale,  
23 or lease in accordance with the provisions of this section.

24 11 U.S.C. § 363(c)(2).

25 If a secured creditor does not consent to the use of its cash collateral, the Court may authorize  
26 the Debtor to use said cash collateral under Bankruptcy Code § 363(c)(2)(B) if the Court determines  
27 that the debtor has provided "adequate protection" of the secured creditor's interest in the cash  
28 collateral. 11 U.S.C. § 363(e).

1 In the instant case, the Debtor does not believe that any pre-petition creditor has an interest in  
 2 its cash collateral. LVDF is the only party who has asserted such an interest (with its 2016 UCC  
 3 financing statement filed with Nye County); however, LVDF has failed to file a continuation  
 4 statement and therefore under Nevada law, the 2016 UCC financing statement has lapsed. To the  
 5 extent any party has an interest in the Debtor's cash collateral, they are adequately protected  
 6 pursuant to Section 361 of the Bankruptcy Code by the maintenance of value of their collateral  
 7 which is made possible by the DIP Financing and Debtor's use of cash collateral.

8 **B. The Meaning Of Adequate Protection.**

9 Section 361 of the Bankruptcy Code provides that:

10 [W]hen adequate protection is required . . . of an interest of an  
 11 entity in property, such adequate protection may be provided by –

12 (1) requiring the trustee to make a cash payment or periodic cash  
 13 payments to such entity, to the extent that the . . . use . . . under  
 14 section 363 of this title . . . results in a decrease in the value of  
 15 such entity's interest in such property;

16 (2) providing to such entity an additional or replacement lien to the  
 17 extent that such . . . use . . . results in a decrease in the value of  
 18 such entity's interest in such property; or

19 (3) granting such other relief . . . as will result in the realization by  
 20 such entity of the indubitable equivalent in such entity's interest in  
 21 such property.

22 11 U.S.C. § 361.

23 Neither Section 361 nor any other provision of the Bankruptcy Code defines the nature and  
 24 extent of the “interest in property” of which a secured creditor is entitled to adequate protection  
 25 under section 361. However, the statute plainly provides that a qualifying interest demands  
 26 protection only to the extent that the use of the creditor's collateral will result in a decrease in “the  
 27 value of such entity's interest in such property.” 11 U.S.C. §§ 361, 363(e). *See also General*  
 28 *Electric Mortgage Corp. v. South Village, Inc. (In re South Village, Inc.)*, 25 B.R. 987, 989-90 &  
 n.4 (Bankr. D. Utah 1982); *O'Toole, Adequate Protection and Post-Petition Interest in Chapter 11*  
*Proceedings*, 56 Am. Bankr. L.J. 251, 263 (1982).

The phrase “value of such entity's interest,” although not defined in the Bankruptcy Code,  
 was addressed by the Supreme Court in the landmark decision, *United Savings Association of Texas*

1 *v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 108 S. Ct. 626 (1988) (“*Timbers*”). For  
 2 the meaning of “value of such entity’s interest,” the Supreme Court was guided by section 506(a),  
 3 which defines a creditor’s allowed secured claim:

4 The phrase “value of such creditor’s interest” in §506(a) means  
 5 “the value of the collateral.” H.R. Rep. No. 950-595, pp. 181, 356  
 6 (1977); see also S. Rep. No. 95-989, p. 68 (1978), U.S. Code  
 7 Cong. & Admin. News, 1978 pp. 5787, 5854, 6141, 6312. **We**  
 8 **think the phrase “value of such entity’s interest” in §361(1)**  
 9 **and (2), when applied to secured creditors, means the same.**

10 *Id.* at 630 (emphasis added).

11 *Timbers* teaches that a secured creditor is entitled to “adequate protection” only against  
 12 diminution in the value of the collateral securing the creditor’s allowed secured claim. Under  
 13 *Timbers*, therefore, where the “value of the collateral” is not diminishing by its use, sale, or lease, the  
 14 creditor’s interest is adequately protected. This conclusion flows directly from the equivalency of  
 15 “value of such entity’s interests” with “value of the collateral.”

16 **C. The Preservation And Enhancement Of The Collateral Resulting From The**  
 17 **Debtor’s Ongoing Operations Affords Adequate Protection.**

18 In *McCombs Properties VI, Ltd. v. First Texas Savings Association (In re McCombs*  
 19 *Properties, VI, Ltd.)*, 88 B.R. 261 (Bankr. C.D. Cal. 1988), the Bankruptcy Court applied the  
 20 *Timbers* decision in ruling that a secured creditor’s interest in the cash and proceeds derived from a  
 21 debtors’ operations was adequately protected where the value of the cash collateral was not declining  
 22 during the pendency of the bankruptcy case. On the nature of the protection required, Bankruptcy  
 23 Judge Ryan noted:

24 The analysis of the Supreme Court in *Timbers* is instructive here. The  
 25 phrase “interest in property” in §363(e) means the value of the  
 26 collateral. That is the interest that I am required to protect. If that  
 27 value is likely to diminish during the time of the use, adequate  
 28 protection must be provided by the debtor. As the Supreme Court  
 stated in *Timbers*, “thus, it is agreed if the apartment project in this  
 case had been declining in value petitioner would have been entitled,  
 under §362(d)(1) to cash payments or additional security in the amount  
 of the decline, as §361 describes.” *Id.* 484 U.S. at \_\_\_\_, 198 S. Ct. at  
 629, at 748. *Id.*, at 266.

Similarly, in *Robert Neier v. Clark Oil & Refining Corp. (In re Apex Oil Company)*, 85 B.R.  
 538 (Bankr. E.D. Mo. 1988), the Bankruptcy Court, relying exclusively on *Timbers*, denied adequate



1 protection to a husband and wife holding over-secured claims because “[n]o evidence was presented  
2 that the value of the [collateral] would diminish during the course of this Chapter 11 proceeding.

3 In this case, use of cash collateral is necessary to implement the DIP Financing contemplated  
4 between the Lender and the Debtor. The Debtor needs continuing authority to use cash collateral in  
5 order to continue to operate and maintain its business. The Debtor’s ongoing business operations  
6 provide adequate protection to the secured creditors, as does the Stalking Horse Remedy.

7 It is well established that a Bankruptcy Court, where possible, should resolve issues  
8 presented in favor of preserving reorganization potential. *In re Hoffman*, 51 B.R. 42, 47 (Bankr.  
9 W.D. Ark. 1985) (relief from stay); *In re A&B Heating and Air Conditioning, Inc.*, 48 B.R. 401,  
10 403-04 (Bankr. N.D. Fla. 1985) (injunction); *In re Heatron, Inc.*, 6 B.R. 493, 496 (Bankr. W.D. Mo.  
11 1980) (cash collateral motion). As the *Heatron* court stated in granting a debtor’s motion to use cash  
12 collateral:

13 At the beginning of the reorganization process, the Court must work  
14 with less evidence than might be desirable and should resolve issues in  
favor of the reorganization, where the evidence is conflicting.

15 *Id.* at 496.

16 In *MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1397-98 (10th Cir.  
17 1987), the court summarized the foregoing principle as follows:

18 Because the ultimate benefit to be achieved by a successful  
19 reorganization inures to all the creditors of the estate, a fair  
20 opportunity must be given to the Debtors to achieve that end. Thus,  
21 while interests of the secured creditor . . . are of concern to the court,  
the interests of all other creditors also have bearing upon the question  
of whether use of cash collateral shall be permitted during the early  
stages of administration.

22 The first effort of the court must be to insure the value of the collateral  
23 will be preserved. Yet, prior to confirmation of a plan of  
24 reorganization, the test of that protection is not by the same  
25 measurements applied to the treatment of a secured creditor in a  
proposed plan. In order to encourage the Debtors’ efforts in the  
formative period prior to the proposal of a reorganization, the court  
must be flexible in applying the adequate protection standard.

26 *Id.* at 1397-98. The Debtor intends on reorganizing its business and believes that the DIP Financing  
27 and use of cash collateral will allow it to operate its business in the most profitable way possible.  
28



1 Applying the foregoing, courts have frequently allowed a debtor to use cash collateral in  
2 circumstances where such use would enhance or preserve the value of the collateral. For example, in  
3 *In re Stein*, 19 B.R. 458 (Bankr. E.D. Penn. 1982), the court allowed a debtor to use cash collateral  
4 where the secured party was undersecured and had no cushion for protection. As in the present case,  
5 the court in *Stein* found that the use of the cash collateral was necessary to the continued operations  
6 of the debtor and “the creditor’s secured position can only be enhanced by the continued operation of  
7 the [debtor’s business].” *Id.* at 460. *See also, In re Pine Lake Village Apartment Co.*, 16 B.R. 750  
8 (Bankr. S.D.N.Y. 1982) (debtor permitted to use cash collateral generated from rental income to  
9 enhance the value of real property and secured creditor’s claim); *In re Karl A. Neise, Inc.*, 16 B.R.  
10 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien in post-  
11 petition property acquired by debtor; debtor can use cash collateral “in the normal course of their  
12 business”).

13 A secured creditor is only entitled to adequate protection of the value of the collateral  
14 securing the creditor’s allowed secured claim. *See Timbers, supra*, at 629-30. Where, as in the  
15 present case, the continuation of the Debtor’s business preserves the value of the creditor’s alleged  
16 collateral, the Debtor’s continued operations constitute adequate protection of the secured creditor’s  
17 interests in the collateral. *See, e.g., In re Coody*, 59 B.R. 164, 167 (Bankr. M.D. Ga. 1986).

18 The Debtor’s continued use of cash collateral under the provisions of the DIP Financing will  
19 insure that the “going concern” value of its assets are preserved, which value is significantly greater  
20 than the Debtor’s liquidation value and inures to the benefit of the Debtor’s general unsecured  
21 creditors in its plan of reorganization.

#### 22 **D. Emergency Relief is Justified Under the Circumstances**

23 In this case, emergency relief is required because the Debtor must have immediate use of DIP  
24 Financing in order to continue its business operations, and to preserve the value of its business. In  
25 order to enable the Debtor to operate its business to avoid immediate and irreparable harm and to  
26 fund operations (including paying employees) upon a final hearing on the Motion, the Debtor  
27 respectfully requests that the Court grant the relief requested by the Motion on shortened notice to  
28 interested parties.

1 Congress specifically recognized that it might be necessary to schedule hearings on requests  
2 for interim authorization to use cash collateral on an expedited basis because of the business  
3 exigencies of individual cases when it enacted Bankruptcy Code Section 363. Section 363(b)(2)(B)  
4 authorizes the use, sale, or lease of cash collateral “after notice and a hearing.” Section 363(c)(3)  
5 provides in pertinent part:

6 Any hearing under paragraph (2)(B) of this subsection may be a  
7 preliminary hearing or may be consolidated with a hearing under  
8 subsection (e) of this section, but shall be scheduled in accordance  
9 with the needs of the debtor . . . The court shall act promptly on any  
10 request for authorization under paragraph (2)(B) of this subsection.

11 11 U.S.C. § 363(b)(3); *see also* 11 U.S.C. § 102(1) (defining “after notice and a hearing” to mean  
12 after such notice and such opportunity for a hearing as is appropriate in the particular circumstances  
13 of a given case).

14 In this instance, the DIP Financing is necessary to preserve the value of the Debtor’s  
15 business, and continued use of cash collateral is a necessary component of the DIP Financing  
16 agreement the Debtor has reached with the Lender, and is also necessary to preserve the going  
17 concern value of the Debtor’s business.

18 **VII. CONCLUSION**

19 **WHEREFORE**, the Debtor respectfully requests that this Court grant the Motion and enter  
20 the proposed Interim Order.

21 DATED: May 24, 2022

BG LAW LLP

22 By: /s/ Susan K. Seflin  
23 Steven T. Gubner  
24 Susan K. Seflin  
25 Proposed Attorneys for Chapter 11 Debtor  
26 and Debtor in Possession  
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*Attorneys for FS DIP, LLC*

**UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA**

In re:

Front Sight Management LLC,

Debtor.

Case No.: 22-11824-abl  
Chapter 11

First Day Hearing:  
Date: OST Requested  
Time: OST Requested

**INTERIM ORDER: (I) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING, (II) GRANTING LIENS AND ADMINISTRATIVE EXPENSE CLAIMS, (III) AUTHORIZING DEBTOR’S USE OF CASH COLLATERAL, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING OTHER RELATED RELIEF**

Upon the motion (“**Motion**”) of Front Sight management LLC, the chapter 11 debtor and debtor in possession herein (“**Front Sight**” or the “**Debtor**”), for entry of an interim order (the

1 “**Interim Order**”) and a final order (the “**Final Order**”) pursuant to Sections<sup>1</sup> 105, 361, 362, 363,  
2 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rule  
3 4001, requesting the Court to, among other things,

4 (i) authorize the Debtor to obtain credit and incur debt in the form of a multiple  
5 draw secured credit facility (the “**DIP Financing**”) in the aggregate commitment of up to  
6 \$5,000,000, comprised of up to \$5,000,000 in post-petition funding subject to the terms and  
7 provisions of this Interim Order and subsequently, the Final Order;

8 (ii) approve the *the Secured Promissory Note* (as may be further amended,  
9 restated, supplemented or otherwise modified from time to time in accordance therewith, the  
10 “**Secured Note**,” and collectively with the *Security Agreement, Secured Deed of Trust and the*  
11 *Environmental Indemnity*,<sup>2</sup> the collateral documents, if any, intercreditor agreements, and  
12 amendments, schedules, and exhibits to the foregoing delivered or filed pursuant to or in connection  
13 with the *Security Agreement* or necessary to implement the *Secured Note*, collectively, the “**Loan**  
14 **Documents**”) by and between the Debtor and FS DIP, LLC, as lender (the “**Lender**” or “**FS DIP**”),  
15 and authorize the Debtor to execute and enter into the Loan Documents and to perform such other  
16 and further acts as may be required in connection with the Loan Documents;

17 (iii) as security for all obligations of the Debtor under and with respect to this  
18 Interim Order (collectively, the “**DIP Obligations**”), the Debtor’s use of Cash Collateral, and the  
19 priming of the Prepetition Liens by the DIP Liens, grant (i) super-priority administrative expense  
20 claims with priority over all other administrative expenses under Section 364(c)(1) of the  
21 Bankruptcy Code, subject to the Carve Out, (ii) automatically perfected security interests and liens  
22 under Section 364(c)(2) and (c)(3) of the Bankruptcy Code in property of the Debtor’s estate,  
23 including, without limitation, all Cash Collateral, and (iii) valid, binding, continuing, enforceable,  
24 fully perfected first priority senior priming liens upon and security interest in all of the Debtor’s

25  
26 <sup>1</sup> Unless otherwise stated, all references to “**Section**” herein shall be to title 11 of the U.S. Code (the  
27 “**Bankruptcy Code**”); all references to a “**Bankruptcy Rule**” shall refer to the Federal Rules of Bankruptcy  
28 Procedure; and all references to a “**Local Rule**” or “**LR**” shall refer to the Local Rules of Bankruptcy Practice  
of the U.S. District Court for the District of Nevada.

<sup>2</sup> All capitalized, undefined terms herein shall have the meanings ascribed to them in the Motion.

1 right, title and interest in, the Collateral;

2 (iv) authorize the use of the proceeds of the DIP Financing consistent with the  
3 terms and conditions of the Loan Documents and in accordance with, and limited by, the Approved  
4 Budget (subject to Permitted Variances);

5 (v) authorize Debtor's use of the Cash Collateral;

6 (vi) modify the automatic stay imposed by Section 362 of the Bankruptcy Code  
7 to the extent necessary to implement and effectuate the terms and provisions of the Loan  
8 Documents and this Interim Order;

9 (vii) pursuant to Bankruptcy Rule 4001, hold a hearing (the "**Interim Hearing**")  
10 on the Motion for the Court to consider entry of the Interim Order (a) approving the Motion on an  
11 interim basis, (b) authorizing the Debtor to enter into and perform its respective obligations under  
12 the Loan Documents, and (c) granting the liens and claims provided for therein, which Interim  
13 Hearing was held on \_\_\_\_\_, 2022; and

14 (viii) Waive any stay of the effectiveness of the Interim Order and provide for  
15 immediate effectiveness of the Interim Order.

16 Due and sufficient notice of the Motion and the Interim Hearing having been provided by  
17 the Debtor; and after considering the Motion and all pleadings and papers filed with this Court in  
18 connection with the Motion, including any objections to the Motion, and the argument of counsel  
19 at the Interim Hearing; and upon the record made by the Debtor at the Interim Hearing; and the  
20 Court having found and determined that, subject to the terms of this Interim Order, the relief sought  
21 in the Motion is in the best interests of the Debtor, its estate, creditors, and all parties in interest;  
22 and after due deliberation and consideration and good and sufficient cause appearing therefor, the  
23 Court hereby finds:<sup>3</sup>

24 A. **Debtor's Chapter 11 Case.** On May 24, 2022 (the "**Petition Date**"), the filed its  
25 voluntary petition for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the  
26

27 <sup>3</sup> To the extent that the Court stated findings of fact and conclusions of law on the record at the Interim  
28 Hearing, such findings and conclusions are incorporated herein by reference in accordance with Fed. R. Civ. P.  
52, made applicable pursuant to Fed. R. Bankr. P. 9014.

1 above-captioned case (the “**Chapter 11 Case**”). The Debtor is continuing to operate its business  
2 and manage its financial affairs as a debtor in possession pursuant to Sections 1107 and 1108 of  
3 the Bankruptcy Code, and no request has been made for the appointment of a trustee or examiner.

4 B. **Jurisdiction; Venue.** This Court has subject matter jurisdiction to consider this  
5 matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §  
6 157(b). The statutory predicates for the relief sought herein are Sections 105, 361, 362, 363, and  
7 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(b), 6004, and 9014, and Local Rule  
8 4001. Venue of the Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C.  
9 §§ 1408 and 1409.

10 C. **Interim Approval of the Motion.** Based upon the Motion, all relevant pleadings  
11 filed with this Court, and the record made at the Interim Hearing, the Court granted the Motion on  
12 an interim basis and approved the Debtor’s entry into and performance under the Loan Documents,  
13 authorized post-petition financing of up to \$1,000,000 on an interim basis, and granted related  
14 relief. Notice of the Interim Hearing and the relief requested in the Motion was provided by the  
15 Debtor by electronic mail, overnight courier, hand delivery or electronic delivery through the  
16 Court’s CM/ECF system, on May 24, 2022, to: (i) the Office of the United States Trustee for the  
17 District of Nevada (the “**U.S. Trustee**”), (ii) the Debtor’s 20 largest non-insider unsecured  
18 creditors, (iii) the Lender and counsel to the Lender, (iv) all other parties known by the Debtor to  
19 assert liens or security interests in the assets of the Debtor, and (v) all other parties entitled to  
20 notice under Bankruptcy Rule 2002 (the “**Noticed Parties**”). Under the circumstances, such notice  
21 of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rule  
22 4001(b), (c) and (d) and the Local Rules.

23 D. **Notice.** The Final Hearing will be held pursuant to the authorization of Bankruptcy  
24 Rule 4001 and Local Rule 4001 on \_\_\_\_\_, 2022, at \_\_\_\_\_.m.

25 E. **Budget for DIP Financing.** Attached hereto as **Exhibit A** is the 13-week cash  
26 flow forecast setting forth all projected cash receipts and cash disbursements (by line item) for a  
27 13-week period beginning in the week commencing \_\_\_\_\_, 2022 (the “**Budget**”). The Budget  
28 may be modified or supplemented from time to time, in accordance with the terms of the Loan

1 Documents, by additional budgets (covering any time period covered by a prior budget or covering  
2 additional time periods) prepared by the Debtor and consented to by the Lender pursuant to the  
3 Loan Documents, without subsequent notice to or order of the Court (each, an “**Approved**  
4 **Budget**”). The Budget is an integral part of this Interim Order and has been relied upon by the  
5 Lender in consenting to this Interim Order and to provide the DIP Financing. The Budget includes  
6 and contains the Debtor’s best estimate of all operational receipts and allows for operational  
7 disbursements, fees, costs and other expenses that will be payable, incurred and/or accrued by any  
8 of the Debtor during the period covered by the Budget to be timely paid in the ordinary course of  
9 business pursuant to, and in accordance with, the Budget. The Budget will allow the Debtor to  
10 operate in its Chapter 11 Case and pay postpetition administrative expenses as they come due  
11 subject to the terms of this Interim Order.

12 F. **Need for Funding.** Based upon the pleadings and proceedings of record in the  
13 Chapter 11 Case, the Debtor does not have sufficient available sources of working capital and  
14 financing to carry on the operation of its business without the DIP Financing and authorized use  
15 of Cash Collateral. As a result of the Debtor’s financial condition, which deteriorated for an  
16 extended period of time prior to the Petition Date, the use of Cash Collateral alone will be  
17 insufficient to meet the Debtor’s immediate postpetition liquidity needs. The Debtor’s ability to  
18 maintain business relationships with its members, suppliers and customers, pay its employees,  
19 purchase materials and provide services, and otherwise finance its operations is essential to the  
20 Debtor’s continued viability. The Debtor’s ability to finance its operations and its Chapter 11 Case  
21 is essential to preserving the going concern value of the Debtor’s business and ultimately  
22 maximizing the value of its estate for the benefit of all stakeholders, and approval of the DIP  
23 Financing is in the best interests of the Debtor, its estate, and its creditors.

24 G. **No Credit on More Favorable Terms.** Based upon the pleadings and proceedings  
25 of record in the Chapter 11 Case, the Debtor is unable to obtain sufficient financing from sources  
26 other than from the Lender on terms and subject to conditions more favorable than under the DIP  
27 Financing and the Loan Documents, and is not able to obtain unsecured credit allowable as an  
28 administrative expense under Sections 364(b) and 503(b)(1) of the Bankruptcy Code. The Debtor

1 is also unable to obtain secured credit under Sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d)  
2 for the purposes set forth in the Loan Documents without granting to the Lender, subject to the  
3 Carve Out, (i) priming first priority, valid, biding, enforceable and non-avoidable post-petition  
4 security interests and liens (collectively, the “DIP Liens”), senior and superior in priority to all  
5 other liens existing on the Petition Date in all of the Debtor’s assets, (ii) a superpriority claim under  
6 Section 364(c)(1), (iii) automatically perfected liens under 364(c)(1), 364(c)(2), 364(c)(3) and  
7 364(d), and (iii) the other protections set forth in the Motion, in each case under the terms and  
8 conditions set forth in this Interim Order and the Loan Documents.

9 H. **Use of Cash Collateral.** An immediate and critical need exists for the Debtor to  
10 use the Cash Collateral (in addition to the DIP Financing) in accordance with the Budget to  
11 continue to operate its business, pay wages, maintain business relationship with members,  
12 suppliers and customers, make capital expenditures, generally conduct its business affairs so as to  
13 avoid immediate and irreparable harm to its estate and the value of its assets, and afford the Debtor  
14 adequate time to effectively reorganize.

15 I. **Good Cause; Best Interests.** The Lender has indicated a willingness to provide  
16 post-petition secured financing but solely on the terms and conditions set forth in this Interim  
17 Order, the Loan Documents, and the Budget, and as of the Interim Hearing, the Lender is prepared  
18 to advance secured financing to the Debtor in accordance with the Interim Order. After  
19 considering all of its alternatives, the Debtor has concluded, in an exercise of its sound business  
20 judgment, that the DIP Financing provided by Lender represents the best financing presently  
21 available to the Debtor. Based upon the pleadings and proceedings of record in the Chapter 11  
22 Case, the terms and conditions of the DIP Financing are fair and reasonable, reflect the Debtor’s  
23 exercise of prudent business judgment, and are supported by reasonably equivalent value and fair  
24 consideration. Absent granting the relief sought by this Interim Order, the Debtor’s business,  
25 properties and estate will be immediately and irreparably harmed. Accordingly, good cause has  
26 been shown and that entry of this Interim Order is in the best interest of the Debtor’s estate and  
27 consummation of the DIP Financing and authorization of the use of the Collateral (including the  
28 Cash Collateral) in accordance with this Interim Order, the Loan Documents, and the other Loan



1 Documents are in the best interests of the Debtor’s estate and consistent with the Debtor’s fiduciary  
2 duties.

3 J. **Good Faith.** Based upon the pleadings and proceedings of record in the Chapter  
4 11 Case, (i) the DIP Financing has been negotiated in good faith and at arm’s length among the  
5 Debtor and the Lender, and (ii) any credit extended, loans made, and other financial  
6 accommodations extended to the Debtor by the Lender have been extended, issued or made, as the  
7 case may be, in “good faith” within the meaning of Section 364(e) of the Bankruptcy Code. This  
8 Court concludes that good cause has been shown and that entry of this Interim Order is in the best  
9 interest of the Debtor’s estate, employees and creditors as its implementation will, among other  
10 things, allow for the continued operation of the Debtor’s businesses and enhance the Debtor’s  
11 prospects for a successful reorganization.

12 Based on the foregoing, and upon the record made before this Court at the Interim Hearing,  
13 and good and sufficient cause appearing therefore,

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

15 1. **Interim Approval.** The DIP Financing is approved on an interim basis and the  
16 Debtor is authorized to borrow up to \$1 million on an interim basis.

17 2. **Approval of the Loan Documents.** Effective upon entry of this Interim Order, the  
18 Loan Documents are hereby approved and are incorporated herein by reference. The Debtor is  
19 expressly authorized to execute the Loan Documents, and the Debtor is authorized, empowered,  
20 and directed to perform all of its obligations under the Loan Documents and such additional  
21 documents, instruments and agreements reasonably required or requested by the Lender pursuant  
22 to the Loan Documents to implement the terms or effectuate the purposes of this Interim Order, as  
23 applicable. In furtherance of the foregoing and without further approval of this Court, the Debtor  
24 is authorized, and the automatic stay imposed by Section 362 of the Bankruptcy Code is lifted to  
25 the extent necessary, to perform all acts and to make, execute and deliver all instruments and  
26 documents and to pay all reasonable fees (when applicable), that may be reasonably required or  
27 necessary for the Debtor’s performance of its obligations under the Loan Documents and this  
28 Interim Order.

1           3.       **Authorization to Borrow/Use of Cash Collateral.** Pursuant to this Interim Order  
2 and subject to the terms and conditions set forth in the Loan Documents, the Debtor is immediately  
3 authorized to borrow from the Lender up to an aggregate principal amount of \$1,000,000 (the  
4 “**Advance**”), subject to and in accordance with the terms of this Interim Order and the Loan  
5 Documents and (b) Debtor is authorized to use the proceeds of the DIP Financing and the Collateral  
6 (including the Cash Collateral) in accordance with the terms of the Loan Documents, this Interim  
7 Order, and any Approved Budget, subject to the Permitted Variance.

8           4.       **Cash Collateral.** The cash and cash equivalents of the Debtor, whenever or  
9 wherever acquired, and the proceeds of all Collateral (defined below), constitutes the cash  
10 collateral of the Lender (the “**Cash Collateral**”). The Debtor may use the Cash Collateral to pay  
11 ordinary and necessary business and administrative expenses in accordance with, and limited by,  
12 an Approved Budget, subject to: (i) the rights of the Lender upon the occurrence of an Event of  
13 Default; and (ii) the rights of the Lender otherwise available to the Lender under the Bankruptcy  
14 Code. The Debtor will not, without the prior written consent of Lender, engage in the use of the  
15 Cash Collateral of the Lender other than to pay ordinary and necessary business and administrative  
16 expenses as set forth in, and limited by, an Approved Budget. All Cash Collateral shall be subject  
17 to the first priority priming liens on the Collateral in accordance with Section 364(d), and shall be  
18 subject to the terms of this Interim Order.

19           5.       **Maturity and Termination.** Debtor’s authority to use the DIP Financing or any  
20 Collateral, including Cash Collateral, and the Lender’s commitment to make additional advances  
21 under the DIP Financing, shall each terminate, subject to the Carve Out, upon the earlier to occur  
22 of (a) the earlier of (x) the effective date of a plan of reorganization with respect to the Debtor or  
23 (y) the date that is seven (7) months after the initial draw under the Loan Documents (the  
24 “**Maturity Date**”), and (b) the date ten (10) days after the Lender delivers a written notice of Event  
25 of Default to the Debtor, and the U.S. Trustee, unless any such event is waived, cured or extended  
26 with the written consent of the Lender.

27           6.       **Interest on DIP Financing.** The rate of interest to be charged on advances under  
28 the DIP Financing shall be 9.5% per annum and shall accrue as payment in kind except the

1 Lender's fees and costs, which shall be paid as set forth in the Loan Documents.

2 7. **Payment of DIP Fees and Expenses.** The Debtor is authorized to pay all costs,  
3 expenses and any other fees or other amounts payable under the terms of the Loan Documents and  
4 all other reasonable, documented, out-of-pocket costs and expenses of the Lender in accordance  
5 with the terms of the Loan Documents (including, without limitation, the costs and expenses of  
6 legal counsel). None of such fees, costs and expenses shall be subject to Court approval or U.S.  
7 Trustee guidelines, and no recipient of any such payment shall be required to file with respect  
8 thereto any interim or final fee application with this Court. Copies of any invoices (in summary  
9 form and redacted, as necessary, for privileged, confidential or otherwise sensitive information)  
10 with respect to such fees, expenses and costs shall be provided upon request to the U.S. Trustee,  
11 counsel for the Debtor, and counsel to any Committee, and each such party shall have ten (10)  
12 days from the date of such notice within which to object in writing to such payment.

13 8. **Validity of Loan Documents.** The Loan Documents shall constitute, and are  
14 hereby deemed on a final basis to be, the legal, valid and binding obligations of the Debtor,  
15 enforceable against the Debtor in accordance with the terms of the Loan Documents for all  
16 purposes during this Chapter 11 Case, in any subsequently converted Chapter 11 Case of the  
17 Debtor under chapter 7 of the Bankruptcy Code or after dismissal of this Chapter 11 Case. None  
18 of the validity, perfection, priority, extent or enforceability of the DIP Obligations or the DIP Liens  
19 shall be subject to any challenge by or on behalf of any Debtor or its estate, including, without  
20 limitation, an effort to equitably subordinate or avoid the DIP Liens. Proceeds of the DIP  
21 Financing and the Cash Collateral shall be applied only to fund allowed postpetition administrative  
22 expenses, the Debtor's working capital, and such other amounts as are required or permitted to be  
23 paid pursuant to the Loan Documents, this Interim Order and any other orders of this Court, all  
24 subject to, limited by, and in accordance with, an Approved Budget, subject to the Permitted  
25 Variance. No obligation, payment, transfer or grant of security under the Loan Documents or this  
26 Interim Order shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy  
27 Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff,  
28 recoupment or counterclaim.

1           9.       **Superpriority Claim.** In accordance with Section 364(c)(1) of the Bankruptcy  
2 Code, the Lender shall have superpriority administrative expense claim for the DIP Obligations  
3 under this Interim Order (the “**Superpriority Claim**”) against the Debtor, with priority in payment  
4 over any and all administrative expenses, adequate protection claims, diminution claims and all  
5 other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever,  
6 including, without limitation, any and all administrative expenses or other claims of the kinds  
7 specified or ordered pursuant to any provision of the Bankruptcy Code, including pursuant to  
8 Sections 105, 326, 328, 330, 331, 364, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 and 1114 or  
9 otherwise, including those resulting from the conversion of this case pursuant to Section 1112 of  
10 the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment  
11 lien or other non-consensual lien, levy or attachment; provided, however, that the Superpriority  
12 Claim (i) shall be subject to the Carve Out. For purposes of Section 1129(a)(9)(A) of the  
13 Bankruptcy Code, the Superpriority Claim shall be considered an administrative expense allowed  
14 under Section 503(b) of the Bankruptcy Code against the Debtor, and shall be (subject to the Carve  
15 Out) payable from and have recourse to all prepetition and postpetition property of the Debtor.  
16 Except as set forth in this Interim Order and the Final Order, no other superpriority claims shall be  
17 granted or allowed in this Chapter 11 Case.

18           10.       **DIP Liens.** As security for all DIP Obligations pursuant to this Interim Order, the  
19 Lender is hereby granted (effective upon the date of this Interim Order, without the necessity of  
20 the execution by the Debtor or the filing or recordation of liens, security agreements, lock box or  
21 control agreements, financing statements, or any other instruments or otherwise) valid, priming,  
22 binding and fully perfected, security interests in and liens (the “**DIP Liens**”) upon all present and  
23 after-acquired property of the Debtor of any nature whatsoever, real or personal, tangible,  
24 intangible, or mixed, now existing or hereafter acquired, whether existing prior to the Petition Date  
25 or arising thereafter, and all other property of the estate within the meaning of Section 541 of the  
26 Bankruptcy Code, including, without limitation, the Cash Collateral and the Prepetition Collateral  
27 the “**Collateral**”), subject only to the payment of the Carve Out; which Collateral includes (i) the  
28 Debtor’s commercial tort claims, and (ii) *bankruptcy claims and causes of action arising under*

1 *Sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other*  
2 *avoidance actions under the Bankruptcy Code and state law equivalents and the proceeds*  
3 *thereof* (collectively, the “**Avoidance Actions**”), consisting of:

4 a) First Lien on Unencumbered Property. Pursuant to Section 364(c)(2) of the  
5 Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority  
6 senior lien upon and security interest in all of the Debtor’s right, title and interest in, to and  
7 under all Collateral; and

8 b) Priming Liens. Pursuant to Section 364(d) of the Bankruptcy Code, a valid,  
9 binding, continuing, enforceable, fully perfected first priority priming lien upon and  
10 security interest in all of the Debtor’s right, title and interest in, to and under all Collateral  
11 senior to the Lender’s DIP Liens.

12 The DIP Liens will not be subject to challenge and the Collateral will be free and clear of other  
13 liens, claims and encumbrances. Upon entry of this Interim Order, the DIP Liens shall be deemed  
14 to be automatically perfected as of the Petition Date, without the need for further action of any  
15 kind; provided, however, that if the Lender determines, in its sole discretion, to file any financing  
16 statements, notice of liens, mortgages or any other similar instruments, the Debtor will cooperate  
17 and assist in such filings and the automatic stay shall be lifted without the need for further order  
18 of this Court to allow such filings.

19 11. Carve Out.

20 a) The DIP Liens and Superpriority Claim granted under this Interim Order  
21 shall be subject to the prior payment of the following amounts (the “**Carve Out**”): (i) in an  
22 amount not to exceed the amount set forth for such period in the accrual portion of the  
23 Approved Budget, the aggregate amount of any allowed but unpaid fees, costs and  
24 expenses of the Debtor’s counsel, and the Debtor’s financial advisor, all of which are  
25 payable under Sections 330, 331, or 363(b), or other provision of the Bankruptcy Code, as  
26 applicable, and were accrued or incurred prior to the Event of Default Notice Date; *plus*  
27 (ii) such fees, costs and expenses accrued or incurred on or after the Event of Default  
28 Notice Date in an aggregate amount not to exceed \$250,000.00; *plus* (iii) the payment of

1 fees pursuant to 28 U.S.C. § 1930.

2 b) Nothing contained herein is intended to constitute, nor should be construed  
3 as consent to, the allowance of any professional's fees, costs or expenses and shall not  
4 affect the right of the Debtor, the Lender, the U.S. Trustee, or any other party-in-interest to  
5 object to the allowance and payment of any amounts incurred or requested under Sections  
6 330 and 331, 363(b), 503(b), or as otherwise provided under the Bankruptcy Code.

7 12. **Restrictions on Granting Post-Petition Liens.** Other than the Carve Out, or as  
8 otherwise provided in this Interim Order or the Loan Documents, no claim having a priority  
9 superior or *pari passu* with those granted by this Interim Order to the Lender shall be granted or  
10 permitted without further order of this Court entered in the Chapter 11 Case, while any portion of  
11 the DIP Financing (or refinancing thereof) or any other Obligation is outstanding without the prior  
12 written consent of the Lender. Except as expressly permitted by this Interim Order and the Loan  
13 Documents, the Debtor will not, at any time during the Chapter 11 Case, grant liens or security  
14 interests in the Collateral to any other parties pursuant to Section 364 of the Bankruptcy Code or  
15 otherwise without the prior written consent of the Lender or if the grant of such liens or security  
16 interests are in satisfaction of the DIP Obligations in full. Unless all Obligations shall have  
17 indefeasibly been paid in full in cash (or as otherwise provided in this Interim Order and the Loan  
18 Documents), it shall constitute an Event of Default and terminate the right of the Debtor to use the  
19 DIP Financing and Cash Collateral, if the Debtor seeks, or if there is entered, any modification or  
20 extension of this Interim Order without the prior written consent of the Lender.

21 13. **Automatic Effectiveness of Liens.** The DIP Liens shall not be subject to challenge  
22 and shall attach and become valid, perfected, enforceable, non-avoidable and effective by  
23 operation of law as of the Petition Date without any further action by the Debtor or Lender without  
24 the necessity of execution by the Debtor, or the filing or recordation, of any financing statements,  
25 security agreements, or other documents or the taking of any other actions. All Collateral shall be  
26 free and clear of other liens, claims and encumbrances, except as provided in the Loan Documents  
27 and this Interim Order for so long as any portion of the DIP Financing (or refinancing thereof) is  
28 outstanding. Debtor is hereby authorized and directed to execute and deliver to the Lender such

1 financing statements, security agreements, mortgages, collateral assignments, instruments, and  
2 documents as the Lender requests, and the Lender is hereby authorized to file or record such  
3 documents in their respective discretion without seeking modification of the automatic stay under  
4 Section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have  
5 been filed or recorded at the time and on the date of entry of this Interim Order.

6 14. **Automatic Stay and Remedies.** As provided herein, subject only to the provisions  
7 of the Loan Documents, the provisions of Section 362 of the Bankruptcy Code are vacated and  
8 modified to the extent necessary to permit the Lender, following the tenth day following an Event  
9 of Default Notice Date and during the continuance of any Event of Default thereafter, all rights  
10 and remedies provided for in the Loan Documents and this Interim Order without further order of  
11 this Court. Following an Event of Default Notice by the Lender, the Debtor, and the U.S. Trustee  
12 shall be entitled to seek an emergency hearing exclusively before this Court. This Court shall  
13 retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the  
14 provisions of this paragraph and relating to the application, re-imposition or continuance of the  
15 automatic stay as provided hereunder.

16 15. **Plan Covenants.** The Debtor agreed to satisfy the performance obligations below  
17 (each a “**Plan Process Covenant**”), and as set forth in the Loan Documents, on or before the  
18 following dates (each a “**Milestone Date**”):

- 19 a) on or before the date that is thirty (30) days after the date the Debtor makes its first  
20 draw under the Loan Documents (the “**Initial Draw**”), the Debtor shall file its  
21 disclosure statement and plan of a reorganization;
- 22 b) on or before the date that is one hundred eighty (180) days after the Initial Draw,  
23 the Debtor shall obtain the entry of an order confirming its plan of reorganization;  
24 and
- 25 c) If the plan is not confirmed by the Bankruptcy Court within one hundred fifty (150)  
26 days after the Initial Draw, the Debtor shall begin conducting informal market  
27 testing of the Collateral on the day that is one hundred fifty-one (151) days after  
28 the Initial Draw.



1 The failure to satisfy any required Plan Process Covenant by the applicable Milestone Date shall  
2 be an Event of Default under the Loan Documents unless extended by written consent of the  
3 Lender.

4 16. **No Creation or Evidence of Liability to Third Parties or Alter Ego**  
5 **Relationship.** The Lender shall not be found or deemed to be an alter ego of any of the Debtor,  
6 in a partnership of any kind with any of the Debtor, in a principal-agent relationship with the  
7 Debtor or otherwise liable for any liabilities of any of the Debtor, and the Debtor shall not be found  
8 or deemed to be a mere instrumentality of the Lender as a result of the Lender deciding to advance  
9 the DIP Financing to the Debtor, negotiating and entering into the Loan Documents, and this  
10 Interim Order, administering the DIP Financing, consenting to the Budget or any future Approved  
11 Budget, or taking any other actions permitted by this Interim Order or the Loan Documents, and  
12 no such action (or conduct taken in furtherance of or comprising an integral part of any such action)  
13 shall be admissible in any proceeding as evidence that the Lender is the alter ego, partner, principal  
14 of, or otherwise liable for any liability of the Debtor.

15 17. **Binding Effect.** The provisions of this Interim Order shall be binding upon and  
16 inure to the benefit of the Lender, the Debtor, and their respective successors and assigns  
17 (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected, an examiner  
18 appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a  
19 legal representative of the Debtor or with respect to the property of the Debtor's estate). To the  
20 extent permitted by applicable law, this Interim Order shall bind any trustee hereafter appointed  
21 for the Debtor's estate, whether in this Chapter 11 Case or in the event of the conversion to a  
22 liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this  
23 Interim Order.

24 18. **Survival.** The provisions of this Interim Order and any actions taken pursuant  
25 hereto shall survive the entry of any order: (a) confirming any plan of reorganization or liquidation  
26 in this Chapter 11 Case (and, to the extent not satisfied in full in cash, the DIP Obligations shall  
27 not be discharged by the entry of any such order pursuant to Section 1141(d)(4) of the Bankruptcy  
28 Code), (b) converting this case to a chapter 7 case, or (c) dismissing this case. The terms and



1 provisions of this Interim Order, as well as the DIP Obligations and the DIP Liens granted pursuant  
2 to this Interim Order and the Loan Documents, shall continue in full force and effect  
3 notwithstanding the entry of any such order. The DIP Obligations and the DIP Liens shall maintain  
4 their priority as provided by this Interim Order and the Loan Documents, and to the maximum  
5 extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full and  
6 discharged. In no event shall any plan of reorganization be allowed to alter the terms of repayment  
7 of any of the DIP Obligations from those set forth in the Loan Documents without the written  
8 consent of the Lender. Unless all DIP Obligations shall have indefeasibly been paid in full, it shall  
9 constitute an Event of Default and terminate the right of the Debtor to use Cash Collateral under  
10 this Interim Order if Debtor seeks, or if there is entered, (x) any modification or extension of this  
11 Interim Order without the prior written consent of the Lender, or (y) an order converting or  
12 dismissing this case.

13 19. **Modifications of Loan Documents.** The Debtor and the Lender are hereby  
14 authorized to implement, in accordance with the terms of the Loan Documents, any non-material  
15 modifications of the Loan Documents without further order of this Court; *provided* that the Debtor  
16 shall provide notice of any such modifications to the U.S. Trustee.

17 20. **Protection Under Section 364(e).** If any or all of the provisions of this Interim  
18 Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or  
19 stay shall not affect the (i) validity of any DIP Obligations owing to the Lender incurred prior to  
20 the actual receipt by both Lender of written notice of the effective date of such reversal,  
21 modification, vacation or stay, or (ii) validity or enforceability of any claim, lien, security interest  
22 or priority authorized or created hereby or pursuant to the Loan Documents with respect to any  
23 DIP Obligations. Notwithstanding any such reversal, modification, vacation or stay, any use of  
24 Cash Collateral or the incurrence of DIP Obligations by the Debtor prior to the actual receipt by  
25 both Lender of written notice of the effective date of such reversal, modification, vacation or stay,  
26 shall be governed in all respects by the provisions of this Interim Order and the other Loan  
27 Documents, and the Lender shall be entitled to all of the rights, remedies, protections and benefits  
28 granted under Section 364(e) of the Bankruptcy Code, this Interim Order, and the Loan Documents

1 with respect to all uses of Cash Collateral and the incurrence of DIP Obligations.

2 21. **Choice of Law; Jurisdiction; Standing.** The DIP Financing and the Loan  
3 Documents (and the rights and obligations of the parties thereto) shall be governed by, and  
4 construed and interpreted in accordance with, the laws of the State of Nevada, and, to the extent  
5 applicable, the Bankruptcy Code. This Court shall have exclusive jurisdiction with respect to any  
6 and all disputes or matters under, or arising out of or in connection with, either the DIP Financing  
7 or the Loan Documents. The Lender shall have standing, as a party-in-interest under Section  
8 1109(b) of the Bankruptcy Code, to raise and appear and be heard on any issue in the Chapter 11  
9 Case.

10 22. **Findings of Fact and Conclusions of Law.** This Interim Order constitutes, where  
11 applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable  
12 immediately upon the entry thereof. Findings of fact shall be construed as conclusions of law, and  
13 conclusions of law be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

14 23. **Interim Order Effective.** This Interim Order shall take effect immediately  
15 notwithstanding anything to the contrary prescribed by applicable law.

16 24. **Failure to Specify Provisions.** The failure specifically to include any particular  
17 provisions of the Loan in this Interim Order shall not diminish or impair the effectiveness of such  
18 provision, it being the intent of the Bankruptcy Court, and the Debtor and the Lender, that the Loan  
19 Documents and any related Loan Documents are authorized and approved in their entirety with  
20 such amendments thereto as may be made by the parties in accordance with this Interim Order.

21 25. **Final Hearing.** The Bankruptcy Court shall hold a hearing to determine the final  
22 approval of the Loan Documents, the Budget and the relief requested by the Debtor in the Motion  
23 on \_\_\_\_\_, 2022, at \_\_\_\_\_.m., which hearing shall include that the relief approved in this  
24 Interim Order is approved in accordance with the Final Order.

25 26. **Retention of Jurisdiction.** The Court shall retain jurisdiction to hear and  
26 determine all matters arising from the implementation of this Interim Order.

27 **IT IS SO ORDERED.**

28

1 Prepared and Submitted By:

2 BG LAW

3 By: /s/  
4 STEVEN T. GUBNER, ESQ.  
5 SUSAN K. SEFLIN, ESQ.  
6 300 S. 4th St., Suite 1550  
7 Las Vegas, NV 89101  
8 Tel: 702.835.0800  
9 Woodland Hills, CA 91367

10 [Proposed] *Attorneys for Debtor*

Approved/Disapproved:

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By: \_\_\_\_\_  
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Tel: 702.385.5544  
*Attorneys for FS DIP, LLC*

Approved/Disapproved:

OFFICE OF THE UNITED STATES  
TRUSTEE

By: \_\_\_\_\_  
EDWARD McDONALD JR.  
edward.m.mcdonald@usdoj.gov  
300 Las Vegas Boulevard South  
Suite 4300  
Las Vegas, Nevada 89101  
Tel: 702.388.6600

Approved/Disapproved:

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**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that (check one):

- The court waived the requirement of approval under LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated above:
- I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

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*FRONT SIGHT MANAGEMENT, LLC DIP FACILITY  
SUMMARY OF INDICATIVE TERMS AND CONDITIONS – May 11, 2022*

<b>Borrower(s):</b>	Front Sight Management, LLC (the “ <b>Company</b> ”) as of the date of closing (the “ <b>Closing Date</b> ”) as well as any and all current and future subsidiaries or affiliates of the Company (if wholly owned or controlled) as joint and several borrowers.
<b>Lender(s):</b>	FS DIP, LLC, or its affiliate (the “ <b>Lender</b> ”), and any other lender(s) acceptable to the Lender. The Lender reserves the right to syndicate a portion of the facility to additional lender(s) at its sole discretion.
<b>Commitment:</b>	Up to \$5,000,000 (the “ <b>Credit Facility</b> ”) shall be committed as set forth below.
<b>Security:</b>	First lien on all of the Company’s assets and the real estate located at: (i) 12501 South Haven Ranch Road, Pahrump, Nevada (Nye County Assessor’s Parcel No. 045-481-05); and (ii) 1 Front Sight Road, Pahrump, Nevada (Nye County Assessor’s Parcel No. 045-481-06).
<b>Use of Proceeds:</b>	Working capital, costs and expenses associated with the Company’s Chapter 11 reorganization, payment of real estate taxes (the “ <b>Bankruptcy Case</b> ”) in the United States Bankruptcy Court for the District of Nevada (the “ <b>Bankruptcy Court</b> ”) and in accordance with the budget approved in the Lender’s sole discretion. Unused funds shall be held in a depository institution of the Lender’s choosing, provided that such institution shall be an approved depository pursuant to the United States Trustee guidelines.
<b>Credit Facility Interest Rates:</b>	Base Rate of nine and one-half percent (9.5%) per annum. The Interest shall be payable in kind, due either at the maturity date or repayment of the Credit Facility or upon a default by the Company. The Company shall pay interest at the default rate of sixteen percent (16.0%) per annum in the event of a default.
<b>Bankruptcy Court Approval:</b>	The Credit Facility shall be subject to the entry of interim and final orders of the Bankruptcy Court approving the Credit Facility and granting Lender: (i) a first priority lien on all of the Company’s assets and real estate; and (ii) superpriority administrative claims in the Bankruptcy Case in the amount of the Credit Facility, plus all of Lender’s legal fees, costs and expenses.
<b>Bankruptcy Case Benchmarks:</b>	The Company’s Chapter 11 plan of reorganization (the “ <b>Plan</b> ”) and related disclosure statement shall be filed within thirty (30) days of the initial funding of the Credit Facility.  Confirmation of the Plan shall occur within one hundred eighty (180) days of the initial funding of the Credit Facility, and informal market testing of the Company’s assets to occur one hundred fifty-one (151) days after the initial funding of the Credit Facility (if the Plan is not confirmed within one hundred fifty (150) days after the initial funding of the Credit Facility).



*FRONT SIGHT MANAGEMENT, LLC DIP FACILITY  
SUMMARY OF INDICATIVE TERMS AND CONDITIONS – May 11, 2022*

<b>Fees and Costs:</b>	<p>An initial, up-front fee of one (1) point, or \$50,000 is fully earned immediately upon the execution of this Term Sheet (the “<b>Initial Payment</b>”). The Initial Payment shall be paid to the account or accounts designated by the Lender upon closing, and may be used for the Lender’s diligence, including appraisal, investigation, environmental, consulting, legal fees and costs, incurred after the execution of this term sheet. In the event the Credit Facility does not close or the parties elect not to execute the Credit Facility, the Company shall pay the Lender’s actual costs and expenses incurred.</p> <p>Following the interim Bankruptcy Court approval of the Credit Facility, the Company shall also pay the Lender’s actual costs, including legal fees, no less than monthly, within five (5) days of receipt of an invoice for such fees and costs from the Lender or its representatives.</p>
<b>Releases and Exculpation of Lender:</b>	<p>The Company’s Plan will include customary releases and exculpation as of the effective date of the Plan of the Lender and its principals, employees, agents and professionals (in their capacity as such) for any matters arising out of or relating to the Company, its bankruptcy estate, or the Bankruptcy Case proceedings.</p>
<b>Exit Payment:</b>	<p>One (1) point, or \$50,000, shall be fully earned upon the confirmation of the Company’s Chapter 11 plan or sale of assets, and added to the principal balance of the Credit Facility, and payable in cash at the earlier of the maturity, default or repayment.</p>
<b>Maturity:</b>	<p>Seven (7) months following the Closing Date.</p>
<b>Availability:</b>	<p>The Credit Facility shall be available for draws of no less than \$500,000 on an interim and final basis, and on a delayed draw basis, subject to a budget and milestones to be agreed by Lender and detailed in subsequent documentation in advance of commencing the bankruptcy process.</p>
<b>Defaults:</b>	<p>The following shall each be considered a default under the Credit Facility: (i) failure to make any required payment when due to Lender; (ii) failure to timely comply with the Bankruptcy Case Benchmarks set forth above; (iii) failure to timely file monthly operating reports in the Bankruptcy Case; (iv) selling assets outside of the ordinary course of business; (v) encumbering the Lender’s collateral without the Lender’s consent and Bankruptcy Court approval; (vi) the appointment of a trustee in the Bankruptcy Case; or (vii) the conversion to Chapter 7 or dismissal of the Bankruptcy Case.</p>
<b>Remedies:</b>	<p>In the event of a default (if not cured within five (5) days), the Company shall modify the Plan to a sale and auction of all its assets within sixty (60) days, but not to exceed more than two hundred forty days (240) days from the initial funding of the Credit Facility, and Lender will become the stalking horse bidder for the Company’s assets.</p>



FRONT SIGHT MANAGEMENT, LLC DIP FACILITY  
SUMMARY OF INDICATIVE TERMS AND CONDITIONS – May 11, 2022

**Stalking Horse Bid:** In the event the Plan is not approved within one hundred eighty (180) days, or the Plan contemplates a sale, the Company agrees Lender will service as the stalking horse bidder in the amount of (i) \$14,000,000, plus the amount due and owing under the Credit Facility at the time of the auction, or (ii) \$19,000,000, whichever is greater.

**Break-Up Fee and Expense Reimbursement:** In the event the Lender is not the winning bidder at the auction for the Company’s assets, the Lender shall be entitled to a break-up fee in the amount of three percent (3.0%) of the final purchase price for the Company’s assets, plus an actual expense reimbursement in the amount not to exceed \$235,000.

THE TERMS AND CONDITIONS AS SET FORTH HEREIN ARE INTENDED TO BE A PROPOSAL TO ENTER INTO THE CREDIT FACILITY AND SHALL NOT BE CONSTRUED AS A LEGAL OR BINDING CONTRACT UNTIL THE INITIAL PAYMENT IS RECEIVED BY THE LENDER, AND SUBSEQUENTLY THE CREDIT FACILITY IS EXECUTED BY THE LENDER AND THE COMPANY, WHICH INCLUDE SEPARATE LOAN DOCUMENTS TO BE PREPARED. LENDER RESERVES THE RIGHT IN LENDER’S SOLE DISCRETION TO DETERMINE THE SUFFICIENCY OF DILIGENCE AND WHETHER TO PROCEED IN EXECUTING THE CREDIT FACILITY AND RELATED DOCUMENTS BASED ON SUCH DILIGENCE.

If the foregoing is acceptable to you, please so indicate by signing a copy of this proposal in the space provided below and return an executed copy at your earliest convenience.

**LENDER:**

**COMPANY:**

FS DIP, LLC

FRONT SIGHT MANAGEMENT, LLC

By: William L. Wilson  
Its: MANAGER  
Date: MAY 11<sup>th</sup> 2022

DocuSigned by:  
Ignatius Piazza  
By: 0921FBF47EDE4DF...  
Its: manager  
Date: 5/11/2022

															Summer Schedule										
Front Sight 13-Week Cashflow (USD)	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	13-Week											
Week Beginning	5/23/2022	5/30/2022	6/6/2022	6/13/2022	6/20/2022	6/27/2022	7/4/2022	7/11/2022	7/18/2022	7/25/2022	8/1/2022	8/8/2022	8/15/2022												
Week Ending	5/29/2022	6/5/2022	6/12/2022	6/19/2022	6/26/2022	7/3/2022	7/10/2022	7/17/2022	7/24/2022	7/31/2022	8/7/2022	8/14/2022	8/21/2022	Total											
<b>Receipts</b>																									
Cash Receipts from Customers	\$ 19,488	\$ 14,382	\$ 12,000	\$ 12,000	\$ 12,000	\$ 7,729	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 105,599										
Daily Fees	102,700	75,792	63,240	63,240	63,240	40,733	21,080	21,080	21,080	21,080	21,080	21,080	21,080	21,080	556,505										
Credit Card Transaction Funds	-	-	-	-	170,000	-	-	-	-	170,000	-	-	-	-	340,000										
DIP Proceeds	1,000,000	-	-	-	1,000,000	-	-	-	-	1,000,000	-	-	-	-	3,000,000										
<b>Total Receipts</b>	<b>\$ 1,122,188</b>	<b>\$ 90,174</b>	<b>\$ 75,240</b>	<b>\$ 75,240</b>	<b>\$ 1,245,240</b>	<b>\$ 48,462</b>	<b>\$ 25,080</b>	<b>\$ 25,080</b>	<b>\$ 25,080</b>	<b>\$ 1,195,080</b>	<b>\$ 25,080</b>	<b>\$ 25,080</b>	<b>\$ 25,080</b>	<b>\$ 4,002,104</b>											
<b>Disbursements</b>																									
Total Utility Disbursements	920	920	4,020	8,820	920	920	2,220	8,820	920	920	2,220	8,820	920	41,360											
SG&A Expenses	7,681	4,165	4,600	4,604	4,341	8,061	4,600	4,604	3,785	4,165	8,496	4,604	3,785	67,490											
OCP Accountant (External CPA)	-	-	10,000	-	-	-	10,000	-	-	-	4,563	-	-	24,563											
Insurance	-	-	7,642	-	-	-	6,170	-	-	244	6,170	-	-	20,226											
Payroll Related	-	222,886	-	225,086	-	222,886	-	118,141	-	115,941	-	118,141	-	1,023,081											
Marketing	3,500	3,500	3,500	15,900	3,500	3,500	3,500	15,900	3,500	3,500	3,500	15,900	3,500	82,700											
Miscellaneous	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	104,000											
<b>Other Disbursements</b>	<b>\$ 20,101</b>	<b>\$ 239,471</b>	<b>\$ 37,763</b>	<b>\$ 262,410</b>	<b>\$ 16,761</b>	<b>\$ 243,367</b>	<b>\$ 34,490</b>	<b>\$ 155,464</b>	<b>\$ 16,205</b>	<b>\$ 132,770</b>	<b>\$ 32,950</b>	<b>\$ 155,464</b>	<b>\$ 16,205</b>	<b>\$ 1,363,421</b>											
<b>Range Maintenance &amp; Operations</b>																									
Pro Shop Supplies / Ammo / Merchandise	17,354	12,807	10,686	10,686	10,686	6,883	3,562	3,562	3,562	3,562	3,562	3,562	3,562	94,036											
Equipment Rental / Purchase	-	-	99,063	-	-	-	-	-	-	-	-	-	-	99,063											
Maintenance/Repairs - Facility	2,500	2,500	2,500	2,500	2,500	2,500	6,500	6,500	6,500	6,500	6,500	6,500	6,500	60,500											
Food Services	3,044	2,246	1,874	1,874	1,874	1,207	625	625	625	625	625	625	625	16,493											
Fire Supplies	-	-	-	242	-	-	-	242	-	-	-	242	-	726											
<b>Total Range Maintenance &amp; Operations Disbursements</b>	<b>\$ 22,898</b>	<b>\$ 17,553</b>	<b>\$ 114,123</b>	<b>\$ 15,302</b>	<b>\$ 15,060</b>	<b>\$ 10,590</b>	<b>\$ 10,687</b>	<b>\$ 10,929</b>	<b>\$ 10,687</b>	<b>\$ 10,687</b>	<b>\$ 10,687</b>	<b>\$ 10,687</b>	<b>\$ 10,929</b>	<b>\$ 10,687</b>	<b>\$ 270,818</b>										
<b>Restructuring</b>																									
Counsel (BG Law LLP)	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	371,429										
DIP Lender Counsel	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	10,714	139,286										
UCC Advisors	14,286	14,286	14,286	14,286	14,286	14,286	14,286	14,286	14,286	14,286	14,286	14,286	14,286	185,714											
Financial Advisor (Province)	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	28,571	371,429											
Claims & Noticing (Stretto)	20,536	25,536	25,536	20,536	20,536	20,536	20,536	20,536	20,536	20,536	20,536	20,536	20,536	276,964											
U.S. Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	24,232											
DIP Fee	-	50,000	-	-	-	-	-	-	-	-	-	-	-	50,000											
<b>Total Restructuring Related Disbursements</b>	<b>\$ 102,679</b>	<b>\$ 157,679</b>	<b>\$ 107,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 102,679</b>	<b>\$ 126,911</b>	<b>\$ 1,419,054</b>										
<b>Total Disbursements</b>	<b>\$ 145,677</b>	<b>\$ 414,703</b>	<b>\$ 259,565</b>	<b>\$ 380,391</b>	<b>\$ 134,500</b>	<b>\$ 356,636</b>	<b>\$ 147,856</b>	<b>\$ 269,072</b>	<b>\$ 129,570</b>	<b>\$ 246,135</b>	<b>\$ 146,315</b>	<b>\$ 269,072</b>	<b>\$ 153,803</b>	<b>\$ 3,053,293</b>											
<b>Cash Balance</b>																									
Cash Beginning Balance	10,000	986,511	661,982	477,657	172,506	1,283,247	975,073	852,297	608,306	503,815	1,452,760	1,331,526	1,087,534	1,087,534	10,000										
(+/-) DIP Loan Proceeds	1,000,000	-	-	-	1,000,000	-	-	-	-	1,000,000	-	-	-	-	3,000,000										
(+/-) Net Cashflow (Excl. DIP Proceeds)	(23,489)	(324,529)	(184,325)	(305,151)	110,740	(308,174)	(122,776)	(243,992)	(104,490)	(51,055)	(121,235)	(243,992)	(128,723)	(2,051,189)											
<b>Cash Ending Balance</b>	<b>\$ 986,511</b>	<b>\$ 661,982</b>	<b>\$ 477,657</b>	<b>\$ 172,506</b>	<b>\$ 1,283,247</b>	<b>\$ 975,073</b>	<b>\$ 852,297</b>	<b>\$ 608,306</b>	<b>\$ 503,815</b>	<b>\$ 1,452,760</b>	<b>\$ 1,331,526</b>	<b>\$ 1,087,534</b>	<b>\$ 958,811</b>	<b>\$ 958,811</b>											
<b>DIP Loan Utilization</b>																									
DIP Beginning Balance	-	1,000,000	1,000,000	1,000,000	1,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	3,000,000	3,000,000	3,000,000	-											
(+/-) DIP Loan Draw / (Paydown)	1,000,000	-	-	-	1,000,000	-	-	-	-	1,000,000	-	-	-	3,000,000											
<b>Ending DIP Balance</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 2,000,000</b>	<b>\$ 2,000,000</b>	<b>\$ 2,000,000</b>	<b>\$ 2,000,000</b>	<b>\$ 2,000,000</b>	<b>\$ 3,000,000</b>	<b>\$ 3,000,000</b>	<b>\$ 3,000,000</b>	<b>\$ 3,000,000</b>	<b>\$ 3,000,000</b>											
<b>Interest &amp; Fees</b>																									
(+) Interest Expense	-	-	-	7,917	-	-	-	-	15,833	-	-	-	-	-	23,750										
<b>Ending DIP Obligation</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,000,000</b>	<b>\$ 1,007,917</b>	<b>\$ 2,007,917</b>	<b>\$ 2,007,917</b>	<b>\$ 2,007,917</b>	<b>\$ 2,007,917</b>	<b>\$ 2,023,750</b>	<b>\$ 3,023,750</b>	<b>\$ 3,023,750</b>	<b>\$ 3,023,750</b>	<b>\$ 3,023,750</b>	<b>\$ 3,023,750</b>											



**SECURED PROMISSORY NOTE**

**\$5,000,000.00**

**May \_\_, 2022  
Las Vegas, Nevada**

This Secured Promissory Note (this “**Note**”) is executed as of the date first set forth above by **FRONT SIGHT MANAGEMENT, LLC**, a Nevada limited liability company (“**Maker**”), with a mailing address of \_\_\_\_\_, in favor of **FS DIP, LLC**, a Delaware limited liability company (“**Lender**”), having an address of \_\_\_\_\_.

WHEREAS, Maker is a “**Debtor**” in that certain Chapter 11 bankruptcy case, Case No. \_\_\_\_\_ (the “**Bankruptcy Case**”) currently pending before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”);

WHEREAS, on \_\_\_\_\_, 2022, Maker filed a motion for entry of an order authorizing Maker to incur post-petition debt from Lender (“**DIP Financing**”) on a priming and super priority basis pursuant to certain provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 4001;

WHEREAS, on \_\_\_\_\_, 2022, the Bankruptcy Court, having found that the DIP Financing is critical in order to maintain the Maker’s business and the Real Property (as defined below), entered an interim order (the “**Interim Order**”) granting the motion and authorizing the DIP Financing on an interim basis; and

WHEREAS, a final hearing on the DIP Financing motion is scheduled on \_\_\_\_\_, and the parties expect that the Bankruptcy Court will enter a final order (the “**Final Order**” and collectively with the Interim Order, the “**Orders**”) granting the motion and authorizing the DIP Financing on a final basis.

NOW THEREFORE, in accordance with the Interim Order, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as may be modified by the Final Order, Maker hereby agrees and promises as follows:

**1. Principal Amount.** Maker hereby promises to pay to the order of Lender, the principal sum of Five Million and No/100 Dollars (\$5,000,000.00) or so much thereof as may from time to time be disbursed and outstanding, on or before seven (7) months from the Closing Date (defined below), or \_\_\_\_\_, 2022 (the “**Maturity Date**”) at the place and in the manner hereinafter provided, together with interest from the date of each disbursement on the balance of principal remaining from time to time unpaid at a rate (the “**Interest Rate**”) of nine and one-half percent (9.5%) per annum (the “**Loan**”).

**2. Interest.** The Interest Rate shall: (a) be computed on the basis of a year consisting of 360 days; (b) be charged for the actual number of days within the period for which interest is being charged; and (c) be charged only on the principal amount of the Loan then outstanding. All interest payable under this Note is computed using this method. The calculation of interest on this

basis will result in a higher interest rate than if such interest rate were calculated for a three hundred sixty-five (365) day period. Interest on this Note shall be paid in kind on the date hereof (the “**Closing Date**” or “**Closing**”) through and including the last day of the first calendar month following the date hereof at the Interest Rate. Commencing on the Closing Date, and continuing on the first day of each month thereafter, interest shall accrue on the entire balance of the Loan disbursed to Maker and remaining unpaid under this Note at the Interest Rate. The principal balance of this Note together with all accrued and unpaid interest, if not sooner declared to be due in accordance with the terms hereof, shall be due and payable in full on the Maturity Date.

**3. Maturity Date.** The entire unpaid principal amount of the Loan, together with any accrued and unpaid interest thereon and any other amounts then due hereunder or under the Loan Documents (as hereinafter defined), shall be due and payable from Maker on the Maturity Date unless due and payable sooner because of acceleration, in which case the entire unpaid principal amount of the Loan, together with any accrued and unpaid interest thereon and any other amounts then due hereunder or under the Loan Documents, shall be due and payable in full on the date of such acceleration, and shall be paid in immediately available funds at Lender’s address set forth above or such other place as the holder hereof from time to time may designate in writing.

**4. Loan Fees.** In consideration of Lender making the Loan, Maker shall pay to Lender (which payment may be made by the advance by Lender of the amount described herein out of the proceeds of the Loan), the following loan fees:

(a) **Initial Loan Fee.** Maker shall pay to Lender an initial, up-front loan fee of one (1) point, or \$50,000.00 (the “**Initial Payment**”), which is Initial Payment is deemed already earned by Lender and payable at closing and such Initial Payment is to cover costs and expenses associated with negotiating and documenting the Loan.

(b) **Lender’s Fees.** Following the Bankruptcy Court’s entry of the Interim Order, Make shall pay Lender’s actual costs and expenses incurred, including, but not limited to legal fees, no less than monthly, within five (5) days of receipt of an invoice for such fees and costs from Lender or its representatives.

(c) **Exit Payment.** Upon confirmation of Maker’s Chapter 11 plan or upon the sale of Maker’s assets (each an “**Exit Event**”), Make shall pay Lender an exit payment of one (1) point, or \$50,000.00 (the “**Exit Payment**”). The Exit Payment shall be fully earned by Lender upon the occurrence of an Exit Event, and payable in cash at the earlier of the Maturity Date, default or repayment.

**5. Funding.** Maker may request that the proceeds of the Loan be disbursed in increments, which each increment being no less than \$500,000.00. Pursuant to the Interim Order, Maker may request up to \$1,000,000. The amount requested by Maker for each increment shall be as reasonably determined by Maker in order to keep Maker’s business open and operating and to pay professional fees in connection with the Bankruptcy Case, provided, (i) the total amount required to be disbursed by Lender shall not exceed Five Million and No/100 Dollars (\$5,000,000.00), inclusive of all sums to be paid out of the proceeds of the Loan as set forth herein. Prior to the Closing Date, Maker shall notify Lender as to the amount requested to be disbursed on the Closing Date (i.e., the amount of the first such increment). On or about the Closing Date,

Lender shall advance from the proceeds of the Loan the following: (a) any loan fees due and payable to Lender, (b) the amount necessary to pay all reasonable costs and expenses of Lender including, but not limited to, the reasonable fees and costs of Lender's counsel, title charges and recording fees, travel fees, underwriting fee, and all of Lender's attorneys' fees for services and costs incurred in connection with the representation of Lender in the Bankruptcy Case, including, but not limited to, the Bankruptcy Court's approval of the DIP Financing and the allowance of Lender's secured claim, and (c) the sum so requested by Maker as set forth herein, which sum will be disbursed to Maker either (at Lender's election) directly by Lender or through a traditional lender's escrow at a title company selected by Lender (the "**Escrowee**"). Following the Closing Date, if applicable, Maker shall make requests to Lender for additional increments of Loan proceeds, which requests shall be made at least twenty (20) days prior to the date on which the applicable proceeds are to be disbursed. For each such increment, on the date the applicable proceeds are to be disbursed, Lender shall advance from the proceeds of the Loan the following: (i) the amount necessary to pay all reasonable costs and expenses of Lender with respect to such increment, including, but not limited to, the reasonable fees and costs of Lender's counsel, title charges and recording fees, and (ii) the sum so requested by Maker, which sum will be disbursed to Maker either (at Lender's election) directly by Lender or through the Escrowee.

**6. Use of Proceeds.** Maker shall use the proceeds from the Loan solely for working capital, costs and expenses associated with Maker's Bankruptcy Case and in accordance with the budget provided with the DIP Financing before the Bankruptcy Court and approved in Lender's sole discretion, which budget shall include a carve-out for professionals' fees and expenses, as more fully set forth in the Orders. Unused funds shall be held in a depository institution of Lender's choosing, provided that such institution shall be an approved depository pursuant to the United States Trustee guidelines. The carve-out for professionals' fees and expenses shall include \$250,000 to wind down the estate upon an Event of Default, plus any amounts incurred by unpaid through the date of the Event of Default (not to exceed such amounts reflected in the budget), however, in no event shall the carve-out exceed the maximum amount set forth in the budget without the Lender's prior written consent.

**7. Bankruptcy Case Matters.**

(a) **Bankruptcy Case Benchmarks.**

(i) **Plan and Disclosure Statement.** Maker shall file its Chapter 11 plan of reorganization (the "**Plan**") and related disclosure statement within thirty (30) days of the initial funding of the Loan (the "**Plan Benchmark**").

(ii) **Chapter 11 Plan.** Maker shall obtain confirmation of its Plan by the Bankruptcy Court within one hundred eighty (180) days of the initial funding of the Loan (the "**Confirmation Benchmark**").

(iii) **Market Testing.** If the Plan is not confirmed by the Bankruptcy Court within one hundred fifty (150) days after the initial funding of the Loan, Maker shall begin conducting informal market testing of Maker's assets on the day that is one hundred fifty-one (151) days after the initial funding of the Loan.

(b) Chapter 11 Plan Releases. Maker's Plan shall include customary releases and exculpation as of the effective date of the Plan of Lender and its principals, employees, agents and professionals (in their capacity as such) for any matters arising out of or relating to Maker, its bankruptcy estate, or the Bankruptcy Case proceedings.

(c) Bankruptcy Case Auction and Sale. In the event Maker does not comply with either the: (i) Plan Benchmark; or (ii) Confirmation Benchmark, or if the Plan contemplates a sale of Maker's assets, then Maker agrees to modify its Plan to a sale (as set forth in Section 15 below), whereby Lender will serve as the stalking horse bidder (the "**Stalking Horse Bidder**") for Maker's assets in the amount of: (x) 14,000,000.00, plus the amount due and owing under the Loan at the time of auction, or (y) \$19,000,000.00, whichever is greater. In the event Lender is not the winning bidder at the auction for Maker's assets, Lender shall be entitled to a break-up fee in the amount of three percent (3.0%) of the final purchase price for Maker's assets (the "**Break-Up Fee**"), plus an actual expense reimbursement in the amount not to exceed \$235,000.00 (the "**Expense Reimbursement**").

**8. Senior Lien Superiority Claims.** Pursuant to Section 364 of the Bankruptcy Code and the Orders (and subject to the terms thereof), (a) all obligations owed under the Loan, this Note and the Loan Documents shall be secured by a senior lien on the Real Property and on all personal property (except to the extent excluded by the terms of the Security Agreement) of Maker (the "**DIP Lien**"), which DIP Lien shall be non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien or claims, and (b) Lender shall have super-priority administrative expense claims in the Bankruptcy Case for all obligations owed under the Loan, this Note and the Loan Documents. Maker shall execute any and all documents to effectuate the DIP Lien and any superpriority administrative expense claim in the Bankruptcy Case.

**9. Default Interest.** During any period in which an uncured Event of Default exists under this Note or any uncured default occurs under any of the Loan Documents, Maker shall pay interest on the balance of principal remaining unpaid during any such period at an annual rate equal to the lesser of sixteen percent (16.0%) per annum or the maximum rate permitted under law (the "**Default Rate**"). The interest accruing under this paragraph shall be immediately due and payable by Maker to the holder or holders of this Note and shall be additional indebtedness evidenced by this Note.

**10. Late Charges.** If any installment of principal or interest due hereunder, or any payment required under the Loan Documents, shall be overdue for more than five (5) business days, Maker shall pay to the holder hereof on demand a "late charge" of five percent (5%) of \$100,000 (calculated as a cumulative figure for the life of the Loan), whichever is less, in order to defray part of the increased cost of collection occasioned by any such late payment, as liquidated damages and not as a penalty. Late charges apply to each late payment, are cumulative, and permitted to the maximum amount allowed by applicable law.

**11. Payments.** All payments and prepayments on account of the indebtedness evidenced by this Note shall be first applied to costs and expenses incurred by Lender in connection with this Note or the Loan Documents, then to accrued and unpaid interest on the unpaid principal balance of this Note and the remainder, if any, to said principal balance.

All payments of principal and interest hereunder shall be paid in immediately available funds, via wire or cashier's check and shall be made at such place as Lender or the legal holder or holders of this Note may from time to time appoint, and in the absence of such appointment, then at the offices of Lender at the address set forth in the first paragraph of this Note. Payment submitted in funds not available until collected shall not be credited against outstanding principal and interest until collected. If payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the State of Nevada, the due date thereof shall be extended to the next succeeding business day, and interest shall be payable thereon at the Interest Rate during such extension.

**12. Prepayment.** Maker may prepay this Note at any time, in whole or in part, without penalty or premium, provided that at least \$50,000 in interest is being repaid (the difference between \$50,000, and the amount of interest already accrued under this Note shall be the "**Prepayment Fee**"), and provided further that any and all fees due and owing to Lender under this Note and the Loan Documents are also paid simultaneously with the principal balance.

**13. Security.** This Note and any and all other liabilities and obligations of Maker to Lender under this Note, howsoever created, arising or evidenced, whether now or hereafter existing, are secured, inter alia, by:

(a) Deed of Trust. The Deed of Trust and Security Agreement (the "**Deed of Trust**") of even date herewith made by Maker to Lender creating a first lien on that certain real property owned by Maker and located at: (i) 12501 South Haven Ranch Road, Pahrump, Nevada (Nye County Assessor's Parcel No. 045-481-05; and (ii) 1 Front Sight Road, Pahrump, Nevada (Nye County Assessor's Parcel No. 045-481-06 (collectively, the "**Real Property**");

(b) Environmental Indemnity. The Environmental Indemnity Agreement of even date herewith made by Maker to Lender (the "**Environmental Indemnity**");

(c) Security Agreement. The Security Agreement of even date herewith between Maker and Lender (the "**Security Agreement**"); and

(d) Other Documents. Any and all other documents executed in connection therewith (said security documents and any other document or instrument securing this Note are hereinafter collectively referred to as the "**Loan Documents**").

Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a legal description of the Real Property, a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all other matters therein contained.

**14. Default.** The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under this Note:

(a) the failure by Maker to make payment of principal or interest when any such payment is due in accordance with the terms hereof;

- (b) the failure of Maker to duly keep, perform and observe, within five (5) business days following written notice from Lender, any covenant, condition or agreement in this Note or any of the Loan Documents;
- (c) the occurrence of any one or more defaults under any of the Loan Documents and the expiration of applicable grace and/or cure periods, if any;
- (d) an order shall have been entered by the Bankruptcy Court (i) dismissing the Bankruptcy Case, (ii) converting the Bankruptcy Case to a chapter 7 case, or (iii) appointing a chapter 11 trustee or examiner or responsible officer for the operations of Maker's business;
- (e) any failure to timely comply with the Bankruptcy Case Benchmarks set forth herein;
- (f) any sale of Maker's assets outside of the ordinary course of business;
- (g) any encumbering of Lender's collateral without Lender's consent and Bankruptcy Court approval; or
- (h) the business operated by Maker at the Real Property ceases operations.

In the case of the occurrence and during the continuance of any Event of Default, the holder or holders hereof shall have the right to elect, upon notice to Maker, to: (i) declare the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and other sums secured by the Loan Documents, immediately due and payable in full, (ii) upon ten (10) days notice to Maker and Maker having the right to seek emergency relief from the Bankruptcy Court, foreclose either on both the Deed of Trust and the security interests serving the payment of the Note; and/or (iii) upon ten (10) days notice to Maker and Maker having the to seek emergency relief from the Bankruptcy Court, exercise any and all other rights and remedies available at law or in equity or under the Deed of Trust or the other Loan Documents. Failure to exercise these options shall not constitute a waiver of the right to exercise the same in the event of any subsequent Event of Default.

Maker expressly agrees hereby to be jointly and severally bound, and jointly and severally waive and renounce any and all homestead and exemption rights and any and all redemption rights and the benefit of all valuation and appraisal privileges as against the indebtedness evidenced hereby or any renewal or extension thereof, waive presentment for payment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Note, and expressly agree that this Note, or any payment hereunder, may be extended from time to time before, at or after maturity without in any way affecting the liability of Maker.

**15.** If any Event of Default under this Note or any Loan Document shall occur or if suit is filed herein or if proceedings are held in bankruptcy (other than the Bankruptcy Case), receivership, reorganization or other legal or judicial proceedings for the collection hereof, Maker promises to pay all costs of collection of every kind, including but not limited to all appraisal costs, attorneys' fees (including, but not limited to, all appellate level and post-judgment proceedings), court costs, and expenses of every kind, incurred by Lender in connection with such collection or



the protection or enforcement of any or all of the security for this Note, whether or not any lawsuit is filed with respect thereto.

**16. Remedies.** Upon the occurrence of an Event of Default, Lender may exercise any or all of the following remedies:

(a) Upon written notice from Lender, Maker shall modify its Plan to a sale and auction of all its assets within sixty (60) days, but not to exceed more than two hundred forty days (240) days from the initial funding of the Loan, and Lender will become the Stalking Horse Bidder for the Company's assets and will be entitled to the Break Up Fee and the Expense Reimbursement if it is not the winning bidder for Maker's assets.

(b) In the event Maker fails to comply with Section 15(a) above and upon ten (10) days notice to Maker, Lender shall be entitled to exercise any and all other remedies under the Loan Documents.

(c) The Maker agrees the provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Lender, following the tenth day after an Event of Default and during the continuance of any Event of Default thereafter, to exercise all rights and remedies provided for in the Loan Documents without further order of the Bankruptcy Court. Following an Event of Default, Maker shall be entitled to seek an emergency hearing exclusively before the Bankruptcy Court.

**17. Representations and Warranties.** As an inducement to Lender to disburse the Loan, Maker hereby represents and warrants as follows, which representations and warranties shall be true as of the date hereof and shall remain true throughout the term of the Loan:

(a) Authorization. Maker is a Nevada limited liability company, duly formed, validly existing and in good standing under the laws of the State of Nevada. Maker has the full right, power and authority to execute the Loan Documents on its own behalf and no consents of any third parties are required (other than the approval of the Bankruptcy Court, which has been granted pursuant to the Interim Order).

(b) No Conflicts. The execution, delivery and compliance with the terms of the Loan and the Loan Documents will not conflict or be inconsistent with, or result in any default under any other agreements to which Maker is a party, or will otherwise be resolved through the entry of the Interim and Final Orders.

(c) No Other Proceedings. Except for the Bankruptcy Case and the litigation listed in Maker's schedules of assets and liabilities and statements of financial affairs (collectively, the "**Schedules**"), as of the date hereof, there is no litigation, arbitration or other proceeding or governmental investigation pending or, to the best of Maker's knowledge, threatened against or relating to Maker, any member of Maker, or any of their property, assets, or business, including the Real Property, which, if decided adversely, would materially affect the business, affairs, assets or financial condition of Maker, the Real Property, or the prospects for repayment of the Loan.

(d) Organizational Documents. True and complete copies of the operating agreement of Maker and all other documents creating Maker (collectively, the “**Organizational Documents**”) have been furnished to Lender. Other than the Organizational Documents, there are no other agreements, oral or written, among any of the members of Maker relating to Maker. The Organizational Documents were duly executed and delivered, are in full force and effect, and are binding upon and enforceable in accordance with their terms. The Organizational Documents constitute the entire understanding among the members of Maker. Other than may be set forth on the Schedules and to the best of Maker’s knowledge, after due inquiry and as set forth on Schedule 17(d), no breach exists under the Organizational Documents and no act has occurred and no condition exists which, with the giving of notice or the passage of time would constitute a breach under the Organizational Documents.

(e) Other Agreements. Maker has delivered to Lender true, complete and correct copies of any agreements between Maker and any affiliate related in any way to the Real Property and any other agreements materially affecting the use and operation of the Real Property. Maker is not in default under any contract, agreement or commitment to which it is a party or is otherwise bound (collectively, the “**Other Agreements**”). Except as may be set forth on the Schedules and to the best of Maker’s knowledge, after due inquiry and as set forth on Schedule 17(e), Maker is not in default in any material respect under any provision of any of the Other Agreements and no event has occurred which, with the passage of time or the giving of notice or both would constitute an event of default under any of the Other Agreements. The execution, delivery and compliance with the terms of this Note and the Loan Documents will not conflict or be inconsistent with, or result in any default under, the Other Agreements, or such conflicts will otherwise be resolved by the entry of the Interim and Final Orders.

(f) Survival of Representations. All representations and warranties in this Note, the Loan Documents and all representations and warranties in any certificate delivered by the Maker pursuant hereto, shall survive execution of the Loan Documents and the making of the Loan, and may be relied upon by Lender as being true and correct until the Loan is fully and irrevocably paid, and as set forth in the Interim and Final Orders.

## 18. Affirmative Covenants.

(a) Prompt Payment. Maker shall promptly pay when due all payment obligations of Maker to Lender and shall promptly perform all other obligations of Maker to Lender as set forth herein or in the Loan Documents.

(b) Discharge of Obligations. Maker shall pay and discharge, or cause to be paid and discharged, all indebtedness and obligations of Maker to other persons or entities, promptly in accordance with normal terms and practices of its businesses, before they shall become in default, as well as all lawful claims for labor, materials and supplies which otherwise, if unpaid, might become a lien or charge upon its Real Property or any part thereof.

(c) Notice. Maker shall furnish, or cause to be furnished, to Lender, promptly upon becoming aware of the existence of an Event of Default or any condition which, with the giving of notice or lapse of time, or both, would constitute an Event of Default, written notice of the existence of any such event or the existence of any such condition.



(d) Insurance. Maker shall keep the Real Property, including all buildings and improvements now or hereafter situated thereon, insured against loss or damage by fire, in accordance with the provisions of the Deed of Trust. Unless Maker provides Lender with evidence of the required insurance coverage, Lender may, upon written notice to Borrower, purchase insurance at Borrower's expense to protect Lender's interest in the Real Property. This insurance must protect Maker's estate's interests as well as the Lender's interests and name the United States Trustee as a notice party. The coverage that Lender purchases may not pay any claim that Maker makes or any claim that is made against Maker in connection with the Real Property. Maker may later cancel any insurance purchased by the Lender, but only after providing Lender with evidence that Maker has obtained the required insurance. If Lender purchases insurance for any of the Property, Maker will be responsible for the costs of that insurance, including interest and any charges Lender may incur in connection with the placement of the insurance, until the effective date of the cancellation or expiration, as the case may be, of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the insurance may be more than the cost of insurance Maker may be able to obtain itself.

(e) Compliance with Certain Financial Institution Regulatory Restrictions. Maker shall ensure that no person who owns a controlling interest in or otherwise controls Maker are or shall be (a) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (b) a person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders. Maker shall comply with all applicable Bank Secrecy Act and anti-money laundering laws and regulations.

## **19. Negative Covenants.**

(a) Appropriate Use/Distributions. Neither Maker nor any affiliate or officer, director or shareholder of Maker shall use any cash flow from the Real Property other than to pay the indebtedness due Lender, as provided herein, and bona fide third-party costs, fees and expenses, related to owning and operating Maker's business and the Real Property as set forth on the budget filed with the Bankruptcy Court including professional fees related to the Bankruptcy Case. Until the Loan is paid in full, no distribution of any kind, including but not limited to operating, sale, refinancing or recapitalization proceeds, shall be made to Maker's manager, or the affiliates or officers, directors, or shareholders of Maker.

(b) No Material Change. Without the prior written consent of Lender, Maker shall not make any material change in the nature of its business carried on as of the date hereof, including but not limited to any change in manager, managing partner, general partner or similar positions.

(c) No Corporate Structure Change. Maker shall not be a party to any merger, consolidation or exchange of ownership interests, or purchase or otherwise acquire all or substantially all of the assets or stock of any class of, or any partnership or joint venture interest in, any other person or entity, or sell, transfer, convey or lease all or any substantial part of its assets, or sell or assign, with or without recourse, any receivables.

(d) Membership Interests in Maker. Maker shall not permit any person or entity to become a shareholder of Maker or any affiliate of Maker or permit any shareholder to assign, transfer, pledge, hypothecate or sell any interest in Maker or any affiliate of Maker, without the prior written consent of Lender to be granted or denied in the sole discretion of Lender.

(e) Other Agreements. Maker shall not enter into any agreement post-petition containing any provision which would be violated or breached by the performance of Maker's obligations under this Note or under any instrument or document delivered or to be delivered by it hereunder or in connection with the Loan or which would materially violate or breach any provision of the Loan Documents.

(f) Incurrence of Debt. Post-petition, Maker shall not, directly or indirectly, incur any debt or enter into any guarantees, hypothecation, contracts or other agreements which would make Maker liable for any debt or expense outside the ordinary course of Maker's operations, except as provided by Maker's Organizational Documents provided no Event of Default exists.

(g) Encumbrances. Maker shall not, without the prior written consent of Lender, sell, assign, transfer, convey, mortgage, pledge, lease, refinance, or otherwise alienate or encumber the Real Property or any interest therein, whether legal or equitable.

(h) Property Management. Maker shall not pay to Maker or any affiliates of Maker any compensation or fees for services rendered other than the payments provided for in any approved property management agreement and usual and customary management fees.

(i) Loans and Guarantees. Maker shall not lend or advance money or credit to any person or entity or purchase or repurchase the indebtedness of, or assume, guarantee (directly or indirectly or by an instrument having the effect of assuming another's payment or performance of any obligation or capability of so doing, or otherwise other than operating expenses in the ordinary course of business), or endorse or otherwise become liable, directly or indirectly, with respect to the obligations, stock or dividends of any person or entity.

(j) Other Material Documents. Maker shall not, without the prior written consent of Lender, enter into any material documents or terminate, modify, or amend any material documents affecting or concerning the Real Property.

**20. Lender's Post-Closing Expenses**. Maker shall promptly pay all reasonable post-closing costs, expenses and fees in connection with this Loan, including, without limitation, all recording fees, charges and taxes, registration taxes, mortgage taxes, charges for certified copies of instruments, title insurance premiums, escrow fees, printing and duplicating costs, fees of Lender's counsel (primary and local) relative to the review and enforcement of this Note and the Loan Documents, all costs incurred in the administration of the Loan once it closes, and all of Lender's attorneys' fees for services and costs incurred in connection with the representation of Lender in the Bankruptcy Case, including, but not limited to, the Bankruptcy Court's approval of the DIP Financing and the allowance of Lender's secured claim. After notice to Maker and to any official committee appointed in the bankruptcy case in accordance with the Loan Documents,

Maker hereby authorizes Lender to make a disbursement of the Loan to pay such expenses if Maker does not pay or reimburse Lender for such expenses.

**21. Business Purpose.** The proceeds of the Loan evidenced by this Note will be used solely for business purposes and the principal sum advanced is for a business loan.

**22. Interpretation.** This Note shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Nevada.

**23. Waiver of Jury Trial.** MAKER WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS NOTE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY MAKER, AND MAKER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. MAKER FURTHER ACKNOWLEDGES THAT MAKER HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF MAKER'S OWN FREE WILL, AND THAT MAKER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. MAKER FURTHER ACKNOWLEDGES THAT MAKER HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

**24. Venue.** MAKER, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS NOTE SHALL BE LITIGATED, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA.

**25. Construction.** Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular. The headings herein, if any, shall be accorded no significance in interpreting this Note.

**26. Miscellaneous.**

(a) **Severability.** If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

(b) **Books and Records.** Maker shall at all times keep and maintain true, correct and complete books and records. Lender shall have the right upon prior notice to Maker times to copy, inspect and/or audit Maker's books and records, at Maker's principal place of business at the Maker's sole cost and expense. It is agreed that so long as Maker is not in default beyond any

applicable grace or cure period under this Note, the Deed of Trust, or any of the Loan Documents, Maker shall not be required to reimburse (or pay for) the cost of any such audit.

(c) Assignment. Notwithstanding anything herein to the contrary and pursuant to the Orders, Maker acknowledges and agrees that Lender may assign, pledge or transfer this Note and its rights hereunder and such assignee shall be entitled to the performance of all of Maker's agreements and obligations under this Note, and shall be entitled to enforce all the rights and remedies of Lender under this Note for the benefit of assignee, as fully as if assignee were herein by name specifically given such rights and remedies. Maker expressly agrees that it will assert no claims or defenses that it may have against Lender against the assignee, except those specifically available under this Note.

(d) Counterparts. This instrument may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one complete document.

(e) No Partnership or Joint Venture. Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Maker or any beneficiary of Maker or of any lessee, operator, concessionaire or licensee of Maker or any beneficiary of Maker in the conduct of their respective businesses.

**[NO FURTHER TEXT. SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, Maker has executed this Secured Promissory Note as of the day and year first above written.

**MAKER:**

**FRONT SIGHT MANAGEMENT, LLC,  
a Nevada limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SECURITY AGREEMENT**

This Security Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and between **FRONT SIGHT MANAGEMENT, LLC**, a Nevada limited liability company (“**Borrower**”) and **FS DIP, LLC**, a Delaware limited liability company (“**Lender**”).

**RECITALS**

WHEREAS, Borrower is a “**Debtor**” in that certain Chapter 11 bankruptcy case, Case No. \_\_\_\_\_ (the “**Bankruptcy Case**”) currently pending before the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”);

WHEREAS, on \_\_\_\_\_, 2022, Borrower filed a motion for entry of interim and final orders authorizing post-petition debt from Lender (“**DIP Financing**”) on a priming and super priority basis pursuant to certain provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 4001;

WHEREAS, on \_\_\_\_\_, 2022, the Bankruptcy Court, having found that the DIP Financing is critical in order to maintain the Borrower’s business and the Real Property (as defined below), entered an interim order (the “**Interim Order**”) granting the motion and authorizing the DIP Financing on an interim basis;

WHEREAS, a final hearing will be held on \_\_\_\_\_, 2022 and it is expected the the Bankruptcy Court will enter a final order shortly thereafter (the “**Final Order**” and collectively with the Interim Order, the “**Orders**”) granting the motion and authorizing the DIP Financing on a final basis; and

WHEREAS, contemporaneously herewith Lender has agreed to provide a loan to Borrower in the original principal amount of up to \$5,000,000.00 (the “**Loan**”) pursuant to the Final Order and up to \$1,000,000 pursuant to the Interim Order, which Loan is evidenced by a Secured Promissory Note (the “**Secured Note**”)¹ of even date herewith, and other Loan Documents referenced in the Secured Note, including this Security Agreement.

NOW THEREFORE, in accordance with the Orders, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower hereby agrees and promises as follows:

**AGREEMENT**

**1. Definitions.** When used herein, the following terms shall have the following meanings:

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1 Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Secured Promissory Note.

(a) **“Assets”** means all of Borrower’s now existing or owned and hereafter arising or acquired: (a) Accounts; (b) Goods for sale, lease or other disposition by Borrower which have given rise to Accounts and have been returned to or repossessed or stopped in transit by Borrower; (c) contract rights and documents, instruments, contracts or other writings executed in connection therewith, including, but not limited to, all real and personal property lease rights; (d) Chattel Paper, Electronic Chattel Paper, Tangible Chattel Paper, Documents of Title, Instruments, Documents, General Intangibles, Payment Intangibles, Letter of Credit Rights, Letters of Credit and Supporting Obligations; (e) patents, trademarks, trade names, service marks and copyrights, all registrations and applications therefor, trade secrets, goodwill, inventions, processes, designs, formulas and other intellectual or proprietary rights or interests, of any kind, nature or description whatsoever, and all registrations, licenses, franchises, customer lists, tax refund claims, claims against carrier and shippers, insurance claims, guaranty claims, all other claims, proof of claims filed in any bankruptcy, insolvency or other proceeding, contract rights, choses in action, security interests, security deposits and rights to indemnification; (f) Goods, including, without limitation, Inventory, Equipment, Fixtures, trade fixtures and vehicles; (g) Investment Property; (h) deposits, cash and cash equivalents and any other property of Borrower now or hereafter in the possession, custody or control of the Borrower, whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise; (i) deposit accounts held with the Borrower or any other depository institution; (j) all other personal property of Borrower of any kind or nature; and (k) state law claims, bankruptcy claims and causes of action arising under Sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and state law equivalents and the proceeds thereof.

(b) **“Event of Default”** means the occurrence of any one of the following events: (a) Borrower fails to fully and timely perform any term, covenant, provision, warranty or condition contained in this Security Agreement or in any other agreement, instrument or document heretofore, now or at any time hereafter executed by Borrower and delivered to Lender; (b) Borrower fails to fully and timely pay all or any portion of the Liabilities when due and payable; (c) any of Borrower’s assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors; (d) an order shall have been entered by the Bankruptcy Court (i) dismissing the Bankruptcy Case, (ii) converting the Bankruptcy Case to a chapter 7 case, or (iii) appointing a chapter 11 trustee or examiner or responsible officer for the operations of Borrower’s business; (e) Borrower is enjoined, restrained or in any way prevented by court order from conducting any material part of its business affairs; and any of the following occur, each of which is not stayed by the automatic stay of Section 362 of the Bankruptcy Code: (i) a lawsuit or other proceeding is filed by or against Borrower to liquidate any of Borrower’s assets; (ii) a notice of lien, levy or assessment is filed of record with respect to any of Borrower’s assets by the United States of America, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental department, agency or instrumentality; (iii) the occurrence of a breach, default or event of default occurs under any now existing or hereafter executed agreement, instrument or document which provides collateral to secure the Liabilities; or (iv) the occurrence of a breach, default or event of default under any agreement, instrument or document executed and delivered by any person or entity to Borrower pursuant to which such person or entity has guaranteed to Borrower the payment of the Liabilities or such person or entity terminates or purports to terminate his guaranty of the Liabilities to Lender.



(c) “**Liabilities**” shall mean any and all obligations, liabilities, indebtedness, fees, costs and expenses, now or hereafter owed or owing by Borrower to Lender, including, but not limited to, all principal, interest, debts, claims and indebtedness of any and every kind and nature, howsoever created, arising or evidenced, whether primary or secondary, direct or indirect, absolute or contingent, insured or uninsured, liquidated or unliquidated, or otherwise, and whether arising or existing under written or oral agreement or by operation of law, together with all costs, fees and expenses of Lender, including, but not limited to, the indebtedness evidenced by the Notes, and attorneys’ and paralegals’ fees or charges relating to the preparation of this Security Agreement or the other documents executed pursuant hereto or in connection herewith (limited to \$50,000 for fees and costs incurred prior to the closing of the Loan), the perfection of Lender’s security interest and lien in and to the Collateral and the enforcement of Lender’s rights and remedies pursuant to this Security Agreement or otherwise, and all of Lender’s reasonable attorneys’ fees for services and costs incurred in connection with the representation of Lender in the Bankruptcy Case, including, but not limited to, the Bankruptcy Court’s approval of the DIP Financing and the allowance of Lender’s secured claim.

(d) “**Notes**” shall mean, collectively, any and all promissory notes executed and delivered by Borrower in favor of Lender, and all amendments, renewals and replacements thereof, including, without limitation, that certain Secured Promissory Note of even date herewith executed and delivered by Borrower to Lender in the original principal amount of up to Five Million and No/100 Dollars (\$5,000,000.00).

(e) “**UCC**” shall mean the Uniform Commercial Code as adopted by the State of Nevada and as amended or restated from time to time, except to the extent that the laws of the State in which the Collateral, or portion thereof, is located are applicable, in which case “UCC” shall mean the Uniform Commercial Code as adopted by the State in which the Collateral, or portion thereof, is located and as amended or restated from time to time.

(f) Other Terms. Except as expressly set forth in this Agreement, all terms contained herein which have an initial capital letter which is not required by the rules of grammar are defined in the UCC.

**2. Collateral.** To secure the full and timely payment to Lender of the Liabilities and the full and timely performance of all covenants, duties, obligations and agreements of Borrower to and with Lender pursuant to this Security Agreement and the Notes, Borrower hereby grants to Lender a security interest and lien in and to: (1) the Assets; and (2) all additions and accessions to, parts, substitutions for and replacements, products and cash and non-cash proceeds of all of the Assets, including, but not limited to, all Accounts and all proceeds of all insurance policies insuring the Assets (collectively the “**Proceeds**”) (the Assets, together with the Proceeds are collectively the “**Collateral**”). Borrower shall make appropriate entries upon its financial statements and books and records disclosing Lender’s perfected security interest and lien in and to the Collateral.

**3. Authorization.** Upon entry of the Orders, Borrower hereby authorizes Lender to file UCC financing statements and amendments to, renewals and continuations of UCC financing statements and other filings or recordings in all jurisdictions where Lender determines appropriate without Borrower’s signature, and authorizes Lender to describe the Collateral in such financing



statements in any manner as Lender determines appropriate, including describing the Collateral as all assets, personal property, fixtures, rights and interests of Borrower, now existing or hereafter arising or acquired and wherever located. Borrower shall execute and deliver to Lender all other agreements and documents as Lender may request to fully consummate all of the transactions contemplated hereunder. Borrower shall, at its sole expense and at all times during the term of this Security Agreement, maintain the Collateral in good and safe operating order and condition, reasonable wear and tear excepted, and in accordance with the requirements of any federal, state, county, municipal or other authority. Borrower shall immediately notify Lender in writing of any seizure of, levy upon, loss of, loss of possession of, destruction of or damage to the Collateral. If Borrower fails to maintain the Collateral as required, then Lender, without waiving any Event of Default hereunder, may, but shall not be obligated to, perform such maintenance with respect thereto. All sums paid by Lender on account of Borrower's failure to properly maintain the Collateral shall be additional Liabilities of Borrower owing to Lender, payable on demand and secured by the Collateral and shall accrue interest at the "default rate" (as defined in the Notes) from the time of demand until paid.

**4. Borrower's Place of Business/Corporate Organization.** Borrower shall keep and will continue to keep the Collateral (to the extent in tangible form), all records relating to the Collateral and its chief executive office at the locations listed on **Exhibit "A"** to this Security Agreement. Borrower will provide Lender with written notice prior to the opening or closing of any place of business, office or other location, and Borrower agrees Lender may access the Borrower's facilities to inspect the Collateral during normal business hours and with forty-eight (48) hours' notice. Borrower covenants and agrees that it shall not change its state of legal formation or its legal form without the prior written consent of Lender.

**5. Priority of Security Interests.** Borrower shall seek Bankruptcy Court approval to provide Lender with a first priority valid perfected senior security interest in and to all of the Collateral, and Borrower represents, warrants and covenants unto Lender that subject to and in accordance with the Orders, the security interest and lien in and to the Collateral which is granted to Lender hereunder shall constitute at all times a valid perfected senior security interest and lien in and to all of the Collateral. All costs and expenses incurred by Lender with respect to the perfection, administration, enforcement, collection or protection of its security interest and lien in and to the Collateral, enforcement of any claims against Borrower or the exercise of any of Lender's rights, remedies or privileges granted in this Security Agreement, at law, in equity, or otherwise, including, but not limited to, reasonable attorneys' and paralegals' fees, shall be additional Liabilities of Borrower owing to Lender, payable on demand and secured by the Collateral and shall accrue interest at the Default Rate from the time of demand until paid.

**6. Taxes.** Subject to its approved budget in Bankruptcy Court, Borrower shall pay promptly when due all post-petition sales, use, excise, personal property, income, withholding and other taxes, assessments and governmental charges upon and relating to the ownership or use of the Collateral, or Borrower's income, gross receipts or otherwise, for which Borrower is or may be liable. Borrower shall not permit or suffer to remain, and will promptly discharge, any lien on any of the Collateral arising from any unpaid tax, assessment, levy or governmental charge. If Borrower fails to pay any such tax, assessment, levy or charge, or to discharge any such lien, then Lender, without waiving any Event of Default hereunder, may, but shall not be obligated to, make such payment, settlement, compromise or release or cause any such lien to be released. All sums

paid by Lender in satisfaction of, or on account of any such taxes, levies, assessments or governmental charges, or to discharge or release any such liens or expenses, including, but not limited to, attorneys' fees, court costs and other charges relating thereto, shall be additional Liabilities of Borrower owing to Lender, payable on demand and secured by the Collateral and shall accrue interest at the default rate from the time of demand until paid.

**7. Insurance.**

(a) Insurance. Borrower shall keep all of the Collateral insured, at its expense, against loss or damage by fire, theft, explosion and such other risks ordinarily insured against by other owners or users of property in similar businesses for the full insurable value thereof, by policies of insurance in such form, with such companies and in such amounts as may be satisfactory to Lender. All such insurance policies shall contain standard lender's loss payable clauses naming Lender as lender's loss payee and additional insured, and copies thereof shall be delivered to Lender upon demand. Subject to Bankruptcy Court approval, and as set forth in the Orders, all proceeds payable under any of said policies shall be payable to Lender and applied by Lender to the Liabilities. Borrower and each insurer shall agree by endorsement upon the policy or policies issued by it to Borrower required above, or by independent instruments furnished to Lender, that it will give Lender thirty (30) days' notice before any policy or policies shall be altered or canceled.

(b) Failure to Maintain Insurance. If Borrower fails to obtain or maintain any of the policies of insurance required above, or fails to pay any premiums in whole or in part relating to any such policies, then Lender, without waiving any Event of Default, may, but shall not be obligated to, obtain and cause to be maintained any or all of such policies and pay any part or all of the premiums due thereunder, and any sums so disbursed by Lender shall be additional Liabilities owing from Borrower to Lender, payable on demand and secured by the Collateral and shall accrue interest at the Default Rate from the time of demand until paid.

(c) Attorney-In-Fact. Unless the Bankruptcy Court orders otherwise in connection with an insurance loss, Borrower hereby irrevocably appoints Lender, and all agents, officers or employees designated by Lender, as Borrower's agent and attorney-in-fact to make adjustments of all insurance losses, to sign all applications, receipts, releases and other papers necessary for the collection of any such loss and any unearned premium, to execute proofs of loss, to make settlements, to endorse and collect any check or other item payable to Borrower issued in connection therewith and to apply the same to any of the Liabilities. Borrower's appointment of Lender as Borrower's agent and attorney-in-fact is coupled with an interest and is therefore irrevocable.

**8. Representations, Warranties and Covenants.**

(a) Borrower represents, warrants and covenants unto Lender as follows: (1) Borrower is a limited liability company, duly formed and organized, validly existing, and in good standing under the laws of the State of Nevada; (2) this Security Agreement is duly authorized, executed and delivered by Borrower and subject to Bankruptcy Court approval, and constitutes a legal, valid and binding obligation of Borrower enforceable in accordance with its terms pursuant

to the Orders; (3) pursuant to the Orders and to the best of Borrower's knowledge after due inquiry and as otherwise disclosed on Schedule 8(a), the execution, delivery and performance by Borrower of this Security Agreement shall not constitute a breach of any provision of applicable law or any provision contained in any agreement to which Borrower is a party; (4) Borrower shall promptly supply Lender with such other information as Lender may request, and shall promptly notify Lender of any default in any agreement executed by Borrower and delivered to Lender; and (5) the Collateral will be used solely for commercial or business use.

(b) Except to the extent that Borrower obtains financing to pay the Loan in full pursuant to the Orders, Borrower represents, warrants and covenants unto Lender that Borrower shall not, without the prior written consent of Lender: (1) grant a security interest in, pledge, assign, mortgage, create or permit a lien or encumbrance upon any of the Collateral to anyone; (2) permit any levy, attachment or restraint to be made affecting any of the Collateral; (3) merge or consolidate with any other firm, dissolve, liquidate, sell, transfer or otherwise dispose of all or any portion of its assets, or enter into any transaction not in the ordinary course of its business; or (4) change its name, form of ownership or location, or the location of the Collateral.

## **9. Remedies.**

(a) Upon the occurrence of an Event of Default and subject to ten (10) days' notice to Borrower, the Liabilities shall be immediately due and payable at the sole discretion and option of Lender, and Lender, as a "secured party" (as that term is defined in the UCC), may proceed to enforce payment of same and to exercise any and all rights afforded to a "secured party" under the UCC, including, without limitation, the right to sell, transfer, lease or otherwise dispose of any or all of the Collateral or any part thereof at public auction or private sale, for cash or on credit, as Lender may elect at its option. Borrower acknowledges and agrees that ten (10) days' notice of such sale sent by Lender to Borrower is reasonable notice. Furthermore, after the ten (10) day notice period and absent further Bankruptcy Court order, Lender shall have the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose and after the ten (10) day notice period, Borrower hereby grants to Lender the unqualified right and license to enter upon any premises on which the Collateral or any part thereof may be situated, and to take possession and remove the Collateral therefrom. Borrower irrevocably waives any bonds, surety or other security relating thereto required by any statute, court rules or otherwise as an incident to taking such possession, and Borrower waives any demand for possession prior to the commencement of any suit or action with respect thereto and in any other action in which Lender is a party. During this ten (10) day notice period, Borrower is entitled to seek an emergency hearing before the Bankruptcy Court seeking, among other things, an extension of this ten (10) day period, a ruling on whether an Event of Default occurred if Borrower asserts that there is no default under the Loan, approval of alternative financing to pay the Loan, etc.

(b) After the ten (10) day notice period and if Borrower has not obtained a Bankruptcy Court order to the contrary, Lender may, in its sole discretion, apply the proceeds of any sale or other disposition of the Collateral to the Liabilities in any order of priority as Lender may deem advisable from time to time. Borrower shall pay to Lender all fees, costs and expenses of or incidental to retaking, holding, preparing for sale, selling and the like, and otherwise enforcing any term or provision of this Security Agreement.

(c) During the time that Lender is in the possession of the Collateral, and to the extent permitted by law, Lender shall have the right to: (1) hold, use, operate, manage and control all or any portion of the Collateral; (2) make any repairs, replacements, alterations, additions and improvements to the Collateral as it may deem proper; (3) demand, collect and retain all earnings, proceeds and other sums due or to become due with respect to the Collateral, accounting only for the net earnings arising from such use and after deducting all costs, expenses and charges associated with such use; and (4) exercise or continue to exercise all of the rights granted to Lender. Notwithstanding the foregoing, Lender shall also be entitled to have a receiver appointed to take charge, possession or control of all or any portion of the Collateral and to exercise all of the rights specified in this Paragraph 9(c).

(d) After the expiration of the ten (10) day notice period, Borrower hereby waives presentment, demand and protest, and notice of presentment, demand, protest, default, non-payment, maturity, release, compromise, amendment, modification, settlement, extension or renewal of this Security Agreement, or any collateral or security for the Liabilities or the Covenants and all other notices not expressly provided for herein or under the Notes. Borrower also waives the benefit of all valuation, appraisal and exemption laws and further waives all rights to notice and hearing of any kind prior to the exercise by Lender of its rights to repossess the Collateral without judicial process or to replevy, attach or levy upon the Collateral without prior notice or hearing.

(e) Borrower agrees the provisions of Section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the Lender, following the tenth day after an Event of Default and during the continuance of any Event of Default thereafter, all rights and remedies provided for in this Security Agreement, the Secured Note, the Deed of Trust, and all documents and agreements related thereto, without further order of the Bankruptcy Court.

**10. Term.** The term of this Security Agreement will continue in full force and effect until the Liabilities have been indefeasibly paid and satisfied in full and Borrower has received written termination of this Agreement duly executed by Lender. The term of this Security Agreement and the rights and privileges of Lender set forth herein shall be reinstated upon any requirement that Lender return or reimburse Borrower, any trustee or a receiver any of the Liabilities paid to Lender. No termination of the term of this Security Agreement shall in any way affect or impair the rights and liabilities of the parties hereto relating to any transactions or events prior to such termination or to any Collateral in which Lender has a security interest or lien.

**11. General.**

(a) Records. Borrower will at all times keep accurate and complete records of the Collateral, and Lender, or any of his agents, shall have the right at all times to examine and inspect the Collateral, all related records and the premises upon which the Collateral is located.

(b) Notices. Any and all notices, service of process, demands, requests, consents, designations, waivers and other communications required or desired hereunder shall be in writing and shall be deemed effective upon personal delivery, or upon delivery by overnight carrier, or three (3) days after mailing if mailed by certified mail, return receipt requested, postage

prepaid, to Lender or Borrower at the following addresses or such other address as Lender or Borrower specify in like manner, with a copy by email; provided, however, that notices of a change of address shall be effective only upon receipt thereof:

If to Borrower: Front Sight Management, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attn: Ignatius Piazza  
Email: ignatius@frontsight.com

With a Copy to:

BG Law LLP  
21650 Oxnard St., Suite 500  
Woodland Hills, CA 91367  
Attn: Steven Gubner / Susan Sefflin  
Email: sgubner@bg.law; ssefflin@bg.law

If to Lender: FS DIP, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

(c) Severability. If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

(d) Successors and Assigns. All of the rights and remedies of Lender under this Security Agreement shall be cumulative and shall inure to the benefit of its heirs, successors and assigns. This Security Agreement shall not be assigned in whole or in part by Borrower. All obligations of Borrower hereunder shall be binding upon Borrower and its successors, divisions, parents and affiliates.

(e) No Waiver. All representations and warranties of Borrower contained herein and in any other agreement, document, instrument, schedule or report executed or delivered to Lender by Borrower shall be true and correct when delivered, and shall survive the consummation of the transactions described herein. No delay on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude any other or future exercise thereof or the exercise of any other right or remedy.

(f) Governing Law. This Security Agreement shall be governed by and construed in accordance with the internal laws of the State of Nevada, except that, with respect to any portion of the Collateral located outside of Nevada, the laws of the state in which such portion of the Collateral is located shall be applicable thereto but only to the extent required for Lender to exercise its rights and remedies in order to realize upon its interest in the Collateral. Nothing herein shall be deemed to limit any rights, powers or privileges which Lender may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Lender which is lawful pursuant to, or which is permitted by, any of the foregoing. The Exhibits referred to herein are attached hereto, made a part hereof and incorporated herein by this reference thereto.

(g) Entire Agreement. This Security Agreement together with the other agreements executed contemporaneously herewith contain the entire agreement between Lender and Borrower with regard to the subject matter hereof, and supersede all prior and contemporaneous communications, agreements and assurances, whether verbal or written, and may not be modified, altered or amended except by an agreement in writing signed by Borrower and Lender.

(h) Payments. Borrower waives the right to direct the application of any and all payments at any time or times hereafter received by Lender on account of the Liabilities, and Borrower agrees that Lender shall have the continuing exclusive right to apply and reapply any and all payments in such manner and in such order as Lender may deem advisable, including, but not limited to, the payment of any costs, fees and expenses due and owing by Borrower to Lender.

(i) Legal Fees and Costs. Borrower shall reimburse Lender for all costs, fees and expenses incurred by Lender, or for which Lender becomes obligated, in connection with the negotiation, preparation, execution, administration, and enforcement of this Security Agreement, the Notes and the other documents, agreements and instruments referenced herein or executed and delivered in connection herewith, including, but not limited to, attorneys' and paralegals' fees, costs and expenses, search fees, title charges, costs and expenses, and filing and recording fees.

(j) Bankruptcy Court Approval. Borrower and Lender agree that the rights and obligations provided herein may be subject to final approval of the Bankruptcy Court. Borrower and Lender further agree that the Orders are hereby made a part of and incorporated into this Security Agreement by this reference. In the event of an inconsistency between the terms of this Security Agreement and the Orders approved by the Bankruptcy Court, the terms of such Orders shall govern and control, which Orders shall be approved by Lender, it is sole discretion, as a prerequisite to any funding hereunder.

**[NO FURTHER TEXT. SIGNATURE PAGE FOLLOWS.]**

**IN WITNESS WHEREOF**, this Security Agreement has been duly executed on the date first set forth above.

**BORROWER:**

**FRONT SIGHT MANAGEMENT, LLC,**  
**a Nevada limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**FS DIP, LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**COLLATERAL LOCATION**

12501 South Haven Ranch Road, Pahrump, Nevada (Nye County Assessor's Parcel No. 045-481-05); and

1 Front Sight Road, Pahrump, Nevada (Nye County Assessor's Parcel No. 045-481-06)

Exhibit A



APNs: 045-481-05 and 045-481-06

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[This Space for Recorder’s Use Only]

**DEED OF TRUST AND SECURITY AGREEMENT**

Per Nevada Revised Statutes (“NRS”) 239B.030, the undersigned hereby affirm(s) that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons.

THIS DEED OF TRUST AND SECURITY AGREEMENT (the “**Deed of Trust**”), made the \_\_\_ day of \_\_\_\_\_, 2022 by **FRONT SIGHT MANAGEMENT, LLC**, a Nevada limited liability company, with a mailing address of \_\_\_\_\_ (“**Grantor**”) to \_\_\_\_\_ a title company of the State of Nevada, with a mailing address as \_\_\_\_\_ (“**Trustee**”) for the benefit of **FS DIP, LLC**, a Nevada limited liability company, having its principal place of business at \_\_\_\_\_ (“**Beneficiary**”).

**W I T N E S S E T H :**

WHEREAS, Grantor is the “**Debtor**” in that certain bankruptcy case (Case No. \_\_\_\_\_) (the “**Bankruptcy Case**”) currently pending in the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”);

WHEREAS, on \_\_\_\_\_, 2022, Grantor filed a motion for entry of an order authorizing Grantor to incur post-petition debt from Lender (“**DIP Financing**”) on a priming and super priority basis pursuant to certain provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 4001;

WHEREAS, on \_\_\_\_\_, 2022, the Bankruptcy Court, having found that the DIP Financing is critical in order to maintain the Grantor’s business and the Real Property (as

defined below), entered an interim order (the “**Interim Order**”) granting the motion and authorizing the DIP Financing on an interim basis;

WHEREAS, on \_\_\_\_\_, 2022, the Bankruptcy Court entered a final order (the “**Final Order**” and collectively with the Interim Order, the “**Orders**”) granting the motion and authorizing the DIP Financing on a final basis.

Pursuant to the Orders, and to secure the payment of an indebtedness in the principal sum of Five Million and No/100 Dollars (\$5,000,000.00), lawful money of the United States of America, to be paid with interest according to a certain Secured Promissory Note dated of even date herewith made by Grantor to Beneficiary (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the “**Note**”) (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the “**Debt**”), Grantor does hereby GRANT, BARGAIN AND SELL, MORTGAGE, WARRANT, CONVEY AND CONFIRM, ASSIGN, TRANSFER AND SET OVER unto the Trustee, his/her successors and assigns, IN TRUST, WITH POWER OF SALE, forever for the use and benefit of the Beneficiary, all of the real property described in Exhibit A attached hereto (the “**Premises**”) and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the “**Improvements**”);

TOGETHER WITH: all right, title, interest and estate of Grantor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter collectively referred to as the “**Real Property**”):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Grantor, or in which Grantor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively called the “**Equipment**”), and the right, title and interest of Grantor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform

Commercial Code, as adopted and enacted by the state or states where any of the Real Property is located (the “**Uniform Commercial Code**”), superior in lien to the lien of this Deed of Trust;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Real Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Real Property;

(d) all leases and other agreements affecting the use, enjoyment or occupancy of the Real Property heretofore or hereafter entered into (the “**Leases**”) and all income, rents, issues, profits, license fees, revenues, charges, accounts and general intangibles (including all oil and gas or other mineral royalties and bonuses) arising from the use, enjoyment and occupancy of the Real Property (the “**Rents**”), or relating to any business conducted by the Mortgagor on it, under the Leases and renewals thereof, which are specifically assigned and transferred to the Beneficiary and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Real Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Real Property;

(f) the right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Real Property and to commence any action or proceeding to protect the interest of Beneficiary in the Real Property;

(g) Any and all rights, titles, interests, estates and other claims, at law or in equity, that Grantor now has or may hereafter acquire in or to any proceeds from the sale, assignment, conveyance, hypothecation, grant, pledge or other transfer of any or all of the foregoing real or personal property;

(h) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, governmental subsidy payments, governmentally registered credits (such as emissions reduction credits) and payments of any kind due from or payable by any governmental authority or any insurance or utility company relating to any or all of the Real Property;

(i) All monies relating to the Real Property held in any cash collateral or operating account maintained with Beneficiary or any Affiliate of Beneficiary now or at any time hereafter;

(j) All right, title and interest of Grantor arising from the operation of the Real Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper including, without limiting the generality of the foregoing, all accounts, accounts receivable, contract rights, book debts, and notes arising from the operation of the Real Property and Real

Property-related services on the Real Property or arising from the sale, lease or exchange of goods or other property and/or the performance of services; and

(k) All of Grantor's existing and after acquired or created accounts (including, without limitation, bank, brokerage, and similar accounts and demand depository accounts), accounts receivable, contract rights, general intangibles, judgments, notes, drafts, acceptances, instruments, chattel paper, deposits, and all other personal property of every kind, nature or description in connection with the Real Property.

Insofar as the Real Property consists of equipment, accounts, accounts receivable, contract rights, general intangibles, inventory, fixtures, proceeds of collateral or any other personal property of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code (as in effect in the appropriate jurisdiction with respect to the Premises wherever located), the Grantor hereby grants to the Beneficiary a security interest in all of the Grantor's right, title and interest therein.

TO HAVE AND TO HOLD IN TRUST the above granted and described Real Property unto and to the use and benefit of Beneficiary, and the successors and assigns of Beneficiary, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to Beneficiary the Debt at the time and in the manner provided in the Note and this Deed of Trust and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void;

AND Grantor represents and warrants to and covenants and agrees with Beneficiary as follows:

**1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Grantor will pay the Debt at the time and in the manner provided in the Note and in this Deed of Trust. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Deed of Trust previously, now or hereafter executed by Grantor and/or others and by or in favor of Beneficiary, which now or in the future wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

**2. Warranty of Title.** Grantor warrants that Grantor has good title to the Real Property and has the right to Deed of Trust, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Grantor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Real Property free and clear of all liens, encumbrances and charges whatsoever. Grantor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against the claims of all persons whomsoever.

**3. Insurance.**

(a) Grantor shall at all times keep or cause its tenants to keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured, pursuant to an all risk policy of insurance (the “**Policies**”) issued by a company rated A-13 or better by Best among property and casualty insurers, or such other rating as approved by Beneficiary, against loss or damage by fire and such other hazards as may reasonably be required by Beneficiary, including without limitation: (a) fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises; (b) rent or business loss insurance for the same perils described in (a) above, payable at the rate per month specified from time to time by Beneficiary and for a period of one year; (c) boiler and sprinkler damage insurance in an amount satisfactory to Beneficiary, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; (d) if the Premises are located in a flood hazard district, flood insurance whenever in the opinion of Beneficiary such protection is necessary and is available; (e) the standard New York Beneficiary non-contribution clause naming Beneficiary as the person to which all payments made by such insurance company shall be paid; and (f) such other insurance as Beneficiary may from time to time require. Grantor also shall at all times maintain comprehensive public liability, property damage and workers’ compensation insurance covering the Premises and any employees thereon, with such limits for personal injury, death and property damage as Beneficiary may require. All policies of insurance to be furnished hereunder shall be in forms, amounts and deductibles, and from companies, satisfactory to Beneficiary, with Deed of Trust clauses attached to all policies in favor of and in form satisfactory to Beneficiary, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days’ prior written notice to Beneficiary. Grantor shall assign and deliver all policies, including additional and renewal policies, to Beneficiary, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. Grantor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard Deed of Trust clause acceptable to Beneficiary. Grantor immediately shall notify Beneficiary whenever any such separate insurance is taken out and promptly shall deliver to Beneficiary the policy or policies of such insurance.

(b) If the Real Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Grantor shall give prompt notice thereof to Beneficiary, who shall have the right, but not the obligation, to make proof of loss. Sums paid to Beneficiary by any insurer may be retained and applied by Beneficiary, after deduction of Beneficiary’s reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Beneficiary in its discretion shall deem proper or, at the discretion of Beneficiary, either in whole or in part, to Grantor for such purposes as Beneficiary shall designate.

**4. Payment of Taxes, etc.** Grantor shall pay or cause to be paid all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Real Property or any part thereof (the “**Taxes**”) and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Real Property or any part thereof (the “**Other Charges**”)

as same become due and payable. Grantor will deliver to Beneficiary, promptly upon Beneficiary's request, evidence satisfactory to Beneficiary that the Taxes and Other Charges have been so paid or are not then delinquent. Grantor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Real Property, and shall promptly pay for all utility services provided to the Real Property. Grantor shall furnish to Beneficiary receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent.

**5. Intentionally Deleted.**

**6. Condemnation.** Grantor shall promptly give Beneficiary notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Beneficiary copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Grantor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Deed of Trust and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Beneficiary, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Beneficiary shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Beneficiary may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable. If the Real Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of such award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

**7. Leases and Rents.**

(a) Beneficiary is hereby granted and assigned by Grantor the right to enter the Real Property for the purpose of enforcing its interest in the Leases and the Rents, this Deed of Trust constituting a present, absolute assignment of the Leases and the Rents. Nevertheless, subject to the terms of this paragraph 7, Beneficiary grants to Grantor a revocable license to operate and manage the Real Property and to collect the Rents. Grantor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon or at any time after an Event of Default, the license granted to Grantor herein may be revoked by Beneficiary, and Beneficiary may enter upon the Real Property, and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Beneficiary in its discretion shall deem proper.

(b) Grantor may not enter into any lease without the prior written consent of Beneficiary. No material changes may be made to the Beneficiary-approved standard lease or in any lease existing as of the date hereof or in any future leases without the prior written consent of Beneficiary. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed leases, lease renewals, modifications and lease amendments shall be subject to the prior approval of Beneficiary. All Leases shall provide that they are subordinate to this Deed of Trust and that the



lessee agrees to attorn to Beneficiary. Grantor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Beneficiary of all notices of default which Grantor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the terms of the Leases without the prior written consent of Beneficiary, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Beneficiary; (viii) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Beneficiary; (ix) shall appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; and (x) shall execute and deliver at the request of Beneficiary all such further assurances, confirmations and assignments in connection with the Real Property as Beneficiary shall from time to time require.

Nothing in this Deed of Trust or in any other documents relating to the loan secured hereby shall be construed to obligate Beneficiary, expressly or by implication, to perform any of the covenants of Grantor as lessor under any of the leases assigned to Beneficiary pursuant to the terms hereof, or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Grantor agrees to perform and pay. This paragraph 7 shall be subject to all applicable laws with respect the assignment of Leases and Rents as provided in the Nevada Revised Statutes. This Deed of Trust is intended to be an "assignment of rents" under NRS 107A.040 which means a transfer of an interest in rents in connection with an obligation secured by the Land located in the State of Nevada and from which the Rents arise.

**8. Maintenance of Real Property.** Grantor shall cause the Real Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Beneficiary. Grantor shall promptly comply with all laws, orders and ordinances affecting the Real Property, or the use thereof. Grantor shall promptly repair, replace or rebuild any part of the Real Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Grantor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Real Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Real Property is or shall become a nonconforming use, Grantor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Beneficiary. Grantor shall keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Grantor shall have the right to contest in good faith and with diligence the validity of any such lien or claim upon: (i) placing a bond with Beneficiary in

an amount, form, content and issued by a surety acceptable to Beneficiary for the payment of any such lien, or (ii) obtaining a title indemnity insuring Beneficiary's interest against said lien in an amount, form, content and issued by a title insurance company acceptable to Beneficiary, in either case within ten (10) days after the filing of such lien. Grantor shall immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to the lien hereof (no such superior or inferior lien to be permitted hereunder), and upon request, exhibit satisfactory evidence of the discharge of any such lien to Beneficiary.

**9. Transfer or Encumbrance of the Real Property.**

(a) Grantor acknowledges that Beneficiary has examined and relied on the creditworthiness of Grantor and experience of Grantor in owning and operating properties such as the Real Property in agreeing to make the loan secured hereby, and that Beneficiary will continue to rely on Grantor's ownership of the Real Property as a means of maintaining the value of the Real Property as security for repayment of the Debt. Grantor acknowledges that Beneficiary has a valid interest in maintaining the value of the Real Property so as to ensure that, should Grantor default in the repayment of the Debt, Beneficiary can recover the Debt by a sale of the Real Property. Except as permitted in Loan Agreement, Grantor shall not, without the prior written consent of Beneficiary, sell, convey, alien, Deed of Trust, encumber, pledge or otherwise transfer the Real Property or any part thereof or permit the Real Property or any part thereof to be sold, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the events listed in the preceding sentence shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder.

(b) A sale, conveyance, alienation, Deed of Trust, encumbrance, pledge or transfer within the meaning of this paragraph 9 shall be deemed to include (i) an installment sales agreement wherein Grantor agrees to sell the Real Property or any part thereof for a price to be paid in installments; (ii) an agreement by Grantor leasing all or a substantial part of the Real Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Grantor's right, title and interest in and to any Leases or any Rents; (iii) if Grantor, any Guarantor (hereinafter defined), or any managing member or general partner of Grantor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Grantor, any Guarantor, and managing member or any general partner of Grantor or any Guarantor is a limited liability company or a limited or general partnership or joint venture, the change, removal or resignation of a managing member, general partner or managing partner or the transfer of the membership or partnership interest of any managing member, general partner or managing partner; and (v) the removal or resignation of the managing agent for the Real Property or the transfer of ownership, management or control of such managing agent to a person or entity other than the general partner or managing partner of Grantor.

(c) Beneficiary reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of this Deed of Trust as so modified

by the proposed transferee, payment of a transfer fee, or such other conditions as Beneficiary shall determine in its sole discretion to be in the interest of Beneficiary. Beneficiary shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Grantor's sale, conveyance, alienation, Deed of Trust, encumbrance, pledge or transfer of the Real Property without Beneficiary's consent. This provision shall apply to every sale, conveyance, alienation, Deed of Trust, encumbrance, pledge or transfer of the Real Property regardless of whether voluntary or not, or whether or not Beneficiary has consented to any previous sale, conveyance, alienation, Deed of Trust, encumbrance, pledge or transfer of the Real Property.

**10. Estoppel Certificates.**

(a) After request by Beneficiary, Grantor, within ten (10) days, shall furnish Beneficiary with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Deed of Trust are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Beneficiary, Grantor, within five (5) days, will furnish Beneficiary with estoppel certificates from any lessees under the Leases as required by their respective Leases.

**11. Changes in the Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Debt from the value of the Real Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Real Property, Grantor will pay such tax, with interest and penalties thereon, if any. In the event Beneficiary is advised by counsel chosen by it that the payment of such tax or interest and penalties by Grantor would be unlawful or taxable to Beneficiary or unenforceable or provide the basis for a defense of usury, then in any such event, Beneficiary shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

**12. No Credits on Account of the Debt.** Grantor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Real Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Real Property, or any part thereof, for real estate tax purposes by reason of this Deed of Trust or the Debt. In the event such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

**13. Documentary Stamps.** If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Deed of Trust, or impose any other tax or charge on the same, Grantor will pay for the same, with interest and penalties thereon, if any.

**14. Usury Laws.** This Deed of Trust and the Note are subject to the express condition that at no time shall Grantor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Grantor is permitted by applicable law to contract or agree to pay. If by the terms of this Deed of Trust or the Note, Grantor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

**15. Books and Records/Audits.** Grantor and Guarantor shall keep and maintain (and provide Lender with reasonable access and copies of same if so requested by Lender) at all times at Grantor's address stated below or at the Real Property, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect the results of the operation of the Real Property, and copies of all written contracts, correspondence, and other documents affecting the Real Property. Grantor shall prepare and furnish (or cause to be so prepared and furnished) to Lender: (i) fifteen (15) days after the end of each month, an income statement and a balance sheet for the each of the Real Property and for the Grantor during the preceding month, and all expenditures made with respect to the Mortgaged Property and for the Grantor from funds from any source for the preceding month, and such other documentation as Lender may request from time to time certified as true, correct and complete by Grantor; (ii) within fifteen (15) days before the end of the calendar year, a complete and detailed revision and update of the operating budget for the Real Property and for Grantor for Lender's review and approval (which approval shall not be unreasonably withheld), setting forth the projected net income relating to the operation and management of the Real Property and for the Grantor for the ensuing year; and (iii) within ninety (90) days after the end of the calendar year, a copy of the annual financial statements for the year just ended fairly presenting the financial condition of the Real Property, the Grantor and Guarantor and the results of the operations of the Mortgaged Property and Grantor and Guarantor, including, without limitation, a balance sheet, an income statement and such additional information as Lender may request from time to time, all of which shall be prepared and certified by an officer of Grantor in accordance with generally accepted accounting principles, consistently applied ("GAAP"). If requested by Lender or its representatives, Grantor will provide supporting documentation for all receipts and expenditures, including, but not limited to, bank statements, contracts, invoices, copies of checks and general ledgers. Grantor shall provide Beneficiary and any professional retained by Beneficiary, with reasonable, immediate and continuing access to any and all books, records, documents and information relevant to Grantor's operations, the status of the Real Property and appraisals or other documents relating to the value of the Real Property prepared by third parties. Beneficiary may audit the accuracy of Grantor's records and computations at any time and the costs and expenses of any such audit shall be paid by Beneficiary unless Grantor is in Default under any of the Loan Documents, in which event the cost of the audit shall be borne by Grantor.

**16. Performance of Other Agreements.** Grantor shall observe and perform each and every term to be observed or performed by Grantor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Real Property.

17. **Further Acts, etc.** Grantor will, at the cost of Grantor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust. Grantor, on demand, will execute and deliver and hereby authorizes Beneficiary to execute in the name of Grantor or without the signature of Grantor to the extent Beneficiary may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Beneficiary in the Real Property. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available to Beneficiary pursuant to this paragraph 17.

18. **Recording of Deed of Trust, etc.** Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Real Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Beneficiary in, the Real Property. Grantor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust, any Deed of Trust supplemental hereto, any security instrument with respect to the Real Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any Deed of Trust supplemental hereto, any security instrument with respect to the Real Property or any instrument of further assurance, except where prohibited by law so to do. Grantor shall hold harmless and indemnify Beneficiary, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Deed of Trust.

19. **Prepayment.** If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. **Events of Default.** The Debt shall become immediately due and payable at the option of Beneficiary upon any one or more of the following events (“**Event of Default**”):

- (a) if any portion of the Debt is not paid when due;
- (b) if any of the Taxes or Other Charges is not paid when the same is due and payable;



(c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Beneficiary upon request;

(d) if Grantor violates or does not comply with any of the provisions of paragraphs 3, 4, 5, 7, 8, 9, 34, 35 or 36 hereof;

(e) if any representation or warranty of Grantor, or of any person guaranteeing payment of the Debt or any portion thereof or performance by Grantor of any of the terms of this Deed of Trust (a "Guarantor"), made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Beneficiary shall have been false or misleading in any material respect when made;

(f) if Grantor or any Guarantor shall make an assignment for the benefit of creditors or if Grantor shall generally not be paying its debts as they become due;

(g) an order shall have been entered by the Bankruptcy Court (i) dismissing the Bankruptcy Case, (ii) converting the Bankruptcy Case to a chapter 7 case, or (iii) appointing a chapter 11 trustee or examiner or responsible officer for the operations of the Debtors' business

(h) if Grantor shall be in default under any other Deed of Trust or security agreement covering any part of the Real Property whether it be superior or junior in lien to this Deed of Trust;

(i) if the Real Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if Grantor fails to cure promptly any violations of laws or ordinances affecting or which may be interpreted to affect the Real Property;

(k) if for more than ten (10) days after notice from Beneficiary, Grantor shall continue to be in default under any other term, covenant or condition of the Note, this Deed of Trust or the Other Security Documents;

(l) in any subordinate financing in placed on the Real Property that has not been given prior written approval by Beneficiary in its sole discretion;

(m) The dissolution or liquidation of Grantor or the death, mental incompetency or permanent disability of any Guarantor; or

(n) Grantor or any other "borrower" (as the term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), with respect to this Deed of Trust, (i) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to Beneficiary, (A) any notice of an election to terminate the operation of this Deed of Trust as security for any "indebtedness secured hereby", including, without limitation, any obligation to



repay any “future advance” (as defined in NRS 106.320) of “principal” (as defined in NRS 106.345), or (B) any other notice pursuant to NRS 106.380(1); (ii) records a statement pursuant to NRS 106.380(3); or (iii) causes this Deed of Trust, any “indebtedness secured hereby” or Beneficiary to be subject to NRS 106.380(2), 106.380(3) or 106.400.

**21. Remedies of Beneficiary.** Upon the occurrence of any Event of Default, (a) Grantor will pay, from the date of an Event of Default, interest on the unpaid principal balance of the Note at the Default Rate of interest set forth in the Note, or at the maximum interest rate which Grantor may by law pay, whichever is lower, (the “**Default Rate**”) and (b) Beneficiary shall have the right to exercise any and all rights and remedies available at law and in equity, including to enter and secure the Real Property, Premises and Improvements. If and to the extent Nevada law is applicable to the extent permitted by applicable law, Grantor waives the provisions and application of NRS 40.459(1)(c) and, without limiting the foregoing, agrees that any application of NRS 40.459(1)(c) would apply only to a circumstance where a deficiency judgment or claim was sold by Beneficiary or any secured party after the obtaining of the same separate and apart from any sale or transfer of Beneficiary’s or any such secured party’s interest in the Debt. Grantor stipulates that, for purposes of applying NRS 40.459(1)(c), it shall be deemed that the amount of the consideration paid by the purchaser for any transfer, sale, or other conveyance of all or any portion of the Debt is an amount equal to the amount of the outstanding principal balance of the portion of the Debt so purchased. Without affecting the rights actually so acquired by such a purchaser, such rights shall not be deemed to constitute in whole or part the “right to obtain a judgment” for purposes of applying NRS 40.459(1)(c).

**22. Sale of Real Property, Expense of Litigation.** Beneficiary may elect to cause any of the Real Property to be sold as follows:

(1) Beneficiary may proceed as if all of the Real Property were real property or Beneficiary may elect to treat any of the Real Property which consists of a right in action or which is property that can be severed from the Premises and Improvements without causing structural damage thereto as if the same were personal property and dispose of the same as if it were Personalty separate and apart from the sale of real property, the remainder of the Real Property being treated as real property.

(2) Should Beneficiary request and direct Trustee to sell the Real Property or any part thereof which is real property or which Beneficiary may elect to treat as real property, upon such election, Trustee may proceed to foreclose this Deed of Trust in respect of said real property in the following manner: Trustee at the request of the Beneficiary shall proceed to take possession and to sell any of the Real Property, in whole or in one or more parcels, at public venue, to the highest bidder, for cash, at a front door (to be designated by Trustee) of the building then appointed for holding of foreclosure sales by the Circuit Court of the county in the State in which the Premises is situate (the “**County**”), or at Trustee's option, Trustee may set the place of such sale at any reasonable place, in accordance with applicable law, first giving notice of such sale in the manner prescribed by statute. Trustee may in the Trustee's discretion set the time of any such sale at any commercially reasonable time, as permitted by applicable law. Upon such sale, Trustee shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof. Trustee shall receive the proceeds of said sale out of which the Trustee shall pay (i) the costs and expenses of executing this trust, including lawful compensation to the Trustee for his

services as provided by statute, and a reasonable attorney's fee, which shall be immediately due upon first publication of sale; (ii) to Beneficiary, upon the usual vouchers therefore, any money advanced for ground rents, taxes, insurance, maintenance, abstracts, title reports, judgments upon statutory lien claims and any other advances hereunder and interest thereon at the Default Rate; (iii) the amount unpaid on the Debt, including the interest accrued thereon at the Default Rate; (iv) the remaining Debt; and (v) the balance of such proceeds, if any, shall be paid as required by law. The purchaser at any foreclosure sale shall not be obligated to look to the application of the proceeds thereof. If the Beneficiary should become the purchaser, it shall be entitled to credit any of the unpaid balance of the Debt against the amount of the purchase price. The Trustee covenants faithfully to perform the Trust herein created. The purchaser at any sale or foreclosure sale hereunder may disaffirm any easement granted or Lease made in violation of any provision of this Deed of Trust, and may take immediate possession of the Real Property free from, and despite the terms of, such grant of easement or Lease. Grantor hereby expressly waives any right which Grantor may have to direct the order in which any of the Real Property shall be sold in the event of any sale or sales pursuant hereto. In the event of a sale or other disposition of any of the Real Property, and the execution of a deed or other conveyance pursuant thereto, the recitals in such deed or conveyance of facts, such as default, the giving of notice of default and notice of sale, terms of sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein. In case of any sale under this Deed of Trust by virtue of judicial proceedings, or under the power of sale, the Real Property may be sold in one parcel and as an entirety or in such parcels, manner or order as Beneficiary in its sole discretion may elect.

(3) Beneficiary may cause any such sale or other disposition to be conducted immediately, or Beneficiary may delay any such sale or other disposition for such period of time as Beneficiary deems to be in its best interest. Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest. Beneficiary may also institute an action to judicially foreclose this Deed of Trust, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the Real Property, and proceed thereon to final judgment and judicial sale or execution thereon for the entire unpaid balance of the Debt, including interest at the rates and pursuant to the methods of calculation specified in the Note, together with all costs of suit, interest at the Default Rate on any judgment obtained by Beneficiary from and after the date of any judicial sale of the Real Property until actual payment is made to Beneficiary of the full amount due Beneficiary, and an attorneys' reasonable fee for collection, any usage or custom to the contrary notwithstanding. In any Trustee's Sale of all or a part of the Real Property or in any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the sum due at the Trustee's Sale or in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for reasonable attorneys' fees, appraisers' fees (including, but not limited to all appellate level and post-judgment proceedings) outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Beneficiary may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to

such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph 22 mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Deed of Trust, including the fees of any attorney employed by Beneficiary in any litigation or other proceeding affecting this Deed of Trust, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any litigation or other proceeding or threatened litigation or other proceeding, shall be immediately due and payable by Grantor, with interest thereon at the Default Rate, and shall be secured by this Deed of Trust.

(4) All cash collateral held by Beneficiary and applied towards repayment of the Debt is intended to be covered by NRS 40.430(6)(g) such that the application of cash collateral by Beneficiary towards repayment of the Debt shall not constitute an “action” within the meaning of NRS 40.430.

**23. Right to Cure Defaults.** Upon the occurrence of any Event of Default or if Grantor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Real Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Real Property or to foreclose this Deed of Trust or collect the Debt, and the cost and expense thereof (including reasonable attorneys’ fees to the extent permitted by law), with interest as provided in this paragraph 23, shall constitute a portion of the Debt and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Deed of Trust and the Other Security Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

**24. Late Payment Charge.** If any portion of the Debt is not paid on the date on which it is due, Grantor shall pay to Beneficiary upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, to defray the expense incurred by Beneficiary in handling and processing such delinquent payment and to compensate Beneficiary for the loss of the use of such delinquent payment, and such amount shall be secured by this Deed of Trust and the Other Security Documents.

**25. Future Advances (NRS 106.300 et seq).** It is the intention of Grantor, Beneficiary, and Trustee that this Deed of Trust is an “instrument” (as defined in NRS 106.320, as amended or recodified from time to time) and which is governed pursuant to NRS 106.300 through 106.400, as amended or recodified from time to time. It is the intention of the parties that the indebtedness secured hereby include the obligation of the Grantor to repay “future advances” (as defined in NRS 106.320, as amended or recodified from time to time) of “principal” (as defined in NRS 106.345, as amended or recodified from time to time), and that the lien of this Deed of Trust secures the obligation of Grantor to repay all such “future advances” with the priority set

forth in NRS 106.370(1), as amended or recodified from time to time. The maximum principal amount, including any future advances, to be secured hereby is the amount of Ten Million and No/100 Dollars (\$10,000,000.00). The maximum amount of advances of principal to be secured by this instrument may increase or decrease from time to time by amendment of this instrument. This instrument shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Real Property given priority by law.

**26. Right of Entry.** Beneficiary and its agents shall have the right to enter and inspect the Real Property at all reasonable times.

**27. Appointment of Receiver.** Subject to the Bankruptcy Code, the Bankruptcy Rules and any Local Rules to which the Bankruptcy Case is subject, the holder of this Deed of Trust, upon the occurrence of an Event of Default or in any action to foreclose this Deed of Trust or upon the actual or threatened waste to any part of the Real Property, shall be entitled to the appointment of a receiver without notice and without regard to the value of the Real Property as security for the Debt, or the solvency or insolvency of any person liable for the payment of the Debt. The failure of Grantor to pay any Taxes assessed against the Real Property, or any installment of them, or any premiums payable with respect to any insurance policy covering the Real Property, shall constitute waste (although the meaning of “waste” shall not be limited to this nonpayment). The parties agree the provisions of Section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Trustee, following an Event of Default, all rights and remedies provided for in the DIP Financing without further order of the Bankruptcy Court.

**28. Reasonable Use and Occupancy.** In addition to the rights which Beneficiary may have herein, upon the occurrence of any Event of Default, Beneficiary, at its option, may require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Real Property as may be occupied by Grantor or may require Grantor to vacate and surrender possession of the Real Property to Beneficiary or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise.

**29. Security Agreement.** This Deed of Trust is both a real property Deed of Trust and a “Security Agreement” within the meaning of the Uniform Commercial Code. The Real Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Real Property. Grantor by executing and delivering this Deed of Trust has granted and hereby grants to Beneficiary, as security for the Debt, a first and prior security interest in the Real Property to the full extent that the Real Property may be subject to the Uniform Commercial Code (said portion of the Real Property so subject to the Uniform Commercial Code being called in this paragraph 29 the “Collateral”). If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary, Grantor shall at its expense assemble the Collateral and make it available to Beneficiary at a convenient place acceptable to

Beneficiary. Grantor shall pay to Beneficiary on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Beneficiary in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its discretion shall deem proper. As to all of the Real Property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under Sections 9313 and 9402(6) (effective through June 30, 2001) and Sections 9334 and 9502(3) (effective July 1, 2001) of the Uniform Commercial Code. It is the intent of Grantor, Beneficiary and Trustee that this Deed of Trust encumber all Leases and Rents, that all items contained in the definition of "Leases" and "Rents" which are included within Chapter 9 of the applicable Uniform Commercial Code be covered by the security interest granted herein and that all items contained in the definition of "Leases" and "Rents" which are excluded from Chapter 9 of the applicable Uniform Commercial Code be covered by the other provisions of Deed of Trust.

**30. Actions and Proceedings.** Beneficiary has the right to appear in and defend any action or proceeding brought with respect to the Real Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its discretion, decides should be brought to protect its interest in the Real Property. Beneficiary shall, at its option, be subrogated to the lien of any Deed of Trust or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

**31. Waiver of Counterclaim.** Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Beneficiary against Grantor, or in any matters whatsoever arising out of or in any way connected with this Deed of Trust, the Note, any of the Other Security Documents or the Debt.

**32. Recovery of Sums Required To Be Paid.** Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

**33. Marshalling and Other Matters.** Grantor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Real Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Real Property subsequent to the date of this Deed of Trust and on behalf of all persons to the extent permitted by applicable law.



**34. Hazardous Materials.** Grantor represents and warrants that except as disclosed in the environmental reports previously delivered to Beneficiary, to the best of Grantor's knowledge, after due inquiry and investigation, (a) there are no Hazardous Materials (hereinafter defined) on the Real Property, except those in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, and (b) no owner or occupant nor any prior owner or occupant of the Real Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Real Property. Grantor covenants that the Real Property shall be kept free of Hazardous Materials, and neither Grantor nor any occupant of the Real Property shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Real Property, except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Grantor shall comply with, and ensure compliance by all occupants of the Real Property with, all applicable federal, state and local laws, ordinances, rules and regulations, and shall keep the Real Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Grantor receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Real Property, Grantor shall immediately notify Beneficiary. Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Hazardous Materials from the Real Property in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. The term "**Hazardous Materials**" as used in this Deed of Trust shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, mold or mold conditions, meaning any surficial or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description or the growth or existence of mold, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule, or regulation, but excluding Asbestos, as defined in paragraph 35 hereof. The obligations and liabilities of Grantor under this paragraph 34 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Deed of Trust. Further, Grantor represents to Beneficiary that no portion of the Real Property is a protected wetland.

**35. Asbestos.** Grantor represents and warrants that except as disclosed in the environmental reports previously delivered to Beneficiary, if any, to the best of Grantor's knowledge, after due inquiry and investigation, that there is no asbestos or material containing asbestos ("**Asbestos**") on the Real Property, and that no owner or occupant nor any prior owner or occupant of the Real Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Real Property. Grantor covenants that the Real Property shall be kept free of Asbestos, and neither Grantor nor any occupant of the Real Property shall install, or permit to be installed, Asbestos on the Real Property. Grantor shall comply with, and ensure compliance by all occupants of the Real Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Real Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Grantor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Real Property, Grantor shall immediately notify Beneficiary. Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions



necessary to clean up and remove all Asbestos from the Real Property in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The obligations and liabilities of Grantor under this paragraph 35 shall survive any entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Deed of Trust.

**36. Indemnification.** Grantor shall protect, defend, indemnify and save harmless Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Beneficiary by reason of (a) ownership of this Deed of Trust, the Real Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Real Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Real Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Grantor to perform or comply with any of the terms of this Deed of Trust; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Real Property or any part thereof; (f) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Deed of Trust, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Deed of Trust is made; (g) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Real Property or any other property or the presence of Asbestos on the Real Property; (h) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials or Asbestos; (i) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials or Asbestos; (j) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; (k) the making of the loan evidenced by the Note and secured by this Deed of Trust; or (l) any suit or other proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Beneficiary may or does become a party, either as a plaintiff or as a defendant, by reason of this Deed of Trust, or for the purpose of protecting the lien of this Deed of Trust; and/or the ownership, use, operation and/or maintenance of the Premises. amounts payable to Beneficiary by reason of the application of this paragraph 36 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Beneficiary until paid. The obligations and liabilities of Grantor under this paragraph 36 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Deed of Trust.

**37. Notices.** Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier or U.S. Mail and shall be deemed given: (a) if served in person, when served; (b) if telecopied, on the date of transmission if before 3:00 p.m. (Chicago time) on a business day; provided that a hard copy of such notice is also sent pursuant to (c) or (d) below; (c) if by overnight courier, on the first business day after delivery to the courier; or (d) if

by U.S. Mail, certified or registered mail, return receipt requested on the fifth (5th) day after deposit in the mail postage prepaid.

If to Grantor: Front Sight Management, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Beneficiary: FS DIP, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

**38. Authority.**

(a) Grantor (and the undersigned representative of Grantor, if any) has full power, authority and legal right to execute this Deed of Trust, and to Deed of Trust, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Real Property pursuant to the terms hereof and to keep and observe all of the terms of this Deed of Trust on Grantor’s part to be performed.

(b) Grantor represents and warrants that Grantor is not a “foreign person” within the meaning of 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

**39. Waiver of Notice.** Grantor shall not be entitled to any notices of any nature whatsoever from Beneficiary except with respect to matters for which this Deed of Trust specifically and expressly provides for the giving of notice by Beneficiary to Grantor and except with respect to matters for which Beneficiary is required by applicable law or the Order of the Bankruptcy Court to give notice, and Grantor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Beneficiary to Grantor.

**40. Remedies of Grantor.** In the event that a claim or adjudication is made that Beneficiary has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Deed of Trust or the Other Security Documents, it has an obligation to act reasonably or promptly, Beneficiary shall not be liable for any monetary damages, and Grantor's remedies shall be limited to injunctive relief or declaratory judgment.

**41. Sole Discretion of Beneficiary.** Wherever pursuant to this Deed of Trust, Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Beneficiary and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

**42. Non-Waiver.** The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (a) the failure of Beneficiary to comply with any request of Grantor or Guarantors to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Real Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Deed of Trust or the Other Security Documents. Beneficiary may resort for the payment of the Debt to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**43. No Oral Change.** This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**44. Liability.** If Grantor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Deed of Trust shall be binding upon and inure to the benefit of Grantor and Beneficiary and their respective successors and assigns forever.

**45. Inapplicable Provisions.** If any term, covenant or condition of the Note or this Deed of Trust is held to be invalid, illegal or unenforceable in any respect, the Note and this Deed of Trust shall be construed without such provision.

46. **Headings, etc.** The headings and captions of various paragraphs of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

47. **Duplicate Originals.** This Deed of Trust may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

48. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in singular or plural form and the word “Grantor” shall mean “each Grantor and any subsequent owner or owners of the Real Property or any part thereof or any interest therein,” the word “Beneficiary” shall mean “Beneficiary and any subsequent holder of the Note,” the word “Note” shall mean “the Note and any other evidence of indebtedness secured by this Deed of Trust,” the word “person” shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words “Real Property” shall include any portion of the Real Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

49. **Business Purpose.** The proceeds of the loan evidenced by the Note and secured hereby will be used solely for the business purposes, and the principal obligation evidenced by the Note constitutes a “business loan” within the definition and purview of said statute and said loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C. Section 1601, et. seq.

50. **Expenses Relating to Note and Deed of Trust.** Grantor will pay all reasonable expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Deed of Trust or necessitated by the terms of the Note, this Deed of Trust or any of the Other Security Documents securing the Note, including without limitation, Beneficiary’s attorneys’ and legal fees and costs (including, but not limited to, all appellate level and post-judgment proceedings) in connection with the negotiation, documentation, modification, workout, collection and enforcement of the Note, this Deed of Trust and the Other Security Documents, all of Beneficiary’s inspection costs, fees and expenses with regard to the Premises, all filing and recording fees, all other expenses incident to the execution and acknowledgment of this Deed of Trust, all Federal, state, county and municipal taxes, and other taxes (provided Grantor shall not be required to pay any income or franchise taxes of Beneficiary), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note or this Deed of Trust, all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Beneficiary including payments to remove or protect against liens, receivers’ fees, appraisers’ fees, engineers’ fees, accountants’ fees, independent consultants’ fees (including environmental consultants), Beneficiary’s out-of-pocket costs and expenses related to any audit or inspection of the Property (not to be made more than one time in any twelve (12) month period), and costs for procuring all such abstracts of title, title searches and examination, title insurance policies, surveys and similar data and assurances with respect to title as Beneficiary may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale of the Collateral the true condition of the title to, or the value of, the Collateral, and after an Event of Default, provided such costs are permitted by any applicable statute, outlays for documentary and

expert evidence, stenographers' charges, publication costs, and all of Beneficiary's attorneys' fees for services and costs incurred in connection with the representation of Lender in the Bankruptcy Case, including, but not limited to, the Bankruptcy Court's approval of the DIP Financing and the allowance of Beneficiary's secured claim.. All expenses, charges, costs and fees described in the preceding sentence shall be so much additional indebtedness secured hereby, and if not paid in accordance with the terms of the Note and this Deed of Trust, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with such interest, by Grantor forthwith upon demand.

**51. Miscellaneous.**

(a) Municipal and Zoning Requirements. Grantor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Grantor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any municipal or governmental requirement. Grantor shall not make any changes or revisions to existing zoning approvals or classifications or entitlements with respect to the Premises without the prior written consent of Beneficiary. Grantor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Grantor which would result in a violation of any of the provisions of this Paragraph 52(a) shall be void.

(b) Use of Proceeds. Grantor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(c) Beneficiary in Possession. Nothing herein contained shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the actual taking of possession of the Premises by Beneficiary pursuant to this Deed of Trust.

(d) Time of the Essence. Time is of the essence of the payment by Grantor and its sole beneficiaries of all amounts due and owing to Beneficiary under the Note and the performance and observance by Grantor of all of the terms, conditions, obligations and agreements contained in this Deed of Trust.

(e) Governing Law. This Deed of Trust shall be governed by and construed in accordance with the internal laws of the State of Nevada, except that, with respect to any portion of the Real Property located outside of Nevada, the laws of the state in which such portion of the Real Property is located shall be applicable thereto but only to the extent required for Beneficiary to exercise its rights and remedies in order to realize upon its interest in the Real Property. Nothing herein shall be deemed to limit any rights, powers or privileges which Beneficiary may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Beneficiary which is lawful pursuant to, or which is permitted by, any of the foregoing.

**52. Waiver of Right of Redemption.** Grantor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Grantor, all persons and entities interested in Grantor and each and every person (except judgment creditors of Grantor) acquiring any interest in, or title to, the Premises subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by law.

**53. Lease of Real Property.** Trustee hereby lets the Real Property to Grantor until a sale is held under the foregoing provisions therefore, or until an Event of Default shall occur, upon the following terms and conditions, to wit: Grantor and all Persons claiming or possessing any of the Real Property by, through, or under Grantor shall pay rent therefore during said term at the rate of one cent per month, payable monthly upon demand, and shall surrender immediate peaceable possession of the Real Property (and any and every part thereof) sold under the provisions of this Deed of Trust to the purchaser thereof under such sale, without notice or demand therefore, and shall and will at once, without notice, surrender up possession of the Real Property and every part thereof in the event Beneficiary shall take charge and enter as hereinbefore provided.

**54. Successor Trustee.** Except as may be prohibited by law, the Beneficiary is hereby granted full power at any time to appoint a successor or substitute Trustee by instrument properly executed, acknowledged and filed for record in the office where this Deed of Trust is to be recorded for any reason satisfactory to Beneficiary, and such successor or substitute Trustee, from and after the making of such appointment, shall have and possess all of the powers, authorities, duties and obligations vested in and upon the Trustee designated in this Deed of Trust. The authority hereby granted shall extend to the appointment of other successor and substitute trustees successively until the Debt has been fully paid and the Debt fully performed.

**55. Indemnity to Trustee.** Grantor shall indemnify, defend and hold the Trustee harmless, from and against any and all loss, damage, liability, cost and expense, including reasonable attorney's fees, suffered or incurred by Trustee in connection with any act or omission to act of Trustee under this Deed of Trust, and in connection with any action or proceeding in which Trustee shall be made a party or shall join, relating to any of the Real Property, this Deed of Trust, or any of the transactions contemplated by the Loan Documents. The provisions of this section shall survive payment of the Debt, performance of the Debt, and the release of this Deed of Trust and reconveyance of the Real Property.

**56. Incorporation of Certain Nevada Covenants.** The following covenants, Nos. 1, 2 (full replacement value), 3, 4 (at the default rate as defined in the Note), 5, 6, 7 (a reasonable percentage), 8, and 9 of NRS 107.030, where not in conflict with the provisions of the Loan Documents, are hereby adopted and made a part of this Deed of Trust. Upon any Event of Default by the Grantor hereunder, Beneficiary may have a receiver appointed as a matter of right without regard to the sufficiency of the Real Property or any other security or guaranty and without any showing as required by NRS 107.100. All remedies provided in this Deed of Trust are cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity and may be exercised concurrently, independently or successively. A sale of Real Property conducted



pursuant to Covenants Nos. 6, 7, and 8 of NRS 107.300 may be conducted either as to the whole of the Real Property or in separate parcels and in such order as Trustee may determine.

**57. Waiver of Condemnation.** Grantor specifically, unconditionally and irrevocably waives all rights of the owner of the Premises granted under applicable law, including NRS 37.115, as amended or recodified from time to time, which provide for an allocation of condemnation proceeds between the owner of the Premises and a lienholder, and any other law or successor statute of similar import.

**58. Waiver of Marshaling.** Grantor specifically, unconditionally and irrevocably waives any right to a marshaling of assets, a sale in inverse order of alienation or to require sale of assets in a particular order, including rights provided by NRS 100.040 and 100.050, as such sections may be amended or recodified from time to time.

**59. Senior Mortgage Lien.** Pursuant to the Orders, the lien and security interest of this Deed of Trust in the Real Property is senior in priority and superior to any existing lien, security, mortgage, collateral interest or claim in the Real Property.

**[NO FURTHER TEXT. SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, this Deed of Trust has been executed by Grantor the day and year first above written.

**GRANTOR:**

**FRONT SIGHT MANAGEMENT, LLC,  
a Nevada limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF NEVADA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that \_\_\_\_\_, as \_\_\_\_\_ of Front Sight Management, LLC, a Nevada limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such person appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, as

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

(S E A L)

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

[TO BE INSERTED]

## ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (the “**Indemnity**”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2022, by **FRONT SIGHT MANAGEMENT, LLC**, a Nevada limited liability company (“**Indemnitor**”), with a mailing address of \_\_\_\_\_ in favor of **FS DIP, LLC**, a Delaware limited liability company (“**Lender**”), having an address of \_\_\_\_\_.

### **RECITALS**

WHEREAS, substantially contemporaneously herewith, Lender is entering into a financing transaction (the “**Loan**”) with Indemnitor, which Loan is evidenced by a certain Secured Promissory Note (the “**Note**”) in the principal amount of \$5,000,000.00 of even date herewith, executed and delivered by Indemnitor, as “**Maker**”, to the order of Lender, as payee;

WHEREAS, the Loan and Note are secured by, *inter alia*, a Deed of Trust and Security Agreement of even date herewith (the “**Deed of Trust**”) made by Indemnitor, as borrower, to Lender securing a first priority lien on certain real property located at: (i) 12501 South Haven Ranch Road, Pahrump, Nevada (Nye County Assessor’s Parcel No. 045-481-05; and (ii) 1 Front Sight Road, Pahrump, Nevada (Nye County Assessor’s Parcel No. 045-481-06 (collectively, the “**Property**”), which Property is legally described on **Exhibit A** attached hereto and made a part hereof (the Note, the Deed of Trust and the other Loan Documents defined in the Note are collectively referred to as the “**Loan Documents**”); and

WHEREAS, Lender has required this Indemnity as a condition of Lender’s disbursing the Loan.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **AGREEMENT**

1. **Recitals**. The Recitals hereto are incorporated herein by this reference thereto.
2. **Indemnity**. Indemnitor hereby agrees unconditionally, absolutely and irrevocably, to indemnify, defend (with counsel reasonably acceptable to Lender and at Indemnitor’s sole cost) and hold harmless Lender, its successors and assigns, and their respective partners, members, managers, officers, directors, employees, shareholders, agents and affiliates, against and in respect of:

(a) any loss, liability, cost, injury, expense or damage of any and every kind whatsoever (including, without limitation, court costs and reasonable attorneys’ fees and expenses) which at any time or from time to time may be suffered or incurred by Lender (or any other person indemnified hereunder) in connection with the breach of the representation and warranty contained in any of the Loan Documents pertaining to pollution, hazardous materials, toxic substances and environmental matters or in connection with any inquiry, charge, claim, cause of action, demand or lien made or arising directly or indirectly or in connection with, with

respect to, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any "Hazardous Material" (as hereinafter defined) including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the "Statutes" (as hereinafter defined), whether now known or unknown, including without limitation:

(i) any costs, fees or expenses incurred in connection with the removal, encapsulation or other treatment of Hazardous Material from or on the Property;

(ii) any loss or damage resulting from a loss of priority of the Deed of Trust due to the imposition of a lien against the Property; or

(iii) any reasonable attorneys' fees and expenses, engineers' fees, and/or charges of any contractor or expert retained or consulted in connection with any inquiry, claim or demand, including without limitation any costs incurred in connection with compliance with such inquiry, claim or demand;

(b) any loss, liability, cost, expense or damage (including, without limitation, reasonable attorneys' fees and expenses) suffered or incurred by Lender (or any other person indemnified hereunder) as a result of, arising out of or in connection with any failure of the Property to comply with all applicable environmental protection laws, ordinances, rules and regulations, and any litigation, proceeding or governmental investigation relating to such compliance or non-compliance; and

(c) Any loss, liability, cost, damage or expense suffered or incurred by Lender (or any other person indemnified hereunder) directly or indirectly arising from any claim, action, demand, cause of action or damage relating to or in connection with any personal injury concerning or relating to the presence of asbestos or other Hazardous Material on the Property.

As used herein, "Hazardous Material" means and includes, without limitation: (i) "hazardous substances", or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; or the Hazardous Materials Transportation Act, 49 U.S.C. §1802, all as amended and hereafter amended; (ii) "hazardous waste", as that term is defined by the Resource Conservation and Recovery Act, 42 U.S. C. §6902 *et seq.*, as amended and hereafter amended; (iii) any pollutant or contaminant or hazardous dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste substance or material, all as amended or hereafter amended; (iv) petroleum products, including, but not limited to, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute) and substances containing hydrocarbons (other than petroleum products which are normally contained in motor vehicles, to the extent that said petroleum products are not released from said motor vehicles)

(v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 et seq., as amended or hereafter amended (collectively, the “**Statutes**”); (vi) asbestos in any form or condition; (vii) polychlorinated biphenyls (“**PCBs**”) or substances or compounds containing PCBs; and (viii) mold or mold condition, meaning any surficial or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description or the growth or existence of mold.

**3. Term.** The provisions of and undertakings and indemnification set out in this Indemnity shall continue indefinitely in full force and effect and shall survive the satisfaction, termination, suspension or cancellation of the indebtedness evidenced by the Note, the release of the Deed of Trust, the acceptance by Lender of a deed in lieu of foreclosure with respect to all or any portion of the Property, a foreclosure of all or any portion of the Property and/or the exercise by Lender of any of its rights under any document securing the Note, and shall continue to be the personal liability, obligation and indemnification of the Indemnitor, binding upon the Indemnitor, jointly, and severally.

**4. Conflicting Provisions.** The provisions of this Indemnity shall govern and control over any inconsistent provision of the Loan Documents and any other agreement, instrument, or document evidencing or securing the Loan, including, without limitation, any exculpatory or non-recourse provisions contained in any of the foregoing agreements.

**5. Attorneys’ Fees.** If at any time or times hereafter Lender employs counsel for advice or other representation (i) with respect to this Indemnity, (ii) except as otherwise expressly provided herein, to represent Lender in any litigation, contest, dispute, suit or proceeding (whether instituted by Lender, Indemnitor, or any other party) in any way or respect relating to this Indemnity (if Lender prevails in the litigation, suit or proceeding in question), or (iii) to enforce Indemnitor’s obligations hereunder, then (if Lender prevails in the litigation, suit or proceeding in question) , in any of the foregoing events, all of the reasonable attorneys’ fees and expenses arising from such services and all expenses, costs and charges in any way or respect arising in connection therewith or relating thereto shall be paid by Indemnitor to Lender, on demand.

**6. Waiver.** Indemnitor hereby waives notice of the following events or occurrences: (a) Lender’s acceptance of this Indemnity; (b) Indemnitor’s heretofore, now or at any time or times hereafter granting to Lender of security interests, liens or encumbrances in any of Indemnitor’s assets or Lender’s heretofore, now or from time to time hereafter obtaining, amending, substituting for, releasing, waiving or modifying any such security interests, liens or encumbrances; (c) Lender’s heretofore, now or at any time or times hereafter, obtaining, releasing, waiving or modifying the Deed of Trust or any other lien or encumbrance in any other party’s assets given to Lender to secure the Note or this Indemnity; (d) Lender’s heretofore, now or at any time or times hereafter amending or modifying the Note or any other agreement, instrument or document, in any way, manner or respect, related thereto, referred to therein or contemplated thereby; (e) presentment, demand, notices of default, non-payment, partial payment and protest, and all other notices or formalities to which Indemnitor may be entitled



except as otherwise provided herein; (f) Lender's heretofore, now or at any time or times hereafter granting to Indemnitor (or any other party liable to Lender on account of the Note) of any indulgences or extensions of time of payment of the Note; and (g) Lender's heretofore, now or at any time or times hereafter accepting from Indemnitor (or any other party) any partial payment or payments on account of the Note or any collateral securing the payment thereof or Lender's settling, subordinating, compromising, discharging or releasing the same. Indemnitor agrees that Lender heretofore, now or at any time or times hereafter may do any or all of the foregoing in such manner, upon such terms and at such times as Lender, in its sole and absolute discretion, deems advisable, without in any way, manner or respect impairing, affecting, reducing or releasing Indemnitor from its obligations hereunder and Indemnitor hereby consents to each and all of the foregoing events or occurrences.

**7. Indemnification Procedures.**

(a) Notice by Indemnitor. Indemnitor shall notify Lender promptly upon receipt of any inquiry, notice, claim, charge, cause of action or demand pertaining to the matters indemnified hereunder, including without limitation any notice of inspection for cause, abatement or noncompliance, stating the nature and basis of such inquiry or notification. Indemnitor shall immediately deliver to Lender any and all documentation or records as Lender may request in connection with such notice or inquiry, and shall keep Lender advised of any subsequent developments.

(b) Notice by Lender. Lender shall give written notice to the Indemnitor of any claim against Lender which might give rise to a claim by Lender against the Indemnitor under this Indemnity stating the nature and basis of the claim, the amount thereof and reasonable best estimate of the amount of the Indemnitor's liability to Lender in connection therewith.

(c) Compromise/Settlement. If any action shall be brought against Lender, then after Lender notifies the Indemnitor thereof as provided in paragraph 7(b), the Indemnitor shall be entitled to participate therein, and to assume the defense thereof at the expense of Indemnitor with counsel reasonably satisfactory to Lender and to settle and compromise any such claim or action; provided, however, that Lender may elect to be represented by separate counsel, at Lender's expense, and if Lender so elects, such settlement or compromise shall be effected only with the consent of Lender, which consent shall not be withheld or delayed if the settlement or compromise does not impose any liability on Lender or any other party indemnified hereunder and shall not otherwise be unreasonably withheld or delayed.

(d) Indemnity Payments. The Indemnitor shall make any payment required to be made under this Indemnity promptly, and shall make such payment in cash in the amount thereof. In the event that such payment is not made forthwith, Lender, at its sole election and in its sole discretion, may proceed to suit against Indemnitor.

**8. No Reduction, Exceptions.** Except in the event any failure, delay, act or omission is the result of Lender's willful misconduct or gross negligence, and then only to the extent Indemnitor is prejudiced thereby, Indemnitor's obligations hereunder shall in no way,

manner or respect be impaired, affected, reduced or released by reason of (a) Lender’s failure or delay to do or take any of the acts, actions or things described herein; or (b) any act or omission of Lender in connection with any notice, demand, warning or claim regarding Hazardous Materials on the Property. Notwithstanding anything to the contrary contained in this Indemnity, the indemnifications set forth herein shall not be applicable to any loss, liability, cost, injury, expense or damage arising solely out of the gross negligence or willful misconduct of Lender.

**9. General.** This Indemnity shall be continuing, irrevocable and binding on Indemnitor, jointly and severally, and its respective successors and assigns and shall inure to the benefit of Lender and Lender’s successors and assigns. Indemnitor’s obligations hereunder may not be assigned. The dissolution of the Indemnitor shall not affect this Indemnity or any of Indemnitor’s obligations hereunder. Notwithstanding anything herein to the contrary, Indemnitor acknowledges and agrees that Lender may assign, pledge or transfer this Indemnity and its rights hereunder and the assignee shall be entitled to the performance of all of Indemnitor’s agreements and obligations under this Indemnity, and shall be entitled to enforce all the rights and remedies of Lender under this Indemnity, for the benefit of assignee, as fully as if assignee were herein by name specifically given such rights and remedies. Indemnitor expressly agrees that it will assert no claims or defenses that it may have against Lender against the assignee, except those specifically available under this Indemnity.

**10. Notices.** Any and all notices, service of process, demands, requests, consents, designations, waivers and other communications required or desired hereunder shall be in writing and shall be deemed effective upon personal delivery, or upon delivery by overnight carrier, or three (3) days after mailing if mailed by certified mail, return receipt requested, postage prepaid, to Lender or Borrower at the following addresses or such other address as Lender or Borrower specify in like manner, with a copy by email; provided, however, that notices of a change of address shall be effective only upon receipt thereof:

If to Borrower: Front Sight Management, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Lender: FS DIP, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

With a Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

**11. GOVERNING LAW; VENUE.** THIS INDEMNITY SHALL BE GOVERNED AND CONTROLLED AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT AND IN ALL OTHER RESPECTS BY THE LAWS, STATUTES AND DECISIONS OF THE STATE OF NEVADA. INDEMNITOR, IN ORDER TO INDUCE LENDER TO ACCEPT THIS INDEMNITY, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH HEREBY IS ACKNOWLEDGED, AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS INDEMNITY SHALL BE LITIGATED, AT LENDER'S SOLE DISCRETION AND ELECTION, ONLY IN COURTS HAVING A SITUS WITHIN THE COUNTY OF CLARK, STATE OF NEVADA. INDEMNITOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. INDEMNITOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT BY LENDER ON THIS INDEMNITY IN ACCORDANCE WITH THIS PARAGRAPH.

**12. WAIVER OF JURY TRIAL.** INDEMNITOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDEMNITY. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO MAKE THE LOAN.

**13. Severability.** If any provision of this Indemnity or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Indemnity and the application of such provision or provisions to the other parties and circumstances will not be affected thereby, the provisions of this Indemnity being severable in any such instance.

**14. Counterparts.** This Indemnity may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

**[NO FURTHER TEXT. SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, the undersigned have executed this Indemnity as of the date first written above.

**INDEMNITOR:**

**FRONT SIGHT MANAGEMENT, LLC,  
a Nevada limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF NEVADA        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that \_\_\_\_\_, as \_\_\_\_\_ of Front Sight Management, LLC, a Nevada limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such person appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, as

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

(S E A L)

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Real Property Legal Description**

[TO BE INSERTED]