

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 FRONT SIGHT MANAGEMENT LLC, a
4 Nevada Limited Liability Company,

5 Petitioner,

6 vs.

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF CLARK;
10 and THE HONORABLE TIMOTHY C.
11 WILLIAMS, DISTRICT COURT JUDGE,

12 Respondents,

13 and

14 LAS VEGAS DEVELOPMENT FUND
15 LLC, a Nevada Limited Liability Company;
16 EB5 IMPACT CAPITAL REGIONAL
17 CENTER LLC, a Nevada Limited Liability
18 Company; EB5 IMPACT ADVISORS
19 LLC, a Nevada Limited Liability Company;
20 ROBERT W. DZIUBLA, individually and
21 as President and CEO of LAS VEGAS
22 DEVELOPMENT FUND LLC and EB5
23 IMPACT ADVISORS LLC; JON
24 FLEMING, individually and as an agent of
25 LAS VEGAS DEVELOPMENT FUND
26 LLC and EB5 IMPACT ADVISORS LLC;
27 LINDA STANWOOD, individually and as
28 Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC,

Real Parties in Interest.

No.: _____ Electronically Filed
Sep 11 2020 04:31 p.m.
Dist. Ct. Case No: A-18-781084-B Elizabeth A. Brown
Clerk of Supreme Court

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Declaration of C. Keith Greer in Support of Las Vegas Development Fund, LLC’s Motion for Leave to Amend the Countercomplaint (04/04/2020)	XV	3641-3645
Declaration of Robert Dziubla in Opposition to Plaintiff’s Motion for Sanctions (09/30/2019)	IX	2041-2044
Declaration of Robert Dziubla in Support of Defendant Las Vegas Development Fund LLC’s Motion for Appointment of Receiver <i>[redacted in district court filing]</i> (02/06/2019)	II / III	0379-0558
Defendant and Counter Claimant LVDF’s Objections to Plaintiff and Counter Defendant’s Statement of Undisputed Facts (02/03/2020)	XIII	3167-3222
Defendant and Counterclaimant Las Vegas Development Fund, LLC’s Notice of Motion and Motion for Leave to Amend the Countercomplaint <i>[redacted in district court filing]</i> (04/03/2020)	XIV / XV	3442-3640
Defendant and Counterclaimant LVD Fund’s Opposition to Counterdefendant Jennifer Piazza’s Motion for Summary Judgment <i>[redacted in district court filing]</i> (02/03/2020)	XIII	3223-3239
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Defendant EB5 Impact Advisors LLC’s Opposition to Plaintiff’s Motion for Sanctions (09/30/2019)	IX	2030-2040
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Defendant Las Vegas Development Fund, LLC’s
Motion for Clarification on Order Shortening Time
(05/01/2020) XVII 4007-4016

Defendant Las Vegas Development Fund LLC’s
Opposition to Motion to Seal and/or Redact portions
of Defendants’ Oppositions to Jennifer Piazza and
the NVN Trusts’ Motions for Summary Judgment to
Protect Confidential Financial Information
(02/14/2020) XIV 3369-3380

Defendant Las Vegas Development Fund, LLC’s
Opposition to Plaintiff’s Second Motion for
Temporary Restraining Order and Preliminary
Injunction (03/19/2019) IV 0837-0860

Defendant Las Vegas Development Fund LLC’s
Reply to Plaintiff’s Opposition to Defendant’s
Motion for Appointment of Receiver (02/26/2019) III / IV 0741-0755

Defendants’ Answer to Plaintiff’s Second Amended
Complaint and Counterclaim (04/23/2019) IV / V 0917-1083

Defendants’ Answer to Plaintiff’s Second Amended
Complaint and First Amended Counterclaim
[redacted in district court filing] (06/04/2020) XVII / XVIII 4073-4262

Defendants’ Opposition to Plaintiff’s Motion to
Quash Subpoenas to Third Parties Bank of America
and Lucas Horsfall, Murphy & Pindroh, LLP
(11/6/2019) X / XI 2479-2655

Errata to Opposition to Defendant Las Vegas
Development Fund LLC’s Motion for Appointment
of Receiver (02/22/2019) III 0731-0740

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Errata to Supplemental Declaration of Robert Dziubla in Support of Defendants’ Opposition to Plaintiff’s Second Motion for Temporary Restraining Order and Preliminary Injunction (03/20/2019)	IV	0882-0892
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Notice of Entry of Disclaimer of Interest of Chicago Title Company and Stipulation and Order for Dismissal (02/05/2019)	II	0344-0350
Notice of Entry of Findings of Fact and Conclusions of Law and Order Granting In Part and Denying In Part Defendants’ Motion for Protective Order Regarding Discovery of Consultants and Individual Investors Confidential Information (07/06/2020)	XVIII	4334-4342

1	Notice of Entry of Findings of Fact, Conclusions of	XIII	3081-3091
2	Law, and Order Denying Defendant Las Vegas		
3	Development Fund LLC’s Motion to Dissolve		
4	Temporary Restraining Order and to Appoint a		
5	Receiver (01/23/2020)		
6	Notice of Entry of Findings of Fact, Conclusions of	XVIII	4269-4275
7	Law and Order Denying Plaintiff Front Sight		
8	Management, LLC’s Motion to Extinguish LVDF’s		
9	Deed of Trust, or Alternatively to Grant Senior Debt		
10	Lender Romspen a First Lien Position, and Motion		
11	to Deposit Funds Pursuant to NRCP 67 (06/08/2020)		
12	Notice of Entry of Order (03/19/2019)	IV	0876-0881
13	Notice of Entry of Order (04/10/2019)	IV	0893-0897
14	Notice of Entry of Order (04/10/2019)	IV	0898-0903
15	Notice of Entry of Order (04/10/2019)	IV	0904-0909
16	Notice of Entry of Order (04/10/2019)	IV	0910-0916
17	Notice of Entry of Order (05/16/2019)	V	1084-1089
18	Notice of Entry of Order (06/25/2019)	VI	1318-1324
19	Notice of Entry of Order (12/18/2019)	XII	2837-2840
20	Notice of Entry of Order (01/17/2020)	XII	2867-2874
21	Notice of Entry of Order (02/07/2020)	XIV	3327-3330
22	Notice of Entry of Order (03/02/2020)	XIV	3412-3416
23	Notice of Entry of Order (03/03/2020)	XIV	3417-3421
24	Notice of Entry of Order (03/12/2020)	XIV	3422-3429
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Notice of Entry of Order (04/01/2020)	XIV	3430-3436
Notice of Entry of Order (04/01/2020)	XIV	3437-3441
Notice of Entry of Order (04/28/2020)	XVI	3892-3896
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Notice of Entry of Order Denying Counter Defendant Jennifer Piazza’s Motion for Summary Judgment (06/08/2020)	XVIII	4288-4293
Notice of Entry of Order Denying Counter Defendants VNV Dynasty Trust I and VNV Dynasty Trust II’s Motion for Summary Judgment (06/08/2020)	XVIII	4282-4287
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Notice of Entry of Order Denying Plaintiff’s Motion for Sanctions Related to Defendant EB5IA’s Accounting Records (12/19/2019)	XII	2854-2860
Notice of Entry of Order Denying Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction related to Investor Funds and Interest Payments (09/13/2019)	VII	1585-1591
Notice of Entry of Order Denying Plaintiff’s Motion to Quash Subpoenas to Morales Construction, Top Rank Builders and All American Concrete and Masonry (12/19/2019)	XII	2847-2853

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Notice of Entry of Order Denying Plaintiff’s Motion to Quash Subpoenas to Plaintiff’s Bank and Accountant (12/6/2019)	XII	2817-2822
Notice of Entry of Order Denying Plaintiff’s Motion to Quash Subpoenas to Summit Financial Group and US Capital Partners, Inc. (06/08/2020)	XVIII	4276-4281
Notice of Entry of Order Denying Plaintiff’s Motion to Stay Enforcement of Order Denying Plaintiff’s Motion to Quash Subpoenas to Bank of America and Lucas Horsfall (01/02/2020)	XII	2861-2866
Notice of Entry of Order Denying Without Prejudice Plaintiff’s Motion for Sanctions for Violation of Court Orders Related to Defendants Responses to Plaintiffs Requests for Production of Documents to Defendants (07/06/2020)	XVIII	4343-4349
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Notice of Entry of Order Granting Defendant Las Vegas Development Fund, LLC’s Motion for Clarification on Order Shortening Time (06/05/2020)	XVIII	4263-4268
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Notice of Entry of Order Granting Defendants’ Motion for Protective Order Regarding the Defendants’ Private Financial Information (07/10/2020)	XVIII	4350-4356

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Notice of Entry of Order Granting Defendants’
Motion to Advance Hearing regarding Plaintiff’s
Motion to Quash Subpoenas (11/08/2019)

XI 2656-2660

Notice of Entry of Order Granting in Part and
Denying in Part Counterdefendants’ Motions to
Dismiss Counterclaim (09/13/2019)

VII 1578-1584

Notice of Entry of Order Granting in Part and
Denying in Part Defendants’ Motions to Quash
Plaintiff’s Subpoenas to Non-Parties Empyrean
West, Jay Carter and David Keller (12/6/2019)

XII 2786-2793

Notice of Entry of Order Granting in Part Motion for
Sanctions and/or to Compel Actual Responses to
Plaintiff’s First Sets of Interrogatories to Defendants
(06/22/2020)

XVIII 4328-4333

Notice of Entry of Order Granting Las Vegas
Development Fund, LLC’s Motion to Compel
Production of Documents or, in the Alternative,
Motion for Preliminary Injunction to Address Front
Sight’s Continuing Violation of Section 5.10 of the
Construction Loan Agreement and Request for
Limited Relief From the Protective Order
(05/18/2020)

XVII 4062-4067

Notice of Entry of Order Granting Plaintiff’s Motion
for Protective Order (11/27/2018)

I 0075-0079

Notice of Entry of Order Granting Temporary
Restraining Order and Expunging Notice of Default
(11/27/2018)

I 0099-0104

Notice of Entry of Order on Defendants’ Motion to
Dismiss Plaintiff’s First Amended Complaint
(01/17/2019)

II 0333-0337

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Notice of Entry of Order on Plaintiff’s Motion for Preliminary Injunction (01/17/2019)	II	0323-0327
Notice of Entry of Order on Plaintiff’s Motion to Disqualify C. Keith Greer as Attorney of Record for Defendants (01/25/2019)	II	0338-0343
Notice of Entry of Order on Plaintiff’s Petition for Appointment of Receiver and for an Accounting (11/27/2018)	I	0069-0074
Notice of Entry of Order on Plaintiff’s Renewed Motion for an Accounting Related to Defendants Las Vegas Development Fund LLC and Robert Dziubla and for Release of Funds (01/17/2019)	II	0328-0332
Notice of Entry of Order on Status Check Regarding Discovery Responses/Plaintiff’s Motion to Compel (01/23/2020)	XIII	3092-3095
Notice of Entry of Order Regarding February 5, 2020 Status Check (02/19/2020)	XIV	3381-3385
Notice of Entry of Order Shortening Time (02/15/2019)	III	0629-0658
Notice of Entry of Order Shortening Time (11/15/2019)	XII	2777-2785
Notice of Entry of Order Shortening Time (12/11/2019)	XII	2823-2836
Notice of Entry of Order Shortening Time (02/11/2020)	XIV	3349-3368
Notice of Entry of Order Shortening Time (06/12/2020)	XVIII	4294-4305

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Notice of Entry of Order Staying All Subpoenas For Documents and Depositions which were Served on Non-Parties by Plaintiff (09/13/2019)	VII	1592-1599
Notice of Entry of Protective Order (11/27/2018)	I	0080-0098
Notice of Entry of Stipulation and Order (12/18/2019)	XII	2841-2846
Notice of Entry of Stipulation and Order Regarding Defendants’ Judicial Foreclosure Cause of Action (06/25/2019)	VI	1325-1330
Notice of Entry of Stipulation and Order Regarding Exhibit (12/6/2019)	XII	2801-2816
Notice of Entry of Stipulation and Order Resetting Hearings and Briefing Schedule (02/25/2020)	XIV	3386-3391
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (09/02/2020)	XVIII	4390-4403
Notice of Entry of Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Second Request) (05/13/2020)	XVII	4046-4056
Notice of Entry of Stipulation and Order to Replace Exhibit “A” to Defendant’s Motion for Leave to Amend the Countercomplaint <i>[redacted in district court filing]</i> (04/20/2020)	XV / XVI	3693-3891
Notice of Intent to Issue Subpoena to Bank of America, N.A. (10/22/2019)	X	2379-2459
Notice of Intent to Issue Subpoena to Lucas Horsfall, LLP (10/22/2019)	X	2298-2378

1	Opposition Memorandum of Defendant Las Vegas	III	0659-0669
2	Development Fund, LLC to Plaintiff's Motion to		
3	Seal and/or Redact Pleadings and Exhibits		
4	(02/19/2019)		
5	Opposition to Defendant Las Vegas Development	III	0670-0730
6	Fund LLC's Motion for Appointment of Receiver		
7	(02/22/2019)		
8	Opposition to Defendant Las Vegas Development	XVII	4017-4045
9	Fund LLC's Motion for Clarification on Order		
10	Shortening Time (05/11/2020)		
11	Order Re Rule 16 Conference, Setting Civil Jury	VII	1573-1577
12	Trial, Pre-Trial/Calendar Call and Deadlines for		
13	Motions; Discovery Scheduling Order (08/20/2019)		
14	Order Scheduling Hearing (09/27/2019)	VIII	1931-1932
15	Order Setting Settlement Conference (12/06/2018)	I	0105-0106
16	Order Setting Settlement Conference (06/04/2019)	VI	1314-1315
17	Plaintiff's Motion for Sanctions (09/17/2019)	VII	1600-1643
18	Plaintiff's Motion to Quash Subpoenas (10/29/2019)	X	2460-2478
19	Plaintiff's Second Motion for Temporary Restraining	IV	0770-0836
20	Order and Preliminary Injunction, Motion for Order		
21	Shortening Time, and Order Shortening Time		
22	(03/01/19)		
23	Reply in Support of Defendant and Counterclaimant	XVI / XVII	3897-4006
24	Las Vegas Development Fund, LLC's Motion for		
25	Leave to Amend the Counterclaim <i>[redacted in</i>		
26	<i>district court filing]</i> (04/29/2020)		
27	Reply to Opposition to Motion to Quash Subpoenas	XI / XII	2661-2776
28	(11/15/2019)		

1	Reply to Opposition to Plaintiff’s Motion for	IV / X	2233-2297
2	Sanctions (10/18/2019)		
3	Reporter’s Transcript of Hearing (Preliminary	VII / VIII	1644-1930
4	Injunction Hearing) (09/20/2019)		
5	Reporter’s Transcript of Motion (Preliminary	V / VI	1090-1313
6	Injunction Hearing) (06/03/2019)		
7	Reporter’s Transcript of Motions (Defendants’	IX	2045-2232
8	Motions to Quash Subpoena to Wells Fargo Bank,		
9	Signature Bank, Open Bank and Bank of Hope)		
10	(10/09/2019)		
11	Reporter’s Transcript of Preliminary Injunction	VI / VII	1331-1513
12	Hearing (07/22/2019)		
13	Reporter’s Transcript of Preliminary Injunction	VII	1514-1565
14	(07/23/2019)		
15	Response to Defendant LVDF’s Objections to	XIV	3392-3411
16	Statement of Undisputed Facts and Countermotion to		
17	Strike (02/28/2020)		
18	Second Amended Complaint (01/04/2019)	I / II	0107-0322
19	Statement of Undisputed Facts (01/17/2020)	XII / XIII	2875-3080
20	Supplemental Declaration of Defendant Robert	IV	0861-0875
21	Dziubla in Support of Defendant Las Vegas		
22	Development Fund, LLC’s Opposition to Plaintiff’s		
23	Second Motion for Temporary Restraining Order and		
24	Preliminary Injunction (03/19/2019)		
25	Supplemental Declaration of Robert W. Dziubla in	IV	0756-0761
26	Support of Defendant LVD Fund’s Reply to		
27	Plaintiff’s Opposition to Defendant’s Motion to		
28	Appointment of Receiver (02/26/2019)		

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E. Defendants Can Show Irreparable Harm

Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages. *J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1068 (N.D. Cal. 2018) (Held that loss of green card and removal proceedings are both irreparable harm). Here, Defendant has sixteen clients that are not capable of receiving their green card, or for those who applied before the default, face their green card being revoked since their money cannot be invested due to the defaults by Plaintiff. (Dziubla Supp. Decl. 17). Moreover, the first EB-5 investor will likely lose his green card before the construction can be finished because of how far behind Plaintiff is in the construction of the project. (Id. ¶¶ 15-19). If the EB-5 project does not get completed according to the project plan, the necessary jobs will not be created and all the investors will lose their rights and benefits through the EB-5 program. This result would be catastrophic for the families involved. The uncertainty and emotional harm of being deported is not compensable with any monetary sum. Accordingly, Defendants can show irreparable harm.

The case law is also clear that where there is a danger that waste will impair the value of the collateral for a secured creditor that appointment of a receiver is appropriate. The rule's origin dates back more than 125 years. "Courts of equity always have the power, where the debtor is insolvent, and the mortgaged property is an insufficient security for the debt, and there is good cause to believe that it will be wasted or deteriorated in the hands of the mortgagor, as by cutting of timber, suffering dilapidation, etc., to take charge of the property by means of a receiver, and preserve not only the corpus, but the rents and profits for the satisfaction of the debt." *Omaha Hotel Co. v. Kountze*, 107 U.S. 378, 395 (1883); *Freedman's Saving & Tr. Co. v. Shepherd*, 127 U.S. 494, 503-04 (1888); *View Crest Garden Apartments, Inc. v. U.S.*, 281 F.2d 844 (9th Cir.1960).

The danger of waste is an additional factor that may justify expanding the duties of a receiver over real property to include full management. "The additional factors warranting appointment of a receiver to manage the property may include: 'the danger of waste[;] delays in foreclosure,' *Canada Life Assurance Co.*, 563 F.3d at 845 (internal citation and quotation

1 omitted); the defendant's 'fraudulent conduct'" *Wells Fargo Bank, N.A. v. CCC Atl., LLC*, 905 F.
2 Supp. 2d 604, 614–15 (D.N.J. 2012). "The additional factor may be the danger of waste," delays
3 in foreclosure, or "any circumstance which commends itself to a court of equity as a reason for
4 granting the relief sought." *View Crest*, 281 F.2d at 849.

5 In *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 844–45 (9th Cir. 2009) appointment
6 of a receiver was justified where rents from the subject shopping mall were being mismanaged
7 and diverted instead of being used to service the debt. "Here, the district court's appointment of a
8 receiver was well within its discretion. It determined that the appointment was necessary because
9 the Mall "and the rents associated therewith, constituting the collateral" were "in danger of
10 substantial waste and risk of loss because income from the [Mall was] being diverted and not
11 applied to servicing the debt. " *Id.*

12 The present case is similar in that the loan proceeds and substantial resources of Front
13 Sight are being diverted from payment of construction costs to payment of general operating
14 expenses for Front Sight and also to exorbitant payments to Piazza family trusts. The impact of
15 such diversion of funds is that the Project is endangered and the value of the collateral is
16 significantly impaired. This is an additional factor which serves as further justification for
17 appointment of a receiver in this case.

18 The existence of a clause in the agreement specifically authorizing LVD Fund to take
19 control of the project and assume management of the construction project is another factor in
20 favor of appointment of a receiver: "In considering the relevant factors, the Court concludes that
21 Wells Fargo is entitled to the relief it seeks. [¶] . . . the Loan Agreement specifically provides that
22 after an "Event of Default"²⁴, Wells Fargo may apply for the appointment of a receiver to
23 manage and operate the property." *Wells Fargo Bank, N.A. v. CCC Atl., LLC*, 905 F. Supp. 2d
24 604, 615 (D.N.J. 2012); *See also Sterling Sav. Bank v. Citadel Dev. Co.*, 656 F. Supp. 2d 1248,
25 1252 (D. Or. 2009) ("The Deed of Trust also reflects that the parties contemplated the
26 appointment of a receiver by the court in the event of Citadel's default"). In the present case the
27 Construction Loan specifically authorizes Lender to take over management of the Project and
28

1 complete the Project.⁴

2 **F. Front Sight Remains in Default Under the Terms of the CLA**

3 As confirmed in the Declarations of Robert Dziubla, Front Sight has failed to cure any of
4 the Events of Default identified in the Notices of Default which Mr. Dziubla caused to be
5 delivered to Front Sight on or about July 30, 2018 (Dziubla Decl. Ex 8), August 24, 2018
6 (Dziubla Decl. Ex. 11), August 28, 2018 (Dziubla Decl. Ex. 12) and October 24, 2018 (Dziubla
7 Decl. Ex. 13), and as further identified on the Notice of Breach, Default and Election to Sell
8 Under Deed of Trust, filed with the Nye County Recorder on January 18, 2019. (Dziubla Decl.
9 ¶¶ 10-17, 18; Dzibula Sup. Dec. ¶¶ 20-23).

10 As set forth in LVD Fund's opening brief, most of the breaches by Front Sight are
11 irrefutable, including: failure to provide government approved plans; material delays in
12 construction; material changes to costs, scope and timing of the construction; failure to provide
13 monthly project costs; failure to provide lender notice of the occurrence of events of default;
14 refusal to allow inspection of books and records; and refusal to allow site inspection by Lender's
15 representatives. Any one of these breaches is sufficient to trigger the default interest rate, which
16 has not been paid. (Dziubla Decl. ¶¶ 10-17, 18; Dzibula Sup. Dec. ¶¶ 20-23). Moreover, these
17 Events of Default alone are sufficient to foreclose on the property, and are certainly a basis to
18 appoint a receiver.

19 In addition, although Front Sight refutes the allegations that it has improperly used the
20 loan proceeds, failed to obtain senior debt and failed to provide EB-5 documentation, it has not
21 provided any admissible evidence to offset the sworn Declaration of Robert Dziubla and the
22 exhibits attached to his Declaration. Accordingly, the court has no evidentiary basis to deny
23 Defendant LVD Fund's request for appointment of a receiver.

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26 ⁴ Section 6.3 provides, *inter alia*, : "Lender may (but shall not be obligated to), in addition
27 to, or in concert with, the other remedies referred to above, take over and complete such construction
28 in accordance with the Plans, with such changes therein as Lender may, in its discretion, deem
appropriate, all at the risk, cost and expense of Borrower."

1 **III. CONCLUSION**

2 For the reasons set forth above, and in the original motion for receivership, for the
3 protection of the EB-5 investors and to compel compliance with the terms of the Construction
4 Loan Agreement, this Court should immediately appoint a receiver to: (1) Complete the Project
5 pursuant to the Construction Loan Agreement, and plans and schedule approved by the USCIS;
6 and (2) to conduct oversight and daily management of Front Sight Management, LLC ("Front
7 Sight").

8
9 Dated: February 26, 2019

FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Telephone: (702) 579-3900
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13 /s/ Kathryn Holbert
Kathryn Holbert, Esq.
Attorney for Defendants
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1 **CERTIFICATE OF SERVICE and/or MAILING**

2 Pursuant to NRCF 5(b), I hereby certify that I am an employee of Farmer Case & Fedor,
3 and that on this date, I caused true and correct copies of the following document(s):

4 **DEFENDANT LAS VEGAS DEVELOPMENT FUND LLC, REPLY TO PLAINTIFF'S
5 OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF A RECEIVER**

6 to be served on the following individuals/entities, in the following manner,

7 John P. Aldrich, Esq. Attorneys for Plaintiff
8 Catherine Hernandez, Esq. FRONT SIGHT MANAGEMENT, LLC
9 ALDRICH LAW FIRM, LTD.
10 1601 S. Rainbow Blvd., Suite 160
11 Las Vegas, Nevada 89146

12 By:

- 13 ■ **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible
14 electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).
15 ■ **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage
16 prepaid envelope, in the United States Mail, to those parties and/or above named
17 individuals which were not on the Court's electronic service list.

18 Dated: February 26, 2019

19 /s/ Kathryn Holbert
20 An Employee of FARMER CASE & FEDOR



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JON FLEMING and LINDA STANWOOD

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC,
et al.,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**SUPPLEMENTAL DECLARATION OF
ROBERT W. DZIUBLA IN SUPPORT
OF DEFENDANT LVD FUND'S
REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO APPOINTMENT OF
RECEIVER**

Hear Date: February 28, 2019
Time: 9:00 am

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO) ss:

3 Affiant, hereby states and declares as follows:

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- 5 1. I, Robert W. Dziubla, am an individual and a resident of the State of California,
6 County of San Diego.
- 7 2. I am currently an officer of Las Vegas Development Fund, LLC ("LVD Fund") and
8 am authorized to make this Declaration on behalf of LVD Fund. I am the custodian of records for
9 LVD Fund.
- 10 3. I make this Declaration of my personal knowledge and the matters stated herein are
11 true and correct. If called as a witness herein, I could, and would, testify competently thereto.
- 12 4. I have read the Expert Witness Report of Catherine Debono Holmes attached as
13 Exhibit 3 ("Report") to Plaintiffs Opposition to the Motion for Appointment of a Receiver, which
14 purports to characterize various interactions between Plaintiff and Defendants as being
15 misrepresentations or misleading. I hereby correct and confirm the following facts addressed by
16 Ms. Holmes.
- 17 5. Michael Meacher is, and has been since at least 2012, the Chief Operating Officer
18 of Plaintiff, Front Sight Management Inc.
- 19 6. Mr. Meacher has represented to Defendants that he is a graduate of the University
20 of Southern California; that he holds a Doctorate of Dentistry degree from USC; that he served as
21 an officer in the U.S. Air Force as a dental surgeon; and, importantly that he has 26 years of
22 experience as a commercial banker, having served as the National Accounts Manager for
23 Bankgroup Financial Services from 1984 - 2010.
- 24 7. Mr. Meacher always presents himself as a sophisticated, savvy, and hard-nosed
25 businessman.
- 26 8. Mr. Meacher represented to Defendants that he had interviewed several other EB-5
27 regional centers as part of his due diligence on Defendants and had decided to proceed with
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1 Defendants based on his business judgment. Even after Plaintiff had engaged Defendant EB5
2 Impact Capital Regional Center, Mr. Meacher periodically stated that he was having discussions
3 with other competing regional centers

4 9. Regarding paragraph 1 in the Report: The referenced Proposal was never executed.
5 Rather, the parties executed that certain Engagement Letter attached as Exhibit 4 to the
6 Declaration of Ignatius Piazza. That Engagement Letter contained a budget as Schedule B for
7 \$327,000 that had been highly negotiated by the parties based on Plaintiff's decision to proceed
8 with Defendants. The Report erroneously compares the negotiated transaction in this case with
9 the "rent-a-Center" model used in many other transactions where the project sponsor (i.e., Front
10 Sight) is itself responsible for sourcing the EB-5 investors, thereby substantially lowering the
11 costs of the sponsoring regional center. Sourcing the EB-5 investors is a time-consuming and
12 expensive endeavor.

13 10. Regarding paragraph 2 in the Report: Again, the Report erroneously compares the
14 highly negotiated transaction here with the "rent-a-Center" model used in other transactions where
15 the project sponsor (i.e., Front Sight) is itself responsible for sourcing the EB-5 investors.

16 11. Regarding paragraph 3 in the Report: Again, the Report erroneously compares the
17 highly negotiated transaction here with the "rent-a-Center" model used in other transactions where
18 the project sponsor (i.e. Front Sight) is itself responsible for sourcing the EB-5 investors.

19 12. Regarding paragraph 4 in the Report: The parties specifically discussed at length
20 the pros and cons of using either:

- 21 a. An "exemplar approval" approach, whereby one unified application is made to
22 USCIS for simultaneous approval of both the regional center and the exemplar project
23 being contemplated (i.e., the Front Sight timeshare resort), thereby resulting in an
24 "exemplar approval" to which USCIS must pay deference in all future determinations; and
25 b. Using the seriatim approach of having each individual I-526 application reviewed
26 and separately adjudicated by USCIS. This seriatim I-526 approval approach has a much
27 higher incidence of USCIS rejecting I-526 applications or issuing multiple "requests for
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1 further evidence."
2 Plaintiff made an informed decision to proceed with the "exemplar approval" approach. Because
3 Defendants used the "exemplar approval," none of the EB-5 investors in this case have had their
4 I-526 petitions rejected.

5 13. Regarding paragraphs 6 - 11 of the Report: Defendants had engaged Beijing
6 Sinowel Wealth Management Co., Ltd. ("Sinowel") as their semi-exclusive master agent for
7 China. Sinowel was one of the largest private wealth management firms in China and enjoyed
8 private equity support from such well-known investors as the famed Silicon Valley firm of
9 Kleiner Perkins. Front Sight was well aware of these facts and, indeed, had demanded to meet the
10 owner of Sinowel (King Liu) and the general manager for the US (Jay Li). During that meeting
11 Ignatius Piazza and Michael Meacher grilled Sinowel about its ability to source investors for the
12 Front Sight project. After that meeting, Plaintiff expressed its confidence in Sinowel, even to
13 such an extent that Plaintiff refused to pay to Defendants agreed-upon international travel costs
14 for a period of several months, saying that they didn't need to travel to China because Sinowel
15 was doing the marketing.

16 14. Regarding paragraphs 12 - 13: The Report erroneously and misleadingly fails to
17 even mention that in this case the Economic Impact Analysis approved by USCIS contains as its
18 fundamental economic input that \$49.1 million was to be spent on hard construction costs,
19 resulting in the creation of 751 direct, indirect and induced jobs. With any Regional Center
20 sponsored project such as this one that relies on the creation of indirect and induced jobs through
21 the use of input-output modeling and economic inputs, USCIS obsesses about ensuring that the
22 economic inputs are satisfied. If the projected economic inputs are met, then by definition the
23 jobs are created. Conversely, if the economic inputs are not met, then the jobs are not created.
24 The simple reality here is that if Plaintiff fails to spend \$49.1 million of the EB-5 loan proceeds
25 on hard construction costs, then the jobs-creation approved by USCIS in its exemplar approval
26 will not be achieved.

27 15. Paragraph 14 of the Report correctly states that "The timeline for an EB-5 investor
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1 from the date he or she files an I-526 Petition for approval of an EB-5 investment through the date
2 the investor files an I-829 Petition for removal of conditions is approximately 5 years." The
3 Report then erroneously and misleadingly concludes that "This means that no EB-5 investors in
4 this Project will be required to submit information on this Project to USCIS for at least the next
5 three years or more for investors from China." The first EB-5 investor in this project is from
6 India, and he filed his I-526 petition on September 30, 2015. Therefore, the adjudication of his
7 I-829 petition will likely occur five years later, which is around September 30, 2020. That is
8 about 18 months from now. Therefore, it is imperative that construction of the USCIS
9 exemplar-approved project occur in a timely fashion

10 16. As a result of Front Sight's blatant and brazen breaches of the Construction Loan
11 Agreement, we cannot disburse any EB5 funds to the project. If an investor's funds are not
12 invested into the project, then the jobs are not created and, therefore, a green card will either be
13 denied or revoked.

14 17. As of the date of this Declaration, we have funds from eight investors that cannot
15 be invested because of Front Sight's defaults. These eight investors face irreparable harm because
16 they face denial of their I-526 application or deportation if the project is not completed in a timely
17 manner. This number grows to sixteen people because of their spouses. The lives of these EB-5
18 applicants will be destroyed if their green card is denied, or worse, they are deported.

19 18. The first investor from India will have his permanent application denied in 2020 if
20 the project is not completed.

21 19. The project has at least 18 months left to finish the property without any delays to
22 the construction time line. At this rate, the first investor is already in danger of losing his green
23 card.

24 20. As of this date, Front Sight has failed to cure any of the Events of Default identified in
25 the Notices of Default which I caused to be delivered to Front Sight on or about July 30, 2018
26 (Dziubla Decl. Ex 8), August 24, 2018 (Dziubla Decl. Ex. 11), August 28, 2018 (Dziubla Decl.
27 Ex. 12) and October 24, 2018 (Dziubla Decl. Ex. 13), and as further identified on the Notice of
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1 Breach, Default and Election to Sell Under Deed of Trust, filed with the Nye County Recorder on
2 January 18, 2019.

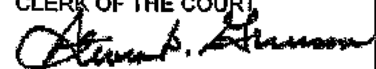
3 22. Although Front Sight has advised me that I, personally, can have access to inspect the
4 project site, it has denied my right under §3.3 of the Construction Loan Agreement to have my
5 "representatives" inspect the project site. For me to fulfill my responsibilities to the EB-5
6 investors, my construction consultants must have access to the project site.

7 23. LVD Fund has received no reports or other documents from Front Sight since the
8 EB-5 prove-up letter of October 30, 2018, including for example the proof of monthly
9 expenditures pursuant to article 3.2(a) of the CLA.

10 24. LVD Fund is under intense and increasing pressure from our investors and our
11 immigration agents to ensure that Front Sight complies with the terms of the CLA and that the
12 project be built. For example, on February 22, 2019, our first Chinese investor into the Front
13 Sight project, along with his migration agent, demanded a detailed explanation of the current
14 status of the instant litigation and wants an immediate report on the Court's decision concerning
15 the appointment of a receiver. Of even more concern is that our largest migration agent from India
16 is flying to the United States and has demanded a face-to-face meeting in San Francisco the day
17 after the hearing on the receivership motion, i.e., Friday, March 1, 2019, to hear firsthand from me
18 how the Court has ruled on this motion.

19 I declare under penalty of perjury under the laws of the State of Nevada and the State of
20 California that the foregoing is true and correct, and that this Declaration was executed on
21 February 26, 2019 at San Diego, California.

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24 Robert W. Dziubla
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1 **DECL**
2 ANTHONY T. CASE, ESQ.
3 Nevada Bar No. 6589
4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
6 Nevada Bar No. 10084
7 kholbert@farmercase.com
8 **FARMER CASE & FEDOR**
9 2190 E. Pebble Rd., Suite #205
10 Las Vegas, NV 89123
11 Telephone: (702) 579-3900
12 Facsimile: (702) 739-3001

13 Attorneys for Defendants
14 LAS VEGAS DEVELOPMENT FUND LLC, EB5
15 IMPACT CAPITAL REGIONAL CENTER LLC,
16 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
17 JON FLEMING and LINDA STANWOOD

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 FRONT SIGHT MANAGEMENT LLC, a)
14 Nevada Limited Liability Company,)
15 Plaintiff,)
16 vs.)
17 LAS VEGAS DEVELOPMENT FUND LLC,)
18 et al.,)
19 Defendants.)
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CASE NO.: A-18-781084-B
DEPT NO.: 16
**DECLARATION OF C. KEITH GREER
IN SUPPORT OF DEFENDANT LVD
FUND'S REPLY TO PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO APPOINTMENT OF
RECEIVER**
Hear Date: February 28, 2019
Time: 9:00 am

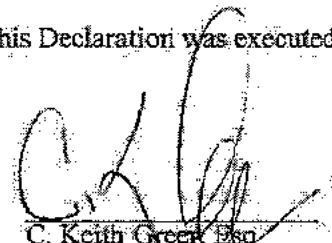
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STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN DIEGO)

Affiant, hereby states and declares as follows:

1. I, C. Keith Greer, am an attorney at law in good standing before State Bar of California and have been admitted pro hac vice to represent the Defendants in this matter.
2. Attached hereto as Exhibit 1 is a true and correct copy of the "What to Do If You Suspect Your EB-5 Project Is in Trouble" Investment Law Blog, (Feb 17, 2017) by Catherine DeBono-Holmes.

I declare under penalty of perjury under the laws of the State of Nevada and the State of California that the foregoing is true and correct, and that this Declaration was executed on February 26, 2019 at San Diego, California.



C. Keith Greer, Esq.

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor,
and that on this date, I caused true and correct copies of the following document(s):

**DECLARATION OF C. KEITH GREER IN SUPPORT OF DEFENDANT LVD FUND'S
REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO
APPOINTMENT OF RECEIVER**

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq. Attorneys for Plaintiff
Catherine Hernandez, Esq. FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146

Marni Rubin Watkins, Esq. Attorney for Defendant
FIDELITY NATIONAL LAW GROUP CHICAGO TITLE COMPANY
1701 Village Center Circle, Suite 110
Las Vegas, Nevada 89134

By:

- ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).
- U.S. MAIL: I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.
- FACSIMILE: I caused said document(s) to be transmitted by facsimile transmission. The sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

Dated: February 26, 2019

/s/ Kathryn Holbert
An Employee of FARMER CASE & FEDOR

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Exhibit 1

4
DECLARATION OF KEITH GREER

INVESTMENT LAW BLOG

Raising Investment Capital for
U.S. Real Estate and Business Development

FEBRUARY 17, 2017

What to do if you suspect your EB-5 project is in trouble

By Catherine DeBono Holmes

This article is co-authored by Daniel B. Lundy, Esq., of Klasko Immigration Law Partners, LLP. His Firm's blog is available here.

WHAT TO DO IF YOU SUSPECT YOUR EB-5 PROJECT IS IN TROUBLE

By: Catherine DeBono Holmes, Esq., Daniel B Lundy, Esq. and Jeffrey E. Brandlin, CPA, CIRA, CFF

Managers and investors in EB-5 investment Funds should regularly monitor their investments in EB-5 Projects and be ready to take protective actions if their EB-5 Projects show signs of trouble.

It is vitally important for managers and investors in EB-5 investment funds^[1] to stay informed of the status of their EB-5 projects^[2], because EB-5 investors must demonstrate that the projects in which they invested were completed and, in some cases, that those projects are operating in accordance with projections, in order to qualify for approval of their I-829 petitions to remove conditions to their residence. If the manager or EB-5 investors in an EB-5 investment fund discover signs that their EB-5 project may be experiencing financial distress or other difficulties that could prevent the project from being completed or operated in accordance with the original business plan for the project, the manager, the investors or their representatives need to evaluate whether there are any actions that could be taken to save the project, so that the EB-5 investors will ultimately qualify for approval of their I-829 petitions. The manager or investors are in a far better position to take protective actions before the problems with their EB-5 project result in litigation, foreclosure, or SEC enforcement action, although it is still possible to take protective actions after one of these events occurs. This article is the first of a series of articles that will describe how managers or investors can monitor their EB-5 projects to discover potential problems before they become a crisis, and the protective actions that may be taken to protect EB-5 investors if their EB-5 projects are in trouble.

Both managers and investors in EB-5 investment funds should continuously monitor and evaluate the progress of their EB-5 projects, and collect documentation of transfers of EB-5 funds, payments of project expenditures, and other financial records that will be required as part of the I-829 petitions. An unwillingness to provide such documentation, which is mostly generated in the normal course of business, can be a red flag indicating that something is wrong. The manager of each EB-5 investment fund is the primary party responsible for monitoring the EB-5 fund's investment in the EB-5 project. However, in cases in which the manager is affiliated with the EB-5 project developer, or the manager is not fulfilling its obligation to properly supervise and monitor the EB-5 project, the EB-5 investors should have their own independent representatives monitor the EB-5 project and evaluate if and when protective actions are necessary to protect the E-5 investors. The manager of an EB-5 investment fund, or third party service provider where the manager is affiliated with the developer, should provide regular reports (preferably on a quarterly basis) to the EB-5 investors in the fund regarding the status of construction and financing of the project, payments made to the EB-5 investment fund and whether or not the EB-5 project is in compliance with the terms of the investment made by the EB-5 investment fund in the project. EB-5 investors should insist that the manager of their EB-5 investment fund make these periodic reports if the manager is not already doing so. If EB-5 investors do not receive these reports, they should engage an independent representative to meet with the manager, review the EB-5 project and advise the EB-5 investors directly regarding the status of the project and any problems that are discovered as a result of the review. In the paragraphs below, we provide further information regarding how that may be done.

Managers and investors in EB-5 investment funds should be aware of the warning signs that their EB-5 project may be in trouble.

Listed below are some of the warning signs that an EB-5 project may be in trouble:

- Failure of the EB-5 project developer to deliver regular reports to the EB-5 investment fund manager of the status of the financing, construction and/or operation of the project
- Failure of the EB-5 project developer to provide documentation of expenditures and the use of EB-5 funds on a regular basis

- Failure of the EB-5 project developer to obtain all necessary financing to commence or complete the project.
- Failure to make payments on an EB-5 loan or equity investment, or on any other financing obtained by the EB-5 project.
- Failure to deliver required financial and other reports to EB-5 lender and/or EB-5 investors.
- Receipt of notice of default from the senior lender to the EB-5 project.
- Receipt of information that the EB-5 project is not paying its contractors.
- Receipt of notice that litigation has been filed against the EB-5 project or developer.
- Evidence that the EB-5 project has not commenced or has ceased construction.
- Failure of the EB-5 project to meet the dates specified in the project construction schedule.

The fact that one or more of these events has occurred may not necessarily indicate that the EB-5 project is in trouble, but it is an indication that there may be a problem, and that further investigation should be done to determine if there is a problem.

The manager of the EB-5 investment fund should hire an experienced construction monitor and/or accountant when it suspects the EB-5 project is in trouble to conduct a thorough review of the status of the EB-5 project.

An experienced construction monitor and/or accountant will take the following steps to evaluate the status of the EB-5 project:

- Interview the developer, architect and engineer for the EB-5 project.
- Obtain copies of the EB-5 project entity financial statements.
- Visit the office where the EB-5 project related books and records are maintained, and review the books and records, including general ledger, invoices and other financial records of the EB-5 project.
- Review all cash transfers of the EB-5 project entities above a specified dollar amount to determine if improper payments are being made.
- Conduct a site visit to assess construction activity and compare it to the project construction schedule and project construction reports.
- Conduct a public records search to determine all liens filed against the EB-5 project property.
- Review zoning approvals and building permits for the EB-5 project.
- Assess the market valuation of the EB-5 project with local real estate brokers.

Depending upon the results of that evaluation, the construction monitor and/or accountant will present a report to the manager regarding the status of the EB-5 project and any problems that have been discovered. The construction monitor and/or accountant will also be able to assist the manager in determining the severity of the problem and evaluating potential solutions to the problem. The manager and its consultants should review the options available for completing the project and determining which of those options should be pursued. In a future article, we will discuss options for saving an EB-5 project in trouble and how those options may be pursued.

If EB-5 investors are concerned that the manager of their EB-5 investment fund is not performing its obligations, the EB-5 investors or their agents should hire their own experienced construction monitor and/or accountant to act as the representative of the EB-5 investors and report directly to the EB-5 investors.

EB-5 investors have rights as limited partners or members of an EB-5 investment fund to review the books and records of the EB-5 investment fund and to require that the manager of the fund fulfil its duties to monitor the EB-5 project and protect the interests of the EB-5 investment fund and the EB-5 investors. EB-5 investors may exercise these rights either individually or as a group. EB-5 investors who are concerned that the manager of their EB-5 investment fund is not fulfilling its duties should engage an attorney to act as representative of one or more of the EB-5 investors to review the books and records of the EB-5 investment fund itself and the EB-5 project entities, and to meet with the manager of the EB-5 investment fund regarding the steps that should be taken so that the necessary monitoring and reporting is done. The attorney for the EB-5 investors will undertake the following review and analysis of the protective actions that may be taken on behalf of the EB-5 investors:

- Review the partnership agreement or operating agreement of the EB-5 investment fund to determine the specific rights of the EB-5 investors to take actions under the terms of the partnership agreement or operating agreement.
- Review the communications, construction reports and financial statements that have been received by the EB-5 investors.
- Review the books and records maintained by the manager of the EB-5 investment fund, including notices, reports and financial statements received by the manager from the EB-5 project entity or developer.
- Review the financial statements of the EB-5 investment fund.
- Review the project financing documents between the EB-5 investment fund and the EB-5 project entity, (loan agreement, pledges, guaranties, intercreditor agreements, etc.) to determine the rights of the EB-5 investment fund.
- Interview the manager of the EB-5 investment fund and the EB-5 project developer.
- Review the adequacy of the documentation necessary to meet annual USCIS reporting requirements and the I-829 requirements.

- Evaluate the status of the EB-5 project to determine additional steps necessary to be taken to protect the EB-5 investors (both with respect to their visa petitions and their financial investment) and their investment in the EB-5 project

The evaluation steps listed above should take two to four weeks, but may take additional time if the manager does not cooperate. If the manager of the EB-5 investment fund does not cooperate, then the attorney may recommend that legal action be filed by the EB-5 investors to obtain a court order for the manager to turn over the necessary books and records to the attorney for the EB-5 investors. Upon completing the review, the attorney should prepare a report of the findings of the review and distribute it to the EB-5 investors in the fund. The report should include an analysis of the actions recommended by the attorney to protect the interests of the EB-5 investors. These recommendations could include implementation of new reporting requirements by the manager of the EB-5 investment fund or by the EB-5 project entity, or requiring the manager to hire an independent construction monitor or loan servicer, or seeking further court orders if necessary for the protection of the EB-5 investors. If the attorney discovers problems with the EB-5 project itself, the report would include an evaluation of the problems and discussion of the options available to the EB-5 investors to save the EB-5 project.

The manager or investors in an EB-5 investment fund should implement a systematic plan for continuous monitoring and reporting on the status of the EB-5 project.

Every EB-5 investment fund should have a regular process in place for monitoring its investment in the EB-5 project. This is often referred to as EB-5 compliance, but can also be thought of as on-going due diligence. These processes are similar to those that would be used by any other private lender or institutional investor in a construction project or business, with the additional focus on job creation in addition to the financial health of the EB-5 project. The following are some of the key components for monitoring an EB-5 project that every EB-5 investment fund should have in place:

- Document all money into the EB-5 investment fund escrow account, all money disbursed out of escrow to the EB-5 investment fund, and all money disbursed to the job creating entity for use in financing the EB-5 project, to demonstrate an unbroken chain in the path of funds from the EB-5 investor to the job creating entity
- Conduct regular inspections of the project and review disbursement requests, and if appropriate hire a construction monitor to make the inspections and/or an independent loan servicer to receive reports and payments made by the EB-5 project entity to the EB-5 investment fund
- Require requests for disbursement of EB-5 proceeds with detailed use of proceeds of each advance, including contractor invoices, architect or engineer certification, lien releases, and other documents (i.e. a draw package or payment application)
- Require regular construction reports and financial statements from the EB-5 project developer
- Require that the senior lender provide copies of notices to the NCE concurrently with delivery to the developer
- Regularly communicate with the EB-5 project developer to find out as early as possible if problems are developing and if possible work with the developer to help resolve issues before they become a crisis

If an SEC enforcement action is filed against a manager of an EB-5 investment fund, EB-5 investors should engage their own legal counsel to participate as interested parties in the action.

The SEC is aware of the issues facing EB-5 investors whose EB-5 investment funds have become the subject of fraud enforcement actions, and will work with legal counsel for EB-5 investors to assist them if possible to save the EB-5 project so that the EB-5 investors will retain their eligibility for permanent visas. However, the SEC does not represent the investors, and has limited tools at its disposal to help investors. The legal and financial representatives of the EB-5 investors can assist them in the following actions:

- Communicate with the SEC, receiver (if appointed by the Court) and USCIS regarding EB-5 investors' desire to analyze viability of completing the EB-5 project
- Hire (or coordinate with the receiver to hire) an experienced construction monitor/accountant to conduct the investigation described above and determine if the EB-5 project can be completed
- Determine what additional capital sources would be required to complete the EB-5 project and assist in the transactions required to bring in those capital sources
- Determine what changes in the business plan would be required to accept the additional capital and work with the USCIS to preserve the eligibility of the EB-5 investors in the project under the new capital structure

In a future article, we will provide further information regarding the process of an SEC enforcement action and the steps that can be taken to assist EB-5 investors during that process.

Conclusion: Managers and EB-5 investors can and must take appropriate steps to monitor their EB-5 investment in order to discover any problems that arise and if possible participate in the resolution of those problems so that the EB-5 investors will retain eligibility for their permanent visas and if possible receive a return of their capital. Managers should implement a process for regular monitoring of the EB-5 project status and reporting of any problems that develop. Managers should provide regular reports to EB-5 investors so that the investors know that their investment is being properly monitored. If managers do not fulfill their obligations, EB-5 investors should hire their own representatives to take the steps necessary to investigate the status of the EB-5 project and to implement a better monitoring process in

the future. If necessary, the manager or EB-5 investors need to be prepared to evaluate options to save their EB-5 project if it experiences financial or other problems.

[1] We refer to "EB-5 investment funds" as the "new commercial enterprise" in which EB-5 investors make their investment. An EB-5 investment fund may be either a limited partnership or a limited liability company. We refer to the "managers" of EB-5 investment funds as the parties designated as the general partner of the limited partnership or the manager of the limited liability company.

[2] We refer to "EB-5 projects" as the project to be completed and/or operated by the "job-creating entity" in which the EB-5 investment funds make their investment.

About the Authors:

Daniel B. Lundy is a Partner and a member of the EB-5 practice of Klasko Immigration Law Partners, LLC. Mr. Lundy leads the Regional Center Developer and EB-5 Compliance practice areas, and represents developers and others who seek to use foreign investment funds under the EB-5 program to fund their projects, either through the formation of a Regional Center or by joining with an existing Regional Center. Mr. Lundy works with various securities lawyers, economists, business plan writers and other professionals in the preparation and filing of Regional Center designation and Regional Center amendment applications; Mr. Lundy is experienced in reviewing Regional Center and project business plans, economic reports, securities offering documents, and corporate documents for compliance with the EB-5 program requirements, and in consulting and advising clients on the specific immigration requirements of the EB-5 program. Mr. Lundy has experience working with court-appointed receivers in EB-5 matters involving SEC actions, and helping investors and regional centers with troubled projects. Mr. Lundy has also successfully represented numerous immigrant investors in their EB-5 petitions and applications. Mr. Lundy is also experienced in litigating immigration cases in Federal Court. For the last two years, he has been named as one of the top 25 immigration lawyers in the country by EB5 Investors magazine.

Catherine D. Hofmes is Chair of the JMBM Investment Capital Law Group, and she has practiced law at JMBM for over 35 years. She has also worked as a senior member of the JMBM Global Hospitality Group and JMBM Chinese Investment Group. Within the Investment Capital Law Group, she helps real estate developers and business owners, brokers, investment advisers and investment managers raise and manage investment capital from U.S. and non-U.S. investors. In the last five years, she has represented over 100 real estate developers obtain financing through the EB-5 immigrant investor visa program for the development of hotels, multi-family, and mixed-use developments throughout the U.S. She has also acted as lead counsel on numerous hotel and mixed-use developments and transactions in the U.S., Europe, China, South America and Asia Pacific regions, as well as hotel management and franchise agreements and public-private hotel developments. She has also represented private investment fund managers, registered securities broker-dealers and investment advisers on securities offerings, business transactions and regulatory compliance issues. For the last two years, she has been named as one of the top 25 securities lawyers in the country by EB5 Investors magazine.

Jeffrey E. Brandlin, CPA, CIRA, CFF founded Brandlin & Associates in 1980 to provide clients with tangible, timely and action-oriented insight. During his 40 year career, Jeff has pursued numerous financial frauds, accounting malpractices and trust fund embezzlements including recent work done on behalf of the SEC under enforcement actions pertaining to the EB-5 Program. Jeff and his team have restructured and rehabilitated more than \$10 billion of real estate projects. Jeff and his team have also provided thorough financial due diligence in support of hundreds of successful transactions for equity and debt capital providers. Jeff is a frequent speaker to industry organizations and law firms on the topics of fraud, forensic accounting and financial statement analysis. He earned his Bachelor of Science degree in Accounting and has been licensed to practice accountancy in California since April 1975. Jeff is a Certified Insolvency and Restructuring Advisor (CIRA), a Certified Merger & Acquisition Advisor (CM&AA) and is Certified in Financial Forensics (CFF) by the American Institute of Certified Public Accountants and currently serves as both the Secretary and Treasurer of the National Association of Federal Equity Receivers (NAFER).

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1 MOT
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7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
10 Nevada Limited Liability Company,
11
12 **Plaintiff,**

13 vs.

14 LAS VEGAS DEVELOPMENT FUND LLC, a
15 Nevada Limited Liability Company; EB5
16 IMPACT CAPITAL REGIONAL CENTER
17 LLC, a Nevada Limited Liability Company;
18 EB5 IMPACT ADVISORS LLC, a Nevada
19 Limited Liability Company; ROBERT W.
20 DZIUBLA, individually and as President and
21 CEO of LAS VEGAS DEVELOPMENT
22 FUND LLC and EB5 IMPACT ADVISORS
23 LLC; JON FLEMING, individually and as an
24 agent of LAS VEGAS DEVELOPMENT
25 FUND LLC and EB5 IMPACT ADVISORS
26 LLC; LINDA STANWOOD, individually and
27 as Senior Vice President of LAS VEGAS
28 DEVELOPMENT FUND LLC and EB5
29 IMPACT ADVISORS LLC; CHICAGO TITLE
30 COMPANY, a California corporation; DOES 1-
31 10, inclusive; and ROE CORPORATIONS 1-
32 10, inclusive,

33 **Defendants.**

CASE NO.: A-18-781084-B
DEPT NO.: 16

PLAINTIFF'S SECOND MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION, MOTION FOR
ORDER SHORTENING TIME, AND
ORDER SHORTENING TIME

DEPARTMENT XVI
NOTICE OF HEARING
DATE 3/21/19 TIME 9:30 AM
APPROVED BY LS RED

02-06-19A07:17 RCVD

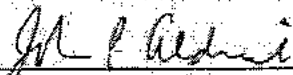
1 PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND
2 PRELIMINARY INJUNCTION, MOTION FOR ORDER SHORTENING TIME, AND
3 ORDER SHORTENING TIME

4 Plaintiff FRONT SIGHT MANAGEMENT LLC ("Plaintiff"), by and through
5 undersigned counsel, and pursuant to Nevada Revised Statutes ("NRS") § 33.010 and Rule 65 of
6 the Nevada Rules of Civil Procedure, submits this Second Motion for a Temporary Restraining
7 Order and Preliminary Injunction (the "Motion").

8 This Motion is based on the papers on file herein, including the Second Amended
9 Complaint, the following Memorandum of Points and Authorities, the Declaration of Dr.
10 Ignatius Piazza and the exhibits attached thereto, filed on October 4, 2018 ("First Piazza Decl."),
11 the Supplemental Declaration of Mike Meacher and the exhibits attached thereto, filed on
12 October 30, 2018 ("First Meacher Decl."), the Declaration of Dr. Ignatius Piazza (Exhibit 1 to
13 Plaintiff's Petition for Appointment of Receiver and for an Accounting) and the exhibits attached
14 thereto, filed on October 4, 2018 ("Second Piazza Decl."), the Declaration of Mike Meacher
15 (Exhibit 2 to Plaintiff's Petition for Appointment of Receiver and for an Accounting) and the
16 exhibits attached thereto, filed on October 4, 2018 ("Second Meacher Decl."), together with any
17 evidence or argument presented to the Court at the hearing of this matter.

18 DATED this 25th day of February, 2019.

19 ALDRICH LAW FIRM, LTD.

20 
21 John P. Aldrich, Esq.
22 Nevada Bar No. 6877
23 Catherine Hernandez, Esq.
24 Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, NV 89117
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Fax (702) 226-1975
Attorneys for Plaintiff

7
1 DECLARATION OF JOHN P. ALDRICH IN SUPPORT OF SECOND MOTION FOR
2 TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION,
3 MOTION FOR ORDER SHORTENING TIME, AND ORDER SHORTENING TIME

3 State of Nevada)
4) ss
4 County of Clark)

5 Affiant, being first duly sworn, deposes and states as follows:

6 1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and
7 am a partner in the law firm of Aldrich Law Firm, Ltd. I am counsel for Plaintiff in this action.

8 2. My office address is 7866 West Sahara Avenue, Las Vegas, Nevada 89117.

9 3. The following facts set forth in this Affidavit are true and correct to the best of my
10 knowledge, or where stated, are upon information and belief. I make this Declaration based on
11 my personal knowledge of the facts and matters of this action, and to establish good cause
12 justifying a shortening of time for the hearing Plaintiff's Second Motion for Temporary
13 Restraining Order and Preliminary Injunction.

14 4. There exists good cause to hear Plaintiff's Second Motion for Temporary
15 Restraining Order and Preliminary Injunction on shortened time. On January 18, 2019,
16 Defendants, at the request of new Trustee Kathryn Holbert, Esq., again recorded a Notice of
17 Breach, Default and Election to Sell Under of Trust, alleging various defaults. That Notice
18 indicates that Defendants intend to proceed with attempting to sell Plaintiff's property.

19 5. Plaintiff's Project and Plaintiff's property, as more fully outlined in Plaintiff's
20 Second Motion for Temporary Restraining Order and Preliminary Injunction, hang in the balance
21 due to the actions of Defendants, and it is imperative that the Motion are heard on shortened
22 time.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff respectfully submits this Memorandum of Points and Authorities in Support of
3 its Second Motion for Temporary Restraining Order and Preliminary Injunction.

4 Plaintiff seeks a temporary restraining order and preliminary injunction (both affirmative
5 and prohibitive) as follows:

6 1. A temporary restraining order and preliminary injunction enjoining Defendants
7 from selling the subject property as they purport they have the right to do under the Notice of
8 Breach and Default and of Election to Sell Under Deed of Trust recorded on January 18, 2019.

9 2. An Order expunging the Notice of Breach and Default and of Election to Sell
10 Under Deed of Trust recorded on January 18, 2019.

11 **I.**

12 **PROCEDURAL HISTORY**

13 On or about October 4, 2018, Plaintiff filed an Amended Complaint against Defendants
14 alleging 18 causes of action.

15 Also on or about October 4, 2018, Plaintiff filed a Petition for Appointment of Receiver
16 and for an Accounting, a Motion for Protective Order; and Motion for Temporary Restraining
17 Order and Preliminary Injunction seeking part to enjoin Defendants from selling the subject
18 property.

19 The Court held a hearing on Wednesday, October 31, 2018 on the following motions: (1)
20 Plaintiff's Petition for Appointment of Receiver and for an Accounting; (2) Plaintiff's Motion for
21 Protective Order; and (3) Plaintiff's Motion for Temporary Restraining Order and Preliminary
22 Injunction. The Court granted the accounting portion of the Petition for Appointment of
23
24

1 Receiver and for an Accounting, as to Defendant EB5 Impact Advisors ("EB5IA") and also
2 granted in part the Motion for Temporary Restraining Order.

3 On or about November 27, 2018, the Court entered an Order Granting Plaintiff's Petition
4 for an Accounting as to Defendant EB5IA.

5 Also on or about November 27, 2018, the Court entered an Order Granting Plaintiff's
6 Motion for Temporary Restraining Order enjoining Defendants from proceeding with the
7 foreclosure process and/or selling the subject property under the Notice of Breach and Default
8 and Election to Sell Under the Deed of Trust recorded on September 11, 2018. The Court's
9 Order also expunged the Notice of Breach and Default and Election to Sell Under the Deed of
10 Trust recorded on September 11, 2018.

11 On December 5, 2018, the Court held a hearing on Defendants' Motion to Dismiss. At
12 that hearing, a discussion occurred regarding the preliminary injunction hearing that was
13 scheduled for December 13, 2018. The following exchange occurred:

14 MR. ALDRICH: -- if the Court interprets it that way anyway, you would be
15 extending a TRO to a preliminary injunction for something that's already
happened. It's been expunged.

16 THE COURT: Right. It's been done.

17 MR. ALDRICH: Right. We are going to talk about if they file another one, then
we'd just be back.

18 THE COURT: And I'd sign it. And I think all you would have to do is change the
dates probably.

19 (Transcript of December 5, 2018 hearing, relevant portion attached hereto as Exhibit 1.)

20 On January 4, 2019, Plaintiff filed a Second Amended Complaint. The causes of action
21 include: (1) Fraud/Intentional Misrepresentation/Concealment Against All Defendants; (2)
22 Breach of Fiduciary Duty Against All Defendants; (3) Conversion Against All Defendants; (4)
23 Civil Conspiracy Against All Defendants; (5) Breach of Contract Against Defendants EB5IA and
24 LVDF; (6) Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against the

1 Entity Defendants; (7) Tortious Breach of Implied Covenant of Good Faith and Fair Dealing
2 Against the Entity Defendants; (8) Intentional Interference with Prospective Economic
3 Advantage Against the Entity Defendants and Defendant Dziubla; (9) Unjust Enrichment
4 Against All Defendants; (10) Negligent Misrepresentation Against All Defendants; (11)
5 Negligence Against All Defendants; and (12) Alter Ego Against Defendants Dziubla, LVDF,
6 EB5IA, and EB5IC.

7 On January 14, 2019, Defendants recorded a Substitution of Trustee, substituting
8 Defendants' current litigation counsel, Kathryn Holbert, Esq., as Trustee. (Substitution of
9 Trustee, attached hereto as **Exhibit 2**.)

10 On or about January 17, 2019, the Court entered an Order finding Plaintiff's Motion for
11 Preliminary Injunction Moot because the Court had already expunged the Notice of Breach and
12 Default and Election to Sell Under the Deed of Trust recorded on September 11, 2018. On that
13 same day, Ms. Holbert signed another Notice of Breach, Default and Election to Sell Under the
14 Deed of Trust. (**Exhibit 2**.)

15 On or about January 18, 2019, Defendants, at the request of Ms. Holbert, again recorded
16 a Notice of Breach, Default and Election to Sell Under of Trust, alleging various defaults. The
17 Affidavit of Authority to Exercise the Power of Sale was signed by Defendant Dziubla on
18 January 4, 2019. (**Exhibit 2**.)

19 On January 24, 2019, after Defendants failed to timely respond to the Second Amended
20 Complaint, Plaintiff served by hand a Three Day Notice of Intent to Take Default, attached
21 hereto as **Exhibit 3**.

22 On January 28, 2019, Defendants filed the following motions: (1) Motion to Dismiss
23 Plaintiff's Second Amended Complaint filed by Defendants Las Vegas Development Fund,
24

1 Robert Dziubla and EB 5 Impact Advisors; (2) Motion to Dismiss Plaintiff's Second Amended
2 Complaint filed by Defendant Jon Fleming; (3) Motion to Dismiss Plaintiff's Second Amended
3 Complaint filed by Defendant EB5 Impact Capital Regional Center; (4) Motion to Dismiss
4 Plaintiff's Second Amended Complaint filed by Defendant Linda Stanwood; and (5) Motion to
5 Strike Portions of Plaintiff's Second Amended Complaint. On February 1, 2019, Defendants
6 filed an Amended Motion to Dismiss Plaintiff's Second Amended Complaint filed by
7 Defendants Las Vegas Development Fund, Robert Dziubla and EB 5 Impact Advisors. On
8 February 4, 2019, Defendants filed a Counter-Motion for Relief from the November 20, 2018
9 Court Order Granting Plaintiff's Petition for an accounting of Defendant EB5 Impact Advisors
10 LLC. The hearing on those motions is set for April 3, 2019.

11 On February 6, 2019, Defendant Las Vegas Development Fund LLC filed a Motion for
12 Appointment of Receiver and Request for Order Shortening Time, Declaration of Keith Greer,
13 Esq. Declaration of C. Keith Greer in Support of Defendant's Motion for Receivership, with
14 attached exhibits, and Declaration of Robert Dziubla in Support of Defendant's Motion for
15 Receivership, with attached exhibits. That hearing has been set for February 28, 2019.

16 Defendants' Notice of Default is - once again - frivolous and designed to harass
17 Plaintiff. The Court already advised Defendants against doing exactly what they have done at
18 the hearing on December 5, 2018. Defendants' conduct wastes precious judicial resources and
19 Defendants should be required to pay Plaintiff's attorney's fees for having to bring this motion.

20 **II.**

21 **FACTUAL BACKGROUND AND NATURE OF THE ACTION**

22 This is the second Motion for Temporary Restraining Order and Preliminary Injunction
23 ("Motion for TRO") Plaintiff has had to file. The facts are the same now as they were back on
24

1 October 4, 2018 when Plaintiff filed the first Motion for TRO and on October 31, 2018 when the
2 Court held the hearing on the first Motion for TRO and granted the Motion for TRO.

3 On October 4, 2018, Plaintiff filed the Declaration of Ignatius Piazza in Support of (1)
4 Motion for Temporary Restraining Order and Preliminary Injunction; (2) Motion for Protective
5 Order; and (3) Petition for Appointment of Receiver and for an Accounting ("First Piazza
6 Decl."). Plaintiff incorporates that Declaration by reference. That Declaration includes the first
7 28 exhibits included with the Second Amended Complaint. Plaintiff has also filed two
8 Declarations of Michael Meacher, and both of them are incorporated by reference.

9 On October 23, 2018, Defendant Robert Dziubla filed a Declaration in Opposition to: (1)
10 (1) Motion for Temporary Restraining Order and Preliminary Injunction; (2) Motion for
11 Protective Order; and (3) Petition for Appointment of Receiver and for an Accounting. Plaintiff
12 incorporates that Declaration by reference as well.

13 The Second Amended Complaint is the operative pleading, and Plaintiff incorporates
14 those facts as well.

15 Defendants have thus far refused to answer these serious allegations, instead filing a
16 second round of motions to dismiss. However, because the Court previously granted a Motion
17 for Accounting against Defendant EB5IA, Plaintiff has discovered serious misappropriation of
18 funds by Defendants Dziubla, Fleming, and EB5IA. Defendants have also shown the Court that
19 Defendants LVDF, EB5IA, and Dziubla have commingled funds provided by Plaintiff for
20 marketing purposes.

21 Defendants continue to assert various breaches. Plaintiff will address each:

22 The first alleged default is improper use of loan proceeds. In support of this argument,
23 Defendants cite Section 1.7(e) of the Construction Loan Agreement and Exhibit 15 of Dziubla's
24

1 Declaration.¹ Defendants claim that “Front Sight revealed that although it has spent all of the
2 \$6,375,000 in loan proceeds since the initial disbursement in October 2016, less than \$2.7
3 million of the proceeds were actually spent on construction of the EB-5 project.” (Defendants’
4 Motion for Appointment of Receiver, p. 11, ls. 9-11.) Without explanation, Defendants then
5 claim that “more than \$3.675 million of EB-5 loan proceeds have been diverted to fund matters
6 that are not related to completion of the approved EB-5 plan, such as payment of Front Sight’s
7 general overhead expenses, thereby severely prejudicing the EB-5 investors.” (Defendants’
8 Motion for Appointment of Receiver, p. 11, ls. 11-14.) As has become custom, Defendants do
9 not tell the Court the whole truth, nor do they provide any evidence to support their claim that
10 the loan proceeds have been used for overhead.

11 There are actually four (4) paragraphs of the Construction Loan Agreement that relate to
12 loan proceeds. They are as follows:

13 **Section 1.7 EB-5 Program Requirements.**

14

15 (e) Borrower shall use the proceeds of the Loan solely for the purpose
16 of funding directly, or advancing to Affiliates to pay, the costs of the Project, in
17 accordance with the terms and conditions of this Agreement, as set forth in the
18 Budget and the Project documents submitted to, and approved by, USCIS.

19

20 **Section 3.7 Use of Loan Proceeds.** Borrower shall use and apply the Loan
21 proceeds solely to all or any number of the individual Project components in
22 accordance with the Budget and also to pay some or all of any or all existing
23 indebtedness encumbering the Project pursuant to a Permitted
24 Encumbrance. Borrower shall use its best business judgment based upon
then-current real estate market and availability of other financing resources
to allocate the proceeds of the Loan in such a manner as to assure the full
expenditure of the Loan proceeds advanced to Borrower. Borrower will
comply with the requirements of the EB-5 Program and the other EB-5 Program
covenants and requirements contained in this Agreement.

¹ The brief actually says the exhibit is “attached hereto,” but it is actually attached to Dziubla’s Declaration.

1 **Section 4.29 Use of Loan Proceeds. The proceeds of the Loan shall be used**
2 **to pay and obtain release of the existing liens on the Land, to pay for or**
3 **reimburse Borrower for soft and hard costs related to the pre-construction,**
4 **development, promotion, construction, development and operation of the**
5 **Project in connection with the FSFTI Facility and the construction,**
6 **development, operation, leasing and sale of the timeshare portion of the**
7 **Project, all as more particularly described on Exhibit F, attached hereto.**

8 The Loan is made exclusively for business purposes in connection with holding,
9 developing and financially managing real estate for profit, and none of the
10 proceeds of the Loan will be used for the personal, family or agricultural purposes
11 of the Borrower.

12 **Section 5.3 Using Loan Proceeds. Subject to Section 3.2, Borrower shall**
13 **use the Loan proceeds in its sole discretion to pay, or to reimburse Borrower**
14 **for paying, costs and expenses incurred by Borrower in connection with the**
15 **pre-construction, promotion, construction, development, operating and**
16 **leasing of the Project on the Land and the equipping of the Improvements,**
17 **together with the payoff and release of any existing liens and encumbrances**
18 **on the Land.** Borrower shall take all steps necessary to assure that Loan
19 proceeds are used by its contractors and subcontractors to pay such costs and
20 expenses which could otherwise constitute a mechanic's lien claim against the
21 Project. Within thirty (30) days after the Completion Date, Borrower shall provide
22 the documentation and supporting accounting records and contract documents
23 necessary, in Lender's discretion, to demonstrate that between the Closing Date
24 and the date of delivery of such documentation not less than the total amount of
25 the Advances has been spent directly or indirectly on the Project substantially in a
26 form acceptable to Lender for compliance with the EB-5 Program.

27 (Emphasis added.)

28 Taking the contents of Exhibit 15 to Dziubla's Declaration as true, which Defendants
29 apparently concede, the expenses "from and including July 1, 2017, through and including
30 October 30, 2018" total at least \$5,990,464.74, which Dr. Piazza's letter notes is "well in excess
31 of the \$3,750,000.00 in advances made by Lender to Borrower from and after July 1, 2017." Dr.
32 Piazza also notes that this list of expenses is not exhaustive. Prior to Defendants' Motion for
33 Appointment of Receiver, Defendants never advised Plaintiff that any of the expenses listed in
34 Exhibit 15 were inappropriate. Indeed, they are appropriate by the clear terms of the
35 Construction Loan Agreement. Defendants' claim of improper use of loan funds is completely

1 unfounded. Defendants' math is suspect - Defendants simply disregard entire categories of
2 legitimate expenses to attempt to claim improper spending. This is simply an empty attempt by
3 Defendants to justify their disclosure of Plaintiff's tax records.

4 Defendants inappropriately attached and disclosed private tax information of Plaintiff,
5 claiming Dr. Piazza is "diverting profits" and "misappropriating loan proceeds and endangering
6 Front Sight's solvency." (Defendants' Motion for Appointment of Receiver, p. 12, ls. 2-3.)
7 Defendants ignore what "diverting profits" and "misappropriating" funds means. As Plaintiff
8 has learned, Defendants have misappropriated funds that Plaintiff provided for specific purposes
9 to their own purposes. That has been shown by the few documents Defendant EB5IA provided
10 in response to the Court's order. "Misappropriation" is defined as "[t]he unauthorized, improper,
11 or unlawful use of funds or other property for purpose other than that for which intended."
12 Black's Law Dictionary 998 (6th Ed. 1990). Defendants' misuse of Plaintiff's funds literally fits
13 the definition of misappropriation. On the other hand, Dr. Piazza is the owner of Front Sight.
14 Defendants want to disregard their responsibility and claim that Front Sight is supposed to do
15 Defendants' job and finance the project itself. Plaintiff is not in breach.

16 The second alleged default is failure to provide government approved plans for
17 construction. This claim is also false. As Ms. Holmes explained in her report:

18 [I]t is not accurate to say that loan proceeds must be applied toward construction
19 of the Project. In fact, USCIS policy requires that loan proceeds must be applied
20 toward the Project in general, but loan proceeds can be used for any expense
21 related to the Project, except for interest payments made on the EB-5 loan itself
22 and expenses of the EB-5 lender in connection with the EB-5 offering and the
23 loan. The second sentence also incorrectly states that the construction schedule
24 and construction budget must be substantially complied with in order to meet the
immigrant investors' obligations under the EB-5 program. In fact, USCIS policy
requires only that the EB-5 investors' capital be used to fund the Project described
in the business plan filed with USCIS. There is no requirement that the
construction schedule or construction budget be complied with in order for the
EB-5 investors to obtain their visa. I have personally been engaged to provide

1 legal assistance on a number of EB-5 projects that had delays in construction and
2 changed in size and scope, which did not result in any EB-5 investors losing their
3 immigration benefits under the EB-5 program. It is quite common that the
4 construction schedule or construction budget undergo changes in any construction
5 project, including those funded with EB-5 capital. Just as with this Project, delays
6 or changes in construction plans occur when the EB-5 lender fails to raise
7 sufficient capital to complete the project originally contemplated, or within the
8 time contemplated. As long as the EB-5 investors can show that their capital was
9 invested in the project generally described in the business plan filed with USCIS,
10 whether there were changes in the size of the project, project budget or
11 construction timeline, the EB-5 investors will receive their visas so long as the
12 number of jobs created as a result of the work on the project are sufficient for
13 each investor in the project. USCIS does not deny visas to EB-5 investors in
14 projects where there has been a change in construction schedule or construction
15 budget.

9 (Expert Witness Report of Catherine DeBono Holmes, Esq. attached hereto as Exhibit 4, ¶12.)

10 Plaintiff is not in breach.

11 The third alleged event of default –material delays in construction or failure to timely
12 complete the project – is not an event of default at all. Ms. Holmes addressed this issue to, as set
13 forth above. Additionally, that alleged default has not even occurred, so by definition no event
14 of default has occurred. There can be no breach before a deadline has passed. Nevertheless,
15 Plaintiff continues to move forward with the project despite Defendants' failure and refusal to
16 provide financing.

17 The fourth alleged default is also a bogus claim. In their Motion for Appointment of
18 Receiver, Defendants claim that the "Patriot Pavilion" has been reduced from 85,000 square feet
19 to 25,000 to 30,000 square feet. (Defendants' Motion for Appointment of Receiver, p. 14, ls. 3-
20 4.) Ms. Holmes addressed this issue as well:

21 the reduction in size of any portion of the Project would not jeopardize the
22 EB-5 investors' benefits under the EB-5 Program. As stated above, as long as the
23 general Project description is the same as what is actually constructed with EB-5
24 proceeds, and the actual expenditures on the Project result in the creation of the
number of jobs necessary to support each EB-5 investor in the project, all of the
EB-5 investors will receive their immigration benefits. In this case, there are only

1 13 EB-5 investors in the Project, meaning that it is only necessary to demonstrate
2 that 130 jobs have been created from work on the Project. These are far fewer
3 than the total number of jobs that would have been required if the entire \$75
4 million in EB-5 proceeds had been raised. Therefore, the reduction in size of the
5 Project will not jeopardize any EB-5 investors in this Project.

6 (Exhibit 4, ¶13.) Plaintiff is not in breach.

7 Even so, Exhibit 12 to Dziubla's Declaration, while still alleging a breach due to changes
8 in "Patriot Pavilion" stated that it was being reduced "to be 57,000 square feet without our prior
9 written consent."² While every project experiences some changes during the building process,
10 the changes to Front Sight's project have not been material. Defendant Dziubla's claim that the
11 "Patriot Pavilion" has been reduced from 85,000 square feet to 25-30,000 square feet is again
12 disingenuous. The size of the *classroom* in the "Patriot Pavilion" has been reduced, but the
13 overall scope and size of "Patriot Pavilion" itself has not changed significantly and work there
14 continues to progress. (First Meacher Decl., ¶7.) Moreover, Dziubla tours the project
15 approximately once a quarter – the latest tour occurred on October 11, 2018 – after this litigation
16 began. Dziubla chose not to attend other inspections. (Correspondence regarding inspection,
17 attached hereto as Exhibit 5.) Plaintiff has kept no secrets about the progress of the project, and
18 Defendants' claim otherwise is disingenuous.

19 The fifth alleged default is the alleged failure to obtain senior debt. The definition of
20 "Senior Debt" provides that an additional loan "will be sought" and that Plaintiff "will use its
21 best efforts" to obtain a senior loan. Plaintiff was not *required* to obtain senior debt, although it
22 has done so. Section 5.27 of the CLA indicates Plaintiff will use its "best efforts" to obtain
23 Senior Debt.

24 ² Admittedly, Exhibit 8 to Dziubla's Declaration claims that Mr. Meacher stated the Patriot Pavilion would be
25,000 to 30,000 square feet.

1 Nevertheless, Defendants have not included the fact that Plaintiff has obtained such
2 financing, and Defendants have indicated such financing is acceptable. Those financing
3 documents were provided to Defendants on October 31, 2017. (See First Piazza Decl., ¶21,
4 Exhibit 19.) Moreover, in Defendant EB5 Impact Capital's Q3 2017 project update to its
5 investors, Defendants specifically referenced the construction line of credit and stated: "The
6 terms of this agreement and note are completed and this line of credit will be signed by the end
7 of October." *Id.* Defendants repeatedly updated investors and referenced the senior construction
8 loan, and those updates indicated that the financing that had been obtained was in compliance
9 with the Construction Loan Agreement. (Updates to investors attached hereto as Exhibits 6-9.)

10 The sixth alleged default is failure to provide monthly project costs. Again, Plaintiff is
11 not in default. Because Defendants have failed to provide financing, Plaintiff has been
12 proceeding through other means. As has been explained to Defendants, the grading work
13 continues. Vertical construction cannot. Defendants long ago received the project costs related
14 to the grading.

15 The seventh alleged default is the assertion that Plaintiff failed to notify Defendants of an
16 event of default. Defendants claim that "Front Sight has failed to notify LVD Fund of either (1)
17 the existence of certain events of default or (2) a detailed statement of the steps being taken to
18 cure the event of default." (Defendants' Motion for Appointment of Receiver, p. 15, ls. 7-9.)
19 Without more specifics, it is difficult for Plaintiff to respond to this assertion. However, Plaintiff
20 directs the Court to the various correspondence related to Defendants' claims of default and
21 Plaintiff's responses thereto. (See First Piazza Decl., Exhibits 19, 21.) There have been no
22 defaults, so there is no duty to report anything.

1 The eighth alleged default is Defendants' claim that they have not been allowed to
2 inspect the records of Front Sight. Section 5.4 of the Construction Loan Agreement states:

3 **Section 5.4 Keeping of Records.** Borrower shall set up and maintain accurate
4 and complete books, accounts and records pertaining to the Project. Borrower
5 will permit representatives of Lender to have reasonable access to and to inspect
6 and copy such books, records and contracts of Borrower and to inspect the Project
7 and to discuss Borrower's affairs, finances and accounts with any of its principal
8 officers, all at such times and as often as may reasonably be requested by Lender.
Any such inspection by Lender shall be for the sole benefit of and protection of
Lender, and Lender shall have no obligation to disclose the results thereof to
Borrower or to any third party. When a Default or Event of Default exists,
Lender may do any of the foregoing during normal business hours without
advance notice of other limitation.

9 Paragraph 6 of the First Amendment to Loan Agreement required Plaintiff to provide proof of
10 expenses up to "at least the amount of money as has been disbursed...."

11 Defendants deny receiving such documentation. However, Defendants again fail to
12 advise the Court that they have received thousands of pages of documents showing Plaintiff's
13 expenses on the project. Plaintiff has done so and then some, despite the fact that many of the
14 documents were destroyed in a wildfire, which the parties acknowledged in the First Amendment
15 to Loan Agreement and even though not required by the First Amendment to Loan Agreement
16 (because the USCIS or Department of Justice had not required it). (See First Piazza Decl.,
17 Exhibits 19, 21; First Meacher Decl., Exhibits 29-30.) Defendants continue to demand
18 "unimpeded access to Front Sight's books and records regarding the project and Front Sight's
19 operations," which is beyond what the agreement allows. (See Exhibit 13 to Dziubla
20 Declaration.) Plaintiff has more than complied and is not in breach.

21 The ninth alleged default is failure to allow site inspection. However, Dziubla tours the
22 project approximately once a quarter – the latest tour occurred on October 11, 2018 – after this
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1 litigation began. Plaintiff agreed to allow Dziubla to tour the project (without litigation attorneys
2 and experts) but he has declined to do so. (Exhibit 5.)

3 The tenth alleged default is for the alleged failure to provide EB-5 information.
4 Defendants do not specify what "EB-5 Information" they lack from Plaintiff. They reference
5 paragraph 1.7 of the CLA and paragraph 6 of the First Amendment, but do not say what is
6 missing. This alleged breach is really just a restatement of the eighth alleged breach, which is
7 addressed above.

8 The eleventh and twelfth alleged defaults are the alleged failure to pay default interest
9 and legal fees. Plaintiff is not in default, and therefore, is not obligated to pay either default
10 interest or attorneys' fees. Further, the attorneys' fee provision requires "reasonable" attorney's
11 fees. Defendants have done nothing to attempt to address the reasonableness of the alleged
12 attorney's fees. Because there has been no default, the claim for attorneys' fees is inherently
13 unreasonable.

14 Defendants have once again recorded a frivolous Notice of Breach and Default and of
15 Election to Sell Under Deed of Trust. Based on the above facts, Plaintiff is currently suffering,
16 and will continue to suffer, immediate and irreparable harm unless this Court immediately orders
17 as follows:

18 1. A temporary restraining order and preliminary injunction enjoining Defendants
19 from selling the subject property as they purport they have the right to do under the Notice of
20 Breach and Default and of Election to Sell Under Deed of Trust filed on January 18, 2019.

21 2. An Order expunging the Notice of Breach and Default and of Election to Sell
22 Under Deed of Trust recorded on January 18, 2019.

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III.

ARGUMENT AND AUTHORITIES

A. Preliminary Injunction

In Nevada, the decision to grant a preliminary injunction is within the sound discretion of the trial court. *Dangberg Holdings Nev., L.L.C. v. Douglas County*, 115 Nev. 129, 142-43, 978 P.2d 311, 319-20 (1999) (affirming district court issuance of preliminary injunction). The purpose of a preliminary injunction under Nev. R. Civ. P. 65 is to preserve the status quo pending court determination. *All Minerals Corp. v. Kunkle*, 105 Nev. 835, 838, 784 P.2d 2 (1989); *Dixon v. Thatcher et al.*, 103 Nev. 414, 415, 742 P.2d 1029 (1987). An injunction to maintain the status quo is proper if "injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted." *Dangberg*, 115 Nev. at 146 (quoting *Rhodes Mining Co. v. Belleville Placer Mining Co.*, 32 Nev. 230, 239, 106 P. 561, 563 (1910)).

In determining whether to grant a preliminary injunction, Nevada courts consider two factors: (1) whether there is a reasonable probability that the plaintiff will prevail on the merits; and (2) is the plaintiff likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from its grant. *Dangberg*, 115 Nev. at 146; *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996); Nev. Rev. Stat. Ann. § 33.010.³ The Court "may also weigh the public interest and relative hardships of the parties...."

³Nev. Rev. Stat. Ann. § 33.010 provides:

An injunction may be granted in the following cases:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

1 *Clark County School Dist.*, 112 Nev. at 1150 at 719 (1996) (citing *Pickett v. Commanche*
2 *Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)). As discussed below, Plaintiff
3 satisfies each of these elements.

4 The movant “bears the burden of providing testimony, exhibits, or documentary evidence
5 to support its request for an injunction.” *Hospitality Int’l Group v. Gratitude Group, LLC*, 387
6 P.3d 208 (Table), 2016 WL 7105065, at *2 (Nev. 2016).

7 Both factors required for a temporary restraining order and preliminary injunction favor
8 granting Plaintiff the requested relief in this case.

9 1. Plaintiff Will Succeed on the Merits of its Claims

10 First, Plaintiff reminds the Court that it has already found that Plaintiff has established a
11 reasonable likelihood of success on the merits on these exact issues. (**Exhibit 1**, Transcript of
12 December 5, 2018 hearing, p. 74; Order Granting Temporary Restraining Order and Expunging
13 Notice of Default filed on November 26, 2018 (Notice of Entry on November 27, 2018).)
14 Nothing of substance has changed, other than Plaintiff has filed a Second Amended Complaint
15 detailing even more specifically Defendants’ unlawful and nefarious actions.

16 Second, the facts set forth above, in the Second Amended Complaint, in the referenced
17 Declarations, and the attached exhibits demonstrate Plaintiff’s reasonable likelihood of success
18 on the merits.

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22 2. When it shall appear by the complaint or affidavit that the commission or continuance
of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

23 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or
24 is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff’s rights
respecting the subject of the action, and tending to render the judgment ineffectual.

1 A temporary restraining order and preliminary injunction must be entered to protect
2 Plaintiff and stop further abuse by Defendants. Defendants' nefarious and fraudulent conduct
3 includes the following:

- 4 1. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
5 EB5 experience. (See First Piazza Decl., Exhibits 1-3, 7.)
- 6 2. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
7 investor network. (See First Piazza Decl., Exhibits 1-3, 7, 11-12, 16, pp. 4-5.)
- 8 3. Dziubla and Fleming, as agents of the entity Defendants, misrepresented their
9 ability to raise the promised funds. (See First Piazza Decl., Exhibits 1-3, 7, 11-12,
10 16, pp. 4-5.)
- 11 4. Dziubla and Fleming, as agents of the entity Defendants, mismanaged and
12 produced conflicting EB5 documents, loan documents, and investor documents.
13 (See First Piazza Decl., Exhibits 7, 11-12, 16, pp. 2-6.)
- 14 5. Dziubla and Fleming, as agents of the entity Defendants, made fraudulent reports
15 to Plaintiff and investors. (See First Piazza Decl., Exhibit 16, pp. 4-5.)
- 16 6. Dziubla and Fleming, as agents of the entity Defendants, refuse to provide any
17 proof of Defendants Dziubla and Fleming, as agents of the entity Defendants,
18 spent the administrative fees provided by Plaintiff, which fees totaled several
19 hundred thousand dollars were specifically earmarked for development of the
20 regional center. This is particularly disturbing given Defendants' representation
21 that "Front Sight is the ONLY EB5 project we are handling and of course receives
22 our full and diligent attention," while on Defendants' website
23 eb5impactcapital.com, Defendants have posted an open invitation to other
24

1 developers seeking EB-5 funding for their respective projects to contact
2 Defendants regarding their EB-5 fundraising services. (See First Piazza Decl.,
3 Exhibits 10, 15.)

4 7. Dziubla and Fleming, as agents of the entity Defendants, refuse to provide any
5 accounting to Plaintiff or proof of payment of marketing fees for the project,
6 which marketing fees were financed by Plaintiff to the tune of hundreds of
7 thousands of dollars. Defendants have been ordered by the Court to provide said
8 accounting, however, Defendants failed and refused to provide the required
9 documents and Plaintiff's now have a Motion to Compel and for Sanction
10 pending before the Court. (See First Piazza Decl., Exhibits 10, 15.)

11 8. Dziubla and Fleming, as agents of the entity Defendants, refuse to provide any
12 proof of payment for interest paid to investors and agents (although Defendants
13 repeatedly represented they had made such payments), also totaling hundreds of
14 thousands of dollars. (See First Piazza Decl., Exhibits 10, 15.) Dziubla and
15 Fleming, as agents of the entity Defendants, claimed they make no money from
16 interest payments, marketing fees or commissions, yet refuse to disclose and
17 prove where payments have been spent.

18 9. When Front Sight asked for full disclosure on the financial arrangements with the
19 various agents and brokers Defendant Dziubla claimed to have in place,
20 Defendant Dziubla represented to Front Sight that said agents require strict
21 confidentiality on all financial arrangements with the Regional Center and thus
22 Defendant Dziubla could not disclose to Front Sight the financial splits. (See,
23 e.g., First Piazza Decl., Exhibits 16-17.) Front Sight has recently learned from an
24

1 experienced and reputable industry consultant that these representations are not
2 true. In reality, developers often own the regional centers handling their projects,
3 and financial arrangements with the brokers and agents are normally transparent
4 and regularly disclosed to the developers.

5 10. When Defendant Dziubla was soliciting Front Sight to pay for the Regional
6 Center, Front Sight requested to be an owner of EB5IC since Front Sight was
7 paying for it, but Defendant Dziubla responded that USCIS would not allow it and
8 would look unfavorably on a developer owning a regional center. This statement
9 was false. (See First Piazza Decl., Exhibit 16.)

10 11. Dziubla and Fleming, as agents of the entity Defendants, dissolved EB5 Impact
11 Advisors LLC without notifying Plaintiff or USCIS. (See First Piazza Decl.,
12 Exhibit 23.)

13 12. Dziubla and Fleming, as agents of the entity Defendants, dissolved EB5 Impact
14 Advisors, LLC without paying plaintiff \$36,000 that Plaintiff was owed under
15 agreements with EB5 Impact Advisors, LLC. (See First Piazza Decl., Exhibit 23.)

16 13. Dziubla and Fleming, as agents of the entity Defendants, delivered less than 10%
17 of the funding promised after Plaintiff has paid over \$500,000 in marketing and
18 administrative fees, with Dziubla and Fleming, as agents of the entity Defendants,
19 refusing to provide any accounting of where said money was spent. (See Second
20 Piazza Decl., ¶3.)

21 14. Dziubla and Fleming, as agents of the entity Defendants, billed Plaintiff \$20,000
22 for an economic study associated with the development of the Regional Center
23 and EB5 project, then without Plaintiff's knowledge, offered the economist, Sean
24

1 Flynn, who prepared the economic study, a percentage of the EB5 project, with
2 promises of large financial returns, in consideration for Flynn not accepting the
3 \$20,000 payment made by Plaintiff for said economic study. Plaintiff was not
4 aware of this "bait and switch" conduct until just recently and believes Dziubla
5 and/or Fleming, as agents of the entity Defendants, pocketed the money. Dziubla
6 and Fleming, as agents of the entity Defendants, have failed and refused to
7 account for the \$20,000. (See Second Piazza Decl., ¶4; Second Meacher Decl.,
8 ¶8.)

9 15. After Plaintiff had paid over \$300,000 to Dziubla and Fleming, as agents of the
10 entity Defendants, and Dziubla and Fleming, as agents of the entity Defendants,
11 failed to provide the initial \$25 million dollars of the \$75 million that had been
12 promised, Dziubla misrepresented that he and Defendant Fleming had exhausted
13 all of their personal finances and those of the Defendant entities, and needed to
14 restructure the funding project at significant legal and administrative costs to
15 Plaintiff. Dziubla and Fleming, as agents of the entity Defendants, stated
16 Defendants would need an additional \$8,000 per month for ongoing marketing of
17 the project abroad. Plaintiff has paid said additional monthly marketing fees but
18 no marketing has occurred and Plaintiff believes Dziubla has used the marketing
19 funds to fund his own personal lifestyle, which Plaintiff's investigation reveals
20 includes a million-dollar home, new luxury cars, multiple properties, and bank
21 accounts with substantial sums of money now in them. (See Second Piazza Decl.,
22 ¶5.)

1 16. Dziubla and Fleming, as agents of the entity Defendants, are holding hostage
2 \$36,000 of Plaintiff's money as well as \$375,000 in investor money that was
3 supposed to be released to the project many weeks ago. Dziubla and Fleming, as
4 agents of the entity Defendants, are attempting to starve the construction of the
5 project and extort and leverage Plaintiff into foregoing these claims against
6 Defendants. (See Second Piazza Decl., ¶6.)

7 17. As Defendants' misrepresentations and failure to provide the promised funding;
8 along with the asserted commingling and misappropriation of the funds provided
9 by Plaintiff to Defendants; and as Defendants' agreements with Plaintiff, USCIS,
10 and his investors began to crumble around them, Dziubla, as agent of the entity
11 Defendants, fraudulently and frivolously sent multiple Notices of Default despite
12 Plaintiff refuting every allegation contained therein (See First Piazza Decl.,
13 Exhibits 18-22), and fraudulently and frivolously filed a Notice of Default and
14 Intent to Sell in an attempt to leverage himself out of his predicament, thereby
15 slandering the title of Plaintiff, placing the immigration visa applications of his 13
16 foreign investors as risk, and placing the Front Sight project (with its 200,000
17 members, hundreds of employees, and contractors working on the project) in
18 peril. *See supra, generally.*

19 The Court must not allow Defendants to continue in their unlawful conduct, nor should
20 they be permitted to profit by their inappropriate behavior.

21 Defendants have breached the agreement with Plaintiff and then alleged Plaintiff is in
22 default. As demonstrated above, Plaintiff has refuted Defendants' notices of default at every
23 turn, providing thousands of pages of documentation to prove each and every one of Defendants'
24

1 claimed defaults is a reprehensible attempt to extort additional money out of Plaintiff, and
2 ultimately, to steal Plaintiff's land and business.

3 When Defendants' claims of breach were refuted, on August 31, 2018, Defendants
4 agreed to a standstill agreement regarding the alleged notices of default. (See First Piazza Decl.,
5 Exhibit 24.) On September 5, 2018, purportedly in furtherance of the standstill agreement,
6 Defendants sent a Pre-Negotiation Letter. (See First Piazza Decl., Exhibit 25.) The proposed
7 terms of the Pre-Negotiation Letter had not been discussed with Plaintiff at all. Nevertheless,
8 Plaintiff agreed to the majority of Defendants' terms and proposed a few changes. (See First
9 Piazza Decl., Exhibit 26.) Defendants did not respond to the proposed changes. Instead, on
10 September 11, 2018, in violation of the agreed-upon standstill agreement, Defendants frivolously
11 filed a Notice of Breach and Default and of Election to Sell Under Deed of Trust. Plaintiff was
12 not in default under any loan obligations to Defendants at the time the Notice of Default and
13 Election to Sell Under Deed of Trust was recorded. This Court agreed and entered an order
14 expunging the Notice of Default and Election to Sell.

15 Defendants now filed another Notice of Default and Election to Sell almost identical to
16 the one previously expunged by this Court. Defendants have alleged essentially ten events of
17 default. Plaintiff refers the Court to Exhibits 19 and 21 of the First Piazza Decl. regarding
18 Plaintiff's responses to Defendants' allegations of default. Those documents address these
19 allegations in great detail and were accompanied by hundreds of pages of documents. Plaintiff
20 has also addressed the allegations above.

21 2. Plaintiffs Will Suffer Irreparable Injury If Relief Is Not Granted

22 Plaintiff has also shown irreparable harm. Irreparable harm is an injury "for which
23 compensatory damage is an inadequate remedy." *Excellence Community*, 351 P.3d at 723
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1 (quotations and citations omitted). In the business context, irreparable harm is established when
2 a company can show that a person committed acts “without just cause which unreasonably
3 interfere with a business or destroy its credit or profits.” *State, Dep’t of Bus. & Indus., Fin.*
4 *Institutions Div. v. Nevada Ass’n Servs., Inc.*, 294 P.3d 1223, 1228 (Nev. 2012) (quoting *Sobol v.*
5 *Capital Management*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986)).

6 Moreover, “...real property and its attributes are considered unique and loss of real
7 property rights generally results in irreparable harm” *See Dixon v. Thatcher*, 103 Nev. 414, 415,
8 742 P.2d 1029, 1029 (1987); *Thirteen S. Ltd. v. Summit Vill., Inc.*, 109 Nev. 1218, 1220, 866
9 P.2d 257, 259 (1993) (concluding that a party had demonstrated irreparable harm by showing
10 that it would lose title to the property at issue in the absence of an injunction); *Pickett v.*
11 *Comanche Constr., Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (holding that a party would
12 be subject to irreparable harm if the opposing party were allowed to sell certain real property).

13 Defendants are seeking to take Plaintiff’s real property and greatly harm its ongoing
14 business. Through Defendants’ continued egregious conduct and continued refusal to release
15 funds under the agreement, Defendants have committed acts “without just cause which
16 unreasonably interfere with [Plaintiff’s] business or destroy its credit or profits.” *State, Dep’t of*
17 *Bus. & Indus., Fin. Institutions Div.*, 294 P.3d at 1228. Further, they seek to foreclose on
18 Plaintiff’s real property. Plaintiff has clearly demonstrated irreparable harm.

19 **B. Security**

20 While NRCP 65(c) permits the Court to condition the issuance of an injunction on the
21 moving party providing security sufficient to pay any costs and damages that a wrongfully
22 enjoined or restrained party might sustain, in this case such a bond is not necessary. Defendants
23 will incur no loss from the temporary restraining order or preliminary injunction requested.

24

1 If the Court were to decide that some bond should be posted, a nominal bond of \$100.00
2 would be sufficient.

3 **C. Sanctions Should Be Awarded for Plaintiff Having to File This Motion to Expunge**
4 **Defendants' Frivolous Notice of Breach, Default and Election to Sell**

5 District courts in Nevada may sanction abusive litigation practices through their inherent
6 powers. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). A
7 court's inherent power to sanction is designed "to protect the dignity and decency of its
8 proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or
9 dismiss an action for litigation abuses." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d
10 428, 440 (2007). Generally, "this court will not reverse sanctions absent a clear showing of
11 abuse of discretion." *Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998).

12 This Court advised Defendants that if they filed another frivolous Notice of Breach and
13 Intent to Sell the Court would deny it also. The latest filing was frivolous and unnecessary, and
14 was done for the sole purpose of causing Plaintiff to incur additional litigation costs. Plaintiff
15 requests attorneys' fees for all fees and costs related to having to file this motion. If the Court
16 agrees, Plaintiff will file supplemental briefing related to the request and specify the amount
17 sought.

18 **D. Plaintiff's Motion Should Be Heard on Shortened Time**

19 EDCR 2.26 states in pertinent part:

20 **Rule 2.26.Shortening time.** Ex parte motions to shorten time may not be
21 granted except upon an unsworn declaration under penalty of perjury or affidavit
22 of counsel describing the circumstances claimed to constitute good cause and
23 justify shortening of time. If a motion to shorten time is granted, it must be
24 served upon all parties promptly. An order which shortens the notice of a hearing
to less than 10 days may not be served by mail. In no event may the notice of the
hearing of a motion be shortened to less than 1 full judicial day.

1 As set forth above, there exists good cause to hear Plaintiff's Second Motion for
2 Temporary Restraining Order and Preliminary Injunction on shortened time. On January 18,
3 2019, Defendants, at the request of new Trustee Kathryn Holbert, Esq., again recorded a Notice
4 of Breach, Default and Election to Sell Under of Trust, alleging various defaults. That Notice
5 indicates that Defendants intend to proceed with attempting to sell Plaintiff's property.

6 Plaintiff's Project and Plaintiff's property, as more fully outlined in Plaintiff's Second
7 Motion for Temporary Restraining Order and Preliminary Injunction, hang in the balance due to
8 the actions of Defendants, and it is imperative that the Motion are heard on shortened time.

9 On January 28, 2019, Defendants filed several Motions to Dismiss. The hearing on those
10 motions is set for April 3, 2019. That indicates that if the hearing on Plaintiff's Second Motion
11 for Temporary Restraining Order and Preliminary Injunction was held in the ordinary course,
12 irreparable harm may be done to the Project and property.

13 CONCLUSION

14 WHEREFORE, Plaintiff seeks the following relief:

15 I. A temporary restraining order and preliminary injunction (both affirmative and
16 prohibitive) as follows:

17 a. A temporary restraining order and preliminary injunction enjoining
18 Defendants from selling the subject property as they purport they have the
19 right to do under the Notice of Breach and Default and of Election to Sell
20 Under Deed of Trust.

21 b. An Order expunging the Notice of Breach and Default and of Election to
22 Sell Under Deed of Trust recorded on January 18, 2019.
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- 2. Schedule a hearing on Plaintiff's Second Motion for Preliminary Injunction at the Court's earliest opportunity;
- 3. Grant an order converting the temporary restraining order into a preliminary and permanent injunction;
- 4. Attorneys' fees for having to bring this Motion; and
- 5. Grant such further relief as the Court deems proper.

DATED this 25th day of February, 2019.

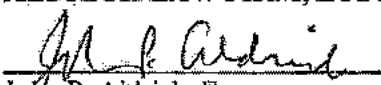
ALDRICH LAW FIRM, LTD.

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Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
1601 S. Rainbow Boulevard, Suite 160
Las Vegas, NV 89146
Tel (702) 853-5490
Fax (702) 226-1975
Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1

1 CASE NO. A-18-781084-B

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 FRONT SIGHT MANAGEMENT LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS DEVELOPMENT FUND LLC,)

13 Defendant.)

14

REPORTER'S TRANSCRIPT

15

OF

MOTION TO DISMISS

16

17

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

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DATED WEDNESDAY, DECEMBER 5, 2018

21

22

23

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

11:55:58 1 the point do we really need the hearing on the 13th
2 because --
3 MR. GREER: Right.
4 MR. ALDRICH: -- if the Court interprets it
11:56:04 5 that way anyway, you would be extending a TRO to a
6 preliminary injunction for something that's already
7 happened. It's been expunged.
8 THE COURT: Right. It's been done.
9 MR. ALDRICH: Right. We are going to talk
11:56:18 10 about if they file another one, then we'd just be back.
11 THE COURT: And I'd sign it. And I think all
12 you would have to do is change the dates probably.
13 MR. ALDRICH: Yeah.
14 THE COURT: Right?
11:56:27 15 MR. ALDRICH: We all have so much fun when we
16 all get together.
17 THE COURT: Yes, we do.
18 Where do we go from here? So is it safe to
19 say we just go ahead and vacate the hearing on -- is it
11:56:38 20 the 13th?
21 MR. ALDRICH: The 13th.
22 MR. GREER: Yes, your Honor.
23 THE COURT: We'll do that. As moot?
24 MR. GREER: Moot.
11:56:45 25 Counsel? Counsel, 13th, moot?

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOTYPE NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR
(702)671-4402 - CROERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

EXHIBIT 2

EXHIBIT 2

DOC #905318

Official Records Nye County NV
Deborah Beatty - Recorder
01/14/2019 09:16:46 AM
Requested By: E-DOCS SOLUTIONS L
Recorded By: tc RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 1

APN(s) 045-481-05 and 045-481-06

RECORDING REQUESTED BY
and RETURN TO:

Kathryn Holbert, Esq. NV Bar #10084
FARMER CASE & FEDOR
2190 E. Pebble Rd., #205
Las Vegas, NV 89123

SUBSTITUTION OF TRUSTEE

WHEREAS, Front Sight Management, LLC is the original Trustor; Chicago Title Company was the original Trustee and Las Vegas Development Fund, LLC was the original Beneficiary under that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust").

WHEREAS, the undersigned current Beneficiary, desires to substitute a new Trustee under said Deed of Trust in place of and instead of said original Trustee thereunder in the manner in said Deed of Trust provided;

NOW THEREFORE, the undersigned hereby substitutes Kathryn Holbert, Esq., whose address is 2190 E. Pebble Rd., #205, Las Vegas, Nevada 89123, as Trustee under said Deed of Trust.

I certify under Penalty of Perjury under the laws of Nevada, California and the United States that the foregoing is true and correct.

Dated: January 4, 2019

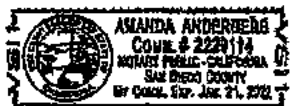
[Signature] Robert Dziubla
Title: President & CEO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California
COUNTY OF San Diego

On Jan 4, 2019 before me, Amanda Anderberg, a Notary Public, personally appeared Robert W. Dziubla, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

[Signature]
Notary Public Amanda Anderberg



APN(s) 045-481-05 and 045-481-06

RECORDING REQUESTED BY
and RETURN TO:

Kathryn Holbert, Esq. NV Bar #10084
FARMER CASE & FEDOR
2190 E. Pebble Rd., #205
Las Vegas, NV 89123

DOC #905512

Official Records Nye County NV
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Recording Fee: \$285.00
Non Conformity Fee: \$
Page 1 of 5

NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST
IMPORTANT NOTICE

NOTICE IS HEREBY GIVEN that Kathryn Holbert, Esq., is the duly appointed substitute Trustee under that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company, Grantor, as Trustor, to secure certain obligations in favor of LAS VEGAS DEVELOPMENT FUND, LLC, a Nevada limited liability company, together with that certain First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017 and recorded on January 12, 2018, as Document No. 886510, and any modifications/amendments thereto of the Official Records in the Office of the Recorder of Nye County, State of Nevada ("Deeds of Trust").

Such DEED OF TRUST secures an Amended and Restated Promissory Note for the sum of up to \$50,000,000.00 as well as other material obligations. A breach of the obligations which are secured by such Amended and Restated Promissory Note has occurred and FRONT SIGHT MANAGEMENT, LLC is in default under the terms of the Deeds of Trust as set forth below:

The total amount due is \$345,787.24 which is itemized as \$32,833.33 current interest; \$158,395.80 past due interest; \$138,655.62 legal/attorney fees and costs; and \$15,902.49 in late fees. Additionally, FRONT SIGHT MANAGEMENT, LLC has default regarding various material non-monetary obligations which are set forth in and secured by the Deeds of Trust, including:

- a. Improper use of loan proceeds.
- b. Failure to provide government approved plans for construction.
- c. Material delays in construction.
- d. Material changes to the costs, scope and timing of the construction.
- e. Refusal to comply regarding securing senior debt.
- f. Failure to provide monthly project costs.
- g. Failure to notify lender of the occurrence of events of default.
- h. Refusal to allow inspection of books and records.
- i. Refusal to allow site inspection by Lender and its representatives.
- j. Failure to provide EB-5 documentation.

NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST
Page 1 of 2

To cure the Default and Reinstate your loan, you must pay all amounts then due at the time of reinstatement, including any additional unpaid amounts that you are obligated to pay by the terms of the Note and the Deed of Trust, such as, but not limited to, advances, taxes, hazard insurance and obligations secured by prior encumbrances, plus Trustee's and/or Attorney's Fees and Costs and Expenses incurred in enforcing the obligation AND cure the above itemized performance obligations.

Pursuant to NRS 104.9604(1)(b) the sale may, at the election of the beneficiary, include personal property.

NOTICE

You may have the right to cure the defaults set forth herein and reinstate the obligations secured by the Deeds of Trust described above. NRS Section 107.080 permits certain defaults to be reinstated without requiring payment of that portion of principal and interest which would not be due had no default occurred (acceleration of principal). Where reinstatement is possible, if the default is not cured within 35 days following the recording and mailing of this Notice, the right of reinstatement shall terminate and the property thereafter may be sold.

To find out the amount you must pay and the other obligations you must fulfill, or to seek to make arrangements to stop the foreclosure, or if your property is in foreclosure for any other reason, contact LAS VEGAS DEVELOPMENT FUND, LLC, c/o Kathryn Holbert, Esq. Farmer Case & Fedor, Las Vegas, NV 89123, 702-579-3900.

That by reason thereof, the present beneficiary under such Deeds of Trust has executed and delivered to said Trustee a written Declaration of Default and Demand for Sale, and has delivered to said Trustee such Deeds of Trust and all documents evidencing obligations secured thereby and has declared and does hereby declare all sums and obligations set forth above which are secured thereby immediately due and has elected to cause the property to be sold to satisfy the obligations secured thereby.

AFFIDAVIT OF AUTHORITY IS ATTACHED HERETO

Kathryn Holbert
Kathryn Holbert, Esq. Successor Trustee

1-17-2019
Dated

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF NEVADA
COUNTY OF CLARK

On January 17, 2019 before me, Alana Barton, a Notary Public, Personally appeared KATHRYN HOLBERT, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

Alana Barton
Notary Public Alana Barton

NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST



AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

NRS § 107.080(2)(c)

STATE of CALIFORNIA)

)ss.

COUNTY of SAN DIEGO)

The affiant, ROBERT W. DZUBLA, being first duly sworn upon oath, based on my direct, personal knowledge, or pursuant to personal knowledge that I acquired by a review of the business records, which meet the standards set forth in NRS §51.135, of the beneficiary and/or the servicer of the obligation or debt secured by that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company, Grantor, as Trustor, to secure certain obligations in favor of LAS VEGAS DEVELOPMENT FUND, LLC, a Nevada limited liability company, together with that certain First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017 and recorded on January 12, 2018, as Document No. 886510, and any modifications/amendments thereto of the Official Records in the Office of the Recorder of Nye County, State of Nevada ("Deeds of Trust").

I further attest, under penalty of perjury, that I am the authorized representative of the beneficiary under such Deeds of Trust, which are described in the NOTICE OF BREACH, DEFAULT and ELECTION TO SELL UNDER DEED OF TRUST to which this affidavit is attached.

I further attest, under penalty of perjury, to the following information, as required by NRS § 107.080(2)(c):

- 1. The full name and business address of the current trustee is:

Kathryn Holbert, Esq. NV Bar No. 10084
Farmer Case & Fedor
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
702-579-3900

- 2. The full name and business address of the current holder of the Promissory Note which is secured by the Deeds of Trust and the current beneficiary of record of the Deeds of Trust is:

Las Vegas Development Fund, LLC
916 Southwood Blvd., Suite IG
Post Office Box 3003
Incline Village, NV 89450

3. The full name and business address of the current servicer of the obligation or debt which is secure by the Deeds of Trust is:

NES Financial Corp.
50 W. San Fernando St., Suite 300
San Jose, CA 95113

4. The beneficiary is in actual possession of the Promissory Note which is secured by the Deeds of Trust and is entitled to enforce the debt and/or other obligations which are secured by the Deed of Trust.

5. The beneficiary and/or the servicer of the obligations and/or debt which are secured by the Deed of Trust has sent to the obligator/borrower of the obligation and/or debt which are secured by the Deed of Trust a written statement of:

a. The amount of payment required to make good the monetary deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt as existing before the deficiency and/or defaults occurred, as of the date of the statements;

b. The amount in default;

c. The principal amount of the obligation or debt secured by the Deed of Trust;

d. The amount of accrued interest and late charges,

e. A good faith estimate of all fees imposed in connection with the exercise of the power of sale; and

f. Contact information for obtaining the most current amounts due and the local or toll free number as required by NRS 107.080(2)(c)(4).

6. A local or toll free telephone number that the obligor or borrower of the obligation or debt may call to receive the most current amount due and other items required to cure the obligors defaults under the Deeds of Trust as well as recitation of the information contained in this affidavit is 702-579-3900.

7. The following information regarding the recorded instruments that conveyed the interest of the beneficiary is as follows:

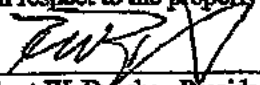
Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded on October 13, 2016, as Document No. 860867 of official records in the Office of the Recorder of Nye County, Nevada; ("Deed of Trust"), which was executed by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company, Grantor, as Trustor, to secure certain obligations in favor of LAS VEGAS DEVELOPMENT FUND, LLC, a

AFFIDAVIT OF AUTHORIZATION

Page 2 of 3

Nevada limited liability company, together with that certain First Amendment to Construction Deed of Trust, Security Agreement and Fixture Filing dated July 1, 2017 and recorded on January 12, 2018, as Document No. 886510, and any modifications/amendments thereto of the Official Records in the Office of the Recorder of Nye County, State of Nevada ("Deeds of Trust").

The beneficiary has and does hereby instruct the Successor Trustee to exercise the power of sale with respect to the property which is set forth as security under the Deeds of Trust.


Robert W. Dzivbla, President and CEO of beneficiary
LAS VEGAS DEVELOPMENT FUND, LLC

January 4, 2019
Dated

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE of CALIFORNIA)
)ss.
COUNTY of SAN DIEGO)

On Jan 4, 2019 before me, Amanda Anderberg, a Notary Public, Personally appeared Robert W. Dzivbla, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

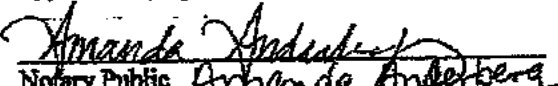


Notary Public Amanda Anderberg



EXHIBIT 3

EXHIBIT 3



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NOTICE
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
7866 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

THREE DAY NOTICE OF INTENT
TO TAKE DEFAULT

1 TO: LAS VEGAS DEVELOPMENT FUND LLC, Defendant:
2 TO: EBS IMPACT CAPITAL REGIONAL CENTER LLC, Defendant:
3 TO: EBS IMPACT ADVISORS LLC, Defendant:
4 TO: ROBERT W. DZIUBLA, Defendant:
5 TO: JON FLEMING, Defendant:
6 TO: LINDA STANWOOD, Defendant:
7 TO: KATHRYN HOLBERT, ESQ. and C. KEITH GREER, ESQ., Attorneys for Defendants:

8 YOU WILL PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure
9 12(a)(1) on file herein within three (3) days of the date of receipt of this Three Day Notice of
10 Intent to Take Default, Plaintiff FRONT SIGHT MANAGEMENT LLC will enter Default
11 against Defendants, and request the Court enter Judgment against Defendants, by default, based
12 on Defendants' failure to file a responsive pleading unless an Answer to the Second Amended
13 Complaint or other responsive pleading is filed in the above-entitled action on or before January
14 29, 2019.

15 DATED this 24th day of January, 2019.

16 ALDRICH LAW FIRM, LTD.

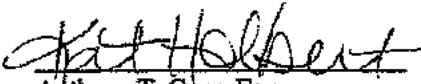
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18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Catherine Hernandez, Esq.
21 Nevada Bar No. 8410
22 7866 West Sahara Avenue
23 Las Vegas, NV 89117
24 Tel (702) 853-5490
Fax (702) 226-1975
Attorneys for Plaintiff

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RECEIPT OF COPY

I HEREBY CERTIFY that on the 24th day of January, 2019, I received, via hand delivery, the foregoing **THREE DAY NOTICE OF INTENT TO TAKE DEFAULT.**



Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127

Attorneys for Defendants

EXHIBIT 4

EXHIBIT 4

FRONT SIGHT MANAGEMENT, LLC
V.
LAS VEGAS DEVELOPMENT FUND LLC, ET AL.

EXPERT WITNESS REPORT OF
CATHERINE DEBONO HOLMES, ESQ.

I have been asked to serve as an expert witness for the Plaintiff in the above identified case, in connection with the Plaintiff's claims that the Defendants committed fraud, made intentional misrepresentations, breached their fiduciary duties, wrongfully converted funds of Plaintiff, and breached written contracts with Plaintiff. My qualifications as an expert witness in this matter are described in Exhibit A.

I intend to testify as follows based upon my review of the exhibits attached to the Declaration of Ignatius Piazza ("the **Declaration**") and the Memorandum of Points and Authorities (the **Memorandum**) submitted in support of the Motion for Appointment of Receiver and Request for Order Shortening Time (the **Motion**) of Defendant Las Vegas Development Fund LLC (**Defendant**):

1. The initial letter proposal ("**Proposal**") dated September 13, 2012 of Kenworth Capital, Inc. addressed to Front Sight Enterprises, LLC (Exhibit 2 of the Declaration) states in paragraph 2 that Kenworth's "partners" are Emphyrean West (Dave Keller and Jay Carter), the owners of Liberty West Regional Center. The letter agreement further represents in paragraph 3 that Emphyrean West has been authorized by the Vietnamese government to act as the exclusive EB-5 firm in Vietnam and has been exempted from the \$5,000 limit on international money transfers. I know from my personal experience working with dozens of EB-5 offerings over the past approximately 10 years that Emphyrean West was not and is not the exclusive EB-5 firm in Vietnam. I believe that this was a misrepresentation intended to give the impression that Kenworth, through its "partners" Emphyrean West had special access to EB-5 investors in Vietnam.
2. The Proposal further describes the estimated direct out-of-pocket cost for an EB-5 offering as typically \$300,000 (paid upfront). I know from my personal experience in the EB-5 industry that this is a substantially inflated estimate of direct-out-of-pocket costs, and that it is not customary for an amount this large to be paid up front. I believe that this estimate was a misrepresentation of the true costs of an EB-5 offering intended to mislead the Plaintiff into paying substantially more upfront than it would pay to a legitimate EB-5 funding provider.
3. The engagement letter agreement dated February 14, 2013 ("**Engagement Agreement**") between EB5 Impact Advisors LLC ("**EB5IA**") and Plaintiff (Exhibit 5 of the Declaration) indicates in the Scope of Assignment; Services on page 1 that EB5IA would engage Baker & McKenzie to establish the EB5 Impact Capital Regional Center. The establishment of a regional center is a highly unusual provision in an engagement letter to provide EB-5 financing to a third party, and the cost of establishment of the regional center is, in my experience, always paid for by the owner of the regional center, not the party seeking financing. These provisions indicate

that EB5IA misled the Plaintiff into believing that this was a normal part of an EB-5 financing, which it was not.

4. The process for filing a regional center application with the U.S. Citizenship and Immigration Services ("USCIS") and a request for exemplar approval of an actual EB-5 project in 2013 was approximately 12 to 24 months from the date of filing. **This is a very important disadvantage to an EB-5 financing, because no EB-5 investor is allowed to file a visa petition until the regional center is approved.** For that reason, it is standard in the EB-5 industry to either wait until the regional center is approved before even beginning to market an EB-5 project, or enter into an agreement with an existing regional center to avoid the waiting time. (As shown in Exhibit 6 and Exhibit 8 of the Declaration, EB5IA filed its regional center application on April 14, 2014 and received USCIS approval on July 27, 2015, meaning that the Plaintiff's project could not be marketed for 15 months after the regional center application was filed, thus demonstrating the substantial disadvantage of this method of raising EB-5 financing.) EB5IA could have entered into an agreement with one of several regional centers that were already approved to sponsor projects in the Las Vegas area in 2013 (including Empyrean West, which it represented to be a "partner"), but for unexplained reasons, EB5IA chose not to enter into an agreement with an existing regional center, and instead to file a regional center application that would require it to delay marketing for over a year.

5. The Engagement Agreement (Exhibit 5 of the Declaration) contains an estimated timeline showing that \$75 million in EB-5 financing would be raised between 4 months from the earliest expected approval of the regional center and 6 months from the latest expected approval of the regional center. Those estimates wildly misrepresented the normal time necessary to raise \$75 million in EB-5 financing. In 2013, only the very largest and most experienced regional centers could raise that much in EB-5 financing, based upon their track record of prior successful EB-5 financings. Most new regional centers either failed to raise any financing at all or would start with very small offerings (\$5 million to \$10 million) and gradually raise larger EB-5 financings as they became known in the EB-5 financing market. Even for well-known regional center operators, it is not unusual for an EB-5 financing, even one sponsored by an experienced EB-5 sponsor, to take a year or more before it gains acceptance in the EB-5 financing market.

6. In an email exchange between Robert Dziubla ("Dziubla"), the owner of EB5IA and Mike Meacher ("Meacher"), an officer of Plaintiff, between June 26 and June 29, 2015 (Exhibit 7 of the Declaration) Dziubla states that

"We anticipate that once we start the roadshows for the Front Sight project, which will have already been pre-approved by USCIS as part of the I-924 process – a very big advantage- we should have the first tranche of \$25m into escrow and ready for disbursement for the project (at the 75% level, i.e., \$18.75m, as discussed) within 4 – 5 months."

This assurance that it would take only 4 to 5 months to raise \$25,000,000 in EB-5 financing again substantially overstates the ability of a new regional center to raise EB-5 financing.

7. In an email exchange between Dziubla and Meacher dated August 11, 2015 (Exhibit 9 of the Declaration), which was one month after the regional center approval by USCIS, Dziubla stated that:

“Front Sight is the ONLY EB5 project we are handling and of course receives our full and diligent attention. Our goal is most assuredly to have the minimum raise of \$25m (50 investors) subscribed by Thanksgiving.”

This is yet another indication that Dziubla mislead Plaintiff into believing that it was possible to raise that amount of EB-5 financing within 4 months.

8. In an email exchange between Dziubla and Meacher between December 8 and December 16, 2015 (Exhibit 11 of the Declaration), Dziubla attempted to explain the reason why EB5IA had not raised \$25,000,000, while continuing to represent that he would reach that goal soon. He states in his email dated December 16, 2015 that the following is the reason for the delay in raising EB-5 funds:

“As we mentioned in an earlier email, the uncertainty surrounding what Congress was going to do has really sidelined the investors. We have been in contact with our agents in China over night, and they are ecstatic with this news and assure us that with this logjam now cleared, the investors will be signing up. We were, of course, dismayed by the slow sales progress, but now expect the sales pace to increase substantially.”

Contrary to the explanation given by Dziubla for the slow sales of investments in Plaintiff's project, in fact, because of the uncertainty regarding whether the EB-5 program would be renewed, the sales of EB-5 investments reached their highest levels ever in 2015, particularly in China where over 85% of all EB-5 investments were sold at that time. To illustrate this fact, attached as Exhibit B is a report issued by USCIS that states the number of I-526 petitions filed by EB-5 investors each year between 2008 and 2017. As indicated in this chart, the highest number of I-526 petitions filed with USCIS was in 2015, when 14,373 petitions were filed. No other year before or after 2015 had a higher number of petitions filed. If Dziubla had any knowledge of the EB-5 markets, he would have known that 2015 was a year of very high market demand, and his statements that the market had slowed in 2015 were deliberately misleading.

9. In the same email dated December 16, 2015, Dziubla states that:

“With regard to the timeline, we may still be able to achieve the minimum raise of \$25m by January 31 and thereupon begin disbursing the construction loan proceeds to you, but a more realistic date might be February 8.”

This shows that Dziubla was continuing to misrepresent to Plaintiff that there was a possibility that at least \$25,000,000 would be raised by February 8, 2016.

10. In an email exchange between Dziubla and Meacher between January 26 and January 31, 2016 (Exhibit 13 of the Declaration), Dziubla provided a detailed update of the actions he was taking to raise EB-5 financing. One of the methods he states that he was using was to sign up four new agents, including one who is native Chinese living in Washington state and one who is native Chinese living in the Chicago area. He does not state that either of these individuals are

registered securities broker-dealers, and appears to be unaware that it is illegal to hire U.S. persons to solicit EB-5 investors, even outside the U.S., unless they are registered securities broker-dealers. At the time of these emails, the Securities and Exchange Commission ("SEC") had already publicly announced that it was illegal to pay finder's fees to persons for selling EB-5 investments, and the SEC subsequently brought at least 20 enforcement actions against unregistered persons for receiving illegal payments and against two regional centers for paying illegal payments to unregistered persons. It is unknown whether Dziubla paid illegal finder's fees to unregistered persons.

11. In an email exchange between Dziubla and Meacher on March 1, 2016 (Exhibit 16 of the Declaration), 18 months after marketing first began for the EB-5 offering, Meacher states that as of that date, there was only one Indian investor with funds in escrow, two Indian investors who are raising funds to deposit to escrow and one Swiss investor who has decided to invest but has not put any money in escrow. This email lists 28 prior emails from Dziubla to Meacher from August 2015 to February 2016 in which Dziubla had repeatedly indicated that EB5IA was on track to raise the minimum \$25,000,000. All of these assurances appear to have been misrepresentations designed to persuade Plaintiff to continue funding amounts that were purportedly intended to be used for marketing the offering.

12. The Memorandum includes statements regarding the requirements of the EB-5 Program that are partially accurate, and partially inaccurate, indicating a possible lack of understanding of the requirements of the EB-5 Program. Specifically, page 8, line 14 through page 9, line 1 of the Memorandum contains these statements that are partially accurate and partially inaccurate:

"The CLA , as well as the USCIS approved business plan and Confidential Offering Memorandum that comply with both EB-5 legislation and U.S. securities laws and regulations, specifically require that loan proceeds and disbursements be applied toward construction of the Project and the creation of jobs. The CLA also includes a contractually agreed upon construction schedule and construction budget that were specifically approved by the USCIS and must be substantially complied with in order to meet the immigrant investors' obligations under the EB-5 program."

The first sentence quoted states that loan proceeds and disbursements must be applied toward construction of the Project and the creation of jobs. However, it is not accurate to say that loan proceeds must be applied toward construction of the Project. In fact, USCIS policy requires that loan proceeds must be applied toward the Project in general, but loan proceeds can be used for any expense related to the Project, except for interest payments made on the EB-5 loan itself and expenses of the EB-5 lender in connection with the EB-5 offering and the loan. The second sentence also incorrectly states that the construction schedule and construction budget must be substantially complied with in order to meet the immigrant investors' obligations under the EB-5 program. In fact, USCIS policy requires only that the EB-5 investors' capital be used to fund the Project described in the business plan filed with USCIS. There is no requirement that the construction schedule or construction budget be complied with in order for the EB-5 investors to obtain their visa. I have personally been engaged to provide legal assistance on a number of EB-5 projects that had delays in construction and changed in size and scope, which did not result in any EB-5 investors losing their immigration benefits under the EB-5 program. It is quite

common that the construction schedule or construction budget undergo changes in any construction project, including those funded with EB-5 capital. Just as with this Project, delays or changes in construction plans occur when the EB-5 lender fails to raise sufficient capital to complete the project originally contemplated, or within the time contemplated. As long as the EB-5 investors can show that their capital was invested in the project generally described in the business plan filed with USCIS, whether there were changes in the size of the project, project budget or construction timeline, the EB-5 investors will receive their visas so long as the number of jobs created as a result of the work on the project are sufficient for each investor in the project. USCIS does not deny visas to EB-5 investors in projects where there has been a change in construction schedule or construction budget.

13. The Memorandum contains this statement on page 14, lines 1 – 9:

“Front Sight has made multiple changes to the plans and schedule without obtaining written consent from LVD Fund or the USCIS, including, *inter alia*, reducing the size of the "Patriot Pavilion" from 85,000 square feet, as represented to USCIS, to approximately 25,000 30,000 square feet, while also modifying plans to eliminate foundations. (See Exhibit 8, July 2018 Notice of Multiple Defaults). This appears to be a material change from the plans approved by the USCIS, which could jeopardize the EB-5 investors' benefits under the EB-5 Program. Without appointment of a receiver, Lender will not be able to get sufficient information to analyze the extent to which Borrower has deviated from the USCIS approved plans, and certainly will not have any ability to compel Borrower to follow the plans.”

Contrary to the statement made in this paragraph, the reduction in size of any portion of the Project would not jeopardize the EB-5 investors' benefits under the EB-5 Program. As stated above, as long as the general Project description is the same as what is actually constructed with EB-5 proceeds, and the actual expenditures on the Project result in the creation of the number of jobs necessary to support each EB-5 investor in the project, all of the EB-5 investors will receive their immigration benefits. In this case, there are only 13 EB-5 investors in the Project, meaning that it is only necessary to demonstrate that 130 jobs have been created from work on the Project. These are far fewer than the total number of jobs that would have been required if the entire \$75 million in EB-5 proceeds had been raised. Therefore, the reduction in size of the Project will not jeopardize any EB-5 investors in this Project.

14. The Memorandum contains these statements on page 19, lines 4 through 15:

“Due to the nature of the EB-5 Investor Program, Front Sight's material breaches of the CLA have created a substantial risk of irreparable harm to the EB-5 Investors who were the source of the funds for the CLA. Because the EB-5 Program is closely regulated and monitored by the USCIS, a failure to comply with material conditions of the program and material departures from the approved project plans submitted to the USCIS could seriously jeopardize the immigration status of the EB-5 Investors through no fault of their own.

If the Project is not built substantially in accordance with the plan and schedule that was submitted to, and approved by, USCIS as part of the EB-5

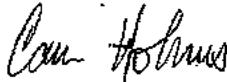
approval process, the EB-5 investors who have funded the construction loan to Borrower may not receive their permanent green cards and will be subject to deportation from the United States — all after having uprooted themselves and their families from their home countries to move to the United States, the land of their dreams.”

This statement repeats the same inaccurate information — that the Project must be built in accordance with its original plan and schedule as submitted to USCIS — as the earlier paragraphs noted in paragraphs 12 and 13 of this Report. In addition, it implies that there is an immediate risk of deportation, which is also inaccurate due to the delays in processing applications that currently exist within the EB-5 Program. The timeline for an EB-5 investor from the date he or she files an I-526 Petition for approval of an EB-5 investment through the date the investor files an I-829 Petition for removal of conditions is approximately 5 years. This means that EB-5 Investors would not need to present evidence of job creation to USCIS for 5 years from the date each EB-5 investor first filed an I-526 Petition. Until that time, the EB-5 Investor is not required to file any information with USCIS. For EB-5 investors from mainland China, the timeline from date of filing an I-526 Petition until the date of filing an I-829 Petition has been estimated at 14 years by Charles Oppenheim, the Chief, Immigrant Visa Control & Reporting, U.S. Department of State (“DOS”) at a recent EB-5 Conference held in April 2018. (See this report of Mr. Oppenheim’s presentation: <https://wolfsdorf.com/eb-5-update-new-state-department-data-released/>.) This means that no EB-5 investors in this Project will be required to submit information on this Project to USCIS for at least the next three years or more for investors from China.

15. The Memorandum repeats the inaccurate statements regarding the risk to EB-5 investors commencing on page 21, line 25 and ending on page 23, line 24, by stating that “timely” job creation is a requirement under the EB-5 Program, and that material modifications in the Project could result in EB-5 investors not receiving their permanent green cards and being deported. As described in detail in paragraphs 12 through 14 of this Report, there are no requirements for “timely” completion of a Project, or that the Project be completed in accordance with its original plan. I personally have been engaged for many EB-5 projects where there have been substantial delays in construction, as well as significant changes in the size and scope of a Project, none of which have resulted in USCIS denying any EB-5 investor their permanent green or deporting any EB-5 investor. I also have personal knowledge of a number of EB-5 Projects, even Projects which have failed and never been completed, in which the EB-5 investors have received their visas.

This Expert Witness Report is based solely upon my review of the exhibits contained in the Declaration of Ignatius Piazza and the Memorandum prepared by Defendant. I expect there will be more relevant evidence as additional discovery is completed.

IN WITNESS WHEREOF, I prepared and signed this Expert Witness Report on February 21, 2019.



CATHERINE DEBONO HOLMES

EXHIBIT A

Catherine DeBono Holmes is chair of JMBM's Investment Capital Law Group and a partner in the firm's Corporate Department, specializing in securities law. She has been an attorney at JMBM for over 35 years and has worked in many aspects of the EB-5 industry over the past 10 years. She has represented more than 200 real estate developers in obtaining financing through the EB-5 immigrant investor visa program for the development of hotels, multi-family and mixed-use developments through the U.S. She has also represented dozens of EB-5 regional centers in New York, California, Oregon, Nevada, and Illinois to raise EB-5 financing for development of hotels, assisted living facilities, multi-family residential buildings and mixed use projects.

Author:

Investment Law Blog at: <https://www.investmentlawblog.com/>. (With many articles concerning EB-5 legal and business issues)

Education:

J.D., Boalt Hall School of Law, University of California, Berkeley, 1977

B.A., University of California, Berkeley, 1974, Phi Beta Kappa

EB-5 Industry Associations and Awards:

Invest in the USA ("IUSA") Trade Organization of EB-5 Regional Centers and Service Providers

Current Member, Editorial Committee
Past Member, Best Practices Committee

EB-5 Securities Roundtable – Organization of most active securities attorneys in EB-5 financing (including many voted as Top 15 EB-5 Securities Attorneys in the U.S. in EB-5 Investors Magazine)

2016, 2017 and 2018 – Top 15 EB-5 Securities Attorneys EB-5 Investors Magazine

EXHIBIT B

USCIS

Number of Form I-526 Petitions Filed 2008-2017



**U.S. Citizenship
and Immigration
Services**

Number of Form I-526 Immigrant Petition by Affiliations
Fiscal Year, Quarter

Period	Petitions by Case Status		
	Petitions Received ¹	Approved ²	Denied ³
Fiscal Year - Total:			
2008	1,258	642	120
2009	1,031	1,265	208
2010	1,953	1,369	165
2011	3,805	1,571	372
2012	6,041	3,677	957
2013	6,346	3,699	943
2014	10,950	5,115	1,266
2015	14,373	8,761	1,055
2016	14,147	7,632	1,735
2017	12,165	11,321	922
Fiscal Year 2018 by Quarter			
Q1, October - December	2,862	2,746	298
Q2, January - March	1,607	3,303	312
Q3, April - June	617	4,012	412
Q4, July - September			
Total	5,086	10,061	1,022

D. Data withheld to protect applicants' privacy.

- Represents zero.

¹ The number of new petitions received and entered into a case-tracking system during the reporting period.

² The number of petitions approved during the reporting period.

³ The number of petitions that were denied, terminated, or withdrawn during the reporting period.

⁴ The number of petitions awaiting a decision as of the end of the reporting period.

NOTE: 1) Some petitions approved or denied may have been received in previous reporting periods.

2) The report reflects the most up-to-date estimate available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, *Performance Reporting Tool*.

EXHIBIT 5

EXHIBIT 5

Traci Bixenmann

From: John Aldrich <jaldrich@johnaldrichlawfirm.com>
Sent: Tuesday, November 13, 2018 2:55 PM
To: 'Kathryn Holbert'
Cc: 'Keith Greer'; traci@johnaldrichlawfirm.com
Subject: RE: Front Sight v. LV Dev. Fund et al 11-14-18 SITE INSPECTION

Ms. Holbert,

Thank you for letting us know. I will advise my client accordingly.

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
7886 West Sahara Avenue
Las Vegas, Nevada 89117
jaldrich@johnaldrichlawfirm.com
Tel (702) 853-5490
Fax (702) 227-1975
Visit us online at <http://www.johnaldrichlawfirm.com>

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From: Kathryn Holbert [mailto:kholbert@farmercase.com]
Sent: Tuesday, November 13, 2018 2:12 PM
To: John Aldrich
Cc: 'Keith Greer'
Subject: Front Sight v. LV Dev. Fund et al 11-14-18 SITE INSPECTION

Mr. Aldrich-

Thank you for taking the time to discuss this matter with me this morning and taking the time to further explain your client's position. I have discussed the matter with my client. He has already cancelled his flight and will not be inspecting the site tomorrow.

Our client would like to inspect the property in early December, 2018. We will get back to you regarding dates and additional details.

Thank you,

Kathryn Holbert, Esq
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
702-579-3900

EXHIBIT 6

EXHIBIT 6

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
912 SOUTHWOOD BOULEVARD, SUITE 101
P.O. BOX 5903
INCLINE VILLAGE, NEVADA 89450

Telephone: (855) 683-6226
Facsimile: (855) 332-1355

21 April 2017

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE
012017

Dear Investors:

ES Capital Partners - senior construction loan: ES Capital Partners has provided a commitment letter to Front Sight (FS) that is acceptable to FS but which requires that origination points and interest rate payments start immediately upon signature. FS does not need the senior construction loan until this autumn after the 25 new ranges have been completed and the architectural plans have been finalized, so FS will sign and begin drawing down on the senior loan at that point.

EB-5 funds - status: We have disbursed a total of \$2,625,000 in EB-5 funds to the Front Sight project since the closing on October 7, 2016. USCIS is now processing I-526s dating from July 28, 2016, so we anticipate that several of our investors will receive their I-526 approval very soon.

Construction Status: FS continues construction on the 25 new training ranges, which cover 60 acres of land and will double the number of ranges. Here is a Dropbox link showing recent pictures of the ongoing construction: <https://www.dropbox.com/sh/p0nflvaegq1ybd1/AAAckKc3BvCjNlMl-3vZElcZIN7e2dl-0>. These pictures show that FS has completed concrete block walls on 16 of the 25 new ranges. They have also completed between-range simulators on each of these 16 ranges. All the shade structure steel has been delivered and is waiting to be installed when the final grading, gravel and railroad ties have been installed.

FS will complete all the block walls, then complete all the grading, then spread all the gravel. On 10 of the ranges FS will be installing concrete walking paths so the students are standing on level and firm concrete while shooting. The final segment will be to put up the railroad ties, targets and sand facing over the backstop dirt berm into which the bullets are trapped.

With these new ranges, FS will be able to train 2,000 students at any one time.

ES is funding the balance of the \$6m construction cost for the ranges out of its cashflow from operations.

Please let us know if you have any questions.

Very truly yours,

Las Vegas Development Fund, LLC


Robert W. Dziubia
President & CEO

EXHIBIT 7

EXHIBIT 7

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
916 SOUTHWOOD BOULEVARD, SUITE 1G
P.O. BOX 5903
INCLINE VILLAGE, NEVADA 89450

Telephone: (844) 689-8028
Facsimile: (858) 332-1795

19 July 2017

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE
Q2 2017

Dear Investors:

US Capital Partners – senior construction loan: As explained in the prior Project Update for Q1 2017, Front Sight ("FS") does not need the senior construction loan until this autumn after the 25 new ranges have been completed and the architectural plans have been finalized, so FS will sign and begin drawing down on the senior loan at that point.

EB-5 funds – status: We have disbursed a total of \$2,625,000 in EB5 funds to the Front Sight project since the closing on October 7, 2016. USCIS is now processing I-526s dating from October 18, 2015, so we anticipate that several of our investors will receive their I-526 approval very soon.

Construction Status: FS has completed about 95% of the construction on the 25 new training ranges. Please use this link to see an aerial video of the construction:

<https://www.dropbox.com/s/nixg55qxdcyp3iw/Drone%20Phase%203%20.mov?dl=0>

The platted site for the new ranges is 60 acres, and FS has used 55 acres – that is a very large area. To help put that into perspective, if you look carefully on the aerial video, some of the construction equipment is visible, and it looks like toys compared to the site. There is an enormous D-9 Caterpillar in the video that looks dwarfed by the construction site. Look also for some of the regular-size pickup trucks - they look like little toy Lego blocks.

FS has moved over 245,000 cubic yards of dirt to create this flat area, and then distributed almost 40,000 tons of Type 2 gravel on this site as preparation for the ranges and the roads. This is almost 2,000 huge semi-trailer truckloads of gravel. FS then installed more than 115,000 CMU concrete blocks for all the walls, reinforced them with rebar and filled them with hundreds of tons of concrete to create ballistic barriers.

All block walls are complete except for one 200-yard rifle range. All the railroad ties and steel has been delivered and is ready to complete the ranges.

FS has spent \$3,443,501 on this construction to-date.

Very truly yours,

Las Vegas Development Fund, LLC

RW Dziubla

Robert W. Dziubla
President & CEO

EXHIBIT 8

EXHIBIT 8

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
644 SOUTH BOWEN BOULEVARD, SUITE 10
P.O. BOX 2003
INCLINE VILLAGE, NEVADA 89451

Telephone: (844) 889-8028
Facsimile: (951) 332-1779

24 October 2017

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE
Q3 2017

Dear Investors:

We are pleased to provide you with Project Update for Q3 2017 (July – September 2017). If you have any questions, please let us know.

Senior Construction Lender- Front Sight has negotiated a \$36 million construction line of credit with the construction companies contracted to build the resort. This will be a 5-year term credit facility that accrues interest at 7% for the difference between any work done by the construction companies and the payments made by Front Sight to those companies. The terms of this agreement and note are completed and this line of credit will be signed by the end of October. There will be no Deed of Trust encumbering the property associated with this credit facility.

Additionally, Front Sight has agreed to take a reduced loan from U.S. Capital Partners in San Francisco of \$21 million. This construction loan will be secured by a first deed of trust on the Front Sight property. Since there is no immediate need for this capital, Front Sight will conclude this agreement later in the fourth quarter.

Construction Status- Front Sight has had delivered all the steel for the shade structures on the 25 new ranges. All railroad ties that support the sand for the shooting berms have been delivered and installed. Hundreds of tons of sand have been installed against the berms on these ranges. The steel shade structures are being erected and many of these new ranges are being used for classes this fall. The new 800-yard rifle range is in use every week. Final grading for the roads on the Phase 3 ranges was completed and thousands of tons of Type 2 gravel has been spread and compacted as a base for future asphalt paving for these roads.

The preliminary grading plans have been submitted to Nye County for grading the 14 acre site that will house the 1300 person classroom, offices, the armory, the pro shop and the retail sales building as well as a grading plan for the parking lot for 1000 cars and RVs. This site plan included all water drainage plans and utilities distribution for this site. Grading for this new project will begin as soon as Nye County Building and Safety approves these plans. This is anticipated by the end of October. This site is clearly shown in the attached flyover animation at 45 to 60 seconds into this video.

Handwritten initials/signature

EB5 Investors in Front Sight Project
24 October 2017
Page 2

EB5 Impact Capital Regional Center, LLC

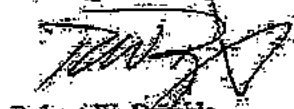
Here is that updated link:

[https://www.dropbox.com/s/pvhw4lr3i7ic48k/3D%20FrontSight%20CID%20w%2009017a.m
p47d1-1](https://www.dropbox.com/s/pvhw4lr3i7ic48k/3D%20FrontSight%20CID%20w%2009017a.m
p47d1-1)

FS has spent \$3,443,501 on this construction to-date.

Very truly yours,

EB5 Impact Capital Regional Center, LLC/
Las Vegas Development Fund, LLC



Robert W. Diabla
President & CEO

• 4 •

EXHIBIT 9

EXHIBIT 9

**EB5 Impact Capital
Regional Center, LLC**

EB5 Impact Capital Regional Center, LLC
916 SOUTHWOOD BOULEVARD, SUITE 1G
P.O. BOX 3005
INCLINE VILLAGE, NEVADA 89450
Telephone: (844) 689-3028
Facsimile: (866) 332-4795

10 April 2018

TO: Our valued EB5 investors in the Front Sight Resort & Vacation Club (the "Project")

PROJECT UPDATE

Q1 2018

Dear Investors:

We are pleased to provide you with this Project Update for Q1 2018 (January – March 2018). If you have any questions, please let us know.

Front Sight ("FS") continues to build out the infrastructure on the firearms training side and has been seeing record numbers of students at the facility. In March, FS had over 1,250 people for a group of classes on just one day. Front Sight had over 8200 student days during March alone.

The grading of the 240,000 cubic yards for the Patriot Pavilion site will be complete in mid-April. This 44-acre site includes a pad for the 2,000 person classroom, offices, armory, retail store, and ammunition bunker. Front Sight also completed a new road connecting the main road to the newly completed Phase 3 shooting ranges. All 25 of these new ranges are in full use. Front Sight now has 50 total ranges which have a capacity of up to 2,000 people per day.

The permits were secured to begin a major concrete drainage channel on the east side of the Patriot Pavilion location to control water from getting into the newly graded 1200 car parking lot. Construction of this project will begin in mid-April.

Rough grading plans for the resort side of Front Sight are almost completed by the civil engineers and are on schedule to be submitted to Nye County, Nevada in the next two weeks. Upon approval, rough grading for the entire resort side will begin.

Here is the link to the same video from the last update, showing some of the construction described above:

EBS Investors in Front Sight Project
10 March 2018
Page 2

EBS Impact Capital Regional Center, LLC

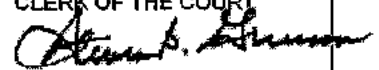
https://www.dropbox.com/s/zpebnycugz836d/Phase%203%20Completion%20%26%20Patriot%20Pavillion%20Construction%20Progress%2001_24_18.mp4?dl=0

Very truly yours,

Las Vegas Development Fund, LLC

RW Dziubla

Robert W. Dziubla
President & CEO



1 MRCVR
C. Keith Greer, ESQ.
2 Admitted *pro hac vice*
keith.greer@greerlaw.biz
3 **GREER AND ASSOCIATES, A PC**
17150 Via Del Campo, Suite 100
4 San Diego, CA 92127
Telephone: (858) 613-6677
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6 ANTHONY T. CASE, ESQ.
Nevada Bar No. 6589
7 tcase@farmercase.com
KATHRYN HOLBERT, ESQ.
8 Nevada Bar No. 10084
kholbert@farmercase.com
9 **FARMER CASE & FEDOR**
2190 E. Pebble Rd., Suite #205
10 Las Vegas, NV 89123
Telephone: (702) 579-3900
11 Facsimile: (702) 739-3001

12 Attorneys for Defendants
LAS VEGAS DEVELOPMENT FUND LLC, EB5
13 IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
14 JON FLEMING and LINDA STANWOOD

15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

18 Plaintiff,

19 vs.

20 LAS VEGAS DEVELOPMENT FUND LLC,
21 et al.,

22 Defendants.

) CASE NO.: A-18-781084-B
) DEPT NO.: 16

) **DEFENDANT LAS VEGAS
) DEVELOPMENT FUND, LLC'S
) OPPOSITION TO PLAINTIFF'S SECOND
) MOTION FOR TEMPORARY
) RESTRAINING ORDER AND
) PRELIMINARY INJUNCTION**

) Hearing Date: March 21, 2019
) Time: 9:30 a.m.

1 Defendant Las Vegas Development Fund, LLC, by and through its attorneys Keith Greer,
2 Esq. and Catherine Holbert, Esq., hereby files this Opposition to Plaintiff's Second Motion for
3 Temporary Restraining Order and Preliminary Injunction. This Motion is based on the pleadings
4 and papers on file, the Memorandum of Points and Authorities attached hereto, the Declarations
5 of Deborah Lowry, Terry Arnett, Sean Flynn, Robert Dziubla, filed herewith, and the Declaration
6 of Robert Dziubla in Support of Las Vegas Development Fund LLC's Motion for Appointment
7 of a Receiver (filed 2/6/19), together with any further evidence or argument presented to the
8 Court at the hearing of this matter.

9 Dated: March 18, 2019

FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Telephone: (702) 579-3900
Facsimile: (702) 739-3001

10
11
12 /s/ Kathryn Holbert
13 Kathryn Holbert, Esq.
Attorney for Defendants

14 LAS VEGAS DEVELOPMENT FUND LLC, a
15 Nevada Limited Liability Company; EB5 IMPACT
16 CAPITAL REGIONAL CENTER, LLC, a Nevada
17 Limited Liability Company; EB5 IMPACT
18 ADVISORS LLC, a Nevada Limited Liability
19 Company; ROBERT W. DZIUBLA, an individual;
20 JON FLEMING; an individual; and LINDA
21 STANWOOD, an individual.
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 18, 2019, Defendant Las Vegas Development Fund, LLC (“LVD Fund” or
4 “Lender”) recorded a Notice of Default against Front Sight Management, LLC (“Front Sight” or
5 “Borrower”), based on Borrower’s breach of multiple material provisions of the Construction
6 Loan Agreement (the “CLA”)¹, including: (1) improper use of loan proceeds, including the
7 apparent misappropriation of more than \$18 million; (2) failure to provide government approved
8 Plans for construction; (3) material delays in construction, in violation of the USCIS approved
9 construction schedule; (4) failure to report material changes in project costs; (5) failure to comply
10 with senior debt financing requirements; (6) failure to provide monthly evidence of project costs;
11 (7) failure to notify Lender of events of default; (8) refusal to allow Lender to inspect books and
12 records; (9) refusal to allow site inspections by Lender’s representatives; (10) failure to provide
13 information necessary for EB-5² reporting as required by the U.S. Citizenship and Immigration
14 Service (“USCIS”); (10) failure to pay default interest; and (11) failure to pay Lender’s legal fees
15 relating to enforcing Borrower to comply with the terms of the CLA. (See Dziubla Decl., Ex. 5,
16 Notice of Default). Moreover, Borrower’s continued failure to proceed with construction,
17 refusing to grant Lender’s representatives access to the property and concealing its books and
18 records, raise serious questions regarding Front Sight’s continued solvency (which is a required
19 loan covenant) and thus its ability to complete the Project.

20 The CLA was made to fund construction of the Front Sight Resort & Vacation Club (“FS
21

22 ¹ “CLA” refers to the Construction Loan Agreement dated October 6, 2016, between Front
23 Sight Management LLC (“Borrower”) and Las Vegas Development Fund LLC (“Lender”). (See
24 Dziubla Decl., Ex. 3).

25 ² The EB-5 Immigrant Investor Program, which is administered by the United States
26 Citizenship and Immigration Services (“USCIS”), provides certain immigrant investors, who can
27 demonstrate that their investments are creating jobs in this country, with a potential avenue to lawful
28 permanent residency in the United States. The program sets aside EB-5 visas for participants who
invest in commercial enterprises approved by USCIS, frequently administered by entities called
“regional centers.” (8 U.S.C.A. § 1153(b)(5)(B); *Securities and Exchange Commission v. Hui Feng*
(C.D. Cal., Aug. 10, 2017, No. 15-CV-09420) 2017 WL 6551107, at 1).

1 Resort”) and an expansion of the facilities and infrastructure of the Front Sight Firearms Training
2 Institute (the “Training Facilities”) located on a 550-acre site in Pahrump, Nevada (the “Project”).
3 All of the loan funds came from foreign citizens participating in the Federal Immigrant Investor
4 Program, known as “EB-5.” Material departures from the U.S. Citizenship and Immigration
5 Service (“USCIS”) approved plans for the Project, including delays in construction, and
6 diversion of funds from the Project to general corporate or personal uses, are all significant
7 breaches of the CLA and also potentially jeopardize the immigration status of the EB-5
8 Investors.³ The CLA, as well as the USCIS approved business plan and Confidential Offering
9 Memorandum that comply with both EB-5 legislation and U.S. securities laws and regulations,
10 specifically require that loan proceeds and disbursements be applied toward construction of the
11 Project and the creation of jobs.

12 The CLA also includes a contractually agreed upon construction schedule and
13 construction budget that were specifically approved by the USCIS and must be substantially
14 complied with in order to meet the immigrant investors’ obligations under the EB-5 Program.
15 Accordingly, Section 6.3 of the CLA (Dziubla Decl., Exhibit 3) and Section 7.2(d) of the Deed of
16 Trust (Dziubla Decl., Exhibit 1) specifically authorize Lender to take over and complete
17 construction of the Project in the event of certain defaults which place timely completion of the
18 project in jeopardy.

19 Based Front Sight’s breach of these contractual provisions in the CLA and Deed of Trust,
20

21 ³According to the US Citizenship and Immigration Services, the Immigrant Investor Program,
22 also known as “EB-5,” was created to stimulate the U.S. economy through job creation and capital
23 investment from immigrant investors by creating a new commercial enterprise or investing in a
24 troubled business. In this case, the immigrant investors are attempting to gain lawful permanent
25 residence for themselves and their families by participating in a Regional Center Pilot Program,
26 which requires them to make a capital investment of \$500,000, since this region is deemed to be a
27 Targeted Employment Area (“TEA”), i.e., “a rural area or an area that has experienced high
28 unemployment of at least 150 percent of the national average.” The new commercial enterprise must
create or preserve 10 full-time jobs for qualifying U.S. workers *within two years* (or under certain
circumstances, within a reasonable time after the two year period) of the immigrant investor’s
admission to the United States as a Conditional Permanent Resident (CPR).”

<https://www.uscis.gov/archive/blog/2010/11/what-is-eb-5-program> 30

1 which constitute conditions of default, and its Principal, Ignatius Piazza unlawfully siphoning
2 CLA loan proceeds for general corporate and personal benefit, LVD Fund's duty to its EB5
3 immigrant investors require that it foreclose on the property and take charge of the development
4 project. If LVD Fund didn't take such action, the EB-5 investors would not only be at risk for
5 losing their investments, but would also be at risk of losing their chance for citizenship through
6 the EB-5 Immigrant Investor Program and possibly being deported.

7 **II. STATEMENT OF FACTS**

8 **A. EB-5 FOREIGN INVESTOR FUNDING**

9 The Construction Loan Agreement dated October 6, 2016 (the "CLA") (as amended)⁴ is
10 the operative agreement for purposes of determining Front Sight's obligations as the "Borrower,"
11 and the remedies available to LVD Fund as the "Lender."⁵ The source of the funds for the CLA
12 is a group of immigrant investors, each of whom was required to invest a minimum of \$500,000
13 and, through the EB-5 Immigrant Investor Program, are anticipated to receive permanent
14 foreign resident status within the United States *assuming compliance with the EB-5 program*
15 *requirements and creation of 10 US jobs per investor.*

16 **B. DEFINITION OF EVENT OF DEFAULT**

17 Pursuant to the terms of §6.1 of the CLA, each of the following, without limitation,
18 constitutes an Event of Default:

19 "(a) Borrower shall default in any payment of principal or interest . . .

20 _____
21 ⁴The Construction Loan Agreement is attached as Dziubla Decl., Exhibit 3 to the Declaration
22 of Robert Dziubla. The First Amendment to the Construction Loan Agreement is attached to the
23 Dziubla Declaration as Dziubla Decl., Exhibit 4. The Second Amendment to the Construction Loan
24 Agreement is attached to the Dziubla Declaration as Dziubla Decl., Exhibit 10.

25 ⁵ The "Project" is described as construction of the Front Sight Resort & Vacation Club
26 ("FSRVC") and an expansion of the facilities and infrastructure of the Front Sight Firearms Training
27 Institute ("FSFTI") (the "Facilities") located in a 550 acre site in Pahrump, Nevada. The Facilities
28 will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an 85,000 square
foot restaurant, retail, classroom and offices building (to be known as the Patriot Pavilion) and
related infrastructure and amenities, all of which will be located at One Front Sight Road, Pahrump,
Nevada 89041.

1 (c) Borrower shall default in the performance or observance of any
2 agreement, covenant or condition required to be performed or
3 observed by Borrower under the terms of this Agreement, or any
4 other Loan Document, other than a default described elsewhere in
5 this Section . . .

6 (j) A default occurs in the performance of Borrower's obligations in
7 any of Section 5.6, 5.7, 5.8, 5.10, 5.13, 5.16, 5.18, 5.19, 5.22, 5.23
8 or 5.24, hereof;

9 (m) Any failure by Borrower to timely deliver the EB-5
10 information, which failure continues more than 5 days following
11 notice of such failure from Lender.”

12 As set forth below, Borrower is in default under each of these provisions.

13 **C. REMEDIES IN EVENT OF DEFAULT**

14 In the event of default, Lender can, *inter alia*: suspend the obligation to make further
15 advances of funds (CLA §6.2(b)); *foreclose on the Deed of Trust (CLA §6.2(e))*; and *“take over*
16 *and complete such construction in accordance with the Plans, with such changes therein as*
17 *Lender may, in its discretion, deem appropriate, all at the risk, cost and expense of Borrower.”*
18 (CLA §6.3).

19 As set forth below, Lender had the right to record the Notice of Default with the Nye
20 County Recorder’s Office and commence the foreclosure process in light of Borrower’s multiple
21 events of default, and take over the project to ensure that construction is completed in a manner
22 consistent with the terms of the CLA and Deed of Trust.

23 **D. BORROWER’S BREACHES AND DEFAULT UNDER THE CLA**

24 **Breach Number 1: Improper Use of Loan Proceeds - CLA § 1.7(e)**

25 Section 1.7(e) of the CLA provides that “Borrower shall use the proceeds of the Loan
26 solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the
27 Project, in accordance with the terms and conditions of this Agreement, as set forth in the Budget
28

1 and the Project documents submitted to, and approved by, USCIS.” However, in its October 30,
2 2018 report to LVD Fund regarding EB-5 compliance, (Dziubla Decl., Exhibit 19), Front Sight
3 revealed that although it has spent all of the \$6,375,000 in loan proceeds since the initial
4 disbursement in October 2016, less than \$2.7 million of the proceeds were actually spent on
5 construction of the EB-5 project. (Dziubla Decl., ¶ 19). Thus, more than \$3.675 million of EB-5
6 loan proceeds have been diverted to fund matters that are not related to completion of the
7 approved EB-5 plan, such as payment of Front Sight’s general overhead expenses, thereby
8 severely prejudicing the EB-5 investors. (Id.)

9 This is significant to the EB5 investors because they do not obtain citizenship unless they
10 generate 10 new jobs though investment of their capital. As discussed in the Declaration of
11 economist Sean Flynn, Ph.D., filed herewith, i.e., the economist whot prepared the economic
12 impact report (“Report”) that was submitted to the USCIS for this project, based on the type of
13 project being built here, there is one job created for every \$58,896 invested in construction costs.
14 (Flynn Decl., ¶5). There are no new jobs allocated to paying-off Front Sight’s preexisting debts.
15 (Id.).

16 That means that in order to create 10 jobs, \$588,960 must be spent on construction. Since
17 the EB5 investors only invest \$500,000 each, *all of their investment* plus an additional \$88,960
18 from the builder or another financing source must be committed to construction of the project for
19 each EB5 investor. Here, Front Sight has applied less than half the EB5 investors’ money toward
20 construction of the project. Accordingly, LVD Fund, who is duty bound to the EB5 investors, is
21 compelled to step in and resolve the problem.

22 It should also be noted that during the past two years, while Front Sight has been using
23 EB-5 loan proceeds to pay its general overhead operating costs, pre-existing debt service, and
24 multi-million shareholder distributions to Ignatius Piazza, Piazza meretriciously asserts that the
25 project has been languishing due to an alleged lack of funds. To wit, Front Sight’s principal,
26 Ignatius Piazza, pulled out \$10,968,803 in 2016, and \$7,505,895 in 2017 (in addition to his
27
28

1 \$250,000 annual salary).⁶ Assuming that his withdrawals for 2018 are comparable, he will have
2 diverted out of Front Sight, for his personal benefit, enough capital to have completed the Front
3 Sight Resort Project well within the time constraints approved by the USCIS for the EB-5
4 Project. By diverting profits generated by Front Sight's operations to himself, and using EB-5
5 investor funds to pay Front Sight's operating expenses and pre-existing loans, Ignatius Piazza is
6 misappropriating loan proceeds and violated terms of the CLA that **forbid related party**
7 **distributions without approval of the Lender.** (See Dziubla Decl., Exhibit 3, CLA §5.8).

8 **Breach Number 2: Failure to Provide Government Approved Plans-CLA §3.2(b)**

9 Section 3.2 (b)(i) of the CLA requires that prior to the Commencement Date⁷ Front Sight
10 provide LVD Fund with "Plans, in the form previously submitted to Lender, as finally approved
11 for construction by the Project Architect and the applicable Governmental Authority." (Dziubla
12 Decl., Ex. 3, pg. 20, §3.2(b)(ii)). This is to include "a schedule listing all Contractors, and
13 primary contracts relating to the Project having a contracts sum in excess of \$250,000 for any
14 such Contractor, and construction contracts, subcontracts and schedules relating to the Project.
15 (*Id.* CLA §3.2(b)(ii)). In a letter dated August 28, 2018, Robert Dziubla, on behalf of LVD Fund,
16 gave notice to Front Sight that it was in default for failure to provide construction plans and the
17 related lists of contractors, licenses, agreements and permits relating to the construction as
18 required under §§3.2(b)(i) and (ii) of the CLA. (Dziubla Decl., ¶15 and Ex.12, pg. 2, "Updated
19 Plans and Construction Schedule").

20 Front Sight remains in default under these provisions of the CLA. (Dziubla Decl. ¶14 and
21

22 ⁶ As confirmed in Front Sight's tax returns, Ignatius Piazza pulled \$10,968,803 out of Front
23 Sight in 2016 (\$4,903,525 as income to him and his two Dynasty Trusts and \$6,065,278 in "loans"
24 from Front Sight). (Dziubla Decl., Ex. 6). Then in 2017, he pulled another \$7,505,895 out for
25 himself and his trusts in 2017. This is in addition to his \$250,000 annual salary (Dziubla Decl., Ex.
26 7).

27 ⁷ The "Commencement Date" for the Project is defined in the First Amendment to Loan
28 Agreement effective July 1, 2017 as "October 6, 2016." (Dziubla Decl., Ex. 2).

1 ¶16; Dziubla Supp Decl. ¶5). This is a material breach of the CLA, and is generally considered
2 to be a “material performance default because the lender is unable to monitor what is being
3 constructed. (Lowry Decl., ¶6.a.). Accordingly, it was appropriate for Lender to record the
4 Notice of Default for this material breach..

5 **Breach Number 3: Failure to Timely Complete Construction - CLA § 5.1**

6 Pursuant to Section 5.1 of the CLA, Front Sight was required to complete construction by
7 the “Completion Date” which is defined as “the date that is no later than thirty-six (36) months
8 from the Commencement Date.” (Dziubla Decl. Ex. 1, CLA pg. 3). Pursuant to the First
9 Amendment to the Loan Agreement, the “Commencement Date” is defined as “October 4, 2016.”
10 (Dziubla Decl. Ex. 2, §1). Therefore, construction of the project must be completed on or before
11 October 4, 2019.

12 As set forth in the Declaration of construction expert Terry Arnett, filed herewith, based
13 on where the Project appears to be at this time, it will take approximately 8 to 9 months to get the
14 construction plans completed and submitted to Nye Count, 3 to 4 months to get approval of the
15 plans and 18 to 24 months to build project. Thus, even assuming Front Sight starts today, the
16 project is 29 to 37 months away from completion. This puts completion of the project being
17 somewhere between August 2021 and April 2022, well past the October 4, 2019 deadline.⁸

18 This is a material event of Default, and is particularly prejudicial to the EB-5 investors
19 who risk losing their EB-5 benefits if the project is not completed in accordance with the terms
20 of the CLA. Immediate action is essential to make sure that the construction timeline is met.
21 Moreover, as noted in the declaration of construction financing expert Deborah Lowry, filed
22 herewith: “In the construction industry, a substantial delay in building the project would
23 generally be considered a material default. . .” (Lowery Decl., 5:11-16). Moreover, “If the

24 _____
25 ⁸ Front Sight argues that because Ms. Debono Holmes states in her unverified, unsworn,
26 written statement that changes in the construction schedule are not always fatal to EB5 investors’
27 quest for citizenship, not completing the Project by the contractually agreed to date is not an event
28 of default. This is simply nonsense, since the events of default are determined by the terms of the
contract that was negotiated and agreed to by the parties, not by what Ms. Holmes of the USCIS do
or say. Interestingly, Ms. Holmes never discusses legal implications of the CLA.

1 project is not built, generally the value of the collateral for the loan is negatively impacted.”
2 (Lowery Decl., 3:23-25). Therefore, a failure to complete the project on time risks both the EB5
3 investors’ access to citizenship and return of their invested capital. Accordingly, recording the
4 Notice of Default is warranted.

5 **Breach Number 4: Material Change of Costs, Scope or Timing of Work - CLA § 5.2**

6 Section 5.2 of the CLA states in pertinent part:

7 Borrower shall deliver to Lender revised, estimated costs of the
8 Project, showing changes in or variations from the original
9 Estimated Construction Cost Statement, as soon as such changes
10 are known to Borrower. Borrower shall deliver to Lender a revised
11 construction schedule, if and when any target date set forth therein
12 has been delayed by twenty (20) consecutive days or more, or when
13 the aggregate of all such delays equals thirty (30) days or more.
14 Borrower shall not make or consent to any change or modification
15 in such Plans, contracts or subcontracts, and no work shall be
16 performed with respect to any such change or modification,
17 without the prior written consent of Lender, if (i) such change or
18 modification would in any material way alter the design or
19 structure of the Project or change the rentable area thereof in any
20 way, or increase or decrease the Project cost by \$250,000 or more
21 (after taking into account cost savings and any insurance proceeds
22 of Borrower received by Lender) for any single change or
23 modification, or (ii) the aggregate amount of all changes and
24 modifications exceeds \$500,000 (after taking into account cost
25 savings and any insurance proceeds of Borrower received by
26 Lender). Borrower shall promptly furnish Lender with a copy of all
27 changes or modifications in the Plans, contracts or subcontracts for
28 the Project prior to any Advance used to fund such change or
modification whether or not Lender's consent to such change or
modification is required hereby.

Front Sight has made multiple changes to the plans and schedule without obtaining
written consent from LVD Fund or the USCIS, including, *inter alia*, reducing the size of the
“Patriot Pavilion” from 85,000 square feet, as represented to USCIS, to approximately 25,000 -
30,000 square feet, while also modifying plans to eliminate foundations. (See Dziubla Decl.,
Exhibit 8, July 30, 2018 Notice of Multiple Defaults).

This appears to be a material change from the plans as defined in the CLA, which could
jeopardize the EB-5 investors’ rights and benefits under the EB-5 Program. As noted by
construction lending expert Deborah Lowry, “ a borrowers failure to obtain the lender’s approval
for material changes to costs, scope and timing is generally considered to be a material

1 performance default in the construction lending industry. (Lowry Decl., ¶6.d.) In light of
2 Borrower's refusal to work with Lender and provide any information at all regarding the Project,
3 Lender's only alternative was to record the Notice of Default and be prepared to proceed with
4 foreclosure if Borrower continues to refuse to cooperate with Lender.

5 **Breach Number 5: Refusal to Comply Regarding Senior Debt - CLA § 5.27**

6 Front Sight was required to obtain Senior Debt from a traditional construction lender,
7 originally by March 31, 2016 (Dziubla Decl. Ex.1, CLA, pg. 11 "Senior Debt" defined), then was
8 given an extension to December 31, 2017 (Dziubla Decl. Ex. 2, CLA 1st Amend., ¶4), and then
9 was given an extension to June 30, 2018 (Dziubla Decl. Ex. 3, CLA 2nd Amend., ¶1). To date,
10 Front Sight has not secured a Senior Debt that meets the requirements of the CLA. (Dziubla Ex.
11 11, NOD). While Front Sight was only required to use its best efforts to obtain the Senior Debt,
12 because Front Sight failed to obtain the Senior Debt, LVD Fund has the right, pursuant to
13 Section 5.27 of the CLA, to impose provisions "similar to those customarily found in
14 construction loans made by institutional lenders." Front Sight is in breach of this provision of the
15 CLA because it has refused to allow LVD Fund to impose such provisions. (Dziubla Decl.,
16 Exhibit 9, at pages 5 and 6).

17 **Breach Number 6: Failure to Provide Monthly Project Costs - CLA § 3.2(a)**

18 "From and after the date of the first Advance of the Loan, Borrower shall deliver to
19 Lender on a monthly basis evidence of the Project costs funded during the preceding month."
20 (CLA § 3.2(a)). Front Sight has not delivered the required Monthly Evidence of Project Costs.
21 (Dziubla Decl. ¶16, Dezuible Supp. Decl. ¶5). The failure to provide monthly project costs is not
22 only a breach of §3.2(a) of the CLA, such a failure is also "a powerful indicator that the
23 project may not be being built." (Lowry Decl., ¶6.b.).

24 Because Front Sight is *not providing any monthly cost reports*, Lender can only assume
25 that there are no costs being incurred. Again, Lender has the right to file the Notice Default under
26 the terms of the CLA, and the threat of foreclosure is the only tool remaining that Lender has to
27 compel Borrower to comply with the terms of the CLA and provide Lender with sufficient

1 information to adequately monitor construction progress, confirm that loan proceeds are being
2 used properly and ensure compliance with the contractually agreed to construction timeline.

3 **Breach Number 7: Failure to Notify of Event of Default - CLA § 5.10**

4 Section 5.10(d) of the CLA requires the Borrower to notify Lender of the occurrence of
5 an Event of Default. "Within five (5) Business Days after the occurrence of any event
6 actually known to Borrower which constitutes a Default or an Event of Default, notice of
7 such occurrence, together with a detailed statement of the steps being taken to cure such
8 event, and the estimated date, if known, on which such action will be taken." Front Sight has
9 failed to notify LVD Fund of either (1) the existence of certain events of default or (2) a detailed
10 statement of the steps being taken to cure the event of default. Front Sight has not cured this
11 default. (Dziubla Decl. ¶16, Dziubla Supp. Decl., ¶5).

12 **Breach Number 8: Refusal to Allow Inspection of Records - CLA § 5.4**

13 Section 5.4 of the CLA provides:

14 **Keeping of Records.** Borrower shall set up and maintain accurate
15 and complete books, accounts and records pertaining to the Project.
16 Borrower will permit representatives of Lender to have reasonable
17 access to and to inspect and copy such books, records and
18 contracts of Borrower and to inspect the Project and to discuss
19 Borrower's affairs, finances and accounts with any of its principal
20 officers, all at such times and as often as may reasonably be
21 requested by Lender.

22 LVD Fund made a demand to inspect the Books and Records by Notice of Default and Letter
23 dated July 30, 2018. (*See* Dziubla Decl., Exhibit 8, pg. 4 ("Pursuant to articles 3.3 and 5.4 of the
24 CLA, we hereby serve you notice that we and our representatives will inspect the Project and
25 your books and records on Monday, August 27 commencing promptly at 9 a.m. We of course
26 know where the project is. Please immediately inform us the location of your corporate books
27 and records."))

28 Front Sight explicitly refused to comply with this obligation under the CLA, as stated in
the letter from Ignatius Piazza dated August 20, 2018. It states

"Borrower is not in breach; thus, there will be no inspections. [Emphasis in
the original]. In the Notice; you have included a "Notice of Inspections" which

1 alleges that "[P]ursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you
2 notice that we and our representatives will inspect the Project and your books and
3 records on Monday, August 27." As set forth above and below herein, we contend
4 that Borrower is not in breach or default of any of its obligations under the Loan
5 Agreement; thus, **Borrower will not authorize any inspections whatsoever by
6 Lender or its representatives of the Project or its books and records on the
7 proposed date of August 27 [2018], or at any other time."**

8 (Dziubla Decl., Exhibit 9, pg. 13, latter emphasis added).

9 However, the right of inspection with advance notice pursuant to §3.3 and §5.4 of the
10 CLA is not contingent on whether there is an Event of Default. Thus, Borrower's refusal to
11 permit the inspection constitutes a separate Event of Default acknowledged in writing by Front
12 Sight.

13 As noted in the Declaration of Deborah Lowry, this type of behavior by a borrower is
14 typically considered a material default, and a warning sign that should cause any construction
15 lender to be concerned. (Lowry Decl., ¶6.f. and ¶ 8). The right of inspection is generally
16 considered important for the construction lender to determine, *inter alia*, appropriate use of loan
17 proceeds, construction progress, and possible impairment of security, which is necessary for the
18 lender to protect its interests. Failure to cooperate will justify proceeding to secure the Lender's
19 interests. *See, Elizabeth Retail Properties, LLC v. KeyBank Nat'l Assoc.*, No. 3:13-CV-02045-
20 SB, 2017 WL 1407662, at *12 (D. Or. Mar. 10, 2017), report and recommendation adopted, No.
21 3:13-CV-2045-SB, 2017 WL 1430611 (D. Or. Apr. 19, 2017), appeal dismissed, No. 17-35425,
22 2017 WL 6262200 (9th Cir. June 22, 2017)("Plaintiffs were far from diligent in providing
23 financial information to KeyBank"); *Capitol Radiology, LLC v. Sandy Spring Bank*, 439 F. App'x
24 222, 226-27 (4th Cir. 2011)(Lender properly declared borrower to be in default and accelerate
25 principal balance where borrower ignored lenders requests for information.")

26 Here, Front Sight, as the borrower, affirmatively refused LVD Fund's requested exercise
27 of the contractual right of inspection of relevant books and records, and thus further breached the

1 terms of the CLA and created yet another Event of Default. Accordingly, it was within LVD
2 Fund's right under the CLA to file the Notice of Default with Nye County, and if necessary,
3 foreclose in the property.

4 **Breach Number 9: Refusal to Allow Inspection of the Project - CLA § 3.3**

5 Section 3.3 of the CLA provides:

6 **Inspections:** Lender and its representatives shall have access to the
7 Project at all reasonable times and shall have the right to enter the
8 Project to conduct such inspections thereof as they shall deem
9 necessary or desirable for the protection of Lender's interests;
10 provided, however, that for so long as no Event of Default shall
11 have occurred and be continuing, Lender shall provide to borrower
12 prior to the notice of not less than seventy-two (72) hours of any
13 such inspections and such inspection shall be subject to the rights
14 of club members (i.e., owners of timeshare interests) and any
15 tenants under any applicable leases."

16 As discussed in the section above, on July 30, 2018, LVD Fund made a demand to Front
17 Sight for permission to inspect the Project, with more than 72 hours notice, even though Events
18 of Default negated the need for advanced notice. (See Dziubla Decl., Exhibit 8, July 30, 2018
19 Notice of Default, at pg. 4: "Pursuant to articles 3.3 and 5.4 of the CLA, we hereby serve you
20 notice that we and our representatives will inspect the Project and your books and records on
21 Monday, August 27 . . .") In response, Front Sight explicitly refused to comply with this
22 obligation under the CLA, stating: "**Borrower will not authorize any inspections whatsoever
23 by Lender or its representatives of the Project or its books and records on the proposed
24 date of August 27 [2018], or at any other time.**" (Dziubla Decl., Exhibit 9, August 20, 2018
25 letter from Ignatius Piazza, pg.13).

26 This is a material breach of the CLA justifying court intervention because the right of
27 inspection is necessary for Lender to determine, *inter alia*, appropriate use of loan proceeds,
28 construction progress, and possible impairment of security, which is necessary for Lender to
protect its interests. See, *Elizabeth Retail Properties, LLC, supra*, 2017 WL 107662, at *12;
Capitol Radiology, LLC, supra, 439 F. App'x at 226-27 (4th Cir. 2011). Not only is the refusal
to allow inspection a specified material breach of the CLA, but "[i]n the construction lending
industry, a borrower's refusal to allow site inspections by a lender and its representatives would

1 generally be considered a material performance default.” (Lowry Decl. ¶6.e.). Accordingly, Front
2 Sight’s refusal to allow inspection of the property is another independent material breach which
3 supports LVD Fund’s right to record the Notice of Default and proceed with foreclosure, if
4 necessary.

5 **Breach Number 10: Failure to Provide EB-5 Information - CLA § 1.7(f)**

6 In order to verify continuing eligibility for participation in the EB-5 Investor Program
7 with the USCIS, Front Sight was required to submit certain EB-5 information on a continuing
8 basis as a condition of the loan. “Borrower shall submit to Lender the EB-5 Information. Failure
9 of Borrower to use the proceeds of the Loan in accordance with the terms and conditions of
10 this Agreement or to provide the EB-5 Information shall be a default pursuant to Section
11 6.1.” (Dziubla Decl., Exhibit 3, §6.1). This obligation was further specified in the First
12 Amendment to the CLA requiring “Borrower [to] provide Lender with copies of major contracts,
13 bank statements, receipts, invoices and cancelled checks or credit card statements or other proof
14 of payment reasonably acceptable to Lender that document that Borrower has invested in the
15 Project at least the amount of money as has been disbursed by Lender to Borrower on or before
16 the First Amendment Effective Date.” (See July 1, 2017 First Amendment to Loan Agreement,
17 Dziubla Decl., Exhibit 4).

18 Front Sight has failed to provide the required EB-5 Information. (Dziubla Decl. ¶ 16;
19 Dziubla Supp. Decl. ¶5). This is another independent material breach of the CLA supporting
20 Lender’s right to record the Notice of Default and proceed with foreclosure, if necessary.

21 **Breach Number 11: Non Payment of Default Interest - CLA § 1.2**

22 Section 1.2 of the CLA provides that if there is an Event of Default, interest shall be
23 charged at the “Default Rate.” The “Default Rate” is defined as “the lesser of five percent (5%)
24 per annum in excess of the Loan Rate or the maximum lawful rate of interest which may be
25 charged.” (Dziubla Decl., Exhibit 3, CLA, pg. 4, “Default Rate Defined.”) Because Front Sight
26 is in default under multiple provisions of the CLA as detailed above, the Default Rate provisions
27 of Section 1.2 were properly triggered. Plaintiff Front Sight has failed and refused to pay the

1 Default Rate despite the demand therefor. (See Dziubla Decl., Exhibit 9, August 20, 2018 Piazza
2 letter, at pg. 17, ¶14; see also, Dziubla Decl., Exhibit 5, Notice of Default). Plaintiff Front Sight
3 is therefore, despite protestations to the contrary, in monetary default as well as non-monetary
4 default under the terms of the CLA.

5 **Breach Number 12: Non Payment of Legal Fees - CLA § 8.2**

6 Section 8.2(a) of the CLA provides that “Borrower agrees to pay and reimburse Lender
7 upon demand for all reasonable expenses paid or incurred by Lender (including reasonable
8 fees and expenses of legal counsel) in connection with the collection and enforcement
9 of the Loan Documents, or any of them.” This obligation was specifically reaffirmed in ¶7 of the
10 First Amendment to the Loan Agreement (Dziubla Decl., Exhibit 4), with respect to failure to
11 provide the EB-5 Information. LVD Fund has incurred legal fees in connection with the Notices
12 of Default and has made demand of payment therefor from Front Sight. To date, Front Sight has
13 refused to pay such fees and this constitutes a monetary default under §6.1(b) of the CLA. LVD
14 Fund has also incurred attorneys’ fees and costs in defense of this action and pursuing it rights
15 and remedies under the CLA and Deed of Trust, for which Front Sight is contractually liable.
16 (Dziubla Decl., Exhibit 5, Notice of Default; Dziubla Supp. Decl., ¶5, Ex. B).

17 **III. ARGUMENT**

18 **A. The Legal Standards for A Preliminary Injunction**

19 “A party seeking the issuance of a preliminary injunction bears the burden of establishing:
20 (1) a likelihood of success on the merits; and (2) a reasonable probability that the nonmoving
21 party’s conduct, if allowed to continue, will cause irreparable harm for which compensatory
22 damage is an inadequate remedy.” *S.O.C., Inc. v. Mirage Casino-Hotel*, 117 Nev. 403, 408
23 (2001); *Int’l Union of Painters & Allied Trades Dist. Council 15 Local 159 v. Great Wash Park,*
24 *LLC*, No. 67453, 2016 WL 4499940, at *3 (Nev. App. Aug. 18, 2016)(reversing an order
25 granting preliminary injunction for failure to show likelihood of success.)

26 “The party seeking injunctive relief carries the burden of proving that there exists a
27 reasonable probability of irreparable harm for which compensatory damages would not provide

1 adequate remedy.” *Swarovski Retail Ventures Ltd. v. JGB Vegas Retail Lessee, LLC*, 416 P.3d
2 208 (Nev. 2018). Critically, Front Sight does NOT ever provide any declaration stating that
3 Front Sight is NOT in default under the CLA.⁹ “[E]ven if damages are an inadequate remedy, the
4 [moving party] must also show a reasonable likelihood of prevailing on the merits before a
5 preliminary injunction can issue.” *Dixon v. Thatcher*, 103 Nev. 414, 416 (1987) (cited by
6 Plaintiff).

7 Moreover, injunctive relief is generally not appropriate where the allegedly irreparable
8 harm was actually contemplated by the contracting parties. See *Swarovski*, 416 P.3d 208 (Nev.
9 2018) (“Injunction to prevent early termination of shopping mall lease was properly denied
10 where ‘[d]amages attributable to such injury can ‘fairly and reasonably be considered as arising
11 naturally’” from a commercial lease, ‘or were reasonably contemplated by both parties at the
12 time they made the contract.’”)

13 Although loss of real property may under certain circumstances constitute irreparable
14 injury, it is the natural consequence of default on a mortgage. Nor, contrary to the implication of
15 Plaintiff’s moving papers, does there need to be a “monetary default” to trigger a proper
16 foreclosure. The court explicitly rejected such a limitation in *Lakeside Inn, Inc. v. Bank of the*
17 *West.*, No. 3:14-CV-00473-RCJ, 2015 WL 1331383, at *4 (D. Nev. Mar. 25, 2015). In that case,
18 the borrower argued that “foreclosure of real property is necessarily improper under Nevada law
19 where there is no monetary default, so long as the debt is fully secured.” *Id.* The Court flatly
20 rejected that argument.

21 _____
22 ⁹The Piazza Declaration in Support of the Temporary Restraining Order is simply a document
23 authentication Declaration and also includes an omnibus statement that Piazza has read the
24 Statement of Facts contained in the Motion. He never specifically declares that Front Sight is NOT
25 in default under the terms of the CLA and Deed of Trust. The closest that Front Sight comes to
26 actually statin that there is no default is in the Statement of Facts at page 13 where they state that no
27 “monetary defaults” exist but only that Front Sight “refutes” the “administrative defaults”.
28 _____

1 The only reason the mortgagee in *Manke* was required to prove that
2 the alleged waste impaired the value of the security is because the
3 covenant at issue was explicitly so limited. *See id.* at 682 (“and
4 further that she will not make any alteration or alterations to said
5 buildings or improvements *which would in any way reduce or*
6 *impair or tend to reduce or impair the value of the property*
7 *transferred hereunder.*” (emphasis added; internal quotation marks
8 omitted)).

9 Indeed, in *Manke* [the case relied on by borrower], the impairment
10 of the value of the collateral was not only a condition required for
11 foreclosure based on the non-monetary default (affirmative or
12 ameliorative waste), **it was incorporated directly into the very**
13 **definition of the event of default.** That is, impairment of the value
14 of the security was an element of the event of default itself. **The**
15 **events of default at issue in the present case are not similarly**
16 **limited or defined** under the TLA, and the Casino points to no
17 authority indicating that such a limitation on events of default is
18 inherent in the law. It has long been the case that in addition to
19 adopting standard covenants by reference, **parties to deeds of**
20 **trust in Nevada may generally enter into whatever covenants**
21 **they wish.** *See Nev.Rev.Stat. § 107.050 (1927).*

22 *Lakeside Inn, Inc. v. Bank of the West*, No. 3:14-CV-00473-RCJ, 2015 WL 1331383, at *4 (D.
23 Nev. Mar. 25, 2015)(emphasis added). Other courts have ruled similarly. *See Elizabeth Retail*
24 *Properties, LLC v. KeyBank Nat'l Assoc.*, No. 3:13-CV-02045-SB, 2017 WL 1407662, at *7 (D.
25 Or. Mar. 10, 2017), report and recommendation adopted, No. 3:13-CV-2045-SB, 2017 WL
26 1430611 (D. Or. Apr. 19, 2017), appeal dismissed, No. 17-35425, 2017 WL 6262200 (9th Cir.
27 June 22, 2017) (“borrower either ‘ignored’ or ‘neglected to respond promptly’ to requests for
28 financial information, failed to notify the bank about the judgment, allowed a writ of garnishment
to issue, failed to report that a guarantor was subject to a lien, and allowed its principal to use
accounts securing the loans for other expenses. *Id.* at 226-27. On these facts, the Fourth Circuit
held that, as a matter of law, the bank had a good faith belief that it was insecure and, therefore,
was entitled to take steps to protect its interests.”); *Nat'l Bank of Arizona v. Thruston*, 218 Ariz.
112, 120–21 (Ct. App. 2008), as amended (Jan. 23, 2008)(“although [borrower] cured the
monetary default, an existing default, the non-monetary default, remained uncured.
Consequently, the Bank was entitled to pursue foreclosure of the deed of trust securing the
note.”); *Geneva Ltd. Partners v. Kemp*, 779 F. Supp. 1237, 1240 (N.D. Cal. 1990)(“The deed of
trust and HUD’s own regulations both provide the Secretary with the authority to foreclose based

1 on a non-monetary
2 default.”)

3 The *Lakeside Inn* court noted that the agreement between the parties, “[t]he copy of the
4 SA attached to the Verified Complaint lists twelve events of default, (*see* TLA § 5, at 11–13,
5 ECF No. 1–3, at 17), only two of which concern nonpayment. Section 5.3 makes it an event of
6 default for the Casino to breach any covenant that does not call for the payment of money if such
7 breach continues for 30 days. . . If the Casino has breached these provisions, there has been an
8 event of default under the TLA, and foreclosure is permitted under the SA.” *Id.*

9 As set forth more fully in the Statement of Facts, the Construction Loan herein, which
10 was negotiated at arms length between sophisticated parties, specifically defined Events of
11 Default in §6.1 to include both monetary and non monetary defaults. The negotiated Rights and
12 Remedies upon the occurrence of an Event of Default are set forth in §6.2 and explicitly include
13 the right to foreclose the Deed of Trust. LVD Fund has summarized the numerous Events of
14 Default under the terms of the CLA in the Statement of Facts, which is supported by the Dziubla
15 Declarations.

16 In addition to the circumstances naturally arising from the construction loan agreement,
17 Plaintiff’s Motion for injunctive relief must fail because Plaintiff has not satisfied its burden of
18 showing irreparable harm, since compensatory damages are not defined as irreparable harm and
19 Defendant has not filed an Notice of Intent Sell. *See Coronet Homes, Inc. v. Mylan*, 84 Nev. 435,
20 437, 442 P.2d 901, 902 (1968) (The moving party bears the burden of providing testimony,
21 exhibits, or documentary evidence to support its request for an injunction.); *Excellence Cmty.*
22 *Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 724 (2015) (“Irreparable harm is an
23 injury ‘for which compensatory damage is an inadequate remedy.’”) Currently, the only effect of
24 the Notice of Default is to start the waiting period that is necessary to file the Notice of Sale. This
25 does not constitute irreparable harm because the property is not part of a pending sale. As such,
26 there is simply no irreparable harm.

1 Further, Plaintiff has not provided any authority that support to support his position
2 because all the cases it sites are easily distinguishable. Plaintiff cites *State, Dept. of Bus. &*
3 *Indus., Fin. Institutions Div. v. Nevada Ass'n Services, Inc.*, 128 Nev. 362, 370, 294 P.3d 1223,
4 1228 (2012), to support the argument that "irreparable harm is established when
5 a company can show that a person committed acts 'without just cause which unreasonably
6 interfere with a business or destroy its credit or profits.'" (Pltf Mtn 26:1-3) However, this case is
7 easily distinguishable and misleadingly quoted. In *State, Dept. of Bus. & Indus., Fin.*
8 *Institutions Div. v. Nevada Ass'n Services, Inc.*, the Court held that removal of a professional
9 license *may*, not shall, cause irreparable harm buy leaving the licensee with no means to profit
10 and damaging his reputation publically. That is simply not the case here, nor has Plaintiff
11 satisfied its burden by providing *any evidence* that it has lost a license or suffered irreparably
12 damage to its reputation. To the contrary, Plaintiff appears to be utilizing this litigation as a
13 source of public promotion to solicit more public sales.

14 Plaintiff cites only one case where the court actually enjoined a foreclosure sale. *Dixon v.*
15 *Thatcher*, 103 Nev. 414, 415 (1987) (Memo at p. 17, 24). Plaintiff cites the *Dixon* case for the
16 unremarkable proposition that under proper circumstances real property is generally considered
17 unique and loss of real property may be irreparable harm. If this were sufficient to obtain an
18 injunction to prevent foreclosure there could never be a foreclosure. Foreclosure is, in fact, the
19 natural and anticipated consequence of a default on a mortgage obligation. Accordingly,
20 Plaintiff's motion must be denied.

21 **B. Plaintiff cannot Demonstrate A Likelihood Of Success Regarding Plaintiff's**
22 **Defaults Under The Construction Loan Agreement to Justify an Injunction**
to Stay Foreclosure

23 As set forth above, Plaintiff has committed multiple material breaches of the CLA, and
24 therefore LVD Fund, as the lender, has the right to declare a default and record the Notice of
25 Default with the County recorder. Plaintiff sets forth a long twisted series of allegations
26 regarding the inability to raise the amount of funds desired by Plaintiff. In all of Plaintiff's

1 disjointed factual recitations, however, Plaintiff barely references the actual negotiated
2 contractual agreements between the parties and certainly never discusses the actual terms
3 contained in those negotiated written agreements.

4 For purposes of the request to enjoin the foreclosure sale, the only facts that matter are the
5 terms of the CLA and whether Plaintiff is in default under those terms. Because Plaintiff did not
6 include the construction loan documents as part of its Motion for TRO/Preliminary Injunction, or
7 anywhere else in Plaintiff's pleadings, Defendant LVD Fund has provided them as attachments to
8 the Dziubla Declaration. The terms of the CLA are discussed more fully in the Statement of
9 Facts section of this Memorandum.

10 First, it must be remembered that the CLA is a detailed legal document setting forth the
11 rights and obligations of the parties negotiated at arms length by sophisticated businessmen. The
12 Construction Loan Agreement explicitly establishes the nature of the relationship. "The
13 relationship between Borrower and Lender created hereby and by the other Loan Documents
14 shall be that of a borrower and a lender only, and in no event shall Lender be deemed to be a
15 partner of, or a joint venturer with, Borrower." (CLA §8.14, Dziubla Dec. Exh 3.) Thus, contrary
16 to Plaintiff's current implications, there is no fiduciary or special relationship between Plaintiff
17 and Defendants. See *Shlesinger v. Bank of Am., N.A.*, No. 2:11-CV-2020-PMP-PAL, 2012 WL
18 2995698, at *7 (D. Nev. July 23, 2012) ("Absent exceptional circumstances, a lender does not
19 owe fiduciary duties to a borrower beyond contractual obligations."); *Giles v. Gen. Motors*
20 *Acceptance Corp.*, 494 F.3d 865 (9th Cir.2007)

21 Therefore, in the current case, the rights and duties of the parties toward each other are
22 defined by the terms of the written contract. As it relates to the foreclosure, it means the
23 negotiated terms of the CLA govern. "It has long been the case that in addition to adopting
24 standard covenants by reference, parties to deeds of trust in Nevada may generally enter into
25 whatever covenants they wish. See Nev.Rev.Stat. § 107.050 (1927)." *Lakeside Inn, Inc. v. Bank*
26 *of the W.*, No. 3:14-CV-00473-RCJ, 2015 WL 1331383, at *4 (D. Nev. Mar. 25, 2015)

1 Plaintiff argues that because it did not receive as large a loan as Plaintiff had hoped for,
2 Plaintiff is not obligated to follow the terms of the written loan agreement. Not only is the
3 argument absurd from a legal standpoint, it is also premised on a false factual premise; i.e., that
4 Defendants had a contractual obligation to raise any specific amount of funding. The
5 Engagement Letter attached as Exhibit 5 to the Piazza Declaration makes it explicitly clear that:
6 “Nothing contained in this Agreement is to be construed as a commitment by EB5IA, its
7 affiliates or its agents to lend to or invest in the contemplated financing. This is not a guarantee
8 that any such financing can be procured by EB5 IA for the Company on terms acceptable to the
9 Company, or a representation or guarantee that EB5 IA will be able to perform successfully the
10 services detailed in this Agreement.” (Piazza Dec. Exh 5 at p. 2.)

11 Moreover, the Engagement Letter contained an integration clause which explicitly
12 “supersedes and cancels any prior communications, understanding and agreements between the
13 parties.” (Piazza Exh 5 at p. 4.) Thus, no matter how much Front Sight alleged about the
14 discussions leading up to signing the written contract, they do not survive the execution of the
15 written agreement.

16 While Front Sight undoubtedly would have preferred it if EB5IA had successfully raised
17 \$75 million, or even \$25 million, the simple fact is there was no contractual obligation to raise
18 that amount or any specified sum. EB5IA was only obligated to “endeavor to obtain
19 commitments) for the contemplated financing . . .”. (Piazza Exh 5 at p. 3) Although Front Sight
20 is disappointed in the results of those endeavors, even Front Sight acknowledges those endeavors
21 were undertaken and resulted in disbursement of loan proceeds in excess of \$6 million to Front
22 Sight. While this amount fell short of the goal it is NOT a breach of any contractual or other
23 obligation.

24 Moreover, on May 12, 2016, Defendant Dziubla laid out the available alternatives for
25 Front Sight going forward, in light of changes in the EB5 environment and difficulty raising the
26 amount of money previously being considered. The alternatives enumerated were:

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- (1) Give the EB5 investors their money back, close the doors and part paths:
- (2) Restructure the capital stack by: (i) eliminating the minimum raise; and (ii) bring in senior debt from a timeshare lender who understands the timeshare business; or
- (3) Sell the EB5 Impact Capital Regional Center and LVD Fund to Front Sight, and allow Front Sight to proceed as it wishes.

Front Sight subsequently advised him that it preferred the second option, i.e., restructure the deal, and the parties proceeded accordingly, resulting in the October 6, 2016 Construction Loan Agreement. (Dziubla Supp. Decl., ¶4, Exhibit A). Therefore, Front Sight entered into the CLA with knowledge of exactly how much money was, and wasn't available. It can not now argue that LVD Fund breached any contract with Front Sight based on the amount of money raised.

Accordingly, Front Sight can not meet its burden in this hearing to show that it is "likely to succeed" on the merits against LVD Fund. The Motion should thus be denied.

IV. CONCLUSION

For the reasons set forth above, Plaintiff can not meet its burden of showing both irreparable harm and likelihood of success on the merits. Therefore its motion for a temporary restraining order and preliminary injunction should be denied.

Dated: March 18, 2018

FARMER CASE & FEDOR
 2190 E. Pebble Rd., Suite #205
 Las Vegas, NV 89123
 Telephone: (702) 579-3900
 Facsimile: (702) 739-3001

/s/ Kathryn Holbert
 Kathryn Holbert, Esq.
 Attorney for Defendants

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

DEFENDANT LAS VEGAS DEVELOPMENT FUND, LLCS OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

to be served on the following individuals/entities, in the following manner,

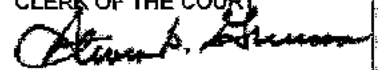
John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

By:

- **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).
- **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.

Dated: March 18, 2019

/s/ Kathryn Holbert
An Employee of FARMER CASE & FEDOR



1 **DECL**
2 ANTHONY T. CASE, ESQ.
3 Nevada Bar No. 6589
4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
6 Nevada Bar No. 10084
7 kholtbert@farmercase.com
8 **FARMER CASE & FEDOR**
9 2190 E. Pebble Rd., Suite #205
10 Las Vegas, NV 89123
11 Telephone: (702) 579-3900
12 Facsimile: (702) 739-3001

13 C. KEITH GREER, ESQ.
14 keith.greer@greerlaw.biz
15 Cal. Bar No. 135537 [*Pro Hac Vice*]
16 **GREER & ASSOCIATES, A.P.C.**
17 17150 Via Del Campo, Suite #100
18 San Diego, California 92128
19 Telephone: (858) 613-6677
20 Facsimile : (858) 613-6680

21 Attorneys for Defendants
22 LAS VEGAS DEVELOPMENT FUND LLC, EB5
23 IMPACT CAPITAL REGIONAL CENTER LLC,
24 EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
25 JON FLEMING and LINDA STANWOOD

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

28 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

vs.

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company, et al.,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**SUPPLEMENTAL DECLARATION OF
DEFENDANT ROBERT DZIUBLA IN
SUPPORT OF DEFENDANT LAS
VEGAS DEVELOPMENT FUND,
LLC'S OPPOSITION TO PLAINTIFF'S
SECOND MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Date: March 21, 2019
Time: 9:30 a.m.

1 STATE OF CALIFORNIA)

2) ss:

3 COUNTY OF SAN DIEGO)

4

5 Affiant, being duly sworn, deposes and states the following:

6 1. I, Robert W. Dziubla, am an individual and a resident of the State of California,
7 County of San Diego.

8 2. I am a Defendant in this action and am an officer of Defendant Las Vegas
9 Development Fund, LLC ("LVD Fund"), and of the now dissolved Defendant EB5 Impact
10 Advisors, LLC ("EB5IA").

11 3. I make this Declaration of my personal knowledge, and the matters stated herein
12 are true and correct. If called as a witness herein, I could, and would, testify competently thereto.

13 4. Attached hereto as Exhibit "A" is a true and correct copy of a string of emails
14 dated from May 10, 2016 to May 20, 2016, between me (rdziubla@eb5impactcapital.com), and
15 Front Sight representatives Ignatius Piazza (ignatius@frontsight.com) and Mike Meacher
16 (meacher@frontsight.com). In the May 12, 2016 email, I laid out the available alternatives for
17 Front Sight going forward, in light of changes in the EB5 environment and difficulty raising the
18 amount of money previously being considered. The alternatives enumerated were:

19 (1) Give the EB5 investors their money back, close the doors and part paths;

20 (2) Restructure the capital stack by: (i) eliminating the minimum raise; and
21 (ii) bring in senior debt from a timeshare lender who understands the
22 timeshare business; or

23 (3) Sell the EB5 Impact Capital Regional Center and LVD Fund to Front Sight,
24 and allow Front Sight to proceed as it wishes.

25 Front Sight subsequently advised me that it preferred the second option, i.e., restructure the deal,
26 and the parties proceeded accordingly, resulting in the October 6, 2016 Construction Loan


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1 Agreement.

2 5. Attached hereto as Exhibit B is a true and correct copy of the letter I sent to Front
3 Sight on March 5, 2019, entitled Demand to Cure Defaults. As of today, Front Sight has not
4 cured any of the events of default identified in this demand letter, or any the same events of
5 default identified in the multiple previous notices sent to Front Sight, all of which are attached to
6 my prior Declaration in Support of Las Vegas Funding LLC's Motion for Appointment of a
7 Receiver, dated February 4, 2019. (See Notice of Default filed in Nye County on 1/18/19 (Exhibit
8 5); 7/30/18 Notice of Multiple Defaults (Exhibit 8); 8/24/18 Notice of Multiple Defaults
9 (Exhibit 11); 8/28/18 Notice of Multiple Defaults (Exhibit 12); 10/24/18 Demand to Cure (Exhibit
10 13)).

11 I declare under penalty of perjury under the laws of the State of Nevada and the State of
12 California that the foregoing is true and correct, and that this Declaration was executed on March
13 18, 2019, at Escondido California.

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15 Robert Dziubia

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCF 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

SUPPLEMENTAL DECLARATION OF DEFENDANT ROBERT DZIUBLA IN SUPPORT OF DEFENDANT LAS VEGAS DEVELOPMENT FUND, LLC'S OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

By:

ELECTRONIC SERVICE: Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

FACSIMILE: I caused said document(s) to be transmitted by facsimile transmission. The sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

Dated: March 18, 2019

/s/ Kathryn Holbert
An Employee of FARMER CASE & FEDOR

EXHIBIT A

Keith Greer

From: Robert Dziubla <rdziubla@eb5impactcapital.com>
Sent: Monday, March 18, 2019 7:11 PM
To: Keith Greer
Subject: FW: EB-5 The next steps

From: Mike Meacher <meacher@frontsight.com>
Sent: Friday, May 20, 2016 1:22 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Jon Fleming' <jfleming@EB5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: RE: EB-5 The next steps

Bob and Jon,

John Small was able to convince Hank Cairo to meet with Naish and me on June 2nd. We hope to have a tentative list of his lending prospects prior to that date.

You guys want to get back to marketing immediately and Front Sight wants some immediate capital to develop the project so our interest are the same to get the changes completed quickly and the current investor capital funded to Front Sight. Our goals are in sync. Front Sight confirms the preliminary budget you reference below and we will pay those charges promptly upon disbursement of the \$375,000 from the existing 4-6 investors into the Front Sight account.

Best regards to Travis on his graduation.

Mike
Meacher@frontsight.com
702-425-6550

From: Robert Dziubla [<mailto:rdziubla@eb5impactcapital.com>]
Sent: Friday, May 20, 2016 11:05 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB-5 The next steps

Dear Mike,

We too are pleased with the progress that was made, and we are working on the steps as outlined so that we can get the EB5 money disbursed to you.

I have confirmed with Matt that we can amend the USCIS filings as discussed (but we do NOT need USCIS approval for any of the changes) – namely, to eliminate the minimum raise and to allow for us to bring in bridge / senior financing – and I will have our corporate / securities lawyer amend the PPM, subscription agreement and other deal documents to make the same changes. As I mentioned on Wednesday, he has already advised that we will need to notify the investors already in escrow of these changes and allow them the right to rescind / withdraw if they wish. We don't yet know how long that notice period will be, and that question is pending with our lawyer.

As discussed, we think it unlikely that any of the investors will withdraw, because then they'd need to find another project and move to the back of the line.

We have confirmed with Matt that once the documents have been amended and we have the EB5 loan agreement in place, then (a) we can disburse 75% of the current EB5 funds to Front Sight and that FS can apply those funds to reimburse itself for the grading and other project-related costs such as mortgage pay-down already incurred, and (b) on a go-forward basis, we would disburse the EB5 funds to FS as those funds come into escrow, and FS would provide us with construction and related receipts at the end of the project sufficient to cover the amount of EB5 money disbursed. None of us need to track EXACTLY that the EB5 funds went into a specific expenditure so long as there are sufficient project receipts that (i) cover the amount of EB5 funds disbursed to FS, and (ii) those receipts are tied to the project development outlined in the USCIS-approved business plan.

Please confirm that Front Sight approves the preliminary budget outlined in my email of May 12 as supplemented by my email of May 13. We would very much like to get Ethan back on board immediately, so request that FS fund the \$8k for May immediately.

Have you heard from John Small / Hank Cairo about Hank coming out to visit with you?

As we work through this new process, please do keep in mind that we will need to ensure that there is appropriate language in the timeshare financing loan agreement referencing the EB5 loan and that proceeds from the EB5 loan may be used to repay the timeshare financing. That way we will have complied with USCIS rules regarding bridge / interim financing that is used while the EB5 raise is being completed.

Thanks,

Bob

From: Mike Meacher [mailto:meacher@frontsight.com]

Sent: Friday, May 20, 2016 10:11 AM

To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <jfleming@EB5ImpactCapital.com>

Subject: EB-5 The next steps

Bob,

I was pleased at the productive end to our conversation in Oakland on Wednesday. Sorry Jon had to leave before we got to that.

As a followup to that please get the following things accomplished:

1. Get Matt to amend the paperwork as needed with USCIS to reflect our discussion
2. Next week, get Mike Brand, Letvia and Scott to amend the construction loan documents to reflect the new deal of Front Sight taking the money as it comes in with construction receipts provided to Bob for EB-5 investors when project is completed.
3. Arrange for Bob to release the funds for the 4-6 existing investors to Front Sight the following week.

Thanks,

Mike

Meacher@frontsight.com

702-425-6550

Total Control Panel

[Login](#)

To: keith.greer@greerlaw.biz [Remove this sender from my allow list](#)
From: rdziubla@eb5impactcapital.com

You received this message because the sender is on your allow list.

EXHIBIT B

**Las Vegas Development
Fund LLC**

Las Vegas Development Fund, LLC
916 SOUTHWOOD BOULEVARD, SUITE 10
P.O. BOX 3903
INCLINE VILLAGE, NEVADA 89450
Telephone: (844) 899-8028
Facsimile: (559) 332-0795

March 11, 2019

Via Email

Mr. Ignatius Piazza
Manager
Front Sight Management LLC
1 Front Sight Road
Pahrump, NV 89061

With an email copy to:

Scott A. Preston, Esq.
Preston Arza LLP
301 North Palm Canyon Drive
Suite 103-102
Palm Springs, CA 92262-5672

Re: Demand to Cure Defaults

Dear Mr. Piazza:

As the construction lender, we hereby make demand upon you as the Borrower under the Construction Loan Agreement dated October 6, 2016, as amended, plus related documents (collectively, "CLA"), as follows:

1. Immediately Provide Construction Plans.

- a. The definitions section of the CLA defines "Plans" as follows: "**Plans**" mean the final **construction plans** for the Improvements, including drawings, specifications, details and manuals, **as approved by the applicable Governmental Authority** responsible for reviewing and approving construction plans for compliance with applicable Governmental Requirements." (Emphasis added.)
- b. Article 3.2(b) of the CLA states in relevant part: "Prior to the Commencement Date, Borrower shall, in addition to satisfying all other conditions for an Advance in this Section, provide to Lender ... (ii) Plans, in the form previously submitted



to Lender, as finally approved for construction by the Project Architect and the applicable Governmental Authority.”

- c. The Commencement Date was October 4, 2016. You have never submitted the construction Plans to us, and we again demand that you immediately do so.

2. Correct Material Delays in Construction. There are multiple material delays in your construction of the Project, e.g.:

- a. On June 13, 2018, you provided us with a construction timeline for the Project. That construction timeline stated that construction of the Patriot Pavilion would start on August 20, 2018, and take 80 days to complete, i.e. November 8, 2018 (line 58). You have failed to commence, much less complete, building the Patriot Pavilion, which is a material delay.
- b. The same construction timeline states that construction of the timeshare villas would commence on November 5, 2018 (line 101). You have failed to commence, much less complete, construction of the villas, which is a material delay.
- c. We demand that you immediately commence remediation of these defaults.

3. Immediately Correct and Update Changes to Construction Timeline.

- a. Article 5.2 of the CLA states in relevant part: “Borrower shall deliver to Lender a revised construction schedule, if and when any target date set forth therein has been delayed by twenty (20) consecutive days or more, or when the aggregate of all such delays equals thirty (30) days or more.”
- b. You have failed to deliver to us a revised construction schedule. We demand that you immediately remedy the same.

4. Immediately Correct Material Changes to the Project Scope

- a. Article 5.2 of the CLA states in relevant part: “Borrower shall not make or consent to any change or modification in such Plans, contracts or subcontracts, and no work shall be performed with respect to any such change or modification, without the prior written consent of Lender, if (i) such change or modification would in any material way alter the design or structure of the Project or change the rentable area thereof in any way, or increase or decrease the Project cost by \$250,000 or more (after taking into account cost savings and any insurance proceeds of Borrower received by Lender) for any single change or modification, or (ii) the aggregate amount of all changes and modifications exceeds \$500,000 (after taking into account cost savings and any insurance proceeds of Borrower received by Lender).”
- b. The USCIS-approved *business plan* for the Project (as compared to the construction Plans required under the CLA, which we have demanded above) defines Patriot Pavilion as “85,000 square foot Patriot Pavilion, a large central facility that will accommodate classrooms for up to 2,000 students, more than double the current capacity. Within this facility the central Administration of the complex will be housed, along with large retail shops that specialize in

[Handwritten signature]

merchandise related to the special interests of the students. In addition a food court is planned in the central core of the facility to meet the demand for breakfast (for those early arrivals) and lunch for the entire complement of students.”

- c. In oral conversations, Mr. Meacher stated that the Patriot Pavilion would be reduced to 25,000 – 30,000 square feet, which you now dispute, but even in your recent Opposition to Appointment of Receiver, you admit that “The size of the *classroom* in the Patriot Pavilion has been reduced...” (Original emphasis). Lender has never approved, nor accurately been informed of, these material changes to the Patriot Pavilion.
- d. We demand that you immediately provide us with the above construction Plans showing all of your proposed changes to the Patriot Pavilion and all other elements of the Project, including any cost changes of \$250,000 or more, for our approval.

5. Immediately Provide Monthly Project Costs

- a. Article 3.2(a) of the CLA states in relevant part: “From and after the Commencement Date, Borrower shall deliver to Lender on a monthly basis evidence of the Project costs funded during the preceding month (whether from Loan proceeds or otherwise).”
- b. You have never delivered to us this monthly evidence of Project costs, and we demand that you immediately do so for every month from October 2016 through today.

6. Immediately Allow Site Inspection and Inspection of Books and Records

- a. Article 5.4 of the CLA states: “Borrower shall set up and maintain accurate and complete books, accounts and records pertaining to the Project. Borrower will permit representatives of Lender to have reasonable access to and to inspect and copy such books, records and contracts of Borrower and to inspect the Project and to discuss Borrower’s affairs, finances and accounts with any of its principal officers, all at such times and as often as may reasonably be requested by Lender.”
- b. We again demand that you immediately allow us and our representatives to have immediate access to the Project site and to discuss your affairs, finances and accounts with all your principal officers.
- c. We again demand that you immediately allow us and our representatives to have immediate access to and to inspect and copy your books, records and contracts as per the CLA.

7. Immediately Provide EB-5 Documentation

- a. Article 5.10(e) of the CLA states in relevant part: “Without limiting the foregoing, information to be provided to Lender by Borrower prior to October 31 of each year, shall specifically include:

RWD

Mr. Ignatius Piazza
Manager, Front Sight
March 11, 2019
Page 4

Las Vegas Development Fund LLC

- (i) Annual report of expenditures on the project, showing amounts at least equal to the amount of money Lender has disbursed to Borrower have been spent on the Project; this will include appropriate backup documentation, such as copies of major invoices & payment receipts, major contracts, bank statements, etc.”
- b. Your EB-5 prove-up letter of October 30, 2018 (“Prove-Up Letter”), fails to include any bank statements, nor have we ever received from you bank statements that confirm the Project related expenditures you claim.
- c. We demand that you immediately provide us with all bank statements confirming the EB-5 expenditures that you claim to have made since October 6, 2018.

8. Immediately Begin Funding Hard Construction Costs of the Project

- a. Article 1.7 of the CLA is entitled “EB-5 Program Requirements,” and subparagraph (c) states: “Borrower shall use the proceeds of the Loan solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the Project, in accordance with the terms and conditions of this Agreement, as set forth in the Budget and the Project documents submitted to, and approved by, USCIS.”
- b. Page 6 of the “The Economic and Jobs-Creation Impacts of the Exemplar Front Sight Firearms Training Institute Expansion Project in the Applicant EB5 Impact Capital Regional Center LLC” (Economic Impact Analysis,” or “EIA”) that was submitted to and approved by USCIS specifically states as follows:

“The exemplar Project will generate EB-5 eligible jobs in four ways:

1. *The expenditure of \$49.1 million in hard construction costs*
2. *The creation of 408 new full-time jobs at the Front Sight Firearms Training Institute*
3. *The creation of 145 new full-time jobs at the Front Sight Resort & Vacation Club.*
4. *Increased tourism spending in the local economy resulting from the increase in student attendance that will be facilitated by the Project’s expansion of the Front Sight Firearms Training Institute’s teaching capacity.”*

- c. Your Prove-Up Letter confirms that you have spent less than \$2.7 Million on hard construction costs even though we have lent you \$6,375,000 of EB-5 loan proceeds.
- d. At the same time, your federal tax returns show that you have paid to Ignatius Piazza and his dynasty trusts almost \$17 Million during 2016 and 2017.
- e. You have misapplied the loan proceeds instead of funding hard construction costs that create the required jobs, which is the fundamental pillar of this entire transaction.

TWD

- f. We demand that you immediately begin funding hard construction costs to the Project in accordance with the construction Plans that we have demanded above.

9. Senior Debt.

- a. Article 5.27 of the CLA states: "Borrower will use its best efforts to obtain Senior Debt as defined herein. Borrower and Lender expect that the Senior Debt documents will impose provisions concerning disbursement procedures, mechanisms to protect against mechanics liens and related matters as are customarily found in construction loans made by institutional lenders, which procedures also tend to help protect Lender. If Borrower has not obtained such Senior Debt by March 31, 2017 [extended to June 30, 2018], Borrower agrees that Lender may impose provisions concerning such matters similar to those customarily found in construction loans made by institutional lenders. In addition, Borrower will execute and deliver, upon request by Lender, such assignments of contracts relating to the Project as Lender shall request, including, but not limited to, the Management Agreement, documents concerning the construction of the Project and any leases."
- b. The definitions section of the CLA states:

"Senior Debt" means the additional loan that will be sought by Borrower, and which Borrower will use its best efforts to obtain, from a traditional financial institution specializing in financing projects such as the Project. Although the Senior Debt would be funded subsequent to this Loan, Lender agrees to subordinate its Deed of Trust to the new Senior Debt, so long as the Borrower is not in default and all of the following conditions are met;

- (a) The loan shall be evidenced by a promissory note not in excess of Fifty Million and no/100 United States Dollars (US\$50,000,000.00).
- (b) The loan proceeds shall be disbursed in payment, or in reimbursement for payment, of the construction and development of the Project.
- (c) The loan shall contain provisions concerning disbursement procedures, mechanisms to protect against mechanics liens and related matters as are customarily found in construction loans made by institutional lenders and Lender shall be provided with copies of such documents showing the progress of construction and the disbursement of funds as are provided to senior lender.

Borrower shall obtain such Senior debt no later than December 31, 2016." *FW!*

Mr. Ignatius Piazza
Manager, Front Sight
March 11, 2019
Page 6

Las Vegas Development Fund LLC

- c. You have claimed that the "LOAN AGREEMENT (Construction Line of Credit)" (the "LOC") between yourself as borrower and, on the other hand as lender, Top Rank Builders, Inc; Morales Construction, Inc.; and All American Concrete and Masonry, Inc., dated October 31, 2017, is in fact the Senior Debt.
- d. Even the most cursory look at the lenders' names confirms that that none of them is "a traditional financial institution specializing in financing projects such as the Project," and the LOC has none of the "provisions concerning disbursement procedures, mechanisms to protect against mechanics' liens and related matters as are customarily found in construction loans made by institutional lenders."
- e. We again demand that you immediately allow modification of the CLA to "impose provisions concerning such matters similar to those customarily found in construction loans made by institutional lenders," and we further demand an immediate assignment of all agreements concerning the construction of the Project, including but not limited to the LOC.

10. Immediately Pay Default Interest, Attorneys' Fees and Costs.

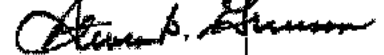
- a. Article 3.2(a) of the CLA states: "Borrower agrees to pay and reimburse Lender upon demand for all reasonable expenses paid or incurred by Lender (including reasonable fees and expenses of legal counsel) in connection with the collection and enforcement of the Loan Documents, or any of them."
- b. Article 4.7 of the Deed of Trust states: "Grantor shall pay or reimburse Lender and Trustee for all reasonable attorneys' fees, costs and expenses incurred by Lender or the Trustee in any action, legal proceeding or dispute of any kind which affects the Loan, the interest created herein, the Property or the Collateral, including but not limited to, any foreclosure of this Deed of Trust, enforcement of payment of the Note and other secured indebtedness, any condemnation action involving the Property, any bankruptcy proceeding or any action to protect the security hereof or to enforce Lender's rights and remedies hereunder. Any such amounts paid by Lender or Trustee shall be due and payable upon demand and shall become part of the secured indebtedness."
- c. We demand that you immediately pay all outstanding amounts as shown on the "Loan Statement & Invoice" dated February 20, 2019, sent to you by our loan servicer NES Financial, which amounts currently exceed \$300,000.

Sincerely,



Robert W. Dziubla
President & CEO

cc: C. Keith Greer, Esq.



1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 **Plaintiff,**

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
14 IMPACT CAPITAL REGIONAL CENTER
15 LLC, a Nevada Limited Liability Company;
16 EB5 IMPACT ADVISORS LLC, a Nevada
17 Limited Liability Company; ROBERT W.
18 DZIUBLA, individually and as President and
19 CEO of LAS VEGAS DEVELOPMENT
20 FUND LLC and EB5 IMPACT ADVISORS
21 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
22 FUND LLC and EB5 IMPACT ADVISORS
23 LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
24 DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Plaintiff's Motion to Seal and or Redact Pleadings and Exhibits to Protect Confidential Information and Motion to Amend Paragraph 2.3 of Protective Order was entered by the Court in the above-captioned action on the 18th day of March, 2019, a true and correct copy of which is attached hereto.

DATED this 19th day of March, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, NV 89117
Tel (702) 853-5490
Fax (702) 226-1975
Attorneys for Plaintiff

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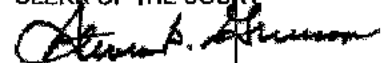
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of March, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1 **ORDER**
2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 **ALDRICH LAW FIRM, LTD.**
7 7866 West Sahara Avenue
8 Las Vegas, NV 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
10 Nevada Limited Liability Company,

11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
14 Nevada Limited Liability Company; EB5
15 IMPACT CAPITAL REGIONAL CENTER
16 LLC, a Nevada Limited Liability Company;
17 EB5 IMPACT ADVISORS LLC, a Nevada
18 Limited Liability Company; ROBERT W.
19 DZIUBLA, individually and as President and
20 CEO of LAS VEGAS DEVELOPMENT
21 FUND LLC and EB5 IMPACT ADVISORS
22 LLC; JON FLEMING, individually and as an
23 agent of LAS VEGAS DEVELOPMENT
24 FUND LLC and EB5 IMPACT ADVISORS
25 LLC; LINDA STANWOOD, individually and
26 as Senior Vice President of LAS VEGAS
27 DEVELOPMENT FUND LLC and EB5
28 IMPACT ADVISORS LLC; DOES 1-
29 10, inclusive; and ROE CORPORATIONS 1-
30 10, inclusive,

31 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO SEAL AND/OR
REDACT PLEADINGS AND
EXHIBITS TO PROTECT
CONFIDENTIAL INFORMATION
AND MOTION TO AMEND
PARAGRAPH 2.3 OF PROTECTIVE
ORDER**

03-11-19PG:49 RCVD

1 This matter having come before the Court, on February 20, 2019 at 9:00 a.m. on
2 Plaintiff's Motion to Seal and/or Redact Pleadings and Exhibits to Protect Confidential
3 Information and Motion to Amend Paragraph 2.3 of Protective Order, John P. Aldrich, Esq.
4 appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing
5 on behalf of Defendants, the Court having reviewed the pleadings on file herein, having heard
6 oral argument by the parties, and for good cause appearing therefore,

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Seal and/or Redact Pleadings
8 and Exhibits to Protect Confidential Information and Motion to Amend Paragraph 2.3 of
9 Protective Order is GRANTED IN PART and DENIED IN PART.

10 **IT IS FURTHER ORDERED** that with regard to portions of Plaintiff's tax returns that
11 were filed in the court record, the motion is granted and the Clerk of Court is directed to seal
12 Exhibits 6 and 7 to the Declaration of Robert Dziubla filed on February 6, 2019.

13 **IT IS FURTHER ORDERED** that with regard to the redactions of the portions of the
14 pleadings requested by Plaintiff, the motion to redact is denied.

15 **IT IS FURTHER ORDERED** that with regard to the motion to revise and amend
16 paragraph 2.3 of the Protective Order, that motion is denied as well. However, in the event any
17 party wishes to file any financial documents of any party, before filing any such documents, the

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1 parties are to meet and confer regarding the intended submission, and if the parties are unable to
2 work out a resolution, the Court will hold a conference call with the parties and resolve the issue.

3 **IT IS SO ORDERED.**

4 DATED this 12 day of March, 2019.

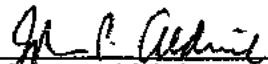
5 
6 **DISTRICT COURT JUDGE** *ep*

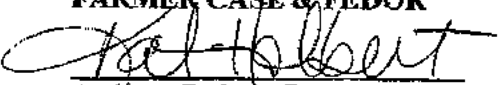
7 Respectfully submitted by:


Approved as to form and content:

8 **ALDRICH LAW FIRM, LTD.**

FARMER CASE & FEDOR

9 
10 John P. Aldrich, Esq.
Nevada Bar No. 6877
11 Catherine Hernandez, Esq.
Nevada Bar No. 8410
12 7866 West Sahara Avenue
Las Vegas, Nevada 89117
13 Tel: (702) 853-5490
Fax: (702) 227-1975
14 *Attorneys for Plaintiff*


15 Anthony T. Case, Esq.
Nevada Bar No. 6589
16 Kathryn Holbert, Esq.
Nevada Bar No. 10084
17 2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
18 Tel: (702) 579-3900
19 Fax: (702) 739-3001
20 *Attorneys for Defendants*



1 **ERR**
2 ANTHONY T. CASE, ESQ.
3 Nevada Bar No. 6589
4 tcase@farmercase.com
5 KATHRYN HOLBERT, ESQ.
6 Nevada Bar No. 10084
7 kholbert@farmercase.com
8 **FARMER CASE & FEDOR**
9 2190 E. Pebble Rd., Suite #205
10 Las Vegas, NV 89123
11 Telephone: (702) 579-3900
12 Facsimile: (702) 739-3001

13 C. KEITH GREER, ESQ.
14 Cal. Bar. No. 135537 (*Pro Hac Vice*)
15 Keith.greer@greerlaw.biz
16 **GREER & ASSOCIATES, A.P.C.**
17 17150 Via Del Campo, Suite #100
18 San Diego, California 92128
19 Telephone: (858) 613-6677
20 Facsimile: (858) 613-6680

21 Attorneys for Defendants
22 LAS VEGAS DEVELOPMENT FUND LLC,
23 EB5 IMPACT CAPITAL REGIONAL CENTER, LLC,
24 EB6 IMPACT ADVISORS, LLC, ROBERT W. DZIUBLA,
25 JON FLEMING and LINDA STANWOOD

26 **EIGHTH JUDICIAL DISTRICT COURT**
27 **CLARK COUNTY, STATE OF NEVADA**

28 FRONT SIGHT MANAGEMENT, LLC., a
Nevada Limited Liability Company,

Plaintiff,

v.

LAS VEGAS DEVELOPMENT FUND LLC,
a Nevada Limited Liability Company, EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Company, EB5
IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS

CASE NO.: A-18-781084-B
DEPT NO.: XVI

**ERRATA TO SUPPLEMENTAL
DECLARATION OF ROBERT
DZIUBLA IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S SECOND MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

29 *From Sight Management LLC v. Las Vegas Development Fund LLC, et al., Case No.: A-18-781084-B Dept. No.: XVI*
30 **ERRATA TO DECLARATION OF TERRY ARNETT IN SUPPORT OF DEFENDANTS' OPPOSITION TO
31 PLAINTIFF'S SECOND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
32

1 LLC; LINDA STANWOOD, individually and)
2 as Senior Vice President of LAS VEGAS
3 DEVELOPMENT FUND LLC and EB5
4 IMPACT ADVISORS LLC; CHICAGO
5 TITLE COMPANY, a California corporation;
6 DOES 1-10, inclusive; and ROE
7 CORPORATIONS 1-10, inclusive;
8
9 Defendants.

6 COMES NOW Defendants and submits this Errata to the Supplemental Declaration of
7 Robert Dziubla which was filed in support of Defendants' Opposition to Plaintiff's Second
8 Motion for Temporary Restraining Order and Preliminary Injunction. The Supplemental
9 Declaration of Mr. Dziubla correctly identified the email string which was attached as Exhibit A.
10 However, such email string which was attached was inadvertently missing several pages. The
11 complete email string is attached hereto as Exhibit A.
12

13 DATED this 20th day of March, 2019.

FARMER CASE & FEDOR

14
15 

16 KATHRYN HOLBERT, ESQ.
17 Nevada Bar No. 10084
18 2190 E. Pebble Rd., Suite #205
19 Las Vegas, NV 89123
20 Telephone: (702) 579-3900
21 kholbert@farmercase.com
22 Attorney for Defendants.
23 LAS VEGAS DEVELOPMENT FUND
24 LLC, EB5 IMPACT CAPITAL REGIONAL
25 CENTER, LLC, EB6 IMPACT ADVISORS,
26 LLC, ROBERT W. DZIUBLA, JON
27 FLEMING and LINDA STANWOOD
28

1 **CERTIFICATE OF SERVICE and/or MAILING**

2 Pursuant to NRCF 5(b), I hereby certify that I am an employee of Farmer Case & Fedor,
3 and that on this date, I caused true and correct copies of the following document(s):

4 **ERRATA TO SUPPLEMENTAL DECLARATION OF ROBERT DZIUBLA**
5 **IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S**
6 **SECOND MOTION FOR TEMPORARY RESTRAINING ORDER**
7 **AND PRELIMINARY INJUNCTION**

8 to be served on the following individuals/entities, in the following manner,

9 John P. Aldrich, Esq. Attorneys for Plaintiff
10 Catherine Hernandez, Esq. FRONT SIGHT MANAGEMENT, LLC
11 ALDRICH LAW FIRM, LTD.
12 7866 West Sahara Avenue
13 Las Vegas, Nevada 89117

14 By:

15 ■ **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible
16 electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).

17 ■ **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage
18 prepaid envelope, in the United States Mail, to those parties and/or above named individuals
19 which were not on the Court's electronic service list.

20 □ **FACSIMILE:** I caused said document(s) to be transmitted by facsimile transmission. The
21 sending facsimile machine properly issued a transmission report confirming that the transmission
22 was complete and without error.

23 Dated: March 20th, 2019

24 
25 _____
26 An Employee of FARMER CASE & FEDOR

EXHIBIT A

Keith Greer

From: Robert Dziubla <rdziubla@eb5impactcapital.com>
Sent: Monday, March 18, 2019 7:11 PM
To: Keith Greer
Subject: FW: EB-5 The next steps

From: Mike Meacher <meacher@frontsight.com>
Sent: Friday, May 20, 2016 1:22 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Jon Fleming' <jfleming@EB5ImpactCapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: RE: EB-5 The next steps

Bob and Jon,

John Small was able to convince Hank Cairo to meet with Naish and me on June 2nd. We hope to have a tentative list of his lending prospects prior to that date.

You guys want to get back to marketing immediately and Front Sight wants some immediate capital to develop the project so our interest are the same to get the changes completed quickly and the current investor capital funded to Front Sight. Our goals are in sync. Front Sight confirms the preliminary budget you reference below and we will pay those charges promptly upon disbursement of the \$375,000 from the existing 4-6 investors into the Front Sight account.

Best regards to Travis on his graduation.

Mike
meacher@frontsight.com
702-425-6550

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Friday, May 20, 2016 11:05 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: EB-5 The next steps

Dear Mike,

We too are pleased with the progress that was made, and we are working on the steps as outlined so that we can get the EB5 money disbursed to you.

I have confirmed with Matt that we can amend the USCIS filings as discussed (but we do NOT need USCIS approval for any of the changes) – namely, to eliminate the minimum raise and to allow for us to bring in bridge / senior financing – and I will have our corporate / securities lawyer amend the PPM, subscription agreement and other deal documents to make the same changes. As I mentioned on Wednesday, he has already advised that we will need to notify the investors already in escrow of these changes and allow them the right to rescind / withdraw if they wish. We don't yet know how long that notice period will be, and that question is pending with our lawyer.

0886

As discussed, we think it unlikely that any of the investors will withdraw, because then they'd need to find another project and move to the back of the line.

We have confirmed with Matt that once the documents have been amended and we have the EBS loan agreement in place, then (a) we can disburse 75% of the current EBS funds to Front Sight and that FS can apply those funds to reimburse itself for the grading and other project-related costs such as mortgage pay-down already incurred, and (b) on a go-forward basis, we would disburse the EBS funds to FS as those funds come into escrow, and FS would provide us with construction and related receipts at the end of the project sufficient to cover the amount of EBS money disbursed. None of us need to track EXACTLY that the EBS funds went into a specific expenditure so long as there are sufficient project receipts that (i) cover the amount of EBS funds disbursed to FS, and (ii) those receipts are tied to the project development outlined in the USCIS-approved business plan.

Please confirm that Front Sight approves the preliminary budget outlined in my email of May 12 as supplemented by my email of May 13. We would very much like to get Ethan back on board immediately, so request that FS fund the \$8k for May immediately.

Have you heard from John Small / Hank Cairo about Hank coming out to visit with you?

As we work through this new process, please do keep in mind that we will need to ensure that there is appropriate language in the timeshare financing loan agreement referencing the EBS loan and that proceeds from the EBS loan may be used to repay the timeshare financing. That way we will have complied with USCIS rules regarding bridge / interim financing that is used while the EBS raise is being completed.

Thanks,

Bob

From: Mike Meacher [mike@meacher@frontsight.com]
Sent: Friday, May 20, 2016 10:11 AM
To: Robert Dziubla <rdziubla@eb5investorcapital.com>; Jon Fleming <jfleming@EB5investorcapital.com>
Subject: EB-5 The next steps

Bob,

I was pleased at the productive end to our conversation in Oakland on Wednesday. Sorry Jon had to leave before we got to that.

As a followup to that please get the following things accomplished:

1. Get Matt to amend the paperwork as needed with USCIS to reflect our discussion
2. Next week, get Mike Brand, Latvia and Scott to amend the construction loan documents to reflect the new deal of Front Sight taking the money as it comes in with construction receipts provided to Bob for EB-5 investors when project is completed.
3. Arrange for Bob to release the funds for the 4-6 existing investors to Front Sight the following week.

Thanks,

Mike
Meacher@frontsight.com
702-425-6550

Total Control Panel

Logout

To: kulthar@ozonatech.biz

[Remove this sender from my allow list](#)

From: rizulha@eb51impactcapital.com

You received this message because the sender is on your allow list.

Robert Dziubla

From: Robert Dziubla <rdziubla@eb5impactcapital.com>
Sent: Thursday, May 12, 2016 2:49 PM
To: 'Mike Meacher'
Cc: Jon Fleming
Subject: RE: Meeting on May 18th

Flag Status: Flagged

Mike,

I wish I could accommodate that request, but I really can't push my departure from Oakland back that late given my already-altered travel plans to attend my son's graduation.

We would like to tee up the agenda for our Oakland meeting so that we can make efficient use of the two hours we will have together.

Background:

As we all know, the EB5 world has changed a lot since we first started down this road and then had to wait 18 months for USCIS to approve the project. The front sight raise is turning out to be much harder and taking longer than we had expected, and all of us are horribly frustrated and upset by this turn of events.

Jon and I love the Front Sight project and have been busting our butts to accomplish the EB5 raise and do so within the budget we agreed three years ago. However, we have now been working without pay for three years, have exhausted our personal resources, and can no longer continue without some major changes. We had to let Ethan go at the end of last week as we have no money to pay him because the modest amount of income we had anticipated from the admin fee while achieving the minimum raise is going to the greedy agents.

Of course there is enormous detail to all of the above, but discussing that won't fix the problem.

Choices:

After a lot of thought, it seems to us that we have three choices:

1. Call it a day, shake hands, and part ways as friends. Naturally, as part of that we first refund the EB5 money that is in escrow to the investors and then close our doors.
2. Restructure the capital stack by (i) eliminating the minimum raise and (ii) bringing in senior debt from a timeshare lender who understands the timeshare business. Elements of this approach include:
 - a. We have discussed item (ii) with a very experienced consultant in the timeshare finance industry who has closed over 2,000 financings. He believes that he can source one or more lenders who will provide construction financing and timeshare receivables financing at a blended rate of around 6-7%. Financing costs from the lender will be around 1.25% of the commitment. That is positive news and allays your concern about having to pay Guido-the-loanshark-rates.
 - b. By getting this timeshare financing into place ASAP, you can then start construction ASAP. With the timeshare financing in place and construction started, you can start pre-selling the timeshares and generating revenues.

- c. By eliminating the minimum raise, we can start disbursing the EB5 money that is already in escrow to the project while we continue to raise as much EB5 money as possible. We would need to ensure that the EB5 money is applied to the project development where the 10 jobs are being created. (We need to have further discussion with our EB5 lawyer on this point and some others.)
 - d. The timeshare financing would have a 1st position mortgage (paying off the Holocek mortgage) and the EB5 money would have a second mortgage. We would need to negotiate an inter-creditor agreement between the timeshare lender and the EB5 money to sort out their respective rights etc.
 - e. We would have to amend the PPM, subscription agreement and other project documents to reflect the above changes.
 - f. We likely would have to give a rescission right to the EB5 investors who are already in escrow. We anticipate that none of them would exercise that right because then they would have to pull their I-526 application back from USCIS and find another project for their investment, thus putting them at the end of an ever-longer line.
 - g. FS would have a new loan agreement with the timeshare lender.
 - h. The EB5 loan agreement that Scott and Letvia have been reviewing would need to be revised to incorporate the above.
 - i. We would continue the EB5 marketing and raise as much EB5 money as possible. We have discussed the above changes to the capital stack with our agents, and they think those changes would make the project much more attractive to the investors because the project would no longer be an outlier, as the vast majority of projects being marketed these days have senior commercial debt and therefore have a much higher EB5 job surplus.
 - j. A preliminary budget for the above (not including costs that the timeshare lender might incur):
 - i. Upfront legal fees of \$11k: i.e., \$3k to amend the EB5 loan agreement, \$3k to amend the PPM and other project legal documents, \$5k to amend the EB5 documents and file them with USCIS.
 - ii. \$8k per month for us to keep our doors open and rehire Ethan (assuming that he hasn't found another job) until we have \$10m of EB5 money invested into the project (anticipated by Sept. 30).
 - iii. Additional legal fees of probably \$5 – 7k or so for the inter-creditor agreement.
3. We sell the EB5 Impact Capital Regional Center LLC and Las Vegas Development Fund LLC entities to you, and you then proceed as you wish.

We look forward to our meeting on Wednesday and hope that we can achieve a speedy resolution.

Bob

From: Mike Meacher [mailto:meacher@frontsight.com]
 Sent: Wednesday, May 11, 2016 3:53 PM
 To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>
 Subject: RE: Meeting on May 18th

Bob,

I just noticed your flights only allow for about a 2 hour meeting presuming you need to be at the airport an hour before flight time. I suggest you change to the 5:50 departure (flight 2671) and then move to the earlier one if we are completed in time. I don't want to rush this discussion.

Thanks,

Mike
meacher@frontsight.com
 702-425-6550

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Wednesday, May 11, 2016 3:22 PM
To: 'Mike Meacher'; 'Jon Fleming'
Cc: 'Ignatius Piazza'
Subject: RE: Meeting on May 18th

Dear Mike,

I was planning to be traveling that day for my son's graduation but have rearranged that trip so we can meet with you and Naish as requested on Wednesday, May 18.

Jon and I are booked to arrive into Oakland at 11:55 a.m. on Southwest #696 and depart at 3:30 pm on Southwest # 1701.

Cheers,

Bob

From: Mike Meacher [mailto:meacher@frontsight.com]
Sent: Wednesday, May 11, 2016 2:04 PM
To: 'Robert Dziubla' <rdziubla@eb5impactcapital.com>; 'Jon Fleming' <jfleming@eb5impactcapital.com>
Cc: Ignatius Piazza <ignatius@frontsight.com>
Subject: Meeting on May 18th
Importance: High

Bob and Jon,

Thanks for the update.

Naish wants to have a face to face meeting in Oakland on Wednesday, May 18th to discuss all the issues surrounding EB-5 and to work toward a solution of getting Front Sight funded. He and I have discussed the topics you raised about reducing the minimum raise and adjusting the capital stack. He is amenable to both ideas but wants to discuss the details.

I will arrive at 11:00AM in Oakland. See if you two can arrange to be there about this time. We can have a leisurely lunch and discuss all the considerations and depart late afternoon.

Please confirm ASAP.

Thanks,

Mike
Meacher@frontsight.com
702-425-6550

From: Robert Dziubla [mailto:rdziubla@eb5impactcapital.com]
Sent: Wednesday, May 11, 2016 11:21 AM
To: 'Mike Meacher'; 'Jon Fleming'
Subject: RE: Update

Dear Mike,

Please find attached the marketing report for the period through Saturday.

We had a good talk with Ralf, and he now understands EBS and the FS deal much better, so will start reaching out to folks he knows in Panama who work with high-net worth investors, i.e. primarily attorneys and accountants. Ralf was musing, though, that most of the HNW Panamanians he knows probably wouldn't be interested in an EBS green card because they already have long-term US visas and don't really need to have a US green card.

Also, on a separate point, John Small kindly introduced us to a couple of his contacts who he explained have been successful in sourcing EBS investors from Latin America. We of course are following up on that.

We are awaiting word from Sinowel on their investor tour later this month. We also are awaiting further word from our Shanghai agent whose investors visited Front Sight.

When would you be available to talk with me and Jon over the next two days, as we have some important discussions and decisions? I am up in LA tonight for meetings and may end up spending the evening there, so sometime on Thursday afternoon or anytime on Friday except for one hour from 10:30 - 11:30 works for us. Please advise.

Thanks,

Bob

From: Mike Meacher [<mailto:meacher@frontsight.com>]
Sent: Tuesday, May 10, 2016 2:08 PM
To: Robert Dziubla <rdziubla@eb5impactcapital.com>; Jon Fleming <fleming@EB5ImpactCapital.com>
Subject: Update

Bob and Jon,

How did your call go with Ralf?


What is the status of the Sinowel investor group tour later this month?

How many investors from the Shanghai group are moving forward?

Please give me a marketing update for the last week.

Thanks,

Mike
Meacher@frontsight.com
702-425-6550



1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
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5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10
11 Plaintiff,

12 vs.

13 LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
14 LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
15 Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
16 CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
17 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
18 FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
19 as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
20 IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
21 10, inclusive,

22 Defendants.
23
24

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Defendant Las Vegas Development Fund LLC's Motion for Appointment of a Receiver was entered by the Court in the above-captioned action on the 9th day of April, 2019, a true and correct copy of which is attached hereto.

DATED this 10th day of April, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, NV 89117
Tel (702) 853-5490
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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



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ORDER
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
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Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

CASE NO.: A-18-781084-B
DEPT NO.: 16

vs.

ORDER DENYING DEFENDANT
LAS VEGAS DEVELOPMENT FUND
LLC'S MOTION FOR
APPOINTMENT OF A RECEIVER

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

1 This matter having come before the Court, on February 28, 2019 at 9:00 a.m. on
2 Defendant Las Vegas Development Fund LLC's Motion for Appointment of a Receiver, John
3 P. Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer,
4 Esq., appearing on behalf of Defendants, the Court having reviewed the pleadings on file
5 herein, having heard oral argument by the parties, and for good cause appearing therefore,

6 **IT IS HEREBY ORDERED** that Defendant Las Vegas Development Fund LLC's
7 Motion for Appointment of a Receiver is DENIED without prejudice.

8 **IT IS SO ORDERED.**

9 DATED this 5 day of April, 2019.

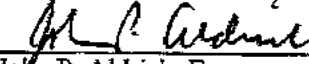
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11 DISTRICT COURT JUDGE *CR*


12 Respectfully submitted by:

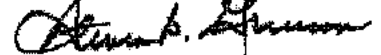
Approved as to form and content:

13 **ALDRICH LAW FIRM, LTD.**

FARMER CASE & FEDOR

14 
15 John P. Aldrich, Esq.
16 Nevada Bar No. 6877
17 Catherine Hernandez, Esq.
18 Nevada Bar No. 8410
19 7866 West Sahara Avenue
20 Las Vegas, Nevada 89117
21 Tel: (702) 853-5490
22 Fax: (702) 227-1975
23 *Attorneys for Plaintiff*


Anthony T. Case, Esq.
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Kathryn Holbert, Esq.
Nevada Bar No. 10084
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Tel: (702) 579-3900
Fax: (702) 739-3001
Attorneys for Defendants



1 **NEO**
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2 Nevada Bar No. 6877
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3 Nevada Bar No. 8410
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4 7866 West Sahara Avenue
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5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
14 LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
15 Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
16 CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
17 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
18 FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
19 as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
20 IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
21 10, inclusive,

22 Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Plaintiff's Second Motion for Temporary Restraining Order and Setting Preliminary Injunction Hearing was entered by the Court in the above-captioned action on the 9th day of April, 2019, a true and correct copy of which is attached hereto.

DATED this 10th day of April, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1 **ORDER**
2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410
6 **ALDRICH LAW FIRM, LTD.**
7 7866 West Sahara Avenue
8 Las Vegas, NV 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **FRONT SIGHT MANAGEMENT LLC, a**
15 **Nevada Limited Liability Company,**

16 **Plaintiff,**

17 **vs.**

18 **LAS VEGAS DEVELOPMENT FUND LLC, a**
19 **Nevada Limited Liability Company; EB5**
20 **IMPACT CAPITAL REGIONAL CENTER**
21 **LLC, a Nevada Limited Liability Company;**
22 **EB5 IMPACT ADVISORS LLC, a Nevada**
23 **Limited Liability Company; ROBERT W.**
24 **DZIUBLA, individually and as President and**
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
SECOND MOTION FOR
TEMPORARY RESTRAINING
ORDER AND SETTING
PRELIMINARY INJUNCTION
HEARING

1 This matter having come before the Court on March 21, 2019 at 9:30 a.m. on Plaintiff's
2 Second Motion for Temporary Restraining Order and Preliminary Injunction, John P. Aldrich,
3 Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq.,
4 appearing on behalf of Defendants, the Court having reviewed the pleadings on file herein,
5 having heard oral argument by the parties, and for good cause appearing therefore,

6 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Temporary Restraining Order
7 is GRANTED in part, as set forth herein.

8 **IT IS FURTHER ORDERED** that a temporary restraining order is hereby entered
9 enjoining Defendants from proceeding with the foreclosure process in any fashion, filing a
10 Notice of Sale, and/or selling the subject property under the Notice of Breach and Default and
11 of Election to Sell Under Deed of Trust which was recorded with the Nye County Recorder's
12 Office on January 18, 2019.

13 **IT IS FURTHER ORDERED** that Plaintiff's request for an Order expunging the Notice
14 of Breach and Default and of Election to Sell Under Deed of Trust recorded on January 18, 2019
15 is DENIED without prejudice.

16 **IT IS FURTHER ORDERED** that, pursuant to the stipulation of the parties, this
17 temporary restraining order shall remain in effect until further order of this Court.

18 **IT IS FURTHER ORDERED** that the hearing on Plaintiff's Motion for Preliminary
19 Injunction is set for May 2, 2019 at 1:15 p.m. before this Court.

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IT IS FURTHER ORDERED that Plaintiff is required to post a bond in the amount of \$100.00. Plaintiff need not post an additional \$100.00 bond; the prior bond is sufficient.

IT IS SO ORDERED.

DATED this 5 day of April, 2019.



DISTRICT COURT JUDGE *ca*

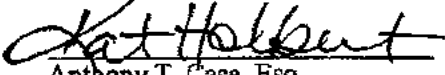
Respectfully submitted by:

Approved as to form and content:

ALDRICH LAW FIRM, LTD.

FARMER CASE & FEDOR


John P. Aldrich, Esq.
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Attorneys for Plaintiff


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Tel: (702) 579-3900
Fax: (702) 739-3001
Attorneys for Defendants



1 **NEO**
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2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
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4 7866 West Sahara Avenue
Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
14 IMPACT CAPITAL REGIONAL CENTER
15 LLC, a Nevada Limited Liability Company;
16 EB5 IMPACT ADVISORS LLC, a Nevada
17 Limited Liability Company; ROBERT W.
18 DZIUBLA, individually and as President and
19 CEO of LAS VEGAS DEVELOPMENT
20 FUND LLC and EB5 IMPACT ADVISORS
21 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
22 FUND LLC and EB5 IMPACT ADVISORS
23 LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
24 DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting In Part and Denying in Part Plaintiff's Motion to Compel and for Sanctions was entered by the Court in the above-captioned action on the 9th day of April, 2019, a true and correct copy of which is attached hereto.

DATED this 10th day of April, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
7866 West Sahara Avenue
Las Vegas, NV 89117
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Attorneys for Plaintiff

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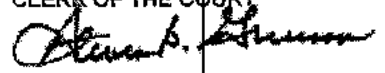
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
*Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
JON FLEMING and LINDA STANWOOD*

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127
*Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND
LLC, EB5IMPACT CAPITAL REGIONAL CENTER LLC,
EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
JON FLEMING and LINDA STANWOOD*

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



1 **ORDER**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 Catherine Hernandez, Esq.
5 Nevada Bar No. 8410

6 **ALDRICH LAW FIRM, LTD.**

7 7866 West Sahara Avenue
8 Las Vegas, NV 89117
9 Telephone: (702) 853-5490
10 Facsimile: (702) 227-1975
11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **FRONT SIGHT MANAGEMENT LLC, a**
15 **Nevada Limited Liability Company,**

16 **Plaintiff,**

17 **vs.**

18 **LAS VEGAS DEVELOPMENT FUND LLC, a**
19 **Nevada Limited Liability Company; EB5**
20 **IMPACT CAPITAL REGIONAL CENTER**
21 **LLC, a Nevada Limited Liability Company;**
22 **EB5 IMPACT ADVISORS LLC, a Nevada**
23 **Limited Liability Company; ROBERT W.**
24 **DZIUBLA, individually and as President and**
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive.

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL AND FOR
SANCTIONS

64-05-19AJ9130 RCVD

1 This matter having come before the Court, on February 28, 2019 at 9:00 a.m. on
2 Plaintiff's Motion to Compel and for Sanctions and Defendants' Countermotion for Relief
3 From the November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of
4 Defendant EB5 Impact Advisors LLC, John P. Aldrich, Esq. appearing on behalf of Plaintiff
5 and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing on behalf of Defendants, the
6 Court having reviewed the pleadings on file herein, having heard oral argument by the parties,
7 and for good cause appearing therefore, AND

8 Further discussions regarding a deadline for supplementation of financial documents
9 pursuant to the November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting
10 of Defendant EB5 Impact Advisors LLC having occurred following the hearing on Plaintiff's
11 Second Motion for Temporary Restraining Order on Thursday, March 21, 2019,

12 **IT IS HEREBY ORDERED** that as to Plaintiff's Motion to Compel is GRANTED IN
13 PART and DENIED IN PART. While the Court finds good faith and substantial compliance
14 by Defendants at this time, Defendants have an obligation to supplement pursuant to Rule 16.1,
15 and pursuant to the November 20, 2018 Order, Defendants must fully comply with the Order to
16 "provide Plaintiff with an accounting of all funds it has received from Front Sight. Said
17 accounting must include all money received from Plaintiff by EB5Impact Advisors LLC, how
18 all funds were spent, identification of who received any portion of the funds, and any and all
19 documentation to support payments made or funds spent," with the remaining disclosure of
20 accounting documents to occur on or before April 4, 2019.

21 **IT IS FURTHER ORDERED** that Defendants' Countermotion for Relief From the
22 November 20, 2018 Court Order Granting Plaintiff's Petition for an Accounting of Defendant
23 EB5 Impact Advisors LLC is DENIED without prejudice.

24

1 IT IS FURTHER ORDERED that Plaintiff's request for sanctions is denied at this
2 time.


3 IT IS SO ORDERED.

4 DATED this 5 day of April, 2019.

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6 
DISTRICT COURT JUDGE *CR*

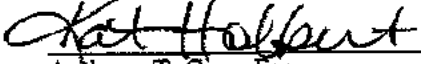
7 Respectfully submitted by:

8 ALDRICH LAW FIRM, LTD.

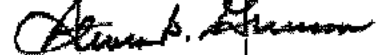
9 
10 John P. Aldrich, Esq.
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11 Catherine Hernandez, Esq.
Nevada Bar No. 8410
12 7866 West Sahara Avenue
Las Vegas, Nevada 89117
13 Tel: (702) 853-5490
Fax: (702) 227-1975
14 Attorneys for Plaintiff

Approved as to form and content:

FARMER CASE & FEDOR


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Kathryn Holbert, Esq.
Nevada Bar No. 10084
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Tel: (702) 579-3900
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Attorneys for Defendants

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1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
Catherine Hernandez, Esq.
3 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
4 7866 West Sahara Avenue
Las Vegas, Nevada 89117
5 Telephone: (702) 853-5490
Facsimile: (702) 227-1975
6 *Attorneys for Plaintiff*

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

10 Plaintiff,

11 vs.

12 LAS VEGAS DEVELOPMENT FUND LLC, a
13 Nevada Limited Liability Company; EB5
14 IMPACT CAPITAL REGIONAL CENTER
15 LLC, a Nevada Limited Liability Company;
16 EB5 IMPACT ADVISORS LLC, a Nevada
17 Limited Liability Company; ROBERT W.
18 DZIUBLA, individually and as President and
19 CEO of LAS VEGAS DEVELOPMENT
20 FUND LLC and EB5 IMPACT ADVISORS
21 LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
22 FUND LLC and EB5 IMPACT ADVISORS
23 LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
24 DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

CASE NO.: A-18-781084-B
DEPT NO.: 16

NOTICE OF ENTRY OF ORDER

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Regarding Defendants' Motions to Dismiss Plaintiff's Second Amended Complaint and Motion to Strike Portions of Second Amended Complaint was entered by the Court in the above-captioned action on the 9th day of April, 2019, a true and correct copy of which is attached hereto.

DATED this 10th day of April, 2019.

ALDRICH LAW FIRM, LTD.

/s/ John P. Aldrich
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
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Tel (702) 853-5490
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Attorneys for Plaintiff

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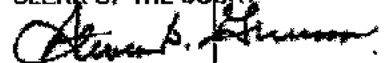
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the Court using Wiznet which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the Electronic Mail Notice List, to the following parties:

Anthony T. Case, Esq.
Kathryn Holbert, Esq.
FARMER CASE & FEDOR
2190 E. Pebble Rd., Suite #205
Las Vegas, NV 89123
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EBSIMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

C. Keith Greer, Esq.
17150 Via del Campo, Suite 100
San Diego, CA 92127
Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND LLC, EBSIMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT W. DZIUBLA, JON FLEMING and LINDA STANWOOD

/s/ T. Bixenmann
An employee of ALDRICH LAW FIRM, LTD.



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ORDER
John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
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Las Vegas, NV 89117
Telephone: (702) 853-5490
Facsimile: (702) 227-1975
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

FRONT SIGHT MANAGEMENT LLC, a
Nevada Limited Liability Company,

Plaintiff,

CASE NO.: A-18-781084-B
DEPT NO.: 16

vs.

ORDER REGARDING
DEFENDANTS' MOTIONS TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT AND
MOTION TO STRIKE PORTIONS
OF SECOND AMENDED
COMPLAINT

LAS VEGAS DEVELOPMENT FUND LLC, a
Nevada Limited Liability Company; EB5
IMPACT CAPITAL REGIONAL CENTER
LLC, a Nevada Limited Liability Company;
EB5 IMPACT ADVISORS LLC, a Nevada
Limited Liability Company; ROBERT W.
DZIUBLA, individually and as President and
CEO of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; JON FLEMING, individually and as an
agent of LAS VEGAS DEVELOPMENT
FUND LLC and EB5 IMPACT ADVISORS
LLC; LINDA STANWOOD, individually and
as Senior Vice President of LAS VEGAS
DEVELOPMENT FUND LLC and EB5
IMPACT ADVISORS LLC; DOES 1-
10, inclusive; and ROE CORPORATIONS 1-
10, inclusive,

Defendants.

21-03-19A07:30 RCVD

1 This matter having come before the Court on March 19, 2019 at 1:30 p.m. on (1)
2 Motion to Dismiss Plaintiff's Second Amended Complaint filed by Defendants Las Vegas
3 Development Fund, Robert Dziubla and EB 5 Impact Advisors; (2) Motion to Dismiss
4 Plaintiff's Second Amended Complaint filed by Defendant Jon Fleming; (3) Motion to Dismiss
5 Plaintiff's Second Amended Complaint filed by Defendant EB5 Impact Capital Regional
6 Center; (4) Motion to Dismiss Plaintiff's Second Amended Complaint filed by Defendant
7 Linda Stanwood; and (5) Defendants' Motion to Strike Portions of Plaintiff's Second Amended
8 Complaint, John P. Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq.
9 and C. Keith Greer, Esq., appearing on behalf of Defendants, the Court having reviewed the
10 pleadings on file herein, having heard oral argument by the parties, and for good cause
11 appearing therefore,

12 As to the First Cause of Action (Fraud/Intentional Misrepresentation/Concealment
13 Against All Defendants) of Plaintiff's Second Amended Complaint, **IT IS HEREBY**
14 **ORDERED** that the Motions to Dismiss are **DENIED** without prejudice as to all Defendants.

15 As to the Second Cause of Action (Breach of Fiduciary Duty Against All Defendants)
16 of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
17 Dismiss are **GRANTED** without prejudice.

18 As to the Third Cause of Action (Conversion Against All Defendants) of Plaintiff's
19 Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are
20 **DENIED** without prejudice as to all Defendants.

21 As to the Fourth Cause of Action (Civil Conspiracy Against All Defendants) of
22 Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
23 Dismiss are **DENIED** without prejudice as to all Defendants.

24

1 As to the Fifth Cause of Action (Breach of Contract Against Defendants EB5IA and
2 LVDF) of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the
3 Motions to Dismiss are DENIED without prejudice.

4 As to the Sixth Cause of Action (Contractual Breach of Implied Covenant of Good
5 Faith and Fair Dealing Against the Entity Defendants) of Plaintiff's Second Amended
6 Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are DENIED, without
7 prejudice as to Defendants EB5IA and LVDF and GRANTED without prejudice as to
8 Defendant EB5IC.

9 As to the Seventh Cause of Action (Tortious Breach of Implied Covenant of Good Faith
10 and Fair Dealing Against the Entity Defendants) of Plaintiff's Second Amended Complaint, **IT**
11 **IS HEREBY ORDERED** that the Motions to Dismiss are GRANTED without prejudice.

12 As to the Eighth Cause of Action (Intentional Interference with Prospective Economic
13 Advantage Against the Entity Defendants and Defendant Dziubla) of Plaintiff's Second
14 Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are DENIED,
15 without prejudice as to Defendants Dziubla and LVDF and GRANTED without prejudice as to
16 Defendants EB5IC and EB5IA.

17 As to the Ninth Cause of Action (Unjust Enrichment Against All Defendants) of
18 Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
19 Dismiss are GRANTED without prejudice.

20 As to the Tenth Cause of Action (Negligent Misrepresentation Against All Defendants)
21 of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to
22 Dismiss are DENIED without prejudice as to Defendants EB5IA and Dziubla and GRANTED
23 without prejudice as to Defendants Stanwood, Fleming, EB5IC and LVDF.

24

1 As to the Eleventh Cause of Action (Negligence Against All Defendants) of Plaintiff's
2 Second Amended Complaint, **IT IS HEREBY ORDERED** that the Motions to Dismiss are
3 GRANTED without prejudice.

4 As to the Twelfth Cause of Action (Alter Ego Against Defendants Dziubla, LVDF,
5 EB5IA, and EBSIC) of Plaintiff's Second Amended Complaint, **IT IS HEREBY ORDERED**
6 that the Motions to Dismiss are GRANTED as to this claim as a stand-alone cause of action,
7 but DENIED as to this claim as a remedy.

8 As to Defendants' Motion to Strike Portions of Plaintiff's Second Amended Complaint,
9 as revised in Defendants' Reply brief to seek only the striking of Exhibits 1-5, 7, 8, 10-18, 20-
10 26, 28, and 29 to the Second Amended Complaint, the Court GRANTS the Motion to Strike
11 those exhibits from the Second Amended Complaint, with the explicit caveat that there is no
12 waiver, estoppel, or other negative effect that will inure to Plaintiff's detriment related to the
13 striking of these exhibits.

14 **IT IS SO ORDERED.**

15 DATED this 5 day of April, 2019.

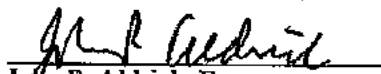
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17 DISTRICT COURT JUDGE *CR*

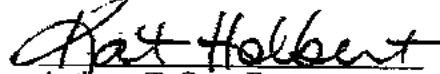
18 Respectfully submitted by:

Approved as to form and content:

19 **ALDRICH LAW FIRM, LTD.**

FARMER CASE & FEDOR

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12 Attorneys for Defendants
LAS VEGAS DEVELOPMENT FUND LLC, EBS
13 IMPACT CAPITAL REGIONAL CENTER LLC,
EBS IMPACT ADVISORS LLC, ROBERT W. DZIUBLA,
14 JON FLEMING and LINDA STANWOOD

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

15
16 **FRONT SIGHT MANAGEMENT LLC, a**
17 Nevada Limited Liability Company,
18 Plaintiff,

19 vs.

20 **LAS VEGAS DEVELOPMENT FUND LLC,**
21 et al.,
22 Defendants.

23 **LAS VEGAS DEVELOPMENT FUND LLC,**
24 a Nevada Limited Liability Company,
25 Counter Claimant,

26 vs.

27 **FRONT SIGHT MANAGEMENT, LLC, a**
Nevada Limited Liability Company;
28 **IGNATIUS PIAZZA, as an individual and in**

) CASE NO.: A-18-781084-B
) DEPT NO.: 16
) DEFENDANTS' ANSWER TO
) PLAINTIFF'S SECOND AMENDED
) COMPLAINT; AND COUNTERCLAIM

**DEFENDANTS' ANSWER AND COUNTERCLAIM TO PLAINTIFF FRONT SIGHT MANAGEMENT
LLC'S SECOND AMENDED COMPLAINT**

1 his capacity as Trustee and/or beneficiary of)
2 VNV DYNASTY TRUST I and VNV)
3 DYNASTY TRUST II; JENNIFER)
4 PIAZZA, as an individual and in her capacity)
5 as Trustee and/or beneficiary of VNV)
6 DYNASTY TRUST I and VNV DYNASTY)
7 TRUST II; VNV DYNASTY TRUST I, an)
8 irrevocable Nevada trust, VNV DYNASTY)
9 TRUST II, an irrevocable Nevada trust; and)
10 ROES 1 through 10, inclusive,)
11
12 Counter Defendants.)
13
14

15 COMES NOW Defendants, LAS VEGAS DEVELOPMENT FUND LLC, EB5 IMPACT
16 CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC; ROBERT W.
17 DZIUBLA; JON FLEMING; and LINDA STANWOOD, (collectively "Responding Parties"), by
18 and through their attorneys, KATHRYN HOLBERT, ESQ., of FARMER CASE & FEDOR, and
19 C. KEITH GREER, ESQ., of GREER & ASSOCIATES, A.P.C., and specifically admit, deny
20 and respond to the allegations of FRONT SIGHT MANAGEMENT, LLC.'s ("Plaintiff") Second
21 Amended Complaint as follows:

- 22 1. These responding Defendants lack sufficient information to admit or deny the
23 allegations in Paragraph 1 of Plaintiff's Second Amended Complaint and, therefore, deny the
24 same.
- 25 2. These responding Defendants admit the allegations in Paragraph 2 of Plaintiff's
26 Second Amended Complaint.
- 27 3. These responding Defendants admit the allegations in Paragraph 3 of Plaintiff's
28 Second Amended Complaint.
- 29 4. These responding Defendants admit the allegations in Paragraph 4 of Plaintiff's
30 Second Amended Complaint.
- 31 5. These responding Defendants admit the allegations in Paragraph 5 of Plaintiff's
32 Second Amended Complaint.
- 33 6. These responding Defendants admit the allegations in Paragraph 6 of Plaintiff's
34 Second Amended Complaint.

1 7. These responding Defendants deny that Linda Stanwood was an officer of EB5
2 IMPACT CAPITAL RESOURCE CENTER LLC and admit the remainder of the allegations in
3 Paragraph 7 of Plaintiff's Second Amended Complaint.

4 8. These responding Defendants lack sufficient information to admit or deny the
5 allegations in Paragraph 8 of Plaintiff's Second Amended Complaint and, therefore, deny the
6 same.

7 9. These responding Defendants lack sufficient information to admit or deny the
8 allegations in Paragraph 9 of Plaintiff's Second Amended Complaint and, therefore, deny the
9 same.

10 10. These responding Defendants admit that Defendants Dziubla, Fleming and
11 Stanwood are or were officers of Defendants EB5IA, EB5IC and LVDF. However, these
12 responding Defendants deny the remainder of the allegations in Paragraph 10 of Plaintiff's
13 Second Amended Complaint.

14 GENERAL ALLEGATIONS

15 Inducement of Front Sight to Fund Defendants' EB-5 Raise for the Development and 16 Construction of the Front Sight Resort Project in Detrimental Reliance on a Raise of \$75 Million

17 11. These responding Defendants admit that Defendants and Plaintiff exchanged
18 email correspondence. However, these responding Defendants deny Plaintiff's the remainder of
19 the allegations in Paragraph 11 of Plaintiff's Second Amended Complaint.

20 12. These responding Defendants admit that Defendants and Plaintiff exchanged
21 correspondence. However, these responding Defendants deny the remainder of the allegations in
22 Paragraph 12 of Plaintiff's Second Amended Complaint.

23 13. These responding Defendants admit that Defendants and Plaintiff exchanged
24 correspondence. However, these responding Defendants deny the remainder of the allegations in
25 Paragraph 13 of Plaintiff's Second Amended Complaint.

26 14. These responding Defendants admit that Defendants and Plaintiff exchanged
27 correspondence. However, these responding Defendants deny the remainder of the allegations in
28 Paragraph 14 of Plaintiff's Second Amended Complaint.

1 15. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the remainder of the allegations in
3 Paragraph 15 of Plaintiff's Second Amended Complaint.

4 16. These responding Defendants admit that Defendants and Plaintiff exchanged
5 correspondence. However, these responding Defendants deny the remainder of the allegations in
6 Paragraph 16 of Plaintiff's Second Amended Complaint.

7 17. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 17 of Plaintiff's Second Amended Complaint.

10 18. These responding Defendants deny the allegations in Paragraph 18 of Plaintiff's
11 Second Amended Complaint.

12 19. These responding Defendants admit that Defendants and Plaintiff exchanged
13 correspondence. However, these responding Defendants deny the remainder of the allegations in
14 Paragraph 19 of Plaintiff's Second Amended Complaint.

15 20. These responding Defendants admit that Defendants and Plaintiff exchanged
16 correspondence. However, these responding Defendants deny the remainder of the allegations in
17 Paragraph 20 of Plaintiff's Second Amended Complaint.

18 21. These responding Defendants lack sufficient information to admit or deny the
19 allegations in Paragraph 21 of Plaintiff's Second Amended Complaint and, therefore, deny the
20 same.

21 22. These responding Defendants admit that Defendant, EB5 Impact Advisors LLC
22 and Plaintiff executed an engagement letter dated February 13, 2013. However, these
23 responding Defendants deny the remainder of the allegations in Paragraph 22 of Plaintiff's
24 Second Amended Complaint.

25 23. These responding Defendants admit that Defendant, EB5 Impact Advisors LLC
26 and Plaintiff executed an engagement letter dated February 13, 2013. However, these
27 responding Defendants deny the remainder of the allegations in Paragraph 23 of Plaintiff's
28 Second Amended Complaint.

1 24. These responding Defendants admit that Defendant, EB5 Impact Advisors LLC
2 and Plaintiff executed an engagement letter dated February 1, 2013. However, these responding
3 Defendants deny the remainder of the allegations in Paragraph 24 of Plaintiff's Second Amended
4 Complaint.

5 25. These responding Defendants admit that Defendant, EB5 Impact Advisors LLC
6 and Plaintiff executed an engagement letter dated February 1, 2013. However, these responding
7 Defendants deny the remainder of the allegations in Paragraph 25 of Plaintiff's Second Amended
8 Complaint.

9 26. These responding Defendants admit that Defendants and Plaintiff exchanged
10 correspondence. However, these responding Defendants deny the remainder of the allegations in
11 Paragraph 26 of Plaintiff's Second Amended Complaint.

12 27. These responding Defendants admit that the Regional Center Application was
13 filed on or about April 14, 2014 and that the application was approved on or about July 27, 2015,
14 and deny the remaining allegations in Paragraph 27 of Plaintiff's Second Amended Complaint.

15 28. These responding Defendants admit that the application for EB5 Impact Capital
16 Regional Center, LLC was filed on April 15, 2014. However, these responding Defendants deny
17 the remainder of the allegations in Paragraph 28 of Plaintiff's Second Amended Complaint.

18 29. These responding Defendants admit that Defendants and Plaintiff exchanged
19 correspondence. However, these responding Defendants deny the remainder of the allegations in
20 Paragraph 29 of Plaintiff's Second Amended Complaint.

21 30. These responding Defendants admit that the application for EB5 Impact Capital
22 Regional Center, LLC was approved on July 27, 2015. However, these responding Defendants
23 deny the remainder of the allegations in Paragraph 30 of Plaintiff's Second Amended Complaint.

24 31. These responding Defendants admit that Defendants and Plaintiff exchanged
25 correspondence. However, these responding Defendants deny the remainder of the allegations in
26 Paragraph 31 of Plaintiff's Second Amended Complaint.

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1 32. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the remainder of the allegations in
3 Paragraph 32 of Plaintiff's Second Amended Complaint.

4 33. These responding Defendants admit to the existence of a website identified as
5 "eb5impactcapital.com," and deny the allegations in Paragraph 33 of Plaintiff's Second Amended
6 Complaint.

7 34. These responding Defendants admit that Defendants and Plaintiff exchanged
8 correspondence. However, these responding Defendants deny the remainder of the allegations in
9 Paragraph 34 of Plaintiff's Second Amended Complaint.

10 35. These responding Defendants admit that Defendants and Plaintiff exchanged
11 correspondence. However, these responding Defendants deny the remainder of the allegations in
12 Paragraph 35 of Plaintiff's Second Amended Complaint.

13 36. These responding Defendants admit that Defendants and Plaintiff exchanged
14 correspondence. However, these responding Defendants deny the remainder of the allegations in
15 Paragraph 36 of Plaintiff's Second Amended Complaint.

16 37. These responding Defendants admit that Defendants and Plaintiff exchanged
17 correspondence. However, these responding Defendants deny the remainder of the allegations in
18 Paragraph 37 of Plaintiff's Second Amended Complaint.

19 38. These responding Defendants admit that Defendants and Plaintiff exchanged
20 correspondence. However, these responding Defendants deny the remainder of the allegations in
21 Paragraph 38 of Plaintiff's Second Amended Complaint.

22 39. These responding Defendants admit that Defendants and Plaintiff exchanged
23 correspondence. However, these responding Defendants deny the remainder of the allegations in
24 Paragraph 39 of Plaintiff's Second Amended Complaint.

25 40. These responding Defendants admit that LVD Fund has loaned Front Sight
26 \$6,375,000. However, these responding Defendants deny the remainder of the allegations in
27 Paragraph 40 of Plaintiff's Second Amended Complaint.

28 ///

1 41. These responding Defendants admit that Defendants and Plaintiff exchanged
2 correspondence. However, these responding Defendants deny the remainder of the allegations in
3 Paragraph 41 of Plaintiff's Second Amended Complaint.

4 42. These responding Defendants admit that Defendants and Plaintiff exchanged
5 correspondence. However, these responding Defendants deny the remainder of the allegations in
6 Paragraph 42 of Plaintiff's Second Amended Complaint.

7 43. These responding Defendants deny the allegations in Paragraph 43 of Plaintiff's
8 Second Amended Complaint.

9 44. These responding Defendants admit that Defendants and Plaintiff exchanged
10 correspondence. However, these responding Defendants deny the allegations in Paragraph 44 of
11 Plaintiff's Second Amended Complaint.

12 45. These responding Defendants deny the allegations in Paragraph 45 of Plaintiff's
13 Second Amended Complaint.

14 46. These responding Defendants deny the allegations in Paragraph 46 of Plaintiff's
15 Second Amended Complaint.

16 47. These responding Defendants deny the allegations in Paragraph 47 of Plaintiff's
17 Second Amended Complaint.

18 48. These responding Defendants admit that Defendant LVD Fund loaned
19 \$6,375,000 to Plaintiff. However, these responding Defendants deny the remainder of the
20 allegations in Paragraph 48 of Plaintiff's Second Amended Complaint.

21 49. These responding Defendants admit that Defendant Las Vegas Development Fund
22 served a Notice of Default on July 31, 2018. However, these responding Defendants deny the
23 remainder of the allegations in Paragraph 49 of Plaintiff's Second Amended Complaint.

24 50. These responding Defendants deny the allegations in Paragraph 50 of Plaintiff's
25 Second Amended Complaint.

26 51. These responding Defendants deny the allegations in Paragraph 51 of Plaintiff's
27 Second Amended Complaint.

28 ///

1 52. These responding Defendants admit that Plaintiff responded to Defendant Las
2 Vegas Development Fund's July 31, 2018 Notice of Default. However, these responding
3 Defendants deny the remainder of the allegations in Paragraph 52 of Plaintiff's Second Amended
4 Complaint.

5 53. These responding Defendants admit that Defendant Las Vegas Development Fund
6 served a second Notice of Default on August 24, 2018. However, these responding Defendants
7 deny the remainder of the allegations in Paragraph 53 of Plaintiff's Second Amended Complaint.

8 54. These responding Defendants deny the allegations in Paragraph 54 of Plaintiff's
9 Second Amended Complaint.

10 55. These responding Defendants admit that Plaintiff responded to Defendant Las
11 Vegas Development Fund's August 24, 2018 Notice of Default. However, these responding
12 Defendants deny the remainder of the allegations in Paragraph 55 of Plaintiff's Second Amended
13 Complaint.

14 56. These responding Defendants admit that Defendant Las Vegas Development Fund
15 served a third Notice of Default on August 28, 2018. However, these responding Defendants
16 deny the remainder of the allegations in Paragraph 56 of Plaintiff's Second Amended Complaint.

17 57. These responding Defendants admit that Defendants and Plaintiff attempted to
18 resolve the issues regarding Plaintiff's Defaults regarding the Construction Loan Agreement.
19 However, these responding Defendants deny the remainder of the allegations in Paragraph 57 of
20 Plaintiff's Second Amended Complaint.

21 58. These responding Defendants admit that Defendant Las Vegas Development
22 Fund recorded a Notice of Default on September 11, 2018. However, these responding
23 Defendants deny the remainder of the allegations in Paragraph 58 of Plaintiff's Second Amended
24 Complaint.

25 59. These responding Defendants admit that Defendants and Plaintiff exchanged
26 correspondence. However, these responding Defendants deny the allegations in Paragraph 59 of
27 Plaintiff's Second Amended Complaint.

28 ///

1 60. These responding Defendants deny the allegations in Paragraph 60 of Plaintiff's
2 Second Amended Complaint.

3 61. These responding Defendants admit that a Court order was entered regarding
4 Plaintiff's Petition for Appointment of Receiver and for an Accounting. However, these
5 responding Defendants deny the remainder of the allegations in Paragraph 61 of Plaintiff's
6 Second Amended Complaint.

7 62. These responding Defendants admit they have complied with the Court order
8 which was entered regarding Plaintiff's Petition for Appointment of Receiver and for an
9 Accounting. However, these responding Defendants deny the remainder of the allegations in
10 Paragraph 62 of Plaintiff's Second Amended Complaint.

11 63. These responding Defendants deny the allegations in Paragraph 63 of Plaintiff's
12 Second Amended Complaint.

13 64. These responding Defendants admit Plaintiff is entitled to a \$36,000.00 offset.
14 However, these responding Defendants deny the remainder of the allegations in Paragraph 64 of
15 Plaintiff's Second Amended Complaint.

16 65. These responding Defendants admit Defendant EB5IA has been dissolved.
17 However, these responding Defendants deny the remainder of the allegations in Paragraph 65 of
18 Plaintiff's Second Amended Complaint.

19 66. These responding Defendants admit Defendant EB5IA has been dissolved.
20 However, these responding Defendants deny the remainder of the allegations in Paragraph 66 of
21 Plaintiff's Second Amended Complaint.

22 67. These responding Defendants deny the allegations in Paragraph 67 of Plaintiff's
23 Second Amended Complaint.

24 68. These responding Defendants deny the allegations in Paragraph 68 of Plaintiff's
25 Second Amended Complaint.

26 69. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
27 multiple occasions. However, these responding Defendants deny the remainder of the allegations
28 in Paragraph 69 of Plaintiff's Second Amended Complaint.

1 70. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
2 multiple occasions. However, these responding Defendants deny the remainder of the allegations
3 in Paragraph 70 of Plaintiff's Second Amended Complaint.

4 71. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
5 multiple occasions. However, these responding Defendants deny the remainder of the allegations
6 in Paragraph 71 of Plaintiff's Second Amended Complaint.

7 72. These responding Defendants admit Plaintiff wired funds to the wrong accounts on
8 multiple occasions. However, these responding Defendants deny the remainder of the allegations
9 in Paragraph 72 of Plaintiff's Second Amended Complaint.

10 73. These responding Defendants deny the allegations in Paragraph 73 of Plaintiff's
11 Second Amended Complaint.

12 **FIRST CAUSE OF ACTION**
13 **(Fraud/Intentional Misrepresentation/Concealment Against All Defendants)**

14 74. These responding Defendants repeat and re-allege their responses to each of the
15 preceding and succeeding paragraphs as though fully set forth herein.

16 75. These responding Defendants deny the allegations in Paragraph 75 of Plaintiff's
17 Second Amended Complaint.

18 76. These responding Defendants deny the allegations in Paragraph 76 of Plaintiff's
19 Second Amended Complaint.

20 77. These responding Defendants admit that Defendant Dziubla is married to
21 Defendant Stanwood and that correspondence was exchanged. However, these responding
22 Defendants deny the remainder of the allegations in Paragraph 77 of Plaintiff's Second Amended
23 Complaint.

24 78. These responding Defendants deny the allegations in paragraph 78 of Plaintiff's
25 Second Amended Complaint.

26 79. These responding Defendants deny the allegations in Paragraph 79 of Plaintiff's
27 Second Amended Complaint.

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1 80. These responding Defendants deny the allegations in Paragraph 80 of Plaintiff's
2 Second Amended Complaint.

3 81. These responding Defendants deny the allegations in Paragraph 81 of Plaintiff's
4 Second Amended Complaint.

5 82. These responding Defendants deny the allegations in Paragraph 82 of Plaintiff's
6 Second Amended Complaint.

7 83. These responding Defendants deny the allegations in Paragraph 83 of Plaintiff's
8 Second Amended Complaint.

9 84. These responding Defendants deny the allegations in Paragraph 84 of Plaintiff's
10 Second Amended Complaint.

11 **SECOND CAUSE OF ACTION**
12 **(Breach of Fiduciary Duty Against All Defendants)**

13 85-89. Plaintiff's Second Cause of Action has been dismissed as against all Defendants
14 pursuant to this Court's Order filed April 9, 2019.

15 **THIRD CAUSE OF ACTION**
16 **(Conversion Against All Defendants)**

17 90. These responding Defendants repeat and re-allege their responses to each of the
18 preceding and succeeding paragraphs as though fully set forth herein.

19 91. These responding Defendants deny the allegations in Paragraph 91 of Plaintiff's
20 Second Amended Complaint.

21 92. These responding Defendants deny the allegations in Paragraph 92 of Plaintiff's
22 Second Amended Complaint.

23 93. These responding Defendants deny the allegations in Paragraph 93 of Plaintiff's
24 Second Amended Complaint.

25 94. These responding Defendants deny the allegations in Paragraph 94 of Plaintiff's
26 Second Amended Complaint.

27 **FOURTH CAUSE OF ACTION**
28 **(Civil Conspiracy Against All Defendants)**

95. These responding Defendants repeat and re-allege their responses to each of the
preceding and succeeding paragraphs as though fully set forth herein.

1 96. These responding Defendants deny the allegations in Paragraph 96 of Plaintiff's
2 Second Amended Complaint.

3 97. These responding Defendants deny the allegations in Paragraph 97 of Plaintiff's
4 Second Amended Complaint.

5 98. These responding Defendants deny the allegations in Paragraph 98 of Plaintiff's
6 Second Amended Complaint.

7 99. These responding Defendants deny the allegations in Paragraph 99 of Plaintiff's
8 Second Amended Complaint.

9 **FIFTH CAUSE OF ACTION**
10 **(Breach of Contract Against All Defendants EBSIA and LVDF)**

11 100. These responding Defendants repeat and re-allege their responses to each of the
12 preceding and succeeding paragraphs as though fully set forth herein.

13 101. These responding Defendants admit the allegations in Paragraph 101 of Plaintiff's
14 Second Amended Complaint.

15 102. These responding Defendants deny the allegations in Paragraph 102 of Plaintiff's
16 Second Amended Complaint.

17 103. These responding Defendants deny the allegations in Paragraph 103 of Plaintiff's
18 Second Amended Complaint.

19 104. These responding Defendants deny the allegations in Paragraph 104 of Plaintiff's
20 Second Amended Complaint.

21 105. These responding Defendants deny the allegations in Paragraph 105 of Plaintiff's
22 Second Amended Complaint.

23 106. These responding Defendants deny the allegations in Paragraph 106 of Plaintiff's
24 Second Amended Complaint.

25 **SIXTH CAUSE OF ACTION**
26 **(Contractual Breach of Implied Covenant of Good Faith and Fair Dealing Against the
Entity Defendants)**

27 Plaintiff's Sixth Cause of Action has been dismissed as against Defendant EBSIC pursuant to
this Court's Order filed April 9, 2019.

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1 107. These responding Defendants repeat and re-allege their responses to each of the
2 preceding and succeeding paragraphs as though fully set forth herein.

3 108. These responding Defendants admit the allegations in Paragraph 108 of Plaintiff's
4 Second Amended Complaint.

5 109. These responding Defendants admit the allegations in Paragraph 109 of Plaintiff's
6 Second Amended Complaint.

7 110. These responding Defendants admit the allegations in Paragraph 110 of Plaintiff's
8 Second Amended Complaint.

9 111. These responding Defendants deny the allegations in Paragraph 111 of Plaintiff's
10 Second Amended Complaint.

11 112. These responding Defendants deny the allegations in Paragraph 112 of Plaintiff's
12 Second Amended Complaint.

13 113. These responding Defendants deny the allegations in Paragraph 113 of Plaintiff's
14 Second Amended Complaint.

15 **SEVENTH CAUSE OF ACTION**
16 **(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing Against the Entity**
17 **Defendants)**

18 114-121. Plaintiff's Seventh Cause of Action has been dismissed as against the Entity
19 Defendants pursuant to this Court's Order filed April 9, 2019.

20 **EIGHTH CAUSE OF ACTION**
21 **(Intentional Interference with Prospective Economic Advantage Against the Entity**
22 **Defendants and Defendant Dziubla)**

23 Plaintiff's Eighth Cause of Action has been dismissed as against the Entity Defendants EB5IC
24 and EB5IA pursuant to this Court's Order filed April 9, 2019. Therefore Defendants Dziubla and
25 LVD Fund respond as follows:

26 122. These responding Defendants repeat and re-allege their responses to each of the
27 preceding and succeeding paragraphs as though fully set forth herein.

28 123. These responding Defendants lack sufficient information to admit or deny the
allegations in Paragraph 123 of Plaintiff's Second Amended Complaint and, therefore, deny the
same.

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1 124. These responding Defendants deny the allegations in Paragraph 124 of Plaintiff's
2 Second Amended Complaint.

3 125. These responding Defendants deny the allegations in Paragraph 125 of Plaintiff's
4 Second Amended Complaint.

5 126. These responding Defendants deny the allegations in Paragraph 126 of Plaintiff's
6 Second Amended Complaint.

7 127. These responding Defendants deny the allegations in Paragraph 127 of Plaintiff's
8 Second Amended Complaint.

9 128. These responding Defendants deny the allegations in Paragraph 128 of Plaintiff's
10 Second Amended Complaint.

11 **NINTH CAUSE OF ACTION**
12 **(Unjust Enrichment Against all Defendants)**

13 129-135. Plaintiff's Ninth Cause of Action has been dismissed as against all
14 Defendants pursuant to this Court's Order filed April 9, 2019.

15 **TENTH CAUSE OF ACTION**
16 **(Negligent Misrepresentation Against all Defendants)**

17 Plaintiff's Tenth Cause of Action has been dismissed as against Defendants Stanwood, Fleming,
18 EB5IC and LVDF pursuant to this Court's Order filed April 9, 2019. Therefore Defendants
19 EB5IA and Dziubla respond as follows:

20 136. These responding Defendants repeat and re-allege their responses to each of the
21 preceding and succeeding paragraphs as though fully set forth herein.

22 137. These responding Defendants admit the allegations in Paragraph 137 of Plaintiff's
23 Second Amended Complaint.

24 138. These responding Defendants deny the allegations in Paragraph 138 of Plaintiff's
25 Second Amended Complaint.

26 139. These responding Defendants deny the allegations in Paragraph 139 of Plaintiff's
27 Second Amended Complaint.

28 140. These responding Defendants deny the allegations in Paragraph 140 of Plaintiff's
Second Amended Complaint.

1 141. These responding Defendants deny the allegations in Paragraph 141 of Plaintiff's
2 Second Amended Complaint.

3 142. These responding Defendants deny the allegations in Paragraph 142 of Plaintiff's
4 Second Amended Complaint.

5 143. These responding Defendants deny the allegations in Paragraph 143 of Plaintiff's
6 Second Amended Complaint.

7 144. These responding Defendants deny the allegations in Paragraph 144 of Plaintiff's
8 Second Amended Complaint.

9 145. These responding Defendants deny the allegations in Paragraph 145 of Plaintiff's
10 Second Amended Complaint.

11 **ELEVENTH CAUSE OF ACTION**
12 **(Negligence Against all Defendants)**

13 146-150. Plaintiff's Eleventh Cause of Action has been dismissed as against all
14 Defendants pursuant to this Court's Order filed April 9, 2019.

15 **TWELFTH CAUSE OF ACTION**
16 **(Alter Ego Against all Defendants)**

17 151-160. Plaintiff's Twelfth Cause of Action has been dismissed as against all
18 Defendants pursuant to this Court's Order filed April 9, 2019.

19 These responding Defendants, LAS VEGAS DEVELOPMENT FUND LLC, EB5
20 IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, a dissolved
21 Nevada Limited Liability Company; ROBERT W. DZIUBLA, JON FLEMING, LINDA
22 STANWOOD, by and through their attorneys, KATHRYN HOLBERT, ESQ., of the law firm
23 FARMER CASE & FEDOR, and C. KEITH GREER of the law offices of GREER &
24 ASSOCIATES, A.P.C. having fully and specifically responded to each and every allegation set
25 forth in Plaintiff's Second Amended Complaint, now assert the following:

26 **AFFIRMATIVE DEFENSES**

27 **FIRST AFFIRMATIVE DEFENSE**

28 Plaintiff's Amended Complaint fails to state a claim for which relief can be granted as
against these responding Defendants.

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SECOND AFFIRMATIVE DEFENSE

These responding Defendants generally deny all liability and all allegations of negligence or wrongdoing.

THIRD AFFIRMATIVE DEFENSE

Any allegations or factual matters asserted by Plaintiff that are not specifically admitted are hereby denied.

FOURTH AFFIRMATIVE DEFENSE

The claims referred to in Plaintiff's Amended Complaint, and the resulting damage, if any, to Plaintiff, was proximately caused or contributed to by Plaintiff's own negligence, and as such, Plaintiff's negligence was greater than the negligence, if any, of these responding Defendants and, therefore Plaintiff's recovery should be barred or diminished.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff has been damaged as alleged, then said damages are the sole, direct and proximate result of actions and/or inactions of other named parties and/or third parties not presently named herein over which these responding Defendants had no control.

SIXTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to assert any and all defenses raised by any other party to this action.

SEVENTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to amend their Answer and/or assert additional affirmative defenses based upon discovery as well as an investigation of the facts and circumstances concerning the alleged incident that is the subject of Plaintiff's Amended Complaint.

EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, these responding Defendants allege that to the extent that Plaintiff's Amended Complaint alleges violations of law, those alleged violations of law are the result of the conduct or omissions of persons or entities other than these responding Defendants.

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NINTH AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting any claims against these responding Defendants because the alleged damages were the result of the intervening and/or superseding conduct of others.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches and/or the statute of limitation.

ELEVENTH AFFIRMATIVE DEFENSE

These responding Defendants reserve the right to seek contribution and indemnity in the event that these responding Defendants deem it appropriate to do so.

TWELFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, these responding Defendants allege that before the commencement of this action, these responding Defendants performed, satisfied, and discharged all duties and obligations they may have owed to Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff was the first party to breach the contract and cannot maintain an action against the Defendants for a subsequent failure to perform.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the alleged tortious act by Defendants was justified and/or privileged.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because all alleged injuries and damages, if any, were caused by the acts or omissions of Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Defendants complied with applicable statutes and with the requirements and regulations of the State of Nevada.

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1 COUNTER CLAIM

2 1. This counterclaim claims stem from Front Sight's misappropriation and diversion
3 of construction loan proceeds for the personal benefit of its principal, Ignatius Piazza, his wife
4 Jennifer Piazza, and beneficiaries of the VNV Trust Defendants, and Front Sight's breach of
5 multiple material provisions of the Construction Loan Agreement (the "CLA")¹, including its
6 failure to meet the construction schedule, material changes to the Project scope, failure to provide
7 government approved construction plans, failure to obtain senior debt, failure to meet its
8 reporting obligations to Lender under the CLA and EB-5 regulations, refusing to give Lender
9 access to its books and records, refusal to allow a site inspection and answer questions by
10 Lender's representatives, failure to pay default interest, further encumbering the Property by
11 selling securities, and failure to pay Lender's legal fees relating to enforcing Borrower to comply
12 with the terms of the CLA. Moreover, Borrower's recent actions of delaying construction,
13 refusing to grant Lender's representatives access to the property and concealing its books and
14 records, raise serious questions regarding Front Sight's continued solvency (which is a required
15 loan covenant) and thus, its ability to complete the Project

16 **I. PARTIES**

17 2. Counter-Claimant LAS VEGAS DEVELOPMENT FUND LLC (hereafter "LVD
18 Fund" or "Lender") is a Nevada limited liability company with a principal place of business
19 located in Nevada and has an interest and right in a the Property through a certain Deed of Trust²
20 that was by and between Front Sight and LVD FUND.

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22 _____
23 ¹ "CLA" refers to the Construction Loan Agreement dated October 6, 2016, between Front
24 Sight Management LLC ("Borrower") and Las Vegas Development Fund LLC ("Lender"). (See
Dziubla Decl., Ex. 3).

25 ² "Deed of Trust" refers to the "Construction Deed of Trust, Security Agreement, Assignment
26 of Leases and Rents, and Fixture Filing," recorded in the official records of Nye County, Nevada,
27 as "DOC #860867" on October 13, 2016, a copy of which is attached as Exhibit 1, filed herewith,
28 as amended by the "First Amendment to Construction Deed of Trust, Security Agreement and
Fixture Filing," recorded in the official records of Nye County, Nevada, as "DOC #886510" on
January 12, 2018, a copy of which is provided as Exhibit 2.

1 3. FRONT SIGHT MANAGEMENT LLC (hereinafter as "Front Sight" or
2 "Borrower") is a Nevada limited liability company with a principal place of business located in
3 Clark County, Nevada.

4 4. Counter Claimant is informed and believe, and on that basis alleges, Counter
5 Defendant VNV DYNASTY TRUST I is a Nevada statutory trust, Nevada business, family trust,
6 or other irrevocable trust that functions as an entity and that may claim title and ownership
7 interest in the Property. Counter Claimant is informed and believe, and on that basis alleges,
8 Counter Defendant VNV DYNASTY TRUST I was organized and exists under the laws of
9 Nevada and Counter Defendants IGNATIUS PIAZZA and JENNIFER PIAZZA are trustees
10 and/or beneficiaries of the VNV DYNASTY TRUST I.

11 5. Counter Claimant is informed and believe, and on that basis alleges, Counter
12 Defendant VNV DYNASTY TRUST II is a Nevada statutory trust, Nevada business, family
13 trust, or other irrevocable trust that functions as an entity and that may claim title and ownership
14 interest in the Property. Counter Claimant is informed and believe, and on that basis alleges,
15 Counter Defendant VNV DYNASTY TRUST II was organized and exists under the laws of
16 Nevada and Counter Defendants IGNATIUS PIAZZA and JENNIFER PIAZZA are trustees
17 and/or beneficiaries of the VNV DYNASTY TRUST II. (Hereinafter VNV DYNASTY TRUST I
18 and VNV DYNASTY TRUST II are collectively referred to as the "VNV Trust Defendants" or
19 "Trust Defendants")

20 6. Counter Claimant is informed and believe, and on that basis alleges, that Counter
21 Defendant IGNATIUS A. PIAZZA II, ("Piazza"), is an individual who is, and at all times
22 relevant hereto was, a resident of Sonoma County, California. Piazza is the managing member, or
23 otherwise in control under another title, of Counter Defendant Front Sight Management, LLC
24 and Trustee and/or beneficiary of VNV Trust Defendants.

25 7. Counter Claimant is informed and believe, and on that basis alleges, that
26 DEFENDANT JENNIFER PIAZZA, is an individual who is, and at all times relevant hereto was,
27 a resident of Sonoma County, California and is Trustee and/or beneficiary of VNV Trust
28 Defendants.

1 8. Upon information and belief, each of the Counter Defendants sued herein as ROE
2 Counter Defendants 1 through 10, inclusive, are beneficiaries or trustees of the Trust Defendants
3 and claim an interest in the Property or are responsible in some manner for the events and
4 happenings herein that Counter Claimant seeks to enjoin; that when the true names and capacities
5 of such defendants become known, Counter Claimant will ask leave of this Court to amend this
6 counterclaim to insert the true names, identities and capacities together with proper charges and
7 allegations.

8 9. Counter Claimant is informed and believe, and on that basis alleges that Counter
9 Defendants Front Sight and the VNV Trust Defendants are influenced and governed by Counter
10 Defendant Ignatius Piazza, and they are so intertwined with one another as to be factually and
11 legally indistinguishable. As such, the adherence to an LLC, corporate or trust fiction of separate
12 entities would, under the circumstances, sanction fraud and promote injustice.

13 10. As a result of Front Sight being the alter ego of Counter Defendant Ignatius
14 Piazza, Ignatius Piazza is personally liable for the liabilities of Front Sight regarding
15 the allegations set forth in this Counterclaim.

16 **II. GENERAL ALLEGATIONS**

17 11. The CLA was made to fund construction of the Front Sight Resort & Vacation
18 Club ("FS Resort") and an expansion of the facilities and infrastructure of the Front Sight
19 Firearms Training Institute (the "Training Facilities") located on a 550-acre site in Pahrump,
20 Nevada (the "Project"). The CLA dated October 6, 2016 (Exhibit 3) is the operative agreement
21 for purposes of determining Front Sight's obligations as the "Borrower," and the remedies
22 available to LVD Fund as the "Lender."

23 12. The "Project" is described as construction of the Front Sight Resort & Vacation
24 Club ("FSRVC") and an expansion of the facilities and infrastructure of the Front Sight Firearms
25 Training Institute ("FSFTI") (the "Facilities") located in a 550 acre site in Pahrump, Nevada. The
26 Facilities will include 102 timeshare residential units, up to 150 luxury timeshare RV pads, an
27 85,000 square foot restaurant, retail, classroom, and office building (to be known as the Patriot

28 *///*

1 Pavilion) and related infrastructure and amenities, all of which will be located at One Front Sight
2 Road, Pahrump, Nevada 89041.

3 13. All of the loan funds came from foreign citizens participating in the Federal
4 Immigrant Investor Program, known as "EB-5." The EB-5 Immigrant Investor Program, which is
5 administered by the United States Citizenship and Immigration Services ("USCIS"), provides
6 certain immigrant investors, who can demonstrate that their investments are creating jobs in this
7 country, with a potential avenue to lawful permanent residency in the United States. The program
8 sets aside EB-5 visas for participants who invest in commercial enterprises approved by USCIS,
9 frequently administered by entities called "regional centers." Each investor is required to invest a
10 minimum of \$500,000 and, through the EB-5 Immigrant Investor Program, are anticipated to
11 receive permanent foreign resident status within the United States *assuming compliance with the*
12 *EB-5 program requirements and creation of 10 US jobs per investor.* Material departures from
13 the U.S. Citizenship and Immigration Service ("USCIS") approved plans for the Project,
14 including delays in construction, and diversion of funds from the Project to general corporate or
15 personal uses, are all significant breaches of the CLA and potentially jeopardize the immigration
16 status of the EB-5 Investors.

17 14. According to the US Citizenship and Immigration Services, the Immigrant Investor
18 Program, also known as "EB-5," was created to stimulate the U.S. economy through job creation
19 and capital investment from immigrant investors by creating a new commercial enterprise or
20 investing in a troubled business. In this case, the immigrant investors are attempting to gain
21 lawful permanent residence for themselves and their families by participating in a Regional Center
22 Pilot Program, which requires them to make a capital investment of \$500,000, since this region is
23 deemed to be a Targeted Employment Area ("TEA"), i.e., "a rural area or an area that has
24 experienced high unemployment of at least 150 percent of the national average." The new
25 commercial enterprise must create or preserve 10 full-time jobs for qualifying U.S. workers within
26 two years (or under certain circumstances, within a reasonable time after the two year period) of
27 the immigrant investor's admission to the United States as a Conditional Permanent Resident
28 (CPR)."

1 BORROWER'S BREACHES AND DEFAULT UNDER THE CLA

2 **A. Breach Number 1: Improper Use of Loan Proceeds - CLA § 1.7(e)**

3 19. Section 1.7(e) of the CLA provides that "Borrower shall use the proceeds of the
4 Loan solely for the purpose of funding directly, or advancing to Affiliates to pay, the costs of the
5 Project, in accordance with the terms and conditions of this Agreement, as set forth in the Budget
6 and the Project documents submitted to, and approved by, USCIS." However, in its October 30,
7 2018 prove-up to LVD Fund regarding EB-5 compliance, Front Sight revealed that although it has
8 spent all of the \$6,375,000 in loan proceeds since the initial disbursement in October 2016, less
9 than \$2.7 million of the proceeds were actually spent on construction of the EB-5 project.

10 20. Counter Claimants are informed and believe and thereon allege that more than
11 \$3.675 million of EB-5 loan proceeds have been diverted to fund matters that are not related to
12 completion of the approved EB-5 plan, such as payment of Front Sight's general overhead
13 expenses, thereby severely prejudicing the EB-5 investors.

14 21. Counter Claimants are informed and believe and thereon allege that during the past
15 two years, Front Sight has been using EB-5 (CLA) loan proceeds to pay its general overhead
16 operating costs, pay off a pre-existing loan for which Ignatius Piazza and Jennifer Piazza are
17 personal guarantors, and disburse multi-million shareholder distributions to Counter Defendants
18 Ignatius Piazza, Jennifer Piazza, and the VNV Trust Defendants.

19 **B. Breach Number 2: Failure to Provide Government Approved Plans-CLA §3.2(b)**

20 22. Section 3.2 (b)(i) of the CLA requires that prior to the Commencement Date Front
21 Sight provide LVD Fund with "Plans, in the form previously submitted to Lender, as finally
22 approved for construction by the Project Architect and the applicable Governmental Authority."
23 (Exhibit 3, pg. 20). The "Commencement Date" for the Project is defined in the First Amendment
24 to Loan Agreement effective July 1, 2017 as "October 6, 2016." (Exhibit 4). This is to include "a
25 schedule listing all Contractors, and primary contracts relating to the Project having a contracts
26 sum in excess of \$250,000 for any such Contractor, and construction contracts, subcontracts and
27 schedules relating to the Project. (*Id.* CLA §3.2(b)(i)). In a letter dated August 28, 2018, Robert
28 Dziubla, on behalf of LVD Fund, gave notice to Front Sight that it was in default for failure to

1 provide construction plans and the related lists of contractors, licenses, agreements and permits
2 relating to the construction as required under §§3.2(b)(i) and (ii) of the CLA. Front Sight remains
3 in default under these provisions of the CLA..

4 **C. Breach Number 3: Failure to Timely Complete Construction - CLA § 5.1**

5 23. Pursuant to Section 5.1 of the CLA, Front Sight was required to complete
6 construction by the "Completion Date" which is defined as "the date that is no later than thirty-six
7 (36) months from the Commencement Date." (Exhibit 3 pg. 3). Pursuant to the First Amendment
8 to the Loan Agreement, the "Commencement Date" is defined as "October 4, 2016." (Exhibit 4,
9 §1). Therefore, construction of the project must be completed on or before October 4, 2019.

10 24. Front Sight has explicitly acknowledged in writing that it is in default of this
11 requirement, warning LVD Fund in a letter dated August 25, 2018 that "... the foreclosure killed
12 the project when it was 18 months away from being completed." Even by Counter Defendant
13 Front Sight's written projection as of August 25, 2018, the Project will not be completed by the
14 contractual Completion Date of October 4, 2019, i.e., 36 months after the commencement date as
15 stated in the First Amendment to Loan Agreement.

16 25. This is a material event of Default, and it is particularly prejudicial to the EB-5
17 investors who risk losing their EB-5 benefits if the project is not completed in accordance with the
18 schedule approved by the USCIS.

19 **D. Breach Number 4: Material Change of Costs, Scope or Timing of Work - CLA § 5.2**

20 26. Section 5.2 of the CLA states in pertinent part:

21 "Borrower shall deliver to Lender revised, estimated costs of the
22 Project, showing changes in or variations from the original
23 Estimated Construction Cost Statement, as soon as such changes are
24 known to Borrower. Borrower shall deliver to Lender a revised
25 construction schedule, if and when any target date set forth therein
26 has been delayed by twenty (20) consecutive days or more, or when
27 the aggregate of all such delays equals thirty (30) days or more.
28 Borrower shall not make or consent to any change or modification
in such Plans, contracts or subcontracts, and no work shall be
performed with respect to any such change or modification, without
the prior written consent of Lender, if (1) such change or
modification would in any material way alter the design or structure
of the Project or change the rentable area thereof in any way, or
increase or decrease the Project cost by \$250,000 or more (after
taking into account cost savings and any insurance proceeds of

1 Borrower received by Lender) for any single change or
2 modification, or (ii) the aggregate amount of all changes and
3 modifications exceeds \$500,000 (after taking into account cost
4 savings and any insurance proceeds of Borrower received by
5 Lender). Borrower shall promptly furnish Lender with a copy of all
6 changes or modifications in the Plans, contracts or subcontracts for
7 the Project prior to any Advance used to fund such change or
8 modification whether or not Lender's consent to such change or
9 modification is required hereby."

6 27. Front Sight has made multiple material changes to the plans and schedule without
7 obtaining written consent from LVD Fund, including, *inter alia*, reducing the size of the "Patriot
8 Pavilion" from 85,000 square feet, as represented to USCIS, to approximately 25,000 - 30,000
9 square feet, while also modifying plans to eliminate foundations. Counter Claimants are informed
10 and believe and thereon allege that this change by Front Sight is a material change in the
11 construction plans, in breach of the CLA.

12 **E. Breach Number 5: Refusal to Comply Regarding Senior Debt - CLA § 5.27**

13 28. Under the CLA, Front Sight was required to obtain Senior Debt from a traditional
14 construction lender, originally by March 31, 2016 (Exhibit 3 at pg. 11 "Senior Debt" defined),
15 then was given an extension to December 31, 2017 (Exhibit 4 at ¶4), and then was given and
16 extension to June 30, 2018 (Exhibit 5 at ¶1). To date, Front Sight has not secured a Senior Debt
17 that meets the requirements of the CLA.

18 **F. Breach Number 6: Failure to Provide Monthly Project Costs - CLA § 3.2(a)**

19 29. Front Sight has not delivered the required Monthly Evidence of Project Costs.
20 "From and after the date of the first Advance of the Loan, Borrower shall deliver to Lender on a
21 monthly basis evidence of the Project costs funded during the preceding month." (CLA § 3.2(a)).
22 Counter Defendant Front Sight has not delivered a single monthly Project cost report.

23 **G. Breach Number 7: Failure to Notify of Event of Default - CLA § 5.10**

24 30. Section 5.10(d) of the CLA requires the Borrower to notify Lender of the
25 occurrence of an Event of Default. "Within five (5) Business Days after the occurrence of any
26 event actually known to Borrower which constitutes a Default or an Event of Default, notice of
27 such occurrence, together with a detailed statement of the steps being taken to cure such
28 event, and the estimated date, if known, on which such action will be taken." Front Sight has

1 failed to notify LVD Fund of either (1) the existence of certain events of default or (2) a detailed
2 statement of the steps being taken to cure the event of default.

3 **H. Breach Number 8: Refusal to Allow Inspection of Records - CLA § 5.4**

4 31. Section 5.4 of the CLA provides:

5 **Keeping of Records.** Borrower shall set up and maintain accurate
6 and complete books, accounts and records pertaining to the Project.
7 Borrower will permit representatives of Lender to have reasonable
8 access to and to inspect and copy such books, records and contracts
9 of Borrower and to inspect the Project and to discuss Borrower's
10 affairs, finances and accounts with any of its principal officers, all at
11 such times and as often as may reasonably be requested by Lender.

12 32. LVD Fund made a demand to inspect the Books and Records by Notice of Default
13 and Letter dated July 30, 2018.

14 33. Front Sight explicitly refused to comply with this obligation under the CLA, as
15 stated in the letter from Ignatius Piazza dated August 20, 2018. It states "Borrower is not in
16 breach; thus, there will be no inspections. In the Notice; you have included a "Notice of
17 Inspections" which alleges that "[P]ursuant to articles 3.3 and 5.4 of the CLA, we hereby serve
18 you notice that we and our representatives will inspect the Project and your books and records on
19 Monday, August 27." As set forth above and below herein, we contend that Borrower is not in
20 breach or default of any of its obligations under the Loan Agreement; thus, Borrower will not
21 authorize any inspections whatsoever by Lender or its representatives of the Project or its
22 books and records on the proposed date of August 27 [2018], or at any other time."

23 34. The right of inspection with advance notice pursuant to §3.3 and §5.4 of the CLA
24 is not contingent on whether there is an Event of Default. Front Sight's refusal to permit the
25 inspection constitutes a separate Event of Default acknowledged in writing by Front Sight.

26 **I. Breach Number 9: Refusal to Allow Inspection of the Project - CLA § 3.3**

27 35. Section 3.3 of the CLA provides:

28 **Inspections:** Lender and its representatives shall have access to the
Project at all reasonable times and shall have the right to enter the
Project to conduct such inspections thereof as they shall deem
necessary or desirable for the protection of Lender's interests;
provided, however, that for so long as no Event of Default shall
have occurred and be continuing, Lender shall provide to borrower
prior to the notice of not less than seventy-two (72) hours of any

1 such inspections and such inspection shall be subject to the rights of
2 club members (i.e., owners of timeshare interests) and any tenants
under any applicable leases.”

3 36. As discussed in the section above, on July 30, 2018, LVD Fund made a demand to
4 Front Sight for permission to inspect the Project, with more than 72 hours notice, even though
5 Events of Default negated the need for advanced notice. In response, Front Sight explicitly refused
6 to comply with this obligation under the CLA, stating: “Borrower will not authorize any
7 inspections whatsoever by Lender or its representatives of the Project or its books and
8 records on the proposed date of August 27 [2018], or at any other time.”

9 37. This is a material breach of the CLA justifying court intervention because the right
10 of inspection is necessary for Lender to determine, *inter alia*, appropriate use of loan proceeds,
11 construction progress, and possible impairment of security, which is necessary for Lender to
12 protect its interests.

13 **J. Breach Number 10: Failure to Provide EB-5 Information - CLA § 1.7(f)**

14 38. In order to verify continuing eligibility for participation in the EB-5 Investor
15 Program with the USCIS, Front Sight was required to submit certain EB-5 information on a
16 continuing basis as a condition of the loan. “Borrower shall submit to Lender the EB-5
17 Information. Failure of Borrower to use the proceeds of the Loan in accordance with the terms and
18 conditions of this Agreement or to provide the EB-5 Information shall be a default pursuant to
19 Section 6.1.” (Exhibit 3). This obligation was further specified in the First Amendment to the
20 CLA requiring “Borrower [to] provide Lender with copies of major contracts, bank statements,
21 receipts, invoices and cancelled checks or credit card statements or other proof of payment
22 reasonably acceptable to Lender that document that Borrower has invested in the Project at least
23 the amount of money as has been disbursed by Lender to Borrower on or before the First
24 Amendment Effective Date.” (Exhibit 4).

25 39. Front Sight has failed to provide the required EB-5 Information. It is necessary to
26 give Lender access to the information needed in order to meet its obligations to its EB-5 investors
27 so the investors don't lose their investment and their path to citizenship.

28 **K. Breach Number 12: Transferring Assets to Related Parties - CLA § 5.18**

1 40. Section 5.18 of the CLA provides that: "Borrower shall not directly or indirectly,
2 prior to completion of all of the improvements or the Completion Date, (a) make any distribution
3 of money or property to any Related Party, or make or advance to any Related Party, or (b) make
4 any loan or advance to any Related Party, or . . . (d) pay any fees or other compensation . . . to
5 itself or to any Related Party, if any such payment in (a) through (d), inclusive, might adversely
6 affect Borrower's ability to repay the loan in accordance with its terms . . ."

7 41. In violation of § 5.18, Counter Defendant Ignatius Piazza removed and converted
8 \$10,968,803 away from Front Sight in 2016-2017 (\$4,903,525 as income to Ignatius Piazza and
9 the VNV Trust Defendants and \$6,065,278 in "loans" from Front Sight). Then in 2017-2018,
10 Ignatius Piazza removed and converted another \$7,505,895 out for himself and the VNV Trust
11 Defendants in 2017.

12 42. Counter Claimant LVD Fund is informed and believes that Ignatius Piazza has
13 transferred additional funds from Front Sight to himself, his wife Jennifer Piazza (either directly
14 or indirectly) and the VNV Trust Defendants in violation of §5.18, which have yet to be disclosed.

15 43. Counter Claimants are informed and believe and thereon allege that Counter
16 Defendants Ignatius Piazza and Jennifer Piazza both individually, as Trustees of the VNV Trust
17 Defendants, and/or as beneficiaries of the VNV Trust Defendants knew about the source of the
18 transferred funds, and that transferring such funds violated the CLA, and with such knowledge
19 endorsed and aided in the removal of funds from Front Sight, and directly benefitted from the
20 funds through the VNV Trust Defendants and by reduction in debts that Ignatius Piazza and
21 Jennifer Piazza had personally guaranteed.

22 44. Assuming that Counter-Defendant's withdrawals for 2018 are comparable, they
23 will have diverted out of Front Sight, for their personal benefit, enough capital to have completed
24 the Front Sight Resort Project well within the time constraints approved by the USCIS for the EB-
25 5 Project. By diverting profits generated by Front Sight's operations to themselves, their trusts,
26 and using EB-5 investor funds to pay Front Sight's operating expenses and pre-existing loans,
27 Counter Defendants Ignatius Piazza and Jennifer Piazza misappropriated loan proceeds and
28 endangered Front Sight's solvency.

1 **L. Breach Number 11: Non Payment of Default Interest - CLA § 1.2**

2 45. Section 1.2 of the CLA provides that if there is an Event of Default, interest shall
3 be charged at the "Default Rate." The "Default Rate" is defined as "the lesser of five percent
4 (5%) per annum in excess of the Loan Rate or the maximum lawful rate of interest which may be
5 charged." (Exhibit 3, CLA, pg. 4, "Default Rate Defined.") Because Front Sight is in default
6 under multiple provisions of the CLA as detailed above, the Default Rate provisions of Section
7 1.2 were properly triggered.

8 46. Front Sight has failed and refused to pay the Default Rate despite the demand
9 therefor. As a result of failing to pay default interest rates, Front Sight is in monetary default
10 under the terms of the CLA.

11 **M. Breach Number 12: Non Payment of Legal Fees - CLA § 8.2**

12 47. Section 8.2(a) of the CLA provides that "Borrower agrees to pay and reimburse
13 Lender upon demand for all reasonable expenses paid or incurred by Lender (including reasonable
14 fees and expenses of legal counsel) in connection with the collection and enforcement of the Loan
15 Documents, or any of them." This obligation was specifically reaffirmed in ¶7 of the First
16 Amendment to the Loan Agreement (Exhibit 4), with respect to failure to provide the EB-5
17 Information. LVD Fund has incurred legal fees in connection with the Notices of Default and has
18 made demand of payment therefor from Front Sight. To date, Front Sight has refused to pay such
19 fees and this constitutes a monetary default under §6.1(b) of the CLA. LVD Fund has also
20 incurred attorneys' fees and costs in excess of \$165,000 in defense of this action and pursuing its
21 rights and remedies under the CLA and Deed of Trust, for which Front Sight is contractually
22 liable.

23 **N. Breach Number 13: Wrongfully Encumbering the Property.**

24 48. Section 5.7 of the CLA provides that "[w]ithout the prior written consent of
25 Lender, Borrower shall not voluntarily or involuntarily agree to, cause, suffer or permit any sale,
26 conveyance, lease, mortgage, grant, lien, encumbrance, security interest, pledge, assignment or
27 transfer of: (a) the Project or any part or portion thereof, or (b) any ownership interest in
28 Borrower, direct or indirect, legal or equitable (including the issuance, sale, redemption, or

1 repurchase of any such interest, the distribution of treasury stock, or the payment of any
2 indebtedness owed to Borrower by any managers, subsidiaries, Affiliates or owners of equity
3 interests or debentures).

4 49. In breach of this provision of the CLA, Counter Defendants Front Sight and
5 Ignatius Piazza have been selling, and continue to sell "credits," "points," "memberships,"
6 "certificates," and other instruments and products, including the sale of unregistered securities,
7 that create contingent liabilities for Counter Defendant Front Sight and/or include the current or
8 contingent rights to convert said instruments directly or indirectly into ownership interests in
9 Counter Defendant Front Sight or the Project.

10 50. As a result of the multiple breaches outlined above, on January 4, 2019, LVD Fund
11 filed the "Notice of Breach, Default and Election to Sell Under the Deed of Trust" with the Nyc
12 County Recorder (DOC #905512, attached hereto as Exhibit 6).

13 51. Counter Defendant Front Sight thereafter has failed to correct any of the previously
14 cited breaches and Events of Default under the CLA, and has further breached the CLA by failing
15 to provide Counter Claimant LVD Fund with financial statements within 75 days of the end of
16 calendar year 2018, as identified in § 5.10 of the CLA, despite Counter Claimant making the
17 demand for said financial statements by letter dated March 25, 2019.

18 **FIRST CAUSE OF ACTION**
19 **Breach of Contract Against Front Sight**

20 52. Counter Claimant repeats and realleges each and every allegation contained in
21 paragraphs 1 through 51 of this Counterclaim as though set forth fully herein at length.

22 53. Front Sight entered into a written Construction Loan Agreement with LVD Fund
23 (Ex. 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in
24 February 2018. (Ex. 5).

25 54. LVD Fund has performed its obligations under the terms of the Construction Loan
26 Agreement and all conditions precedent to Counter Defendant's performance under the
27 Construction Loan Agreement were fulfilled.

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1 55. Counter Defendant Front Sight was not excused from performing any of its
2 obligations under the terms of the Construction Loan Agreement.

3 56. Front Sight breached the contracts as set forth above.

4 57. Counter Claimant has sustained damages, an amount well in excess of fifteen
5 thousand dollars (\$15,000.00) jurisdictional limit, as a direct result of Defendants' breach.

6 58. As a result of Counter Defendant's actions, Counter Claimant has been required to
7 retain the services of an attorney in order to pursue this claim against said Counter Defendants,
8 and each of them, and is therefore entitled to be compensated for any and all costs incurred in the
9 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
10 fees.

11 59. LVD Fund also is entitled to attorney's fees under Section 8.2 of the Construction
12 Loan Agreement for enforcement of the contract.

13 **SECOND CAUSE OF ACTION**

14 **Contractual Breach of the Covenant of Good Faith and Fair Dealing Against Front Sight)**

15 60. Counter Claimant repeats and realleges each and every allegation contained in
16 paragraphs 1 through 59 of this Counterclaim as though set forth fully herein at length.

17 61. Front Sight entered into a written Construction Loan Agreement with LVD Fund
18 (Ex. 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in
19 February 2018. (Ex. 5).

20 62. Counter Defendant Front Sight owed a duty of good faith in performing their duties to
21 LVD Fund.

22 63. As set forth above, Counter Defendant breached that duty by failing and/or
23 refusing to meet their obligations under the agreement and performing in a manner that was
24 unfaithful to the purpose of the contracts. Counter Defendant's actions constitute contractual
25 breaches of the covenant of good faith and fair dealing.

26 64. Counter Claimant's justified expectations were thus denied.

27 65. As a result of Counter Defendant's actions, Counter Claimant has been required to
28 retain the services of an attorney in order to pursue this claim against said Counter Defendant, and

1 each of them, and is therefore entitled to be compensated for any and all costs incurred in the
2 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
3 fees.

4 66. LVD Fund also is entitled to attorney's fees under Section 8.2 of the Construction
5 Loan Agreement for enforcement of the contract.

6 **THIRD CAUSE OF ACTION**
7 **Intentional Interference with Contractual Relationships Against Ignatius Piazza, Jennifer**
8 **Piazza, and VNV Trust Defendants.**

9 67. Counter Claimant repeats and realleges each and every allegation contained in
10 paragraphs 1 through 66 of this Counterclaim as though set forth fully herein at length.

11 68. Front Sight and LVD Fund entered into a written Construction Loan Agreement
12 (Ex. 3), along with a First Amendment in July 2017 (Ex. 4), and a Second Amendment in
13 February 2018. (Ex. 5).

14 69. Counter Defendants had knowledge of the valid contract or had reason to know of
15 its existence;

16 70. These Counter Defendants committed intentional acts intended or designed to
17 disrupt the contractual relationship or to cause the contracting party to breach the contract,
18 including but not limited to, inducing Front Sight to improperly use funds for the personal benefit
19 of Counter Defendants Ignatius Piazza, Jennifer Piazza, and VNV Trust Defendants.

20 71. Front Sight did in fact breach the contract as stated specifically above.

21 72. The breach was caused by the wrongful and unjustified conduct;

22 73. As a direct and proximate result of Counter Defendants' intentional acts to induce
23 Front Sight to breach the CLA, Counter Claimant sustained damages in the amount to be proven
24 at trial.

25 74. As a result of Counter Defendants' actions, Counter Claimant has been required to
26 retain the services of an attorney in order to pursue this claim against said Counter Defendants,
27 and each of them, and is therefore entitled to be compensated for any and all costs incurred in the
28 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
fees.

1 **FOURTH CAUSE OF ACTION**
2 **Conversion Against Front Sight, Ignatius Piazza and Jennifer Piazza**

3 75. Counter Claimant repeats and realleges each and every allegation contained in
4 paragraphs 1 through 74 of this Counterclaim as though set forth fully herein at length.

5 76. Through these Counter Defendants' conduct described above, Counter Defendants
6 obtained Counter Claimants' property and have wrongfully asserted dominion over Counter
7 Claimant's property; to wit: misappropriating and spending the loan proceeds under the CLA for
8 purposes other than that for which it was intended.

9 77. Counter Defendants' wrongful conduct was in denial of, inconsistent with, and in
10 defiance of Counter Claimant's rights and title to its money and/or property.

11 78. As a result of Counter Defendants' actions, Counter Claimant has been required to
12 retain the services of an attorney in order to pursue this claim against said Counter Defendants,
13 and each of them, and is therefore entitled to be compensated for any and all costs incurred in the
14 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
15 fees.

16 **FIFTH CAUSE OF ACTION**
17 **Civil Conspiracy Against All Counter Defendants**

18 79. Counter Claimant repeats and realleges each and every allegation contained in
19 paragraphs 1 through 78 of this Counterclaim as though set forth fully herein at length.

20 80. As set forth above, Counter Defendants Ignatius Piazza and Jennifer Piazza, both
21 in their individual capacity and in their capacity as Trustees and/or beneficiaries of the VNV Trust
22 Defendants, acted together in concert, in their individual capacities, to accomplish their unlawful
23 objectives for the purpose of harming Counter Claimant.

24 81. While acting in their individual capacities and in their capacity as Trustees and/or
25 beneficiaries of the VNV Trust Defendants, Ignatius Piazza and Jennifer Piazza conspired with
26 the Front Sight and the VNV Trust Defendants, using Front Sight and VNV Trust Defendants to
27 achieve their unlawful objective of diverting monies from Front Sight that were needed to
28 maintain Front Sight's solvency and its ability to meet its obligations under the CLA regarding

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1 timely completion of the Project and repayment of the loan, for their own individual advantage
2 and benefit.

3 82. As a direct and proximate result of the Counter Defendants' acts, Counter Claimant
4 has been damaged in an amount to be proven at trial.

5 83. Counter Defendants' conduct was malicious, oppressive and fraudulent under NRS
6 42.005, entitling Counter Claimant to an award of punitive damages.

7 84. As a result of Counter Defendants' actions, Counter Claimant has been required to
8 retain the services of an attorney in order to pursue this claim against said Counter Defendants,
9 and each of them, and is therefore entitled to be compensated for any and all costs incurred in the
10 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
11 fees.

12 85. Based on Counter Defendants' conduct and the inequitable result of allowing the
13 transferred funds to remain in control of Counter Defendants, a constructive trust should be placed
14 on all moneys transferred from Front Sight to the VNV Trust Defendants, as prayed for below.

15 **SIXTH CAUSE OF ACTION**
16 **Judicial Foreclosure Against Front Sight**

17 86. Counter Claimant repeats and realleges each and every allegation contained in
18 paragraphs 1 through 85 of this Counterclaim as though set forth fully herein at length.

19 87. In July 2017, Counter Defendant Front Sight for good and valuable consideration
20 executed and delivered the original Promissory Note to LVD Fund. On November 14, 2017,
21 Counter Defendant Front Sight executed and delivered the Amended and Restated Promissory
22 Note to LVD Fund. (Exhibit 7).

23 88. To secure the Note, on October 13, 2016, Counter Claimant LVD Fund recorded a
24 Deed of Trust titled "Construction Deed of Trust, Security Agreement, Assignment of Leases and
25 Rents, and Fixture Filing," in the official records of Nye County, Nevada, as "DOC #860867."
26 (Exhibit 1). On January 12, 2018, the "First Amendment to Construction Deed of Trust, Security
27 Agreement and Fixture Filing," was recorded in the official records of Nye County, Nevada, as
28 "DOC #886510." (Exhibit 2).

1 89. Counter Claimant LVD Fund is the owner and the holder of the note for value and
2 has performed all obligation under the Promissory Note.

3 90. The encumbered Property is now owned by and in possession of the Counter
4 Defendant Front Sight.

5 91. Counter Defendants have breached the Deed of Trust as discussed in detail above,
6 which include but are not limited to: improper use of loan proceeds; failure to provide government
7 approved plans; material delays in construction, material changes to cost, scope and timing of the
8 construction; refusal to comply with regarding senior debt; failure to provide monthly project
9 costs; failure to notify Lender of events of default; refusal to allow Lender to inspect books and
10 records; diverting Front Sight assets out of Front Sight for the benefit the the individual Counter
11 Defendants; refusal to allow site inspections; failure to give Lender annual financial statements;
12 and failure to provide EB5 documentation.

13 92. As of January 4, 2019 there remained due and owing under the Note approximately
14 \$345,787.24 as described in the Notice of Breach and Election to Sell Under the Deed of Trust.
15 (Exhibit 6). Counter Defendants reserve the right to amend this Counterclaim up to the time of
16 trial to include any additional amounts which become due and remain unpaid as a result of
17 additional damages caused by Counter Defendants.

18 93. Counter Claimant is entitled to an order directing a foreclosure sale in the subject
19 Property to abrogate any and all interest or claims that Counter Defendants might have in the
20 subject Property.

21 94. As a result of Counter Defendants' actions, Counter Claimant has been required to
22 retain the services of an attorney in order to pursue this claim against said Counter Defendants,
23 and each of them, and is therefore entitled to be compensated for any and all costs incurred in the
24 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
25 fees.

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1 **SEVENTH CAUSE OF ACTION**

2 **Waste Against Front Sight, Ignatius Piazza, Jennifer Piazza and the VNV Trust Defendants**

3 95. Counter Claimant repeats and realleges each and every allegation contained in
4 paragraphs 1 through 94 of this Counterclaim as though set forth fully herein at length.

5 96. Counter Claimant LVD Fund (Lender) has a lien encumbering the subject Property.

6 97. Counter Defendant Front Sight (Borrower) has possession of the Property.

7 98. Waste was committed to the property in bad faith, impairing its value, including
8 but not limited to improperly using funds earmarked for development of the Property for the
9 personal benefit of Counter Defendants Ignatius Piazza, Jennifer Piazza and the VNV Trust
10 Defendants; selling unregistered securities which create substantial legal and financial liability to
11 Front Sight, misappropriating Front Sight's assets for the personal benefit of Ignatius and Jennifer
12 Piazza and other beneficiaries of the VNV Trust Defendants, and selling various instruments
13 which include rights to Front Sight's resort property for highly reduced rates which further
14 encumbers the Property, either directly or indirectly.

15 99. As a direct and proximate result of the waste committed by Counter Defendants,
16 Counter Claimant has been injured in an amount to be proven at trial.

17 100. Counter Claimant is entitled to treble damages under NRS 40.150.

18 101. Counter Defendants' conduct was malicious, oppressive and fraudulent under NRS
19 42.005, entitling Counter Claimant to an award of punitive damages.

20 102. As a result of Counter Defendants' actions, Counter Claimant has been required to
21 retain the services of an attorney in order to pursue this claim against said Counter Defendants,
22 and each of them, and is therefore entitled to be compensated for any and all costs incurred in the
23 prosecution of this action, including without limitation, any and all reasonable costs and attorney's
24 fees.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, all material allegations of Plaintiff's Second Amended Complaint having
27 been denied, affirmative defenses having been stated, and counterclaims asserted, these
28 responding Defendants now pray as follows:

- 1 1. That Plaintiff take nothing by way of its Second Amended Complaint on file herein
2 and that the same be dismissed with prejudice;
- 3 2. For Judgment in favor of Counter Claimants against Counter Defendants, and each
4 of them, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), subject to proof at
5 trial;
- 6 3. For appointment of a receiver over Counter Defendant Front Sight;
- 7 4. For an accounting from Counter Defendant Front Sight from October 6, 2016
8 forward, of any and all money paid and received, from all sources;
- 9 5. For an accounting from the Counter Defendant VNV Trusts from October 6, 2016
10 forward, of any and all money received from Counter Defendant Front Sight, and for all money
11 distributed by the Counter Defendant Trusts since October 6, 2016.
- 12 6. For imposition of a constructive trust over the money transferred by Counter
13 Defendant Front Sight to the VNV Trust Defendants in violation of Section 5.18 of the CLA,
14 because the retention of said funds by the Counter Defendant Trusts against Counter Claimant
15 LYD Fund's interests would be inequitable, and a constructive trust is essential to the effectuation
16 of justice, and that restrictions be placed on such funds that limit their use to paying for the costs
17 and expenses relating to completion of the Project.
- 18 7. For injunctive relief pursuant to NRS 33.010 or as otherwise permitted by law or
19 equity to enjoin Counter Defendant Front Sight from engaging in acts that further encumber the
20 Property and increase Counter Defendant Front Sight's actual or contingent liabilities in violation
21 of the CLA, including the sale of "credits," "points," "memberships," "certificates," or any other
22 instruments or products, including the sale of unregistered securities, that create contingent
23 liabilities for Counter Defendant Front Sight and/or include the current or contingent right to
24 convert said instruments directly or indirectly into ownership interests in Counter Defendant Front
25 Sight or the Project.
- 26 8. For punitive damages pursuant to NRS 42.005.
- 27 9. For disgorgement of the funds misappropriated by Counter Defendant Front Sight
28 to the other Counter Defendants;

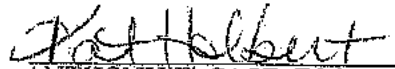
1 10. For a Writ of Execution directing the Sheriff of the County in which the Subject
2 Property is located, to seize and sell the real property in an attempt to satisfy the sums due to
3 Defendants/Counterclaimants herein;

4 11. For attorneys' fees and cost of suit incurred herein; and

5 12. For such other and further relief as the Court may deem just and proper.

6 DATED: April 23, 2019.

FARMER CASE & FEDOR

8 

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LAS VEGAS DEVELOPMENT FUND LLC.

21 EB5 IMPACT CAPITAL REGIONAL CENTER,

LLC, EB6 IMPACT ADVISORS, LLC, ROBERT

22 W. DZIUBLA, JON FLEMING and LINDA

23 STANWOOD

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CERTIFICATE OF SERVICE and/or MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Farmer Case & Fedor, and that on this date, I caused true and correct copies of the following document(s):

DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT; AND COUNTERCLAIM

to be served on the following individuals/entities, in the following manner,

John P. Aldrich, Esq.	Attorneys for Plaintiff
Catherine Hernandez, Esq.	FRONT SIGHT MANAGEMENT, LLC
ALDRICH LAW FIRM, LTD.	
1601 S. Rainbow Blvd., Suite 160	
Las Vegas, Nevada 89146	

By:

- **ELECTRONIC SERVICE:** Said document(s) was served electronically upon all eligible electronic recipients pursuant to the electronic filing and service order of the Court (NECRF 9).
- **U.S. MAIL:** I deposited a true and correct copy of said document(s) in a sealed, postage prepaid envelope, in the United States Mail, to those parties and/or above named individuals which were not on the Court's electronic service list.

Dated: April 23, 2019


An Employee of FARMER CASE & FEDOR

Exhibit 1

DOC #860867

RECORDING REQUESTED BY:)
AFTER RECORDING, RETURN TO:)

LAS VEGAS DEVELOPMENT FUND LLC
C/O EB5 Impact Capital
PO BOX 3003
Incline Village, NV 89450

APN
045-481-05
045-481-06

Official Records Nye County NV
Deborah Beatty - Recorder
10/13/2016 08:32:24 AM
Requested By: CHICAGO TIMESHARE ESC
Recorded By: tc RPTT:\$0
Recording Fee: \$51.00
Non Conformity Fee: \$25.00
Page 1 of 38

57285-NBLL/193090176-426

Space above this line for Recorder's use

CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING

This Document serves as a Fixture Filing under the Uniform Commercial Code, as amended from time to time, covers goods that are or become fixtures on the land, and is to be filed in the real property records of Nye County, Nevada.

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (the "Deed of Trust") is made and entered into effective as of October 06, 2016 by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company ("Grantor"), whose address is 1 Front Sight Road, Pahrump, Nevada 89061, to Chicago Title Company ("Trustee") whose address is 725 S. Figueroa Street, Suite 200, Los Angeles, California 90017, for the benefit of Las Vegas Development Fund LLC, a Nevada limited liability company ("Lender"), as beneficiary, whose address is P.O. Box 3003, 916 Southwood Blvd., Suite 1G, Incline Village, Nevada 89450.

To secure the full and timely payment of the secured indebtedness (as hereinafter defined), and in further consideration of the premises and for the purposes herein recited, and to secure the payment, performance and observance by Grantor of the covenants and conditions contained herein, in the Note (as hereinafter defined) and in all other agreements, documents and instruments (the "Other Documents") now or hereafter governing, securing, or guaranteeing the Loan (as hereinafter defined) evidenced by the Note (the Note, this Deed of Trust and the Other Documents being sometimes hereinafter collectively referred to as the "Loan Documents"), Grantor GRANTS, BARGAINS, SELLS, ASSIGNS and CONVEYS unto Trustee, in trust, for the benefit of Lender, WITH POWER OF SALE, AND RIGHT OF ALL ENTRY and possession of the following described land, real property interests, buildings, improvements, fixtures and other personal property:

(a) All that tract or parcel of land and other real property interests in Nye County, Nevada, more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements"), and all right, title and interest of Grantor, now owned or hereafter acquired, in and to (i) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or

proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (ii) any strips or gores between the Land and abutting or adjacent property; and (iii) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements, including any and all water and water rights up to two hundred (200) acre-feet only per year, timber, crops and mineral interests on or pertaining to the Land;

(b) All materials intended for construction, reconstruction, alteration and repair of the Improvements, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the Land, and all fixtures and articles of personal property now or hereafter owned by Grantor and attached to or contained in and used in connection with the aforesaid Land and Improvements, including, but not limited to, all furniture, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner, but specifically excluding any and all firearms and related ammunition inventory owned or held by Grantor on the Land (the "Accessories");

(c) All (i) plans and specifications for the Improvements; (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments, insurance policies, contracts and agreements for the design, development, construction, operation or inspection of the Improvements and other contracts related to the Land, Improvements and Accessories or the operation thereof and related to the sale of any Land comprising the Improvements; (iii) deposits (including, but not limited to, Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Land and Improvements, and any deposits or reserves hereunder or under any other Loan Document for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts, instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Land, Improvements and Accessories, and any account or deposit account from which Grantor may from time to time authorize Lender to debit and/or credit payments due with respect to the Loan; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Land, Improvements and Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Land, Improvements and Accessories; (vi) engineering, accounting, title, legal and other technical or business data concerning the Land, Improvements and Accessories which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; (vii) all lists and contact information concerning then current members of the Front Sight Vacation Club and Resort, and all booklets, brochures and advertising materials for current members of the Front Sight Vacation Club and Resort.

(d) All (i) proceeds (cash or non-cash) of or arising from all or any portion of the properties, rights, titles and interests referred to in paragraphs (a), (b) and (c) above, including, but not limited to, proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any

rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; and (ii) other interests of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to in paragraphs (a), (b) and (c) above and all property used or useful in connection therewith, including, but not limited to, rights of ingress and egress and remainders, reversions and reversionary rights or interests;

TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (collectively, the "Property") unto Trustee, its successors in trust, forever, with power of sale, and Grantor does hereby bind itself, its successors, and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Grantor, as debtor, hereby grants to Lender, as secured party, a security interest in all of the property described in paragraphs (a), (b), (c) and (d) above which constitutes personal property or fixtures (collectively, the "Collateral") to secure the obligations of Grantor under the Note and the other Loan Documents. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code, as amended from time to time, in effect in the state in which the Land is situated, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law, and Lender shall have all of the rights of a secured party thereunder in addition to its right hereunder or otherwise. This Deed of Trust may secure an obligation incurred for the construction of an improvement on the Land and as such constitutes a "construction mortgage" under the Uniform Commercial Code, as amended from time to time, in effect in the state in which the Land is situated.

Grantor covenants, represents and agrees to and with Trustee and Lender as follows:

ARTICLE I The Loan

1.1 Loan. The indebtedness secured by this Deed of Trust is the result of a loan in the original principal amount of up to Seventy-Five Million Dollars \$75,000,000 (the "Loan") provided by Lender to Grantor. The Loan is evidenced by (a) that certain Construction Loan Agreement (together with any extensions, revisions, modifications or amendments hereafter made, the "Loan Agreement"), of even date herewith, by and between Grantor and Lender, and (b) that certain Promissory Note executed by Grantor of even date herewith, payable to the order of Lender in the maximum original principal amount of the Loan (together with any extensions, revisions, modifications or amendments hereafter made, the "Note").

1.2 Use of Loan Proceeds. The Loan evidenced by the Note is solely for business and commercial purposes, and is not for personal, family, household or agricultural purposes. The Property forms no part of any property owned, used or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the state in which the Property is situated. Grantor hereby disclaims and renounces each and every claim to all or any part of the Property as a homestead.

1.3 Payment of Note. Grantor will pay principal and interest on the Loan in accordance with the Loan Documents, including the Loan Agreement, the Note and this Deed of Trust.

1.4 Amount Secured. This Deed of Trust secures and enforces the payment and performance of the Note and the other Loan Documents, and all indebtedness, liabilities, duties, covenants, promises and other obligations, whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Grantor to Lender now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Deed of Trust or any other Loan Document. This Deed of Trust also secures all present and future loan disbursements (future advances) made by Lender under the Note (it being contemplated by Grantor and Lender that such future indebtedness may be incurred), plus interest thereon, all charges and expenses of collection incurred by Lender, including court costs and reasonable attorneys' fees, and all other sums from time to time owing to Lender by Grantor under the Loan Documents. The indebtedness referred to in this Section 1.4 is hereinafter sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby".

1.5 Defined Terms. All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Note, the terms and provisions of which are incorporated herein by reference, or if such capitalized term is not defined in the Note, the capitalized term shall have the meaning assigned to it in the Loan Agreement.

1.6 Subordination to Senior Debt. Lender agrees that this Deed of Trust shall be subordinated to the Senior Debt and to other Permitted Encumbrances, as such terms are defined in the Loan Agreement, and that such subordination of this Deed of Trust to the Senior Debt and other Permitted Encumbrances shall be in accordance with the applicable provisions of the Loan Agreement.

ARTICLE II

Release

If and when Grantor has paid and performed all of the secured indebtedness, and no further advances are to be made under the Note, Trustee, upon request by Lender, will provide a reconveyance of the Property from the lien of this Deed of Trust and termination statements for filed financing statements, if any, to Grantor. Grantor shall be responsible for the recordation of such reconveyance and the payment of any recording and filing costs. Upon the recording of such reconveyance and the filing of such termination statements, the absolute assignment of rents set forth below shall automatically terminate and become null and void.

ARTICLE III

Grantor's Representations and Warranties

Grantor represents and warrants to Lender that:

3.1 Organization. Grantor (a) is a limited liability company duly organized with a legal status separate from its affiliates, validly existing, and in good standing under the laws of the state of its formation or existence, and (b) has complied with all conditions prerequisite to its doing business in the state in which the Land is situated.

3.2 Authority; Power to Carry on Business; Licenses. Grantor has all requisite power and authority to execute and deliver the Loan Documents to which it is a party, to receive the Loan, to grant and convey the security interests contemplated under this Deed of Trust and to perform its obligations under the Note, this Deed of Trust, the other Loan Documents, and all such action has been duly and validly authorized by all necessary limited liability company proceedings on its part. Grantor has all requisite power and authority to own and operate its properties and to carry on its business as now conducted and as presently planned to be conducted. Grantor has all licenses, permits, consents and governmental approvals or authorizations necessary to carry on its business as now conducted or as presently planned to be conducted.

3.3 Execution and Binding Effect. The Loan Documents to which Grantor is a party have been duly and validly executed and delivered by Grantor and constitute legal, valid and binding obligations of Grantor, enforceable in accordance with their terms.

3.4 Authorizations and Filings. No authorization, consent, approval, license, exemption or other action by, and no registration, qualification, designation, declaration or filing with, any Governmental Authority is or will be necessary or advisable in connection with the execution and delivery of the Note, this Deed of Trust and the other Loan Documents, the consummation of the transactions contemplated herein or therein, or the performance of or compliance by Grantor with the terms and conditions herein or therein.

3.5 Execution and Delivery. Neither the execution and delivery of the Note, this Deed of Trust or the other Loan Documents and the consummation of the transactions herein or therein contemplated, nor performance of or compliance with the terms and conditions hereof or thereof will (a) violate any applicable law, (b) conflict with or result in a breach of or a default under the organizational documents of Grantor, (c) conflict with or result in a breach of or a default under any agreement or instrument to which Grantor is a party or by which it or any of its properties (now owned or acquired in the future) may be subject or bound, or (d) result in the creation or imposition of any lien or encumbrance upon any property (owned or leased) of Grantor (other than the liens created by this Deed of Trust or the other Loan Documents).

3.6 Title to Property. Grantor represents and warrants that it has good and indefeasible title to the Land and Improvements (and any fixtures) in fee simple and has title to any appurtenant easements and interests described above and has the right to convey and encumber the same, that title to such property is free and clear of all liens, encumbrances and claims whatsoever except for (a) the Permitted Encumbrances, (b) the liens and security interests evidenced by this Deed of Trust, (c) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent or due and payable, (d) other liens and security interests (if any) in favor of Lender, and (e) the matters set forth in Schedule B of the final mortgagee title policy insuring this Deed of Trust, as approved by Lender, and that it will warrant and defend the title to such property against the claims of all persons or parties. As to the Collateral, Grantor represents and warrants that it has title to such property, free and clear of all liens, encumbrances, and claims whatsoever except for the liens and security interests (if any) in favor of the lender of the Senior Debt and the Permitted Encumbrances, that it has the right to convey and encumber such property and that it will warrant and defend title to such property against the claims of all persons or parties.

3.7 Financial Information. Any financial information provided by Grantor to Lender as of the date hereof is accurate and complete and has been prepared in accordance with generally accepted accounting principles consistently applied.

3.8 Adequate Access. The Land has adequate rights of access to public road and rights of way, as shown in the survey(s) furnished to Lender.

3.9 Utilities. All utility services necessary for the development of the Land and the Property are available at the boundaries of the Land, including electric and natural gas facilities, telephone service, water supply, storm and sanitary sewer facilities.

3.10 Zoning. The current and anticipated use of the Land complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Land without the existence of any variance, non-complying use, nonconforming use or other special exception, all use restrictions of any Governmental Authority having jurisdiction have been satisfied, and no violation of any law or regulation exists with respect thereto.

3.11 Endangered Species and Historical Sites Disclosure. There are no threatened or endangered species or their habitat affecting the Property, and there are no cemeteries, burial grounds, or archeological or historical sites on the Property.

3.12 Jurisdictional Wetlands or Waters of the U.S. There are no jurisdictional wetlands or "waters of the U.S." located on any part of the Property.

3.13 Special Assessment Districts and Other Reimbursement Obligations. The Property is not located in a utility district, flood control district or other special assessment district, except for the Grantor-disclosed drainage channels that go across the Land and are considered "flood zone areas" on which areas no construction is contemplated or planned. There are no special assessments, special taxes, pro-rata or other reimbursement obligations applicable to the Property.

3.14 Property Disclosure. Grantor has fully disclosed the existence, presence or applicability to the Property of the following: existing gas or oil wells and applicable municipal set-back requirements; special use permits; development permits, plans and plats; existing water wells and confirmation of water rights; drainage channels considered "flood zone areas" on or near which no construction is contemplated or planned; any water features and/or dams located on or adjacent to the Property; wetlands or other environmental permits; and any other licenses, permits or approvals necessary for the ownership or operation of the Property.

3.15 Foreign Person Disclosure. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder.

3.16 OFAC Disclosure. Neither Grantor nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC"), of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive

order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

3.17 No Material Adverse Change. Since the date of the most recent financial statements provided by Grantor to Lender, there has been no material adverse change in the financial condition, business or properties of Grantor.

3.18 No Event of Default; Compliance with Instruments. No event has occurred and is continuing, and no condition exists, which constitutes an Event of Default (as hereinafter defined) or with the passage of time would constitute an Event of Default. Grantor is not in violation of any term of its organizational documents. Grantor is not in violation of any agreement or instrument to which it is a party or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound.

3.19 Litigation. There is no pending, contemplated or, to Grantor's knowledge, threatened action, suit or proceeding by or before any Governmental Authority against or affecting Grantor or the Property or any portion thereof.

3.20 Laws. Grantor is not in violation of any law, which violation is reasonably likely to have a material adverse effect on the financial condition, business or properties of Grantor.

3.21 Accurate and Complete Disclosure. No representation or warranty made by Grantor under this Deed of Trust or under the other Loan Documents and no statement made by Grantor in any financial statement, certificate, report, exhibit or document furnished by Grantor to Lender pursuant to or in connection with the Note, this Deed of Trust or the other Loan Documents is false or misleading in any material respect (including by omission of material information necessary to make such representation, warranty or statement not misleading). Grantor is not aware of any facts which have not been disclosed to Lender in writing by or on behalf of Grantor which would be reasonably likely to have a material adverse effect on the financial condition, business or properties of Grantor. The representations and warranties set forth herein are to survive the delivery of the Loan Documents and the making of the Loan.

ARTICLE IV Affirmative Covenants

Grantor covenants to Lender as follows:

4.1 Preservation of Existence and Franchises. Grantor, and each signatory to this Deed of Trust that signs on Grantor's behalf, will preserve and keep in full force and effect its existence (separate and apart from its affiliates), good standing, rights, franchises, trade names, trademarks and other associated goodwill whether existing at common law or as a federal or state registration.

4.2 Compliance with Licensing Bodies. Grantor shall maintain all certificates of compliance and authority and licenses that are necessary or required by any Governmental Authority or licensing authority having jurisdiction over Grantor or the Property for the current and anticipated use or operation of the Property.

4.3 INTENTIONALLY OMITTED.

4.4 Other Taxes, Utilities and Licns. (a) Grantor shall pay or cause to be paid, when and as due, all real and personal property taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Property or any part thereof, or upon the interest of Lender in the Property, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, assessment district, or other taxing authority upon Grantor or in respect of the Property or any part thereof, or any charge which, if unpaid, might become a lien or charge upon the Property prior to or equal to the lien of this Deed of Trust for any amounts secured hereby or would have priority or equality with this Deed of Trust in distribution of the proceeds of any foreclosure sale of the Property or any part thereof; provided, however, Grantor shall have the right to contest any such taxes, assessments, rates, dues, charges, fine or impositions if the execution or other enforcement of any lien or charge upon the Property is and continues to be effectively stayed or bonded in a manner satisfactory to Lender, the validity and amount of such taxes, assessments, rates, dues, charges, fines or impositions are being actively contested in good faith and by appropriate lawful proceedings and such liens or charges do not, in the aggregate, materially detract from the value of the Property or materially impair the use thereof and the operation of Grantor's business.

(b) Grantor shall promptly pay or cause to be paid all charges by utility companies, whether public or private, for electricity, gas, water, sewer and other utilities.

(c) Grantor shall promptly pay or cause to be paid and will not suffer any mechanics, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Deed of Trust to be created or to remain outstanding upon any of the Property; provided, however, such a lien may be filed against the Property if the execution or other enforcement of any such lien is and continues to be effectively stayed or bonded in a manner satisfactory to Lender for the full amount thereof, the validity and amount of the lien secured thereby are being actively contested in good faith and by appropriate lawful proceedings and such liens do not, in the aggregate, materially detract from the value of the Property or materially impair the use thereof and the operation of Grantor's business.

4.5 Reimbursement. Grantor agrees that if it shall fail to pay or cause to be paid when due any tax, assessment or charge levied or assessed against the Property, any utility charge, whether public or private, or any insurance premium, or if it shall fail to procure the insurance coverage and the delivery of the insurance certificates required hereunder, or if it shall fail to pay any other charge or fee required hereunder, then Lender, at its option and in addition to any other rights or remedies set forth herein, may (but shall have no obligation to) pay or procure the same. Grantor shall reimburse Lender upon demand for any sums of money paid by Lender pursuant to this Section 4.5, together with interest on each such payment at the rate set forth in the Note. All such sums so expended by Lender, and the interest thereon, shall become part of the secured indebtedness.

4.6 Further Assurances. Grantor agrees to execute and deliver to Lender, concurrently with the execution of this Deed of Trust and upon the request of Lender from time to time hereafter,

all financing statements, control agreements and other documents required to perfect and maintain the security interests created hereby.

4.7 Fees and Expenses. Grantor shall pay or reimburse Lender and Trustee for all reasonable attorneys' fees, costs and expenses incurred by Lender or the Trustee in any action, legal proceeding or dispute of any kind which affects the Loan, the interest created herein, the Property or the Collateral, including but not limited to, any foreclosure of this Deed of Trust, enforcement of payment of the Note and other secured indebtedness, any condemnation action involving the Property, any bankruptcy proceeding or any action to protect the security hereof or to enforce Lender's rights and remedies hereunder. Any such amounts paid by Lender or Trustee shall be due and payable upon demand and shall become part of the secured indebtedness.

4.8 Maintenance of Property. Grantor shall maintain the Property in good condition and repair, reasonable wear and tear excepted.

4.9 Compliance with Applicable Laws. Grantor shall comply with all applicable laws including, without limitation, all laws applicable to the use of the Property; provided, however, that Grantor shall have the ability to contest any alleged failure to conform to or comply with such laws so long as such obligations shall be contested by appropriate proceedings pursued in good faith and any penalties or other adverse effect of its nonperformance shall be stayed or otherwise not in effect. Grantor will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of Lender under this Deed of Trust. Grantor shall not cause or permit the lien of this Deed of Trust to be impaired in any way.

4.10 Inspection. Grantor shall permit Lender, or its agents, at any and all reasonable times, to enter and pass through or over the Property for the purpose of appraising, inspecting or evaluating the same at Lender's cost and expense, provided that any such appraisal, inspection or evaluation does not unreasonably interfere with or adversely affect Grantor's operations and shall otherwise be in accordance with the provisions of Section 3.3 of the Loan Agreement.

4.11 Releases and Waivers. Grantor agrees that no release by Lender of any of Grantor's successors in title from liability on the secured indebtedness, no release by Lender of any portion of the Property or the Collateral, no subordination of lien, no forbearance on the part of Lender to collect on the secured indebtedness or any part thereof, no waiver of any right granted or remedy available to Lender, and no action taken or not taken by Lender shall in any way diminish Grantor's obligation to Lender or have the effect of releasing Grantor, or any successor to Grantor, from full responsibility to Lender for the complete discharge of each and every of Grantor's obligations hereunder or under the Note, any other Loan Document or any other secured indebtedness.

4.12 Insurance. Grantor shall, at all times until the Note and all other sums due from Grantor to Lender have been fully repaid, maintain, or cause to be maintained, in full force and effect (and shall furnish to Lender copies of), property insurance, liability insurance and workers compensation insurance that are consistent with policies issued from a reputable carrier in Southern Nevada for businesses such as that operated by Borrower. Borrower shall not take any action that would void or otherwise impair any coverages required hereby or that would result in any denial or limitation of such coverages.

4.13 Condemnation. In the event that any or all of the Property shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Lender and Lender shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Lender who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness secured hereby and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Property by Grantor.

4.14 Condemnation and Insurance Proceeds.

(a) Assignment to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Property, or any part of it, or for conveyance in lieu of condemnation, are assigned to and shall be paid to Lender, who shall hold them in a non-interest-bearing general account regardless of whether Lender's security is impaired. All causes of action, whether accrued before or after the date of this Deed of Trust, of all types for damages or injury to the Property or any part of it, or in connection with any transaction financed by funds lent to Grantor by Lender and secured by this Deed of Trust, or in connection with or affecting the Property or any part of it, including, without limitation, causes of action arising in tort or contract or in equity, are assigned to Lender as additional security, and the proceeds shall be paid to Lender. Lender, at its option may appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement of such action. Grantor shall notify Lender in writing immediately on obtaining knowledge of any casualty damage to the Property or damage in any other manner in excess of Ten Thousand Dollars (\$10,000) or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to all or any portion of the Property. Lender, in its sole and absolute discretion, may participate in any such proceedings and may join Grantor in adjusting any loss covered by insurance. Grantor covenants and agrees with Lender, at Lender's request, to make, execute and deliver at Grantor's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards, causes of action, or claims of damages or proceeds to Lender free, clear, and discharged of any and all encumbrances of any kind or nature;

(b) Insurance Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Grantor may receive or to which Lender may become entitled with respect to the Property if any damage or injury occurs to the Property, other than by a partial condemnation or other partial taking of the Property, shall be paid over to Lender and shall be applied first toward reimbursement of all costs and expenses of Lender in connection with their recovery and disbursement, and shall then be applied as follows:

(i) Lender shall consent to the application of such payments to the restoration of the Property so damaged only if Grantor has met all the following conditions (a breach of one of which shall constitute a default under this Deed of Trust, the Note, and any other Loan Documents): (1) no Event of Default exists under any of the terms, covenants, and conditions of the Loan Documents; (2) all

then-existing Leases affected in any way by such damage will continue in full force and effect; (3) the insurance or award proceeds, plus any sums that Grantor may contribute for such purpose, shall be sufficient to fully restore and rebuild the Property under then current Government Requirements (defined below); and (4) all restoration of the Improvements so damaged or destroyed shall be made with reasonable promptness and shall be of a value at least equal to the value of the Improvements so damaged or destroyed before any such damage or destruction; or

(ii) If fewer than all conditions (1) through (4) in Section 4.14(b)(i) are satisfied, then such payments shall be applied in the sole and absolute discretion of Lender (1) to the payment or prepayment with any applicable prepayment premium, of any secured indebtedness in such order as Lender may determine, or (2) to the reimbursement of Grantor's expenses incurred in the rebuilding and restoration of the Property. If Lender elects under this Section 4.14(b)(ii) to make any funds available to restore the Property, then all of conditions Section 4.14(b)(i) shall apply, except for such conditions that Lender, in its sole and absolute discretion, may waive.

(iii) "Governmental Requirements" shall mean any and all laws, statutes, codes, ordinances, regulations, enactments, decrees, judgments and orders of any Governmental Authority.

(iv) Material Loss Not Covered. If any material part of the Property is damaged or destroyed and the loss, measured by the replacement cost of the Improvements according to then-current Government Requirements, is not adequately covered by insurance proceeds collected or in the process of collection, Grantor shall deposit with Lender, within ten (10) days after Lender's request, the amount of the loss not so covered.

(c) Total Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments the Grantor may receive or to which Grantor may become entitled with respect to the Property in the event of a total condemnation or other total taking of the Property shall be paid over to Lender and shall be applied first to reimbursement of all Lender's costs and expenses in connection with their recovery, and shall then be applied to the payment of any indebtedness secured hereby by such order as Lender may determine, until the secured indebtedness has been paid and satisfied in full. Any surplus remaining after payment and satisfaction of the indebtedness secured by this Deed of Trust shall be paid to Grantor as its interest may then appear.

(d) Partial Condemnation Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action and payments ("funds") that Grantor may receive or to which Grantor may become entitled with respect to the Property in the event of a partial condemnation or other partial taking of the Property, unless Grantor and Lender otherwise agree in writing, shall be divided into two portions, one equal to the principal balance of the Note at the time of receipt of such funds and the other equal to the amount by which such funds exceed the principal balance of the Note at the time of receipt

of such funds. The first such portion shall be applied to the indebtedness secured hereby, whether or not then due, including but not limited to principal, accrued interest, and advances and in such order or combination as Lender may determine, with the balance of the funds paid to Grantor. Any dispute as to the fair market value of the Property shall be settled by arbitration in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association.

(e) No Cure of Waiver of Default. Any application of such amounts or any portion of it to any secured indebtedness shall not be construed to cure or waive any Event of Default or notice of default under this Deed of Trust or invalidate any act done under any such default or notice.

4.15 Use of Property. (a) Grantor shall use or permit the Property to be used solely for the purpose of operating the Front Sight Firearms Training Institute and the Front Sight Resort and Vacation Club complex, and Grantor shall not use or permit the use of the Property for any other principal use without Lender's prior written consent. Grantor shall not use or permit the use of the Property or any part thereof for any other purpose which in the reasonable opinion of Lender would adversely affect the then value or character of the Property or any part thereof.

(b) Grantor shall not suffer or permit the Property or any portion thereof to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Grantor's title to the Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Property or any portion thereof.

4.16 Taxes on Note and Deed of Trust. Grantor shall promptly pay all income, franchise and other taxes owing by Grantor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Grantor is prohibited by law) which may be required to be paid with respect to the Note, this Deed of Trust or any other instrument evidencing or securing any of the secured indebtedness. In the event of the enactment after this date of any law of any Governmental Authority applicable to Lender, the Note, the Property or this Deed of Trust deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Deed of Trust or the indebtedness secured hereby or Lender, then, and in any such event, Grantor, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefore.

4.17 Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Lender at any time and from time to time to file and authenticate any initial financing statements, amendments thereto and continuation statements with or without signature of Grantor as authorized by applicable law, as applicable to all or any part of the Collateral. For purposes of such filings, Grantor agrees to furnish any information requested by Lender promptly upon Lender's request. Grantor also ratifies its authorization for Lender to have filed any initial

financing statements, amendments thereto or continuation statements, if filed prior to the date of this Deed of Trust. Grantor hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and the stead of Grantor or in the name of Grantor to execute in the name of Grantor or authenticate any such documents and otherwise to carry out the purposes of this Section 4.17, to the extent that the authorization above by Grantor is not sufficient. To the extent permitted by law, Grantor hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

4.18 INTENTIONALLY OMITTED.

4.19 Indemnification. (a) GRANTOR SHALL INDEMNIFY AND HOLD HARMLESS LENDER AND TRUSTEE FROM AND AGAINST, AND REIMBURSE THEM ON DEMAND FOR, ANY AND ALL INDEMNIFIED MATTERS (AS HEREINAFTER DEFINED), IN ALL CASES WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF LENDER OR TRUSTEE. FOR PURPOSES OF THIS SECTION 4.19, THE TERMS "LENDER" AND "TRUSTEE" SHALL INCLUDE THE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES AND AGENTS OF LENDER AND TRUSTEE, RESPECTIVELY, AND ANY PERSONS OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH LENDER OR TRUSTEE, RESPECTIVELY. WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PERSON. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO A PARTICULAR INDEMNIFIED PERSON TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT INDEMNIFIED PERSON. ANY AMOUNT TO BE PAID UNDER THIS SECTION 4.19 BY GRANTOR TO LENDER AND/OR TRUSTEE SHALL BE A DEMAND OBLIGATION OWING BY GRANTOR (WHICH GRANTOR HEREBY PROMISES TO PAY) TO LENDER AND/OR TRUSTEE PURSUANT TO THIS DEED OF TRUST. NOTHING IN THIS SECTION 4.19, ELSEWHERE IN THIS DEED OF TRUST OR IN ANY OTHER LOAN DOCUMENT SHALL LIMIT OR IMPAIR ANY RIGHTS OR REMEDIES OF LENDER AND/OR TRUSTEE (INCLUDING WITHOUT LIMITATION ANY RIGHTS OF CONTRIBUTION OR INDEMNIFICATION) AGAINST GRANTOR OR ANY OTHER PERSON UNDER ANY OTHER PROVISION OF THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT, ANY OTHER AGREEMENT OR ANY APPLICABLE FEDERAL, STATE OR LOCAL LAW, STATUTE, ORDINANCE, CODE, RULE, REGULATION, LICENSE, PERMIT, ORDER OR DECREE.

(b) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not

such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Lender and/or Trustee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Deed of Trust or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the Release Date (as hereinafter defined), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Grantor of any representation, warranty, covenant, agreement or condition contained in this Deed of Trust or in any other Loan Document or any Event of Default, except to the extent caused by the gross negligence or intentional misconduct of Lender, its agents, employees and/or representatives. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Deed of Trust has been fully reconveyed and released, or (ii) the date on which the lien of this Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Grantor and Grantor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, then the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this Section 4.19 shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Deed of Trust but will survive the Release Date, foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, the repayment of the secured indebtedness, the discharge and release of this Deed of Trust and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

4.20 Payment of Costs. Grantor shall (a) pay all reasonable legal fees incurred by Lender in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (b) reimburse Lender, promptly upon demand, for all amounts expended, advanced, or incurred by Lender to satisfy any obligation of Grantor under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Lender in connection with any such matters; and (c) pay any and all other costs and expenses of performing or complying with any and all of the obligations under the Note, this Deed of Trust and under the other Loan Documents. All of the foregoing listed fees, costs and expenses are collectively called herein, the "Expenses." Except to the extent that the Expenses are included within the definition of "indebtedness secured hereby," the payment of such Expenses shall not be credited, in any way and to any extent, against any installment on or portion of the indebtedness secured hereby.

ARTICLE V
Negative Covenants

Grantor covenants to Lender as follows:

5.1 Liens. Grantor shall not at any time create, incur, assume or permit to exist any lien or encumbrance on or against the Property or agree to become liable to do so, except for (a) the Permitted Encumbrances, (b) the liens and security interests evidenced by this Deed of Trust, (c) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, (d) other liens and security interests (if any) in favor of Lender, and (e) the matters set forth in Schedule B of the final mortgage title policy insuring this Deed of Trust as approved by Lender.

5.2 Indebtedness. With respect to the Property, Grantor shall not at any time, create, incur, assume or suffer to exist any indebtedness, except (a) the indebtedness under the Permitted Encumbrances, (b) indebtedness under the Note or any other Loan Document or any other document, instrument or agreement between Grantor and Lender, and (c) current accounts payable, accrued expenses and other expenses arising out of transactions (other than borrowing) in the ordinary course of business.

5.3 Guaranties and Contingent Liabilities. Grantor shall not at any time directly or indirectly become or be liable in respect of any guaranty or contingent obligation, or assume, guarantee, become surety for, endorse or otherwise agree, become or remain directly or contingently liable upon or with respect to any obligation or liability of any person or entity (other than Grantor), except (i) by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, or (ii) by indemnity agreements given by Grantor to a title insurance company or a bonding company in connection with any project being constructed or sold by Grantor, including the Project.

5.4 Loans and Investments. Grantor shall not at any time make or suffer to remain outstanding any loan or advance to, or purchase, acquire, or own any stock, bonds, notes or securities of, or any partnership interest (whether general or limited) in, or any other interest in, or make any capital contribution or loan to, any person or entity (other than Grantor), or agree, become or remain liable to do any of the foregoing.

5.5 INTENTIONALLY OMITTED.

5.6 Self-Dealing. Grantor shall not enter into or carry out any transaction (including, without limitation, purchasing property or services from or selling property or services to) with any Affiliate (as hereinafter defined) except (a) officers, managers, members, employees and affiliates of Grantor may render services to Grantor for compensation at the same rates generally paid by companies engaged in the same or similar businesses for the same or similar services; and (b) Grantor may enter into and carry out other transactions with Affiliates if in the ordinary course of business, pursuant to the reasonable requirements of Grantor's business upon terms that are fair and reasonable and no less favorable to Grantor than Grantor would obtain in a comparable arm's-length transaction. "Affiliate" means, with respect to any individual or entity (each, a "Person"), another Person that directly, or indirectly through one or more intermediaries, Controls or is

Controlled by or is under common Control with the Person specified. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" or "Controlled" have meanings correlative thereto.

5.7 Disposition of Property. Except in connection with the obligations with respect to the Senior Debt and related agreements, Grantor shall not (a) sell, convey, pledge, assign, lease, abandon or otherwise transfer or dispose of, voluntarily or involuntarily (any of the foregoing being referred to in this Section 5.7 as a transaction and any set of related transactions constituting but a single transaction), all or any portion of the Property or any interest therein or enter into any agreement to do so, or (b) subdivide the Property, submit the Property, or any portion thereof, to condominium or other multiple form of ownership, or dedicate any portion of the Property to public ownership. Lender hereby consents to Grantor taking actions to secure the Senior Debt as such transactions are reasonably necessary for the development of the Project, including the time share units and the RV resort, as provided in the Loan Agreement and the Budget.

5.8 Ownership and Control. Grantor shall not cause or permit any change in the ownership (whether direct or indirect) of Grantor from that in existence on the date hereof.

5.9 Merger; Consolidation; Business Acquisitions. Grantor shall not merge or agree to merge with or into or consolidate with any other person or entity. Grantor shall not form any subsidiaries or acquire any material portion of the stock, other equity interests or assets or business of any other person or entity.

5.10 Change in Zoning; Easements; Restrictions. Grantor shall not seek or acquiesce in any annexation of the Property or any zoning reclassification of all or any portion of the Land or Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Land or Property, without Lender's prior written consent. Lender hereby agrees that it will not unreasonably withhold or delay consent to Grantor taking actions that would otherwise violate the foregoing provisions so long as such transactions are reasonably necessary for the development of the Project, including the time share units and the RV resort as provided in the Loan Agreement and the Budget.

5.11 Drilling. Grantor shall not, without Lender's prior written consent, permit any drilling or exploration for, or extraction, removal, or production of, any minerals from, the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction therefrom.

5.12 Waste; Alterations. Grantor shall not commit or permit any waste or impairment of the Property and shall not (subject to the provisions of Sections 4.8 and 4.9 hereof), without Lender's prior written consent, which consent shall not be unreasonably delayed or withheld, make or permit to be made any alterations or additions to the Property of a material nature other than those alterations and additions consisting of the Improvements that shall constitute the accommodations and other facilities of the project known as the Front Sight Resort and Vacation Club. Subject to the foregoing and in no way constituting a waiver thereof, in the event Lender

were to give such consent, then any alterations or additions to the Property would be at Grantor's sole cost and expense.

ARTICLE VI
Events of Default

6.1 Events of Default. An "Event of Default" means the occurrence or existence of one or more of the following events or conditions (whatever the reason for such Event of Default and whether voluntary, involuntary or effected by operation of law):

(a) Grantor defaults in any payment of principal or interest on the Loan by the date due according to the terms of the Loan Agreement or of the Note, and such default remains uncured for a period of ten (10) days after the payment became due; provided, however, that there is no cure period for payments due on the Maturity Date; or

(b) Grantor defaults in the payment of undisputed fees or other amounts payable to or on behalf of Lender pursuant to the Note, this Deed of Trust or under any other Loan Documents, other than as described in Section 6.1(a) above, and such default continues unremedied for a period of ten (10) days after notice thereof from Lender to Grantor; or

(c) Grantor defaults in the performance or observance of any agreement, covenant or condition required to be performed or observed by Grantor under the terms of this Deed of Trust, or any other Loan Document, other than a default described elsewhere in this Section, and such default continues unremedied for a period of thirty (30) days after notice from Lender to Grantor thereof provided that, if cure cannot reasonably be effected within such 30-day period, such failure shall not be an event of default hereunder so long as Grantor promptly (in any event, within ten (10) days after such notice of default from Lender) commences cure, and thereafter diligently (in any event, within ninety (90) days after receipt of such notice of default from Lender) prosecutes such cure to completion; and provided further, that notwithstanding the 30-day cure period or extended cure period described above in this subparagraph (c), if a different notice or cure period is specified under any Loan Document or under any provision of the Loan Documents as to any such failure or breach, the specific Loan Document or provision shall control, and Grantor shall have no more time to cure the failure or breach than is allowed under the specific Loan Document or provision as to such failure or breach; or

(d) Any representation or warranty made by Grantor in this Agreement or by Grantor or an Affiliate, if made in connection with the Loan, in any of the other Loan Documents, or in any certificate or document furnished under the terms of this Agreement or in connection with the Loan, shall be untrue or incomplete in any material respect when made or deemed made or restated hereunder unless such representation or warranty was not known by Grantor to be untrue or incomplete at the time made and such representation or warranty is corrected by Grantor and disclosed by Grantor to Lender; or

(e) Lender's security interest or lien under this Deed of Trust is or shall become unperfected or invalid; or

(f) Grantor defaults under any term, covenant or condition of any of the Note or of any of the other Loan Documents to which Grantor is a party, other than a default described elsewhere in this Section, after the expiration of any notice or grace period, if any, provided therein;

(g) Work on the Project, once commenced, shall be substantially abandoned, or shall, by reason of Grantor's fault, be unreasonably delayed or discontinued for a period of fifteen (15) consecutive days, or construction shall be delayed for any reason whatsoever to the extent that Completion cannot, in the reasonable judgment of Lender, be accomplished prior to the Completion Date;

(h) Any of Grantor, or any Related Party who is a party to any of the Loan Documents, shall file a petition for bankruptcy; or shall apply for, consent to or permit the appointment of a receiver, custodian, trustee or liquidator for it or any of its property or assets; or shall generally fail to, or admit in writing its inability to, pay its debts as they mature; or shall make a general assignment for the benefit of creditors or shall be adjudicated bankrupt or insolvent; or shall take other similar action for the benefit or protection of its creditors; or shall give notice to any governmental body of insolvency or of pending insolvency or suspension of operations; or shall file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, rearrangement, dissolution, liquidation or other similar debtor relief law or statute; or shall file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or statute; or shall be dissolved, liquidated, terminated or merged; or shall effect a plan or other arrangement with creditors; or a trustee, receiver, liquidator or custodian shall be appointed for it or for any of its property or assets and shall not be discharged within ninety (90) days after the date of his appointment; or a petition in involuntary bankruptcy or similar proceedings is filed against it and is not dismissed within ninety (90) days after the date of its filing; or

(i) Lender determines that the remaining undisbursed Loan proceeds, together with the proceeds of any Senior Debt, are insufficient to fully pay all of the then-unpaid costs of the Project and the estimated expenses of completion (including the Interest Reserve), and Grantor fails to either (i) deposit with Lender, within three (3) Business Days following demand, sufficient funds to permit Lender to pay said excess costs as the same become payable or (ii) pay said excess costs directly and deliver to Lender unconditional mechanics' lien waivers therefor (or paid receipts for non-liable items), at Lender's option; or

(j) except to the extent otherwise permitted pursuant to the terms and conditions of the Loan Agreement or this Deed of Trust, the sale, lease, transfer or further encumbrance (whether by operation of law or otherwise) (and whether at one time or in or pursuant to a series of events) of (A) the Property or any part thereof or any interest therein, or (B) more than forty-nine percent (49%) in the aggregate of any direct or indirect ownership interest in Grantor; or

(k) A default occurs with respect to the Senior Debt and remains uncured after the expiration of any applicable notice or grace period; or

(l) A default occurs in the performance of Grantor's obligations in any of Section 5.6, 5.7, 5.8, 5.10, 5.13, 5.16, 5.18, 5.19, 5.22, 5.23 or 5.24, of the Loan Agreement;

(m) The General Contract is terminated by either party thereto or either party thereto shall fail to perform its obligations (after any applicable notice and cure period) under the General Contract; or

(n) Any uncured default by Grantor occurs and remains uncured under the Management Agreement; or

(o) Any failure by Grantor to timely deliver the EB-5 information, which failure continues more than five (5) business days following notice of such failure by Lender.

6.2 Remedies of Lender. Upon the occurrence of an Event of Default, unless such Event of Default is subsequently waived in writing by Lender, Lender may, without notice and without prejudice to any other right or remedy Lender may have, exercise from time to time any of the rights and remedies available under the Note, this Deed of Trust or any other Loan Document or under applicable law.

ARTICLE VII Rights and Remedies

7.1 Acceleration of Loan. Upon the occurrence of an uncured Event of Default specified in Section 6.1 hereof, the entire unpaid balance of the indebtedness secured hereby (including all accrued interest and all other sums secured hereby) shall, at the option of Lender, become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the indebtedness secured hereby. If an uncured Event of Default specified in Subsection (h) of Section 6.1 hereof occurs and continues or exists, the entire unpaid balance of the indebtedness secured hereby (including all accrued interest and all other sums secured hereby) shall automatically become immediately due and payable without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the indebtedness secured hereby. The failure to exercise any remedy available to the Lender shall not be deemed to be a waiver of any rights or remedies of the Lender under the Loan Documents, at law or in equity.

7.2 Foreclosure – Power of Sale. Upon the occurrence of any uncured Event of Default, Lender may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(a) Foreclosure; Power of Sale. Trustee, if and as directed by Lender, shall have all of the rights and may exercise all of the powers set forth in applicable law of the

State of Nevada. Trustee may sell the Property in its entirety or in parcels, and by one or by several sales, as deemed appropriate by Trustee in its sole and absolute discretion. If Trustee chooses to have more than one foreclosure sale, Trustee may cause the foreclosure sales to be held simultaneously or successively, on the same day, or on such different days and at such different times as Trustee may elect. Trustee shall receive and apply the proceeds from the sale of the Property, or any portion thereof, in accordance with Nevada law. Before any foreclosure sale, Lender or Trustee shall give such notice of default and election to sell as may be required by law. After the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Lender shall have any obligation to make demand on Grantor before any foreclosure sale. From time to time in accordance with then-applicable law, Trustee may, and in any event at Lender's request shall, postpone any foreclosure sale by public announcement at the time and place noticed for that sale. At any foreclosure sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable law), payable at the time of sale. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, expressed or implied. The recitals in any such deed of any matters of fact, including any facts bearing upon the regularity or validity of any foreclosure sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited therein. Any Person, including Trustee or Lender, may purchase at such sale, and any bid by Lender may be, in whole or in part, in the form of cancellation of all or any part of the Obligations.

(b) Judicial Action. Lender and Trustee, if and as directed by Lender, shall have the right to bring an action in any court of competent jurisdiction for foreclosure of this Deed of Trust a deficiency judgment as provided by law, or for specific enforcement of any of the covenants or agreements of this Deed of Trust.

(c) Collection of Rents. Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents (defined below) shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Lender may, but shall not be obligated to, exercise any or all of the rights and remedies provided in Nevada Law and perform any or all obligations of the landlord under any or all of the Leases (defined below), and Lender may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limiting the generality of the foregoing, Lender may notify the tenants under the Leases that all Rents are to be paid to Lender, and following such notice all Rents shall be paid directly to Lender and not to Grantor or any other Person other than as directed by Lender, it being understood that a demand by Lender on any tenant under a Lease for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Lender without the necessity of further consent by Grantor. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Lender instead of to Grantor, upon receipt of written notice from Lender, without the necessity of any inquiry of Grantor and without the necessity of determining the existence or non-existence of an Event of Default. Grantor hereby appoints Lender as

Grantor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the indebtedness secured hereby, in Grantor's name or in Lender's name: (i) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Lender; (ii) to give receipts and releases in relation thereto; (iii) to institute, prosecute and/or settle actions for the recovery of Rents; (iv) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (v) to cancel any Leases; (vi) to enter into new Leases; and (vii) to do all other acts and things with respect to the Leases and Rents which Lender may deem necessary or desirable to protect the security for the secured indebtedness. Any Rents received shall be applied first to pay all of Lender's costs and expenses and next in reduction of the other secured indebtedness. Grantor shall pay, on demand, to Lender, the amount of any deficiency between (1) the Rents received by Lender, and (2) all Expenses incurred together with interest thereon as provided in this Deed of Trust and the other Loan Documents.

(d) Taking Possession or Control of the Property. As a matter of right without regard to the adequacy of the security, and to the extent permitted by law without notice to Grantor, Lender shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and Grantor hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers granted to Lender pursuant to Section 7.2(c). In addition, to the extent permitted by law, and with or without the appointment of a receiver, or an application therefor, Lender may (i) enter upon, and take possession of (and Grantor shall surrender actual possession of), the Property or any part thereof, without notice to Grantor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (ii) remove and exclude Grantor and its agents and employees therefrom.

(e) Management of the Property. Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.2(d), Lender, Trustee or the receiver, as the case may be, may, at its sole option, (i) make all necessary or proper repairs and additions to or upon the Property, (ii) operate, maintain, control, make secure and preserve the Property, and (iii) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Grantor (the costs of completing such Improvements shall be Expenses secured by this Deed of Trust and shall accrue interest as provided in the Note). Lender, Trustee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for Lender's, Trustee's or Receiver's negligence, gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Lender shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

(f) Cooperation of Grantor. Grantor agrees to cooperate fully with Lender's management of the Property, including, without limitation, providing full access to the Property and all collateral.

(f) Uniform Commercial Code. Lender may proceed under the Uniform Commercial Code as to all or any part of the Collateral, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any uncured Event of Default, Grantor shall assemble all of the Collateral and make the same available within the Improvements or at such other location required by Lender. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the notice provisions of this Deed of Trust at least ten (10) days before any sale or other disposition of the Collateral. Disposition of the Collateral shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Trustee to dispose of the Collateral without giving any warranties as to the Collateral and specifically disclaiming all disposition warranties. Alternatively, Lender may choose to dispose of some or all of the Property, in any combination consisting of both Collateral and Real Property, in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Grantor agrees that such a sale of Collateral together with Real Property constitutes a commercially reasonable sale of the Collateral.

(g) Application of Proceeds. Unless otherwise provided by applicable law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article VII and any other proceeds received by Lender from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other secured indebtedness, in such manner and order as Lender may elect.

(h) Other Remedies. Lender shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Loan Documents or by applicable laws.

7.3 Remedies Cumulative. All remedies provided in this Deed of Trust, in the Note and in the other Loan Documents are cumulative and may, at the election of Lender, be exercised alternatively, successively, or in any manner and are in addition to any other rights provided by law.

7.4 Suits to Protect the Property. Lender and Trustee shall have power (a) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Property or the Collateral by any acts which may be unlawful or any violation of this Deed of Trust, (b) to preserve or protect their interest in the Property and the Collateral, and (c) to restrain the enforcement of or compliance with any legislation or other Governmental Requirement, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such Governmental Requirement, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

ARTICLE VIII
Waivers

8.1 Waiver of Certain Rights. To the full extent permitted by applicable law, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, and all rights to a marshaling of assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of this Deed of Trust to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Deed of Trust to the payment of the secured indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever except for the Senior Debt. Grantor waives any right or remedy which Grantor may have or be able to assert pursuant to any provision of Nevada law, including, but not limited to, the rights or remedies pertaining to the rights and remedies of sureties. If any law referred to in this Section 8.1 and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 8.1.

8.2 Waivers and Agreements Regarding Remedies. To the fullest extent permitted by applicable law, Grantor hereby waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action.

ARTICLE IX
**Environmental Warranties, Representations,
Covenants and Indemnification Provisions**

9.1 Definitions. As used in this Article IX, the following definitions shall apply:

(a) Environmental Activity. The existence, use, storage, Release, threatened Release, generation, processing, abatement, removal, or disposal of any Hazardous Substance on, to, or from the Property or the handling, transportation, treatment, or disposal of any Hazardous Substance arranged by or on behalf of any Indemnitee.

(b) Environmental Claims. Any and all governmental and third-party actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders, or consent agreements relating in any way to the presence or Use of any Hazardous Substance on the Property or the Release or threatened Release of any Hazardous Substance to or from the Property or the violation of any Environmental Requirement or any Environmental Permit applicable to the Property or which otherwise relate to any Environmental Activity, including, without limitation, (i) those of or brought by any Governmental Authority for enforcement, cleanup, removal, response, remedial, or other actions or damages pursuant to any applicable Environmental Requirement, and (ii) those of or brought by any third party seeking damages, contribution, indemnification, cost recovery, compensation, or injunctive relief arising in connection with any Environmental Requirement, any Hazardous Substance or from any alleged injury or threat of injury to property, human health, or the environment resulting or allegedly resulting from any Environmental Activity.

(c) Environmental Damages. All claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses imposed upon, incurred by, or imposed any party in connection with or arising from (i) any Environmental Activity, (ii) any Environmental Claim, (iii) all costs and expenses of investigation and defense of any Environmental Claim, whether or not such Environmental Claim is ultimately defeated, or (iv) any good faith settlement or agreed judgment, including, without limitation, reasonable attorneys' fees, disbursements, and consultants' fees incurred as a result of an Environmental Claim or a violation of any Environmental Requirement pertaining to any Indemnitor or the Property (regardless of whether the existence or alleged existence of such Hazardous Substance or the violation or alleged violation of such Environmental Requirement arose prior to any Indemnitor's Use of such Property). "Environmental Damages" shall also include, without limitation, (A) damages for personal injury or injury to property or natural resources occurring upon or off of the Property, (B) fees incurred for the services of attorneys, consultants, contractors, experts, and laboratories, and all other costs incurred in connection with the investigation of the presence or alleged presence of Hazardous Substances on, about, or under the Property, the removal or remediation of any Hazardous Substances, or the violation or alleged violation of any Environmental Requirements, including, without limitation, costs and expenses for the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, or monitoring work required by any Governmental Authority or necessary in defense of any Environmental Claim, (C) reasonable attorneys' fees, costs, and expenses incurred in enforcing this Article IX or collecting any sums due hereunder, (D) liability to any third person or Governmental Authority to indemnify such person or entity for costs expended in connection with the items referenced above, and (E) diminution in the value of the Property.

(d) Environmental Laws. All federal, state or local laws, statutes, rules, regulations, ordinances, permits, licenses and determinations of any Governmental Authority having jurisdiction over any Indemnitor, the Property, or any user or occupant of the Property, and relating to health, industrial hygiene and/or the environment, now existing or hereafter in effect, including, without limitation, the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) ("CERCLA"), the Solid Waste Disposal Act, as amended (42 U.S.C. § 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f, et seq.), the Atomic Energy Act, as amended (42 U.S.C. § 2014, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. § 136, et seq.), the Oil Pollution Act of 1990, as amended (33 U.S.C. § 2701, et seq.), the Emergency Planning and Community Right-to-Know Act of 1986, as amended (42 U.S.C. § 11001, et seq.), the Occupational Safety and Health Act, as amended (29 U.S.C. § 651, et seq.), and the Endangered Species Act, and any corresponding state laws, statutes, regulations or ordinances.

(e) Environmental Permits. All permits, approvals, identification numbers, licenses, and other authorizations required under any applicable Environmental Requirement.

(f) Environmental Requirements. All Environmental Laws and all rules, regulations, guidelines, standards, orders, decrees, permits, licenses, concessions, and franchises promulgated pursuant thereto, and/or other restrictions or requirements of any Governmental Authority relating to health, industrial hygiene and/or the environment, and all applicable judicial, regulatory, or administrative decisions, decrees, judgments, or orders thereunder, as may be amended from time to time.

(g) Governmental Authority. Any governmental authority (federal, state, county, district, municipal, city or otherwise), including, without limitation, the United States of America, any state of the United States of America, and any subdivision of any of the foregoing, and any agency, department, commission, board, office, authority, instrumentality, bureau, or court now or hereafter in effect, having jurisdiction over the Property, or over any Indemnitor or any occupant or user of the Property, or any of their respective businesses, operations, assets, or properties.

(h) Hazardous Substance. Any substance, product, material, element, compound, chemical or waste, whether solid, liquid or gaseous (i) the presence or Release of which requires reporting, investigation, or remediation under any Environmental Requirement, (ii) which is defined, listed, classified or regulated as a "hazardous waste," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "hazardous material," "toxic substance," "regulated substance," or other similar or related term under or in any Environmental Requirement, (iii) which is toxic, radioactive, or otherwise classified as hazardous or toxic and is or becomes regulated by any Governmental Authority as a threat to human health or the environment, (iv) the presence of which on or about the Property causes or threatens to cause a nuisance upon the Property or to adjacent property, (v) the presence of which on adjacent properties could constitute a trespass by any Indemnitor, (vi) which is asbestos, (vii) which is polychlorinated biphenyls, (viii) which contains petroleum or any petroleum-derived product,

(ix) underground storage tanks, whether empty, filled or partially filled with any substance, or (x) any radioactive materials, urea formaldehyde foam insulation, or radon.

(i) Indemnitees. Lender, any assignee of Lender with respect to all or any portion of the Loan, and all of their respective subsidiaries, affiliates, shareholders, partners, members, directors, officers, agents, attorneys, and employees, and their respective successors and assigns, and "Indemnitee" means any one of the Indemnitees.

(j) Indemnitors. Grantor and its successors and assigns.

(k) Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, drums, tanks or other closed receptacles containing any Hazardous Substance).

(l) Use. Use, ownership, development, construction, maintenance, management, operation, or occupancy (of the Property).

9.2 INDEMNIFICATION. GRANTOR HEREBY ASSUMES LIABILITY FOR, AND HEREBY AGREES TO AND SHALL INDEMNIFY, DEFEND (AT TRIAL AND APPELLATE LEVELS, ADMINISTRATIVE PROCEEDINGS AND ARBITRATIONS, WITH ATTORNEYS, CONSULTANTS AND EXPERTS ACCEPTABLE TO LENDER), SAVE, AND HOLD HARMLESS EACH INDEMNITEE FROM AND AGAINST ANY AND ALL ENVIRONMENTAL DAMAGES AND ENVIRONMENTAL CLAIMS IMPOSED UPON, ASSERTED OR AWARDED AGAINST OR INCURRED BY THE PROPERTY OR ANY INDEMNITEE, UNLESS, AND TO THE EXTENT, SUCH ENVIRONMENTAL DAMAGES OR ENVIRONMENTAL CLAIMS ARE FINALLY DETERMINED TO HAVE ARISEN SOLELY AND DIRECTLY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF INDEMNITEES. THIS OBLIGATION SHALL INCLUDE ANY CLAIMS RESULTING FROM THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE. THIS OBLIGATION SHALL INCLUDE, WITHOUT LIMITATION, (I) THE BURDEN OF DEFENDING ALL CLAIMS, SUITS, AND ADMINISTRATIVE PROCEEDINGS (WITH COUNSEL REASONABLY APPROVED BY INDEMNITEES), EVEN IF SUCH CLAIMS, SUITS, OR PROCEEDINGS ARE GROUNDLESS, FALSE, FRAUDULENT, OR FRIVOLOUS, AND CONDUCTING ALL NEGOTIATIONS OF ANY DESCRIPTION, (II) PAYING AND DISCHARGING, WHEN AND AS THE SAME SHALL BECOME DUE, ANY AND ALL JUDGMENTS, PENALTIES, OR OTHER SUMS DUE AGAINST ANY INDEMNITEE, (III) PAYING AND DISCHARGING, WHEN AND AS THE SAME SHALL BECOME DUE, ALL COSTS OF REMOVAL AND/OR REMEDIATION OF ANY KIND, AND PROMPTLY DISPOSING OF SUCH HAZARDOUS SUBSTANCES (WHETHER OR NOT SUCH HAZARDOUS SUBSTANCE MAY BE LEGALLY ALLOWED TO REMAIN UPON, ABOUT, OR BENEATH THE PROPERTY IF REMOVAL OR REMEDIATION IS, IN LENDER'S DISCRETION, PRUDENT), (IV) PAYING AND DISCHARGING, WHEN AND AS THE SAME SHALL BECOME DUE, ALL COSTS OF DETERMINING WHETHER THE PROPERTY IS IN COMPLIANCE, AND PROMPTLY CAUSING THE PROPERTY TO BE IN COMPLIANCE, WITH ALL APPLICABLE ENVIRONMENTAL

REQUIREMENTS, (V) PAYING AND DISCHARGING, WHEN AND AS THE SAME SHALL BECOME DUE, ALL COSTS ASSOCIATED WITH CLAIMS FOR DAMAGES TO PERSONS, PROPERTY, OR NATURAL RESOURCES, AND (VI) PAYING AND DISCHARGING, WHEN AND AS THE SAME SHALL BECOME DUE, INDEMNITEES' REASONABLE ATTORNEYS' FEES, CONSULTANTS' FEES, AND COURT COSTS. ANY INDEMNITEE, AT ITS EXPENSE (OR AT GRANTOR'S EXPENSE IF GRANTOR'S COUNSEL OR INDEMNITEE REASONABLY BELIEVES A CONFLICT EXISTS IN DUAL REPRESENTATION), MAY EMPLOY ADDITIONAL COUNSEL OF ITS CHOICE TO ASSOCIATE WITH COUNSEL EMPLOYED BY GRANTOR; AND, IF AN EVENT OF DEFAULT EXISTS, ANY INDEMNITEE MAY IN GOOD FAITH SETTLE ANY CLAIM (INCLUDING ANY ENVIRONMENTAL CLAIM) AGAINST IT, WHETHER OR NOT SUBJECT TO INDEMNIFICATION HEREUNDER, WITHOUT THE CONSENT OR JOINDER OF GRANTOR OR ANY OTHER PARTY.

9.3 **SURVIVAL.** THIS ARTICLE IX, INCLUDING THE INDEMNITY CONTAINED HEREIN, SHALL SURVIVE THE RELEASE OF THE LIEN OF THIS DEED OF TRUST OR THE EXTINGUISHMENT OF THE LIEN BY FORECLOSURE OR ACTION IN LIEU THEREOF.

9.4 **Rights Under Environmental Requirements and Other Rights.** Nothing in this Deed of Trust or in any other Loan Document shall limit or impair any claims, rights or remedies of Lender or any other Indemnitee against Grantor or any other person under any Environmental Requirement or otherwise at law or in equity, including any claims for fraud, misrepresentation, waste or breach of contract other than this Deed of Trust, and any rights of contribution or indemnification. In addition to any other rights or remedies Lender may have under this Deed of Trust or the other Loan Documents, at law or in equity, upon any breach or default by Grantor under this Deed of Trust, Lender may pursue any remedies available to it under Nevada Law. Without limiting any of the remedies provided herein or in the other Loan Documents, Grantor acknowledges and agrees that the provisions of this Article IX are environmental provisions, made by Grantor relating to the real property security, and that Grantor's failure to comply with the terms of this Deed of Trust is a breach of contract such that Lender shall have the remedies provided under Nevada Law for the recovery of damages and for the enforcement thereof. Lender's action for the recovery of damages or enforcement of this Deed of Trust shall not constitute an action within the meaning of any provision of law limiting the right to a deficiency or a deficiency judgment.

ARTICLE X

Assignment of Leases and Rents

10.1 **Absolute Assignment.** In order to provide a source of future payment of the secured indebtedness, Grantor hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Grantor's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the units constituting the Front Sight Resort and Vacation Club, together with any and all security deposits, guaranties of the lessees' or tenants' obligations (including any and all security therefor), and other security under any such leases, subleases, concessions, licenses,

franchises, occupancy agreements, tenancies, subtenancies and other agreements, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as (the "Leases"), and hereby gives to and confers upon Lender the right to collect all the income, rents, issues, profits, royalties and proceeds from the Leases and any business conducted at the Front Sight Resort and Vacation Club Units (but specifically excluding any income, rents, issues, profits, royalties and proceeds from any Leases and any other business conducted by or on behalf of FSFTI) and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). The term "Rents" includes, but is not limited to, all minimum rents, additional rents, percentage rents, deficiency rents, common area maintenance charges, lease termination payments, refunds of any type, prepayment of rents, settlements of litigation, settlements of past due rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents, together with any and all rights and claims of any kind that Grantor may have against any tenant under the Leases or any other occupant of the units constituting the Front Sight Resort and Vacation Club. This Deed of Trust is intended by Lender and Grantor to create and shall be construed to create an absolute unconditional and presently effective assignment to Lender of all of Grantor's right, title and interest in and to the Leases and the Rents and shall not be deemed merely to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents. Grantor irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Grantor or in the name of Lender, for all such Rents and apply the same to the secured indebtedness.

10.2 Revocable License to Collect. Notwithstanding the foregoing assignment of Rents, so long as no Event of Default remains uncured, Grantor shall have a revocable license, to collect all Rents, and to retain any portion thereof not required to pay the expenses of the Property or the obligations secured thereby. Upon any Event of Default, Grantor's license to collect and retain Rents shall terminate automatically and without the necessity for any notice.

10.3 Collection and Application of Rents by Lender. While any Event of Default remains uncured, (a) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the secured indebtedness, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (b) without demand by Lender, Grantor shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Grantor whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the secured indebtedness, less all Expenses, including reasonable attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any secured indebtedness or other action taken by Lender under this Article X shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property. In no event shall the assignment of Rents or Leases cause the secured indebtedness to be reduced by an amount greater than the Rents actually received by Lender and applied by Lender to the secured indebtedness, whether before, during or after (1) an Event of Default or (2) a suspension or revocation of the license granted to Grantor in this

Article X with regard to the Rents. Grantor and Lender specifically intend that the assignment of Rents and Leases contained in this Deed of Trust is not intended to result in a pro tanto reduction of the secured indebtedness, nor is it intended to constitute a payment of, or with respect to, the secured indebtedness, and, therefore, Grantor and Lender specifically intend that the secured indebtedness shall not be reduced by the value of the Rents and Leases assigned hereby. Such reduction shall occur only if, and to the extent that, Lender actually receives Rents and applies such Rents to the secured indebtedness. Grantor agrees that the value of the license granted with regard to the Rents equals the value of the absolute assignment of Rents to Lender.

10.4 Direction to Tenants. Grantor hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Grantor thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default remains uncured and that all such amounts are to be paid to Lender. Grantor further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Grantor has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

10.5 Termination. The assignment contained in this Article X will terminate upon the full reconveyance of this Deed of Trust.

ARTICLE XI General Conditions

11.1 Concerning the Trustee.

(a) Trustee. Trustee shall be deemed to have accepted the terms of this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee shall not be obligated to notify any party to this Deed of Trust of any pending sale under any other deed of trust or of any action or proceeding in which Grantor, Lender, or Trustee is a party, unless such sale relates to or reasonably might affect the Property, this Deed of Trust, Lender's security for the payment and performance of the secured indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, or unless such action or proceeding has been instituted by Trustee against the Property, Grantor, or Lender.

(b) Power of Trustee to Reconvey or Consent. At any time, without liability and without notice to Grantor, on Lender's written request and presentation of the Note and this Deed of Trust to Trustee for endorsement, and without altering or affecting (i) the personal liability of Grantor or any other person for the payment of the secured indebtedness, or (ii) the lien of this Deed of Trust on the remainder of the Property as security for the repayment of the full amount of the secured indebtedness then or later secured by this Deed of Trust, (iii) or any right or power of Lender or Trustee with respect to the remainder of the Property, Trustee may (1) reconvey or release any part of the Property from the lien of this Deed of Trust; (2) approve the preparation or filing of any map or plat of the Property; (3) join in the granting of any easement burdening the Property; or (4) enter into any extension or subordination agreement affecting the Property or the lien of this Deed of Trust.

(c) Substitution of Trustee. Lender, at Lender's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties in which the Property is located, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees. The successor Trustee or Trustees shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers, and duties of such predecessor Trustee, including, without limitation, the power to reconvey the Property. To be effective, the instrument must contain the names of the original Grantor, Trustee, and Lender under this Deed of Trust, the book and page or instrument or document number at which, and the county in which, this Deed of Trust is recorded, and the name and address of the substitute Trustee. If any notice of default has been recorded under this Deed of Trust, this power of substitution cannot be exercised until all costs, fees, and expenses of the then acting Trustee have been paid. On such payment, the then acting Trustee shall endorse receipt of the payment on the instrument of substitution. The procedure provided in this paragraph for substitution of Trustees is not exclusive of other provisions for substitution provided by applicable law.

(d) No Representation by Trustee or Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Lender.

(c) No Liability of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. **Grantor will reimburse Trustee for, and indemnify and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee (including as a result of Trustee's negligence) in the performance of its duties.** The foregoing indemnity shall not terminate upon discharge of the secured indebtedness or foreclosure, or release or other termination, of this Deed of Trust.

11.2 Number and Gender. Words in the singular used herein shall be deemed to include the plural and words in the plural shall be deemed to include the singular, unless in each instance the context requires otherwise; and words of any gender shall be deemed to include the masculine, feminine and neuter.

11.3 Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given (a) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; (c) by delivery to a reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee; or (d) by facsimile to the addressee with evidence of receipt at the addressee's facsimile number, if any. Notice so mailed shall be effective three (3) days after its deposit with the United States Postal Service or any successor thereto; notice given by personal delivery shall be effective only if and when received by the addressee; notice sent by such a commercial delivery service shall be effective upon delivery to the recipient (if sent for same day delivery) or the first business day following delivery to such commercial delivery service (if for next day delivery); and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of ten (10) days' prior written notice to the other party in the manner set forth herein.

Grantor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to Grantor at the address set forth on the first page of this Deed of Trust. That address is also the mailing address of Grantor as debtor under the UCC. Lender's address given on the first page of this Deed of Trust is the address for Lender as secured party under the UCC.

11.4 Invalidation of Provisions. Invalidation of any one or more of the provisions of this Deed of Trust shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

11.5 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Deed of Trust or the intent of any provision hereof.

11.6 GOVERNING LAW AND VENUE. THIS DEED OF TRUST SHALL BE GOVERNED BY, AND CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, WITHOUT REGARD TO CONFLICTS OF LAW. GRANTOR AGREES THAT THIS DEED OF TRUST IS PERFORMABLE IN NYE COUNTY, NEVADA. GRANTOR STIPULATES THAT CLARK COUNTY, NEVADA, IS PROPER VENUE FOR ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT, TO THE EXCLUSION OF ALL OTHER VENUES. GRANTOR WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED UNDER THIS DEED OF TRUST, AND

CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

11.7 No Third-Party Beneficiary. Grantor and Lender acknowledge that this Deed of Trust is made solely for the benefit of the parties hereto and their respective successors and assigns, and no third party should or may assume that any third-party beneficiary rights are extended or created hereby.

11.8 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor (and all references in this Deed of Trust to Grantor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Grantor), and shall inure to the benefit of Trustee and Lender and shall constitute covenants running with the Land. Lender may, from time to time and without notice to Grantor, assign, participate or otherwise transfer all or any portion of the Loan secured hereby, the Note, this Deed of Trust (and the lien created hereby) and the other Loan Documents (and Lender's rights and interests thereunder), in whole or in part, and the term "Lender" shall include Lender's successors and assigns and any subsequent holder(s) of the Note secured hereby or any assignee or transferee thereof whether by operation of law or otherwise.

11.9 No Usury Intended. Grantor and Lender intend to comply strictly with applicable usury laws. All agreements between Grantor and Lender, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of the disbursement of the principal amount of the Loan, demand, prepayment or acceleration of the maturity of the Note or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to Lender (including any other compensation, however denominated, held or deemed to be interest) exceed the maximum amount of interest permitted under applicable federal and Nevada law that may be contracted for, charged, received, paid or agreed to be paid to Lender (including any compensation, however denominated, held or deemed to be interest) (the "Maximum Lawful Rate"). If, from any circumstance whatsoever, interest (and any compensation, however denominated, held or deemed to be interest) would otherwise be payable to Lender in excess of the Maximum Lawful Rate, the interest and any such other compensation payable or paid to Lender shall be reduced to the Maximum Lawful Rate; and if from any circumstance Lender shall ever receive interest or anything of value deemed interest by applicable law in excess of the Maximum Lawful Rate, an amount equal to any such excessive interest shall be applied to the reduction of the principal of the Note and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of the Note, such excess shall be refunded to Grantor. All interest (including any other compensation, however denominated, held or deemed to be interest) paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts through the full stated term of the Note, including renewals or forbearance periods, so that the rate or amount of interest on the Note shall not exceed the Maximum Lawful Rate; and in the event the Note is paid in full by Grantor prior to the end of the full stated term of the Note and the interest (including any other compensation, however denominated, held or deemed to be interest) received for the actual period of the existence of the Note exceeds the Maximum Lawful Rate, Lender shall refund to Grantor the amount of the excess or shall credit the amount of the excess against amounts owing under the Note. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender,

Grantor will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor or crediting such excess interest against the Note and/or any other indebtedness then owing by Grantor to Lender.

11.10 WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED INDUCEMENT FOR LENDER TO MAKE THE LOAN TO GRANTOR, TO THE FULLEST EXTENT NOW OR HEREAFTER PERMITTED BY LAW, GRANTOR AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY GRANTOR OR LENDER AGAINST THE OTHER TO ENFORCE THIS DEED OF TRUST, TO COLLECT DAMAGES FOR THE BREACH OF THIS DEED OF TRUST, OR WHICH IN ANY OTHER WAY ARISE OUT OF, ARE CONNECTED TO OR ARE RELATED TO THIS DEED OF TRUST. ANY SUCH ACTION SHALL BE TRIED BY THE JUDGE WITHOUT A JURY.

11.11 ENTIRE AGREEMENT. THE NOTE, THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY. THE NOTE, THIS DEED OF TRUST AND THE LOAN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. EXCEPT AS INCORPORATED IN WRITING INTO THE LOAN DOCUMENTS, THERE ARE NO REPRESENTATIONS, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES, ORAL OR WRITTEN, WITH RESPECT TO THE MATTERS ADDRESSED IN THE LOAN DOCUMENTS.

11.12 No Waiver by Lender or Trustee. No course of dealing or conduct by or among Lender, Trustee and Grantor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Loan Documents. No failure or delay by Lender or Trustee to insist upon the strict performance of any term, covenant or agreement of this Deed of Trust or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lender or Trustee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the secured indebtedness, neither Lender nor Trustee shall be deemed to waive the right either to require prompt payment when due of all other secured indebtedness, or to declare an Event of Default for failure to make prompt payment of any such other secured indebtedness. Neither Grantor nor any other person now or hereafter obligated for the payment of the whole or any part of the secured indebtedness shall be relieved of such liability by reason of (a) the failure of Lender to comply with any request of Grantor or of any other Person to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Lender, or (c) Lender's extending the time of payment or modifying the terms of this Deed of Trust or any of the other Loan Documents without first having obtained the consent of Grantor or such other Person. Regardless of consideration,

and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Lender may release any Person at any time liable for any of the secured indebtedness or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Deed of Trust or any of the other Loan Documents without in any way impairing or affecting the lien of this Deed of Trust or the priority of this Deed of Trust over any subordinate lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Deed of Trust. Lender may resort to the security or collateral described in this Deed of Trust or any of the other Loan Documents in such order and manner as Lender may elect in its sole discretion.

11.13 Attorneys' Fees; Expenses. Grantor shall reimburse Lender for all attorneys' fees and expenses, and all other costs and expenses, arising from and after the date hereof, incurred by Lender in connection with the enforcement of Lender's rights under this Agreement and each of the other Loan Documents, including, without limitation, attorneys' fees and expenses and other costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements, and for enforcement of rights under any state or federal statute, including, without limitation, attorneys' fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) in connection with seeking relief from stay in a bankruptcy proceeding. The term "expenses," as used in the preceding sentence, includes any expenses incurred by Lender in connection with any of the out-of-court, state, federal or bankruptcy proceedings referenced above, including but not limited to the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Lender in connection with any of those proceedings. Lender shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. Grantor will upon demand pay to Lender the amount of any and all expenses, including the fees and expenses of its counsel and of any experts and agents, which Lender may incur in connection with (a) the administration of this Agreement, (b) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Property, (c) the exercise or enforcement of any of the rights of Lender hereunder, and/or (d) the failure by Grantor to perform or observe any of the provisions hereof. This provision is separate and severable and shall survive the merger of this Agreement into any judgment on this Agreement.

11.14 INDEMNIFICATION. GRANTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING, BUT NOT LIMITED TO, SECTIONS 4.19, 9.2 and 11.1 HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY GRANTOR OR OTHERS AGAINST LENDER'S OR TRUSTEE'S OWN NEGLIGENCE.

11.15 Subrogation. Lender shall be subrogated, for further security, to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan evidenced by the Loan Documents.

[SIGNATURE PAGE FOLLOWS]

EXECUTED effective as of the date first above written.

GRANTOR:

FRONT SIGHT MANAGEMENT, LLC
a Nevada limited liability company

By:



Ignatius Piazza, Manager

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared Ignatius Piazza, Manager, Front Sight Management, LLC, a Nevada limited liability company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature)

[Seal]

****Please See Attach****

California Acknowledgment
 California Jurat

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California
COUNTY OF San Francisco

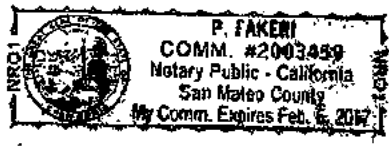
On OCT 06, 2016 before me, P. Fakeri,
a Notary Public in and for said County and State,
personally appeared, Ignatius Piazza

X X X, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Handwritten Signature]



(Notary Seal)

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

A TRACT OF LAND BEING A PORTION OF TRACT 38, OF THE FRACTION TOWNSHIP 22 SOUTH, RANGE 54 EAST, M.D.M. AS SHOWN BY THE INDEPENDENT RE-SURVEY AND SURVEY WITH TRACT SEGREGATION FILED WITH THE BUREAU OF LAND MANAGEMENT ON MAY 10, 1935, ALL SITUATED IN NYE COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH BOUNDARY CORNER OF THE MOST EASTERLY BOUNDARY LINE OF SAID TRACT 38, BEING THE CORNER KNOWN AS "AP11" OF TRACT 38 AS SHOWN BY SAID BUREAU OF LAND MANAGEMENT SURVEY;
THENCE ALONG THE BOUNDARY LINES OF SAID TRACT 38 ON THE FOLLOWING THREE (3) COURSES: 1) SOUTH 89° 55' 56" WEST, 1318.50 FEET;
THENCE 2) NORTH 00° 48' 15" WEST, 1309.00 FEET;
THENCE 3) NORTH 89° 19' 08" WEST, 1310.94 FEET;
THENCE SOUTH 07° 25' 58" WEST, 864.51 FEET; SOUTH 51° 50' 25" EAST, 540.22 FEET;
THENCE SOUTH 85° 06' 44" EAST, 391.56 FEET; SOUTH 44° 07' 13" EAST, 886.99 FEET;
THENCE SOUTH 32° 07' 51" EAST, 909.73 FEET TO A POINT ON THE BOUNDARY LINE OF SAID TRACT 38;
THENCE SOUTH 89° 59' 28" EAST ALONG SAID BOUNDARY LINE OF TRACT 38, 861.95 FEET; THENCE NORTH 00° 48' 57" WEST ALONG SAID BOUNDARY LINE OF TRACT 38, 1308.90 FEET TO THE POINT OF BEGINNING.

MORE COMMONLY KNOW AS: LOT 1 PER RECORD OF SURVEY FOR BOUNDARY LINE ADJUSTMENT MAP, FILE NUMBER 645836, RECORDED DECEMBER 28, 2005.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED DECEMBER 28, 2005 AS INSTRUMENT NO. 645837, OF OFFICIAL RECORDS, NYE COUNTY, NEVADA.

PARCEL 2:

A TRACT OF LAND BEING A PORTION OF TRACT 38, OF THE FRACTION TOWNSHIP 22 SOUTH, RANGE 54 EAST, M.D.M. AS SHOWN BY THE INDEPENDENT RE-SURVEY AND SURVEY WITH TRACT SEGREGATION FILED WITH THE BUREAU OF LAND MANAGEMENT ON MAY 10, 1935, ALL SITUATED IN NYE COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH BOUNDARY CORNER OF THE MOST EASTERLY BOUNDARY LINE OF SAID TRACT 38, BEING THE CORNER KNOWN AS "AP11" OF TRACT 38 AS SHOWN BY SAID BUREAU OF LAND MANAGEMENT SURVEY;

THENCE ALONG THE BOUNDARY LINES OF SAID TRACT 38 ON THE FOLLOWING THREE (3) COURSES: 1) SOUTH 89° 55' 56" WEST, 1318.50 FEET TO "AP12" OF SAID TRACT 38;

THENCE 2) NORTH 00° 48' 15" WEST, 1309.00 FEET TO "AP13" OF SAID TRACT 38;

THENCE 3) NORTH 89° 19' 08" WEST, 1310.94 FEET TO THE POINT OF BEGINNING OF THE

TRACT OF LAND DESCRIBED HEREIN;

THENCE SOUTH 07° 25' 58" WEST, 864.51 FEET; SOUTH 51° 50' 25" EAST, 540.22 FEET;

THENCE SOUTH 85° 06' 44" EAST, 391.56 FEET; SOUTH 44° 07' 13" EAST, 886.99 FEET;

THENCE SOUTH 32° 07' 51" EAST, 909.73 FEET TO A POINT ON THE BOUNDARY LINE OF SAID TRACT 38;

THENCE ALONG SAID BOUNDARY LINE OF TRACT 38 ON THE FOLLOWING ELEVEN (11)

COURSES: 1) NORTH 89° 59' 28" WEST, 456.95 FEET;

THENCE 2) SOUTH 00° 19' 21" EAST, 2632.07 FEET;

THENCE 3) NORTH 89° 43' 00" WEST, 2650.49 FEET;

THENCE 4) NORTH 00° 00' 22" WEST, 2637.91 FEET;

THENCE 5) NORTH 89° 33' 52" WEST, 2645.16 FEET;

THENCE 6) NORTH 00° 21' 41" EAST, 2638.39 FEET;

THENCE 7) SOUTH 89° 18' 43" EAST, 1308.09 FEET;

THENCE 8) NORTH 01° 14' 10" EAST, 1318.86 FEET;

THENCE 9) SOUTH 88° 49' 59" EAST, 1266.00 FEET;

THENCE 10) SOUTH 00° 32' 57" EAST, 1307.62 FEET;

THENCE 11) SOUTH 89° 19' 08" EAST, 1302.28 FEET TO THE POINT OF BEGINNING.

MORE COMMONLY KNOWN AS: LOT 2 PER RECORD OF SURVEY FOR BOUNDARY LINE ADJUSTMENT MAP, FILE NUMBER 645836, RECORDED DECEMBER 28, 2005.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION PREVIOUSLY APPEARED IN THAT CERTAIN DOCUMENT RECORDED DECEMBER 28, 2005 AS INSTRUMENT NO. 645838 OF NYE COUNTY, NEVADA.

End of Legal Description

Exhibit 2

DOC #886510

Official Records Nye County NV
Deborah Beatty - Recorder
01/12/2018 01:26:10 PM
Requested By: FNTG NCS (LAS VEGAS)
Recorded By: MJ RPTT:\$0
Recording Fee: \$35.00
Non Conformity Fee: \$
Page 1 of 6

Ann 045-481-05 and 06
RECORDING REQUESTED BY:)
AFTER RECORDING, RETURN TO:)
ROBERT DZIUBLA
LAS VEGAS DEVELOPMENT FUND, LLC
916 SOUTHWOOD BLVD., SUITE 1G
INCLINE VILLAGE, NV 89450

Space above this line for Recorder's use

FIRST AMENDMENT TO CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

This Document serves as a Fixture Filing under the Uniform Commercial Code, as amended from time to time, covers goods that are or become fixtures on the land, and is to be filed in the real property records of Nye County, Nevada.

THIS FIRST AMENDMENT TO CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "First Amendment") is made and entered into effective as of July 1, 2017 (the "Effective Date") by FRONT SIGHT MANAGEMENT, LLC, a Nevada limited liability company ("Grantor"), whose address is 1 Front Sight Road, Pahrump, Nevada 89061, to Chicago Title Company ("Trustee") whose address is 725 S. Figueroa Street, Suite 200, Los Angeles, California 90017, for the benefit of Las Vegas Development Fund LLC, a Nevada limited liability company ("Lender"), as beneficiary, whose address is P.O. Box 3003, 916 Southwood Blvd., Suite 1G, Incline Village, Nevada 89450. Lender and Grantor and their respective permitted successors and assigns are sometimes referred to in this First Amendment individually as a "Party" and collectively as the "Parties".

RECITALS

A. Lender and Borrower entered into that certain Construction Loan Agreement dated as of October 4, 2016 (the "Original Loan Agreement"). Pursuant to the Original Loan Agreement, Borrower executed a Promissory Note dated October 6, 2016 (the "Original Note") and a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 6, 2016 and recorded under Document #860867 on October 13, 2016 in the Official Records of Nye County, Nevada (the "Original Deed of Trust"). The Original Loan Agreement was amended by a First Amendment to Loan Agreement effective as of July 1, 2017 (the Original Loan Agreement as modified by such amendment is referred to collectively as the "Loan Agreement") and the Original Note was replaced and superseded by an Amended and Restated Promissory Note effective as of July 1, 2017 (the "Promissory Note"). The Original Deed of Trust as amended by this First Amendment to Deed of Trust is referred to herein as the "Deed of Trust".

TW

THIS IS BEING RECORDED AT THE REQUEST OF
CHICAGO TITLE AS AN ACCOMMODATION ONLY
WITH NO LIABILITY

Signed In
Counterpart

APN 045-481-05 and 06
RECORDING REQUESTED BY:)
AFTER RECORDING, RETURN TO:)
ROBERT DZIUBLA
LAS VEGAS DEVELOPMENT FUND, LLC
916 SOUTHWOOD BLVD., SUITE 1G
INCLINE VILLAGE, NV 89450

Space above this line for Recorder's use

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TD

THIS IS BEING RECORDED AT THE REQUEST OF
CHICAGO TITLE AS AN ACCOMMODATION ONLY
WITH NO LIABILITY.

Signed in
Counterpart

B. The Parties desire to amend the Original Deed of Trust to modify the rights and obligations of the Parties as further set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into the operative provisions of this First Amendment by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amend the Original Deed of Trust as follows:

1. **Defined Terms.** Initially capitalized terms not defined herein shall have the respective meanings assigned to such terms in the Original Deed of Trust.
2. **Amendment and Restatement of Article I of the Original Deed of Trust.** Article I of the Original Deed of Trust is hereby amended and restated from and after the Effective Date as follows:

"ARTICLE I

The Loan

1. **Loan.** The indebtedness secured by this Deed of Trust is the result of a loan in the original principal amount of up to Fifty Million Dollars \$50,000,000 (the "Loan") provided by Lender to Grantor. The Loan is evidenced by (a) that certain Construction Loan Agreement dated October 6, 2016, by and between Grantor and Lender, as amended by that certain First Amendment to Loan Agreement (as amended, together with any further extensions, revisions, modifications or amendments thereto, the "Loan Agreement"), dated as of the Effective Date, by and between Grantor and Lender, and (b) that certain Amended and Restated Promissory Note executed dated as of the Effective Date, by Grantor, payable to the order of Lender in the maximum original principal amount of the Loan (together with any extensions, revisions, modifications or amendments hereafter made, the "Note")."
3. **Agreement Ratified.** Except as specifically amended or modified herein, each and every term, covenant, and condition of the Deed of Trust as amended is hereby ratified and shall remain in full force and effect.
4. **Governing Law.** This instrument shall be interpreted and construed in accordance with the laws of the State of Nevada.
5. **Binding Agreement.** This First Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
6. **Counterparts.** This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.


[SIGNATURES APPEAR ON FOLLOWING PAGE]



IN WITNESS WHEREOF, Lender and Borrower have signed this First Amendment as of the First Amendment Effective Date.

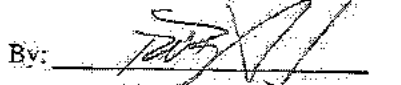
BORROWER:

FRONT SIGHT MANAGEMENT, LLC,
A Nevada Limited Liability Company

By: 
Name: Ignatius Piazza
Title: Manager

LENDER:

LAS VEGAS DEVELOPMENT FUND, LLC,
A Nevada Limited Liability Company

By: 
Name: Robert Dziubko
Title: President & CEO

PLEASE SEE ATTACHED
CALIFORNIA ALL-PURPOSE
ACKNOWLEDGEMENT FORM

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

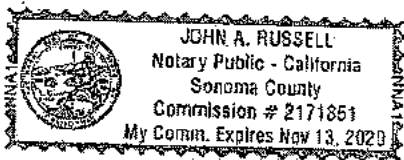
County of Sonoma

On Nov. 14, 2017
Date

before me, John A Russell Notary Public
Here Insert Name and Title of the Officer

personally appeared Ignatius Anthony Piazza II
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature John A Russell
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: First Amendment To Construction Deed & Trust, Security Agreement and Fixture Filing

Document Date: 11/14/2017

Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer - Title(s): _____
- Partner - Limited General
- Individual Attorney in Fact
- Trustee Guardian of Conservator
- Other: _____

Signer is Representing: _____

Signer's Name: _____

- Corporate Officer - Title(s): _____
- Partner - Limited General
- Individual Attorney in Fact
- Trustee Guardian of Conservator
- Other: _____

Signer is Representing: _____