

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 04:33 p.m.  
Dist. Ct. Case No: A-18-781084-B Elizabeth A. Brown  
Clerk of Supreme Court



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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 Dziubka

Title: President & CEO

SEE ATTACHED

# ACKNOWLEDGMENT

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 )

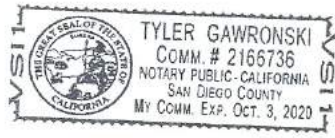
On January 6<sup>th</sup> 2018 before me, Tyler Gawronski notary public  
(insert name and title of the officer)

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 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)



# Exhibit 3



**CONSTRUCTION LOAN AGREEMENT**

by and between

**FRONT SIGHT MANAGEMENT LLC**

a Nevada limited liability company  
as Borrower

and

**LAS VEGAS DEVELOPMENT FUND LLC,**

a Nevada limited liability company,  
as Lender

Dated: October 6, 2016

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## CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (this "Agreement") is made and entered into this Fourth day of October, 2016, by and between FRONT SIGHT MANAGEMENT LLC, a Nevada limited liability company ("Borrower"), and LAS VEGAS DEVELOPMENT FUND, LLC, a Nevada limited liability company ("Lender"), with respect to the following facts:

### RECITALS

A. Borrower has requested that the Lender provide the Loan (as hereinafter defined) to Borrower in the principal sum of up to SEVENTY-FIVE MILLION DOLLARS (\$75,000,000) for the purpose of paying off Existing Liens (as hereinafter defined) and financing the construction of the Improvements (as hereinafter defined) in accordance with the Budget (as hereinafter defined).

B. Borrower has secured, or will endeavor to secure, financing for the remaining costs of the Project (as hereinafter defined) as follows: (1) other equity contributions from Borrower in the amount of \$75,000,000, in the aggregate, on the date the Loan is made, which includes the enterprise value of Borrower's primary business operation, Front Sight Firearms Training Institute ("FSFTI"), which enterprise value was determined by Bring & Company, Inc. to be \$50,000,000 on September 21, 2015, (2) Borrower's equity in the land on which the Project will be located, as well as the land and improvements on the adjacent parcel which is the location of the existing FSFTI, which land is currently encumbered, *inter alia*, by a deed of trust with a current outstanding balance of approximately \$4,661,446.07 as of September 10, 2016, and (3) such additional construction financing as may be secured by Borrower at a date subsequent to the date of this Agreement, with the understanding that any and all liens securing such additional construction financing will be superior to the liens securing the Loan evidenced by this Agreement. The land on which the Project will be located has an appraised value of \$25,000,000. The enterprise value of FSFTI and the value of the land and improvements thereon are referred to collectively as the "Borrower's Equity".

C. Based upon (a) the efforts made by Lender to comply with the rules and regulations promulgated under the EB-5 Program (as hereinafter defined) and (b) the materials and submissions developed by Lender, the Loan has been structured for the payment of costs relating to the development of the Project as set forth in the Budget approved by Lender.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### DEFINITIONS

For purposes of this Agreement, the following terms shall have the following respective meanings, unless expressly established otherwise:

**“Accessibility Regulation”** means any federal, state or local law, statute, code, ordinance, rule, regulation or requirement, including, without limitation, under the United States Americans With Disabilities Act of 1990, as amended (the “**ADA**”), relating to accessibility to facilities or properties for disabled, handicapped and/or physically-challenged persons, or other persons covered by the ADA.

**“Advances”** means (i) any portion of the Loan advanced by Lender to or for the benefit of Borrower in accordance with Article III of this Agreement; (ii) any advance by Lender to protect the Project or the lien of the Loan Documents, including Protective Advances; and (iii) any other advance by Lender required or permitted under this Agreement.

**“Affiliate”** means any Person, together with any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person (i) owns 25% or more of the voting securities (or other ownership interests) of the controlled Person, or (ii) possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of stock, by contract or otherwise.

**“Agreement”** means this Construction Loan Agreement, including any amendments and/or supplements hereto executed by and between Borrower and Lender.

**“Anti-Terrorism Laws”** means any laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the Laws comprising or implementing the Bank Secrecy Act, and the Law administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced).

**“Architect’s Agreement”** means that certain agreement to be entered into by and between Borrower and the Project Architect for design of the construction work with respect to the Improvements and other services related to the same.

**“Blocked Person”** has the meaning assigned to it in Section 4.26(b).

**“Borrower”** has the meaning assigned to it in the introductory paragraph hereof.

**“Borrower Equity”** means other equity contributions from the Borrower as described in Recital B above.

**“Borrower Operating Agreement”** means that certain Amended and Restated Operating Agreement dated February 16, 2012.

**“Borrower’s Organizational Documents”** means all formation documents of Borrower, including the LLC-1, including any amendments thereof and supplements thereto.

**“Budget”** means an itemized statement of actual and estimated costs to be incurred by Borrower with respect to the construction of the Improvements, and other non-construction costs relating to the Project and Borrower’s business operations as set forth in Exhibit A, attached



hereto and made a part hereof, signed and sworn to by Borrower, as the same may be amended or supplemented from time to time, specifically allocated to be paid with Loan proceeds.

“**Business Day**” means any day other than a Saturday, a Sunday, or a legal holiday on which banks in Las Vegas, Nevada, are not open for business.

“**Closing Date**” means the date that this Agreement is executed, which shall be the date on or about which Lender reasonably anticipates making the initial Advance to the Borrower pursuant to the terms and conditions of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means (a) all of the collateral covered by the Deed of Trust, this Agreement or any other Loan Document, and (b) all accessions to, substitutions for and replacements, products and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

“**Commencement Date**” means the date following installation of the required infrastructure on the Land and on which construction of the buildings that will constitute the Front Sight Resort and Vacation Club units commences.

“**Commitment**” means an amount not to exceed seventy five million dollars (\$75,000,000). Such Commitment shall be reduced by any principal payments made by or on behalf of Borrower or any principal reductions otherwise required under and pursuant to the Loan Documents.

“**Completion**” means that (i) such portion of the Improvements are substantially completed in accordance with the Plans, as reasonably approved by Lender, paid for in full, free of all mechanics’, labor, materialmen’s and other similar lien claims, and substantial completion has been certified by the Project Architect; (ii) a certificate of substantial completion for such Improvements has been signed by Borrower delivered to Lender; (iii) Lender has received acceptable evidence that all Governmental Requirements and all private restrictions and covenants relating to such Improvements have been complied with or satisfied (if applicable) and that final certificates of occupancy for such Improvements, if applicable, have been issued by all appropriate governmental authorities; and (iv) the requirements in Section 5.7 have been satisfied.

“**Completion Date**” means the date that is no later than thirty-six (36) months from the Commencement Date. The Completion Date shall be subject to extensions for delays resulting from Force Majeure (as defined herein), provided, that Borrower gives written notice to Lender immediately upon becoming aware of the occurrence of any Force Majeure condition and, provided further, that the aggregate period of any and all such Force Majeure delays shall not exceed ninety (90) days.

**“Contractor”** means any person, party or entity which has a contract or subcontract under which payment may be required for any work done, material supplied or services furnished in connection with acquiring, constructing, financing, equipping and/or developing the Project.

**“Control”** means the power to direct or cause the direction of the management and policies of a Restricted Party or any other Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise.

**“Deed of Trust”** means the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, encumbering the Project, executed by Borrower in favor of Lender to secure the Loan, including any amendments, modifications and/or supplements thereto.

**“Default”** means any event which, with the giving of notice to Borrower or the lapse of time, or both, would constitute an Event of Default.

**“Default Rate”** means the lesser of five percent (5%) per annum in excess of the Loan Rate or the maximum lawful rate of interest which may be charged, if any.

**“Draw Request”** means a spreadsheet summary of the Budget, provided by Borrower for an Advance of Loan proceeds under this Agreement in the form of Exhibit B attached hereto, together with a Draw Request Certification. General Contractor shall be signatory to each Draw Request to acknowledge its approval of the terms therein.

**“Draw Request Certification”** means a certification from Borrower to accompany all Advances for Loan proceeds under this Agreement, in the form of Exhibit C attached hereto.

**“EB-5 Information”** means such documents, certificates, and accounting information required to be submitted by Borrower to Lender pursuant to Article V(A), Section 5.10 hereof for purposes of documenting compliance by Borrower with certain aspects of this Agreement and the EB-5 Program.

**“EB-5 Investors”** has the meaning assigned to it in Section 1.7(b).

**“EB-5 Program”** has the meaning assigned to it in Section 1.7(b).

**“Environmental Impact Study”** means the Phase I Environmental Impact Study previously delivered to Lender and prepared by GeoTek, Inc., and dated as of February 2, 2012.

**“Environmental Law”** means all federal, state, regional, county and local statutes, regulations, ordinances, rules, regulations and policies, all court and administrative orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever, including, but not limited to, those relating to the presence, manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Substances; air, water (including surface water, groundwater, and stormwater) or soil (including subsoil) contamination or pollution; the presence or Release of

Hazardous Substances, protection of wildlife, endangered species, wetlands or natural resources; health and safety of employees and other persons; and notification requirements relating to the foregoing, including, without limitation, the following statutes, and regulations adopted thereunder: the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. ("**CERCLA**"); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq. ("**RCRA**"); the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. ("**TSCA**"); the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act, 19 U.S.C. § 6251 et seq., as each of the foregoing may be amended from time to time.

"**Environmental Liability**" means any claim, demand, obligation, cause of action, allegation, order, violation, damage, injury, judgment, penalty or fine, cost of enforcement, cost of remedial action, diminution in value or any other cost or expense whatsoever, including reasonable attorneys' fees and disbursements, resulting from the presence or use of Hazardous Substances, the violation or alleged violation of any Environmental Law, or the imposition of any Environmental Lien.

"**Environmental Lien**" means a Security Interest in favor of any third party for: (a) any liability under an Environmental Law; or (b) damages arising from or costs incurred by such third party in response to a Release or threatened Release of any Hazardous Substance or constituent into the environment.

"**Equipment**" means all furniture, fixtures and equipment directly acquired by Borrower with the proceeds of the Loan and located or to be located in or on, and used in connection with, the management, maintenance or operation of, the Land and the Improvements.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may from time to time be amended, and the rules and regulations promulgated thereunder by any governmental agency or authority, as from time to time in effect.

"**ERISA Affiliate**" means any trade or business (whether or not incorporated) which is a member of a group of which Borrower is a member and which is under common control within the meaning of Section 414 of the Code, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"**Escrow Account**" means the account that has been established for the benefit of Lender with the Escrow Agent.

"**Escrow Administrator**" means NES Financial Corp, a California corporation.

**“Escrow Agent”** means Time Escrow, Inc, 3055 Wilshire Boulevard, Suite 1150, Los Angeles, Ca. 90010

**“Escrow Agreement”** means that certain agreement between Escrow Agent and the Lender effective as of July 1, 2016.

**“Estimated Construction Cost Statement”** means an itemized statement of actual and estimated costs of the Project, in the form of Exhibit E attached hereto and hereby made a part hereof, signed by Borrower, General Contractor and the Project Architect, as the same may be amended or supplemented, and consistent with the items enumerated in the Budget.

**“Event of Default”** has the meaning assigned to it in Section 6.1 hereof.

**“Excluded Taxes”** means, in the case of Lender, taxes imposed on its overall net income, and franchise taxes imposed on it, by (a) the United States of America or any subdivision thereof, (b) the jurisdiction under the laws of which Lender is incorporated or organized, (c) the jurisdiction in which the Lender’s principal executive office is located, or (d) any foreign government or subdivision thereof.

**“Extension Fee”** means a non-refundable fee in the amount of one-percent (1%) of the then-existing outstanding principal balance of the Loan as the date of the first day of the Extension Term, payable by Borrower to Lender on or before the first day of the Extension Term. **“Extension Term”** has the meaning assigned to it in Section 1.6.

**“Fees”** means the Extension Fee.

**“First Option Maturity Date”** as set forth in Section 1.6, shall be the date twenty-four (24) months after the Initial Maturity Date.

**“Fiscal Year”** means the period of January 1 of any year through December 31 of such year.

**“Force Majeure”** means any act of God; strikes, shortage or unavailability of labor or materials; lockouts or labor difficulty, explosion; sabotage; accident; riot or civil commotion; act of war; fire or other casualty; adverse weather conditions; governmental delays; legal requirements; and other causes beyond the reasonable control of Borrower.

**“GAAP”** means generally accepted accounting principles consistently applied and maintained throughout the period indicated and consistent with the financial statements delivered to Lender pursuant to Article V. Whenever any accounting term is used herein and is not otherwise defined, it shall be interpreted in accordance with GAAP.

**“General Contract”** means one or more agreements by and between Borrower and General Contractor for the construction of the Project.

**“General Contractor”** means one or more general contractors duly licensed in the State of Nevada and selected by Borrower, as identified to Lender on or before the Commencement Date.

**“Governmental Authority”** means any court, board, agency, commission, office or authority of any nature whatsoever or any governmental unit (federal, state, commonwealth, county, district, municipal, city or otherwise) whether now or hereafter in existence.

**“Governmental Requirements”** means all Laws, statutes, codes, ordinances, and governmental rules, regulations and requirements of a Governmental Authority applicable to Borrower, Lender or the Project, including, without limitation, Environmental Laws, and the requirements of the ADA, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Project or any part thereof, including any which may (i) require repairs, modifications or alterations in or to the Project or any part thereof, or (ii) in any way limit the use and enjoyment thereof.

**“Hazardous Substance(s)”** means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant, or material which is defined or regulated under any Environmental Law, and includes, without limitation, (a) mold, asbestos, polychlorinated biphenyls, and petroleum (including petroleum products or derivatives, crude oil or any fraction thereof), and (b) any material classified or regulated as “hazardous waste” pursuant to RCRA.

**“Holdback”** means 25% (\$125,000) of each EB-5 Investor’s subscription, held in the Escrow Account for Lender’s benefit, which will ultimately either be made available for refund to an investor if the Release Condition is not satisfied or, if the Release Condition is satisfied, be made available for an Advance to Borrower.

**“Management Agreement”** means that certain Club Management Agreement to be entered into by and between Borrower, Front Sight Resort and Vacation Club Members Association, Inc., and Manager

**“Manager”** means LaTour Hotels and Resorts, Inc., a California corporation, and any successor manager approved by Lender.

**“Improvements”** means the buildings and improvements, including the existing facilities used by FSFTI in the operation of its business (the “FSFTI Facility”) as well as all structures or improvements to be built on the Land, including, without limitation, the items described in Exhibit F, attached hereto, which is based on the description of the Project in the Executive Summary of the Business Plan, as well as site work, landscaping, parking areas, access drives, offices, and common areas which are to be placed or constructed upon, above or below the Land.

**“Indebtedness”** means in all cases without duplication, all items of indebtedness or liability of Borrower other than the Obligations, at any time which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a consolidated balance sheet of Borrower as of the date of determination, including: (a) indebtedness for

borrowed money; (b) obligations under direct or indirect guaranties of indebtedness or obligations of others referred to in clause (a) above; (c) any indebtedness secured by any Security Interest on the property of such entity; and (d) liabilities in respect of unfunded vested benefits under any Plan for which the minimum funding standards of Section 302 of ERISA have not been met.

**“Indemnified Parties”** has the meaning assigned to it in Section 8.2(b).

**“Initial Maturity Date”** means the date sixty (60) months after the first disbursement of funds by Lender to Borrower under this Agreement.

**“Initial Term”** means that period of time commencing on the Closing Date and ending sixty (60) months after the first disbursement of funds by Lender to Borrower under this Agreement.

**“Interest Reserve”** means a portion of the proceeds of the Loan allocated to pay interest on the Loan through Completion of the Improvements, the initial and continuing amount of which shall be the equivalent of three months’ worth of interest, calculated at the Loan Rate, on the then-outstanding principal balance of the Loan.

**“Land”** means approximately 550 acres of land located in Nye County, Nevada, more specifically described on Exhibit D, attached hereto and made a part hereof by this reference.

**“Late Charge”** has the meaning assigned to it in Section 1.2.

**“Laws”** means all federal, state and local laws, statutes, codes, ordinances, rules and regulations, including judicial opinions and presidential authority in the applicable jurisdiction.

**“Lease”** means any lease, sublease or sub-sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect), pursuant to which any Person is granted a possessory interest in, or right to use or occupy, all or any portion of any space in the Project, and every modification, amendment or other agreement relating to such lease, sublease, sub-sublease or other agreement entered into in connection with such lease, sublease, sub-sublease or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

**“Lender-Approved Appraisal”** means that certain appraisal dated as of October 8, 2014, prepared by Hospitality Real Estate Counselors and previously provided to, and accepted and approved by, Lender.

**“Liens”** means any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise, but excluding liens for ad valorem taxes that are not delinquent), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting all or any portion of the Project or any interest therein, or any direct or indirect interest in Borrower, including any conditional sale or other title retention agreement,

any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialman's, construction and other similar liens and encumbrances.

**"Loan"** means collectively, the loan of the proceeds of the Note by Lender to Borrower in Advances to be made pursuant to the terms of this Agreement in the maximum aggregate principal amount not to exceed the Commitment.

**"Loan Documents"** means all documents now or hereafter entered into which evidence, secure and/or govern the Loan and/or any of the Obligations, including, but not limited to, this Agreement, the Note and the Deed of Trust.

**"Loan Rate"** means the interest rate applicable to the Loan as calculated at an annual rate of 6% during the Initial Term and, if extended, 7% during the Extension Term.

**"Material Adverse Occurrence"** means any occurrence of whatsoever nature (including, without limitation, any firm, final and unappealable adverse determination in any litigation, arbitration or governmental investigation or proceeding) which Lender shall reasonably determine could materially adversely affect the then-present or prospective financial condition or operations of Borrower, the value of the Project or any other material Collateral securing repayment of the Loan, or impair the ability of Borrower to perform its obligations as and when required under any of the Loan Documents.

**"Material Subcontractor"** means any subcontractor providing materials, supplies or labor to the Project under a contract or multiple contracts in the aggregate amount of \$250,000 or more.

**"Maturity Date"** means the Initial Maturity Date, subject to being extended as set forth in Section I.6 below.

**"Note"** means the Promissory Note of even date herewith, executed and delivered by Borrower to the order of Lender, in the original maximum principal amount of the Commitment, including any amendments and/or restatements thereof and supplements thereto executed by Borrower and Lender.

**"Obligations"** means, collectively: (i) Borrower's obligations for the payment of the Loan, interest and other charges, and all Fees; (ii) the performance of all other obligations of Borrower contained herein; (iii) the payment and performance of each and every obligation of Borrower contained in any other Loan Document; and (iv) the performance of each and every obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part hereof, the Note or any other Loan Document.

**"Operating Budget"** means a detailed listing of all anticipated annual income and expenses from and for managing, maintaining and operating the Project (or any portion thereof) for its first full or partial Fiscal Year and for each succeeding Fiscal Year of operation, prepared by Borrower and in form and substance reasonably acceptable to Lender.

**“Operating Expenses”** means actual operating expenses of the Project paid in cash by Borrower during such period, other than those operating expenses that are paid from Advances made by Lender to Borrower pursuant to this Agreement.

**“Operating Statement”** means, for any period, a current, detailed statement of income and expenses from and for managing, maintaining and operating the Project for such period, in form and substance reasonably acceptable to Lender.

**“Other Taxes”** means any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under the Note or from the execution or delivery of, or otherwise with respect to, this Agreement or the Note.

**“Permitted Encumbrances”** mean the Liens, charges and encumbrances on title to the Land listed on Schedule B, I to the Title Commitment on the Closing Date and such other matters of title thereafter approved by Lender in writing. For the avoidance of doubt, any liens, charges and/or encumbrances securing the Senior Debt shall be considered as “Permitted Encumbrances” as and when such liens, charges and/or encumbrances are granted by Borrower in favor of the provider of the Senior Debt.

**“Person”** means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization.

**“Plan”** means each employee benefit plan covered by Title IV of ERISA whether now in existence or hereafter instituted, of Borrower or any ERISA Affiliate.

**“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.

**“Project”** means the Land, the Improvements and the Equipment.

**“Project Architect”** means K.C. Camis Architect or such other architect(s) duly licensed in accordance with the laws of Nevada as may be selected by Borrower.

**“Protective Advance”** means all necessary costs and expenses (including reasonable attorneys’ fees and disbursements) reasonably incurred by Lender in order to remedy an Event of Default under the Loan Documents, which Event of Default, by its nature, may impair any portion of the collateral for the Loan or the value of such collateral, interfere with the enforceability or enforcement of the Loan Documents, or otherwise materially impair the payment of the Loan, and other Obligations (including, without limitation, the costs of unpaid insurance premiums, foreclosure costs, costs of collection, costs incurred in bankruptcy proceedings and other costs incurred in enforcing any of the Loan Documents).

**“Regional Center”** means EB5 Impact Capital Regional Center, LLC, a Nevada limited liability company.



**“Related Party”** means any one or more of the following: (a) an Affiliate of Borrower, or (b) any of the shareholders, partners, members or other equity holders of Borrower, and any Affiliate thereof.

**“Release”** means, without limitation, (a) any intentional, unintentional, knowing or unknowing presence, spilling, leaking, pumping, pouring, emitting, emptying, discharging, migrating, injecting, escaping, leaching, dumping or disposing any Hazardous Substance at, on or into the indoor or outdoor environment or otherwise in, onto, from or about the air, water (including surface waters and groundwater), soils, subsoils or any other surface or media on-site or off-site, and (b) the abandonment or discarding of barrels, drums, containers, underground tanks, or any other receptacles ever containing any Hazardous Substances.

**“Release Condition”** means approval of an EB-5 Investor’s I-526 Immigrant Petition by the USCIS.

**“Restricted Party”** means Borrower, and any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner, of Borrower, from time to time.

**“Security Interest”** means any lien, pledge, mortgage, encumbrance, charge or security interest of any kind whatsoever (including, without limitation, the lien or retained security title of a conditional vendor) whether arising under a security instrument or as a matter of law, judicial process or otherwise or the agreement by Borrower, or any Subsidiary of Borrower, to grant any lien, security interest or pledge, mortgage or encumber any asset.

**“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

**“Subscription Conditions”** means, for each EB-5 Investor, the following conditions: (a) Lender’s receipt of completed subscription documents; (b) deposit of the entire subscription price into the Escrow Account; (c) proof of I-526 filing with the USCIS; and (d) EB-5 Investor receipt of notice of acceptance from Lender.

**“Subsidiary”** means any corporation or other entity of which more than 50% of the outstanding capital stock or interests having ordinary voting power to elect a majority of the board of directors or the board of governors or otherwise to Control the activities of such entity (irrespective of whether or not at the time other class or classes of the equity of such entity shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by Borrower or by one or more other Subsidiaries.

**“Taxes”** means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, but excluding Excluded Taxes and Other Taxes.

**“Title Commitment”** means that certain ALTA Plain Language Commitment Number NCS-753020-HHLV, dated as of September 16, 2015, and prepared by Title Company.

**“Title Company”** means Chicago Title Insurance Company.

**“USA Patriot Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

**“USCIS”** means the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

## **ARTICLE I**

### **LOAN**

**Section 1.1 Principal.** Subject to the terms and conditions of this Agreement, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender, the proceeds of the Loan, from time to time in accordance with the terms hereof until the Maturity Date, for the purpose of refinancing, developing and constructing the Project; **provided, however,** Lender shall not be obligated to make any Advance if, after giving effect to such Advance, the sum of Lender’s aggregate Advances then outstanding would exceed the Commitment. Each Advance shall bear interest at the Loan Rate, computed on each Advance from the date it is made by Lender as more fully described in Section 1.2 below. In no event shall Lender be obligated hereunder to lend to Borrower more than Borrower has qualified to receive under the terms of **Article III** hereof.

All Advances made by Lender shall be evidenced by the Note. The entire principal balance of the Note shall mature and be payable at the Maturity Date.

Lender shall enter in its records the amount of each Advance, the rate of interest borne on such Advances and the payments of the principal balance and interest received by Lender, and such records shall be conclusive evidence of the subject matter thereof, absent manifest error.

**Section 1.2 Interest.** Borrower shall pay to Lender interest on the Note computed at the Loan Rate.

In the event that the interest and/or charges in the nature of interest, if any, provided for by this Agreement or by any other Loan Document, shall contravene a legal or statutory limitation applicable to the Loan, if any, Borrower shall pay only such amounts as would legally be permitted; provided, however, that if the defense of usury and all similar defenses are unavailable to Borrower, Borrower shall pay all amounts provided for herein. If, for any reason, amounts in excess of the amounts permitted in the foregoing sentence shall have been paid, received, collected or applied hereunder, whether by reason of acceleration or otherwise, then, and in that event, any such excess amounts shall be applied to principal, unless principal has been fully paid, in which event such excess amount shall be refunded to Borrower.

Interest at the Loan Rate shall accrue on each and every Advance from and after the date it is made by Lender to Borrower. Notwithstanding the foregoing, and for the avoidance of doubt, it is expressly acknowledged and agreed between Lender and Borrower that Borrower shall pay interest only on such amounts as actually have been disbursed directly to Borrower and that Borrower shall not pay interest on any amounts retained by Lender, including, but not limited to, the Holdback and the Interest Reserve. Principal and interest shall be paid by Borrower in accordance with the Note. Interest shall be paid monthly. Interest shall be computed at the Loan Rate and shall be computed on the basis of a 365 day year, but shall be charged for the actual number of days principal is unpaid. If all unpaid Advances made by Lender have not been repaid on or before the Initial Maturity Date, or the First Option Maturity Date, as applicable, or if an Event of Default occurs pursuant to this Agreement (and is not cured in compliance with the terms of this Agreement) or any other Loan Document or if all amounts due under the Loan Documents otherwise become due and payable in accordance with the terms and conditions of the applicable Loan Documents, then the entire unpaid balance of all Advances made by Lender and all other Obligations shall (without notice to or demand upon Borrower) at the sole option of Lender become due and payable on said date, together with all unpaid, accrued interest thereon, and with interest computed at the Default Rate during the continuance of the Event of Default or if such Event of Default is not cured or waived, then from and after that date until all Advances are paid in full. In such event, interest at the Default Rate shall be payable on the fifth (5<sup>th</sup>) day of each calendar month.

In the event that Borrower fails to make any required payment of principal or interest on the Note (other than the balloon payment at the Maturity Date) on or before the fifth (5<sup>th</sup>) Business Day following the due date thereof, Borrower shall pay to Lender, in addition to interest at the Loan Rate, a late payment charge equal to three percent (3%) of the amount of the overdue payment (each, a "**Late Charge**"), for the purpose of reimbursing Lender for a portion of the expense incident to handling the overdue payment. The Late Charge shall apply individually to all payments past due and there will be no daily prorated adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights

Lender may have including the right to declare the entire unpaid principal and/or interest immediately due and payable. Borrower agrees that the Late Charge is a provision for liquidated damages and represents a fair and reasonable estimate of the damages Lender will incur by reason of the late payment considering all circumstances known to Borrower and Lender on the date hereof. Borrower further agrees that proof of actual damages will be difficult or impossible.

**Section 1.3 Prepayment.** Subject to the following sentence, Borrower may prepay the Loan, in whole or in part, without any prepayment penalty or premium, at any time during either the Initial Term or the Extension Term. Notwithstanding the foregoing, Borrower shall not repay any portion of the Loan corresponding to that portion of an Advance made by Lender to Borrower with the funds received from a Class B member of Lender until such time as said Class B member of Lender shall have received final adjudication of his or her I-829 petition removing conditions for permanent residency in the United States.

**Section 1.4 Payments.** All payments and prepayments of principal of, and interest on, the Note and all Fees, expenses and other Obligations under the Loan Documents payable to Lender shall be made, without deduction, set off, or counterclaim, in immediately available funds not later than 2:00 p.m., Pacific time on the dates due, to Lender at the office specified by it from time to time, for the benefit of Lender, except as otherwise specifically provided in this Agreement. Funds received on any day after 2:00 p.m., Pacific Time shall be deemed to have been received on the next Business Day. Whenever any payment to be made hereunder or on the Note shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of any interest or fees. Borrower hereby authorizes Lender, at the discretion of Lender, to make an Advance in order to pay, on behalf of Borrower, any amount due on the Note or pursuant to any of the other Loan Documents without further action on the part of Borrower and regardless of whether Borrower is able to comply with the terms, conditions and covenants of this Agreement at the time of such Advance.

(i) So long as no Event of Default has occurred and is continuing, all payments received by Lender (including the proceeds of Advances for such payments) for application to the principal, interest, fees, costs and expenses due to Lender shall be applied in the following order:

First, to any costs and expenses due hereunder, and any Fees due to Lender;

Second, to any unpaid interest then due under the Loan Documents;

Third, to all Obligations; and

Fourth, to the unpaid principal balance of the Note.

(ii) After an Event of Default has occurred and is continuing, all amounts received by Lender shall be applied in the following order:

First, to any costs and expenses due hereunder, and any Fees due to Lender;

Second, to costs and expenses of preserving the Collateral, preserving Lender's security interests therein and enforcement of the rights of Lender under the Loan Documents;

Third, to any unpaid interest then due under the Loan Documents

Fourth to all Obligations; and

Fifth, to the unpaid principal balance of the Note.

All amounts received by Lender (whether the result of payment transmitted by Borrower or otherwise) on account of payment of interest on or principal of the Note, or other payments due under this Agreement or any other Loan Documents, as the case may be, shall be so applied by it pursuant to this Section.

**Section 1.5 Fees.** In addition to the interest and other consideration to Lender herein, Borrower agrees to pay to Lender the Fees, as and when due in accordance with the terms of the Loan Documents. No termination or reduction of the Commitment and no failure of Borrower to satisfy the conditions set forth in Article II shall entitle Borrower to a refund of any portion of such Fees.

**Section 1.6 Extension of Maturity Date.** At the option of Borrower, the Initial Maturity Date may be extended until the First Option Maturity Date (the "**Extension Term**"), if all of the following conditions are satisfied, in the sole discretion of the Lender:

- (a) Borrower gives written notice of its request for an extension to Lender by no earlier than one hundred twenty (120) days and by no later than ninety (90) days prior to the Initial Maturity Date;
- (b) The Project has been issued a certificate of occupancy by the competent Governmental Authority.
- (c) Payment by Borrower of the Extension Fee;
- (d) As of the date of request and on the Initial Maturity Date, there exists no Default or Event of Default;
- (e) As of the date of request and on the Initial Maturity Date, no material adverse change in the financial condition of the Borrower has occurred;
- (f) The delivery from Borrower to Lender of all financial information relating to Borrower in accordance with Section 5.10(a) hereof;
- (g) There shall have been no material adverse change to the physical condition of the Project, and the Project shall be free and clear of all Liens (other than the lien of the Deed of Trust, the Permitted Encumbrances and the lien of ad valorem taxes that are not delinquent) unless approved in writing by Lender;

(h) Borrower delivers to Lender an Architect's certificate of completion of the construction works of the Project and a copy of the plans and drawings for said construction works, if not previously provided to Lender.

(i) Borrower delivers to Lender an endorsement to or reissuance of the existing Title Policy, bringing current the effective date of such coverage, stating that the coverage afforded by the Title Policy shall not be affected because of such extension and showing that there have been no Liens against the Project from and after the date hereof, unless consented to in writing by Lender;

In the event that, for any reason, Borrower fails to satisfy all of the foregoing conditions, the Loan shall mature and be due and payable in full on the Initial Maturity Date, as determined by Lender in its sole discretion.

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

(a) Lender hereby represents and warrants that, as of the date of this Agreement, pursuant to that certain letter from the United States Citizenship and Immigration Services ("USCIS") dated July 27, 2015, EB5 Impact Capital Regional Center, LLC, a Nevada limited liability company ("Regional Center") is authorized to act as an approved and federally-designated "regional center" under the Immigrant Investor Pilot Program created by Section 610 of Public Law 102-395 (Oct. 6, 1992), which has been extended through September 30, 2016. The Regional Center may provide construction financing in Nye County, Nevada. The Regional Center will sponsor the Project for EB-5 Program purposes.

(b) The Loan will be comprised of investments made into Lender anticipated to be in the approximate amount of Five Hundred Thousand Dollars (\$500,000) (which amount may be increased pursuant to newly enacted EB-5 visa legislation) per immigrant investor (collectively, the "EB-5 Investors") who seeks to obtain permanent residence in the United States under the EB-5 Immigrant Investor Program created by Section 203(b)(5) of the Immigration and Nationality Act (INA) ("EB-5 Program"). Such funds shall initially be held by Escrow Agent in the Escrow Account which will be administered and maintained by the Escrow Administrator). Upon satisfaction of each EB-5 Investor's Subscription Conditions, 75% (\$375,000) of his or her subscription will be released to the Lender by the Escrow Administrator, pursuant to the Escrow Agreement, and made available for an Advance to Borrower upon Borrower's request. The remaining 25% (\$125,000) of each EB-5 Investor's subscription ("Holdback") will be held in the Escrow Account for the Lender's benefit until the corresponding EB-5 Investor's I-526 Immigrant Petition is either approved or finally adjudicated and denied by the USCIS. The Holdback may be released to the Lender by the Escrow Administrator, upon the Lender's written direction, after the corresponding EB-5 Investor's I-526 Immigrant Petition is approved by the USCIS ("Release Condition"). At such time, the Holdback may be released and made available for an Advance to Borrower. If the Release Condition is not satisfied, the Holdback will be released to the Lender and may be made available for refund to the corresponding EB-5 Investor. As

more fully set forth in Section 1.2 above, Lender shall not charge Borrower interest on the amount of the Holdback.

(c) Lender and Regional Center shall be responsible for monitoring at Lender's sole cost and expense the required submissions made by the EB-5 Investors and/or their legal counsel for purposes of seeking to obtain the necessary approvals from the USCIS for the EB-5 Investors' conditional residency in the United States in accordance with the requirements of the EB-5 Program.

(d) Borrower acknowledges that, for compliance with the rules and regulations promulgated under the EB-5 Program, Lender is required to deploy its funds with third parties located within the approved geographic area of the Regional Center. Based upon the materials provided by Borrower, Lender has determined to allocate the Loan to Borrower as a qualified third party in compliance with the rules and regulations promulgated under the EB-5 Program. Lender acknowledges that the Project has been approved by USCIS as an "Exemplar Form I-526 Petition Project."

(e) 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.

(f) Borrower shall submit to Lender the EB-5 Information. Failure of Borrower to use the proceeds of the Loan in accordance with the terms and conditions of this Agreement or to provide the EB-5 Information shall be a default pursuant to Section 6.1.

## ARTICLE II

### CONDITIONS OF BORROWING

Lender shall not be required to make any Advance hereunder until the pre-closing requirements, conditions and other requirements set forth below have been completed and fulfilled to the satisfaction of Lender, at Borrower's sole cost and expense.

**Section 2.1 Pre-Closing Requirements.** On or prior to the Closing Date (except as otherwise provided in this Section), Borrower shall provide to Lender, except as otherwise instructed, each of the following, in form and substance acceptable to Lender:

- (a) A copy of the Title Commitment.
- (b) A schedule listing all primary contracts relating to the Project having a contract sum in excess of \$250,000.
- (c) One (1) copy of the recent, certified ALTA/ACSM Survey of the Land, which has already been delivered to, and approved by, Lender. Soil reports on the Land, as already delivered to, and approved by, Lender.

(d) The Environmental Impact Study already delivered to, and approved by, Lender. Certificates of insurance, together with paid receipts, indicating that all insurance currently required under the terms of Section 5.6 hereof.

(e) That certain Development Agreement adopted pursuant to Nye County Ordinance No. 378, recorded on August 3, 2009, as Document Number 731349 in the Official Records of the Nye County, Nevada, evidencing the applicable zoning with respect to the Property.

(f) A copy of Borrower's Organizational Documents, certified as true, correct and complete by a manager of Borrower authorized to do so, together with (i) a current certificate of existence/good standing from the jurisdiction in which Borrower was organized (and from the jurisdiction in which the Land is located, if different from the jurisdiction in which Borrower was organized), and (ii) resolutions and/or consents of those parties necessary to authorize the transaction contemplated hereby.

(g) A flood-zone certification indicating that the Project is not located in a flood plain or any other flood-prone area as designated by any governmental agency; provided, however, that if the Project is so located, Borrower shall provide proof of flood insurance to Lender as required by Lender.

(h) A proposed Operating Budget for the Project for its first Fiscal Year of operation in the form previously submitted to the Nevada Real Estate Division in connection with the registration of the Front Sight Resort and Vacation Club.

(i) Letters from the suppliers confirming the availability of water, storm and sanitary sewer, gas, electric and telephone utilities for the Project.

(j) A copy of each non-cancellable agreement relating to the management, operation or maintenance of the Property and of each such agreement which cannot be cancelled upon notice of thirty (30) days or less.

**Section 2.2 Loan Documents.** On or before the Closing Date, Borrower shall execute and deliver (or cause to be executed and delivered) to Lender, the Loan Documents, in form and substance reasonably acceptable to Lender and to its counsel, in their sole but reasonable discretion, to evidence and secure the Loan. Lender may designate which of the Loan Documents are to be placed of record, the order of recording thereof, and the offices in which the same are to be filed and/or recorded. Borrower shall pay all filing, documentary, intangible, recording and/or registration taxes and/or fees due upon the Note, if any, the Deed of Trust, any financing statements and/or the other Loan Documents

**Section 2.3 Title Insurance.** On or prior to the Closing Date, Lender shall have received the Title Policy, proforma or a marked-up commitment to issue the Title Policy, signed by an officer of the Title Company, in form and substance satisfactory to Lender and including all endorsements as required by Lender. Title Company will provide priority insurance over all possible mechanics' lien claims, despite the fact that construction of the Improvements may have commenced prior to the recording of the Deed of Trust.



**Section 2.4 Opinion of Borrower's Attorneys.** Lender shall have received from outside counsel for Borrower one or more current written opinions, in form and substance acceptable to Lender, addressed to Lender, covering matters such as due formation, authorization, execution and delivery of the Loan Documents.

### **ARTICLE III**

#### **ADVANCES OF LOAN PROCEEDS**

**Section 3.1 General.** Provided no Default or Event of Default has occurred and is continuing, the Loan proceeds shall be advanced by the Lender for the benefit of Borrower in accordance with the terms and conditions set forth in this Article III. All monies advanced by the Lender with respect to the Project shall constitute a loan made to Borrower under this Agreement, evidenced by the Note and secured by the other Loan Documents, and interest shall be computed thereon, as prescribed by this Agreement and the Note, from the date the Loan account is charged with the amount of the Advance.

Lender will advise Borrower within five (5) business days every time Lender has received a new EB-5 Investor's funds into the Escrow Account. If so requested by Borrower, Lender will make an Advance of as little as \$375,000, which represents the available funds from each new EB-5 Investor pursuant to the terms of this Agreement.

Lender reserves the right to make Advances of amounts on the Note which are allocated to any of the designated items in the Budget for soft or hard costs related to the development of the Project, and construction of the Improvements or otherwise with respect to the Project or for such other purposes or in such different proportions as Lender may, in its reasonable discretion, deem necessary or advisable; provided, however, after the occurrence of an Event of Default, Lender may act in its sole discretion.

No Advance shall constitute a waiver of any condition precedent to the obligation of Lender to make any further Advance, or preclude Lender from thereafter declaring the failure of Borrower to satisfy any such condition precedent to be an Event of Default. All conditions precedent to the obligation of Lender to make any Advance are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any such condition precedent or shall be entitled to assume that Lender will make or refuse to make any Advance in the absence of strict compliance with such condition precedent. Provided no Default or Event of Default has occurred, Lender may waive any requirement of this Agreement for any Advance which Lender, in its reasonable discretion, determines is not material.

Lender will Advance to itself, when due, from the Interest Reserve, without further order or request from Borrower, all interest payable to Lender under the terms hereof or of the Note (so long as the conditions to such advances have been satisfied, or waived by Lender, and sufficient funds remain in the Interest Reserve).

#### **Section 3.2 Draw Requests.**

(a) From and after the date of the first Advance of the Loan, 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), and, to the extent that Borrower is seeking an additional Advance, the Draw Request approved by General Contractor, together with an itemized summary and copies of all invoices included in such disbursement.

(b) Prior to the date of the first Advance of the Loan, Borrower shall, in addition to satisfying all other conditions for an Advance in this Section, provide to Lender the insurance required per Section 5.6 of this Agreement. Prior to the Commencement Date, Borrower shall, in addition to satisfying all other conditions for an Advance in this Section, provide to Lender (i) Plans, in the form previously submitted to Lender, as finally approved for construction by the Project Architect and the applicable Governmental Authority, (ii) a schedule listing all Contractors, and primary contracts relating to the Project having a contract sum in excess of \$250,000 for any such Contractor, and all other major subcontracts, and such engineering, architectural, and construction contracts, subcontracts and schedules relating to the Project. If requested by Lender, Borrower shall also furnish to Lender copies of such contracts with each Contractor; and (iii) a list of all agreements, licenses and permits relating to the construction, development and operation of the Project.

**Section 3.3 Inspections.** Lender and its representatives shall have access to the Project at all reasonable times and shall have the right to enter the Project and 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 notice of not less than seventy-two (72) hours of any such inspections and such inspections shall be subject to the rights of Club Members (i.e., owners of Timeshare Interests) and any tenants under any applicable Leases.

Borrower shall be responsible for making its own inspections of the Project during the course of such construction work and shall determine to its own satisfaction that the work done and materials supplied are in accordance with applicable contracts with its contractors. By advancing funds after any inspection of the Project by Lender, Lender shall not be deemed to waive any Event of Default, waive any right to require construction defects to be corrected, or acknowledge that all construction conforms to the Plans.

**Section 3.4 Lender's Responsibilities.** It is expressly understood and agreed that Lender does not assume any liability or responsibility for the sufficiency of the Loan proceeds to complete the Project, for protection of the Project, for the adequacy of the Plans, the compliance of the Project and/or Plans with Governmental Requirements, for the satisfactory completion of the Project, for inspection during construction or to notify Borrower, General Contractor or any other party of any construction defects, for the adequacy of the Interest Reserve, for the adequacy or accuracy of the Budget, for any representations made by Borrower, or for any acts on the part of Borrower or its contractors to be performed in connection with the construction of the Project.

**Section 3.5 Procedures for Advances.**

(a) Request for Advances. Any request by Borrower for an Advance shall be made at least five (5) Business Days prior to the date of the requested Advance.

(b) Direct Advances. At Lender's option after the occurrence of an Event of Default, Lender may (i) make any Advances directly to any person, including the General Contractor, to whom Lender determines that payment is due and (ii) make advances to any person to whom Lender determines that payment should be made in order to cure or to prevent the occurrence of any Default. Any of the aforesaid Advances shall be deemed advanced under the Note as of the date on which funds are transferred by Lender.

(c) Title endorsement. Prior to each additional advance, Lender shall have received a commitment from the Title Company to issue an endorsement showing the increased loan amount in the same priority as the previously advanced amounts, provided, however, that upon the closing of the Senior Debt, the priority of the lien of the Deed of Trust reflected in any subsequent endorsements shall be subordinated to the lien of the deed of trust or similar instrument securing the Senior Debt.

(d) Joint Checks. All Advances of Loan proceeds made to a party other than Borrower hereunder shall be made pursuant to a joint check executed by Lender and Borrower, with proper endorsements included.

**Section 3.6 Stop Notices.**

(a) General. Borrower shall not cause any "stop notice" or similar notice to be filed or served on Lender with respect to the Project. Borrower shall defend, indemnify and hold Lender and its officers, directors, agents and employees harmless from and against all claims, damages, loss, liability, costs and expenses (including reasonable attorneys' fees) arising from or relating to any stop notice, the compliance therewith and the defense thereof. Lender may require Borrower to provide a release bond for any stop notice, which bond shall be subject to Lender's review and approval and/or may take such action with respect to any stop notice as Lender may deem appropriate in Lender's reasonable discretion and Lender may withhold such amounts from disbursement in connection with the Loan as Lender may elect in Lender's reasonable discretion, to the extent Lender is obligated to withhold funds pursuant to applicable law or any demands made in connection with any stop notice.

(b) Notices. Upon an Event of Default and so long as it is continuing, Borrower irrevocably appoints Lender as its attorney-in-fact, coupled with an interest and with full power of substitution, to file for record, at the Borrower's cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Lender considers necessary or desirable to protect its security.

**Section 3.7 Use of Loan Proceeds.** Borrower shall use and apply the Loan proceeds solely to all or any number of the individual Project components in accordance with the Budget and also to pay some or all of any or all existing indebtedness encumbering the Project pursuant

to a Permitted 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.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

(A) Borrower represents, warrants and covenants to Lender that:

**Section 4.1 Borrower's Formation and Powers.** Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada, and qualified and authorized to do business in all jurisdictions in which the conduct of its business and affairs requires it to be so qualified. Borrower has all power, authority, permits, consents, authorizations and licenses necessary to carry on its business, to construct, equip, own and operate the Project and to execute, deliver and perform its obligations under this Agreement and the other Loan Documents; all consents necessary to authorize the execution, delivery and performance of this Agreement and the other Loan Documents have been duly adopted and are in full force and effect; and this Agreement and the other Loan Documents have been duly executed and delivered by Borrower.

The execution, delivery and performance by Borrower of this Agreement and other Loan Documents to which Borrower is a party have been duly authorized by all necessary action and do not and will not (i) violate any provision of any laws, rule, regulation (including, without limitation, Regulation U of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or of Borrower's Organizational Documents, (ii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected, or (iii) result in or require the creation or imposition of any Security Interest in any of its properties pursuant to the provisions of any agreement or other document binding upon or applicable to Borrower or any of its properties, except pursuant to the Loan Documents.

**Section 4.2 Authority.** The execution, delivery and performance by Borrower of this Agreement and other Loan Documents to which Borrower is a party have been duly authorized by all necessary limited liability company action.

**Section 4.3 No Approvals.** As of the date of the first Advance of the Loan, no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary to the valid execution, delivery or performance by Borrower of this Agreement, the Note, or any other Loan Documents to which Borrower is a party.

**Section 4.4 Legal and Valid Obligations.** This Agreement, the Note, and the other Loan Documents to which Borrower are a party constitute the legal, valid and binding

obligations of Borrower, enforceable against Borrower in accordance with their respective terms, subject to bankruptcy and insolvency laws and other laws generally affecting the enforceability of creditor's rights generally and subject to limitations on the availability of equitable remedies.

**Section 4.5 Litigation.** There are no actions, suits or proceedings (whether or not purportedly on behalf of Borrower) pending or, to the knowledge of Borrower, threatened against Borrower or affecting any of the Project or Borrower's other assets (if any), at law or in equity or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which contests the validity or enforceability of this Agreement or any of the other Loan Documents or the transactions contemplated hereby or as a result of which Borrower may become subject to any judgment or liability which if determined adversely to Borrower, would constitute a Material Adverse Occurrence as to Borrower. There are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against Borrower or its other assets (if any), at law or in equity or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. As of the date of the first Advance of the Loan, Borrower shall not be in default with respect to any final judgment, writ, injunction, decree, rule or regulations of any court, arbitrator or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

**Section 4.6 Title.** Borrower has good, marketable and insurable fee simple title to the Land, and good title to the rest of the Project, subject to no lien, charge, mortgage, deed of trust, restriction or encumbrance, except Permitted Encumbrances. There are no mechanics', materialman's or other similar Liens which have been filed for work, labor or materials affecting the Project which are or may be Liens prior to, or equal, or subordinate to the Liens created by the Loan Documents. None of the Permitted Encumbrances, individually or in the aggregate, (a) impair the use or intended operations of the Project, or (b) impair Borrower's ability to pay its Obligations in a timely manner.

**Section 4.7 Defects and Hazards.** Borrower does not know of any defects, facts or conditions affecting the Land that would make it unsuitable for the use contemplated hereunder or of any abnormal hazards (including soils and groundwater contamination, earth movement or slippage) affecting the Land that have not been previously disclosed in writing to Lender by Borrower.

**Section 4.8 Payment of Taxes.** There have been filed all federal, state and local tax returns with respect to Borrower and its direct and indirect business operations which are required to be filed. Borrower has paid or caused to be paid to the respective taxing authorities all taxes as shown on such returns or on any assessments received by it to the extent that such taxes have become due. Borrower knows of no proposed material tax assessment against Borrower, and Borrower is not obligated by any other agreement, tax treaty, instrument or otherwise to contribute to the payment of taxes owed by any other person or entity. All material tax liabilities are adequately provided for or reserved against on the books of Borrower, as appropriate.

**Section 4.9 Agreements.**

The Borrower's Organizational Documents shall be in full force and effect as of the date of the first Advance of the Loan and, as of said date of the first Advance of the Loan, shall be free from any default on the part of Borrower. Each of (a) the Architect's Agreement, and (b) the General Contract, shall be in full force and effect before the Commencement Date and, as of said Commencement Date, shall be free from any default on the part of Borrower. Borrower, is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Borrower, is a party the effect of which default would constitute a Material Adverse Occurrence as to Borrower. The General Contract shall require the General Contractor to construct the Project in accordance with the Plans in the form which have been delivered to Lender, without any change thereto not disclosed to Lender. The General Contract shall constitute the entire agreement between Borrower and the General Contractor with respect to the construction of the Project. As of the Commencement Date, Borrower shall have performed all of its obligations required by the General Contract and/or Architect's Agreement, and shall have paid all sums under the General Contract and/or Architect's Agreement which are required to be performed or paid as of the date hereof.

**Section 4.10 No Defaults under Loan Documents or Other Agreements.** No Default or Event of Default has occurred under any of the Loan Documents. As of the date of the first Advance of the Loan, Borrower shall not be in default in the payment of the principal or interest on any of its indebtedness for borrowed money; and no event has occurred, or will occur, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default under the Loan Documents. Borrower is not obligated for the payment of any commission or other fee with respect to the purchase of the Land and Improvements or, if Borrower is so obligated, such commission or other fee has been paid in full.

**Section 4.11 Boundary Lines; Conformance with Governmental Requirements and Restrictions.** The exterior lines of the Improvements are, and at all times will be, within the boundary lines of the Land. Borrower has examined and is familiar with all applicable covenants, conditions, restrictions and reservations, and with all applicable Governmental Requirements, including, but not limited to, building codes and zoning, environmental, hazardous substance, energy and pollution control laws, ordinances and regulations affecting the Project. Borrower has obtained all permits which are necessary for the construction of the Project in accordance with the Plans and in accordance with all applicable building, environmental, subdivision, land use and zoning laws, including all permits for the Improvements, annexation agreements, plot plan approvals, subdivision approvals (including the approval and recordation of any required subdivision map), environmental approvals (including a negative declaration or an environmental impact report if required under applicable law), sewer and water permits and zoning and land use entitlements. Borrower has obtained all approvals of the parties required in connection with the construction of the Project pursuant to any license, easement or restriction affecting the Land. The Project will in all respects conform to and comply with said covenants, conditions, restrictions, reservations and Governmental Requirements.

**Section 4.12 Project Costs.** On a line by line and total basis, the Project costs shown

on the Estimated Construction Cost Statement are, to the best of Borrower's knowledge, true, correct and complete in all material respects, and represent the total of all costs which Borrower expects to pay to complete the Project.

**Section 4.13 Utilities.** Telephone services, gas, electric power, storm sewers, sanitary sewer and water facilities are available to the boundaries of the Land, adequate to serve the Project and not subject to any conditions that would prevent the use of the Project for its intended purposes. All streets and easements necessary for construction and operation of the Project are available to the boundaries of the Land.

**Section 4.14 Personal Property.** Borrower is now and shall continue to be the sole owner of the Equipment free from any lien, security interest or adverse claim of any kind whatsoever, except for the Permitted Encumbrances and any liens or security interests in favor of Lender.

**Section 4.15 Condemnation.** No condemnation proceeding or moratorium is pending or, to the best of Borrower's knowledge, threatened against the Land which would impair the construction, use, sale or occupancy of the Land or its Improvements.

**Section 4.16 Separate Lots.** The Land is comprised of two (2) parcels which constitute separate tax lots and do not constitute a portion of any other tax lot not a part of such Land.

**Section 4.17 Federal Reserve Regulations.** No portion of the Loan hereunder will be used to purchase or carry any "margin stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might constitute this transaction as a "purpose credit" within the meaning of said Regulation U. No portion of the Loan hereunder will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of said Board of Governors.

**Section 4.18 Investment Company Act.** Borrower is not an "investment company," or an "affiliated person" of, or a "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended. The making of the Loan, the application of the proceeds and repayment thereof by Borrower and the performance of the transactions contemplated by this Agreement will not violate any provision of said Act, or any rule, regulation or order issued by the Securities and Exchange Commission thereunder. Furthermore, Borrower is not subject to regulation under the Interstate Commerce Act, or any federal or state statute or regulation limiting its ability to incur indebtedness for money borrowed.

**Section 4.19 Unregistered Securities.** Borrower has not: (a) issued any unregistered securities in violation of the registration requirements of Section 5 of the Securities Act of 1933, as amended, or any other law; or (b) violated any rule, regulation or requirement under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in

either case where the effect of such violation would constitute a Material Adverse Occurrence as to Borrower.

**Section 4.20 Accuracy of Information.** All factual information heretofore or herewith prepared by Borrower or a Related Party of Borrower and furnished by or on behalf of Borrower to Lender for purposes of or in connection with this Agreement or any transaction contemplated hereby is true and accurate in every material respect on the date as of which such information is dated or certified and no such information contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading as of such date. To the best of Borrower's knowledge, all factual information heretofore or herewith prepared by a Person other than Borrower or a Related Party of Borrower and furnished by or on behalf of Borrower to Lender for purposes of or in connection with this Agreement or any transaction contemplated hereby is true and accurate in every material respect on the date as of which such information is dated or certified and no such information contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading as of such date.

**Section 4.21 ERISA Compliance.** Borrower has not adopted a Plan. As of the date hereof and throughout the term of the Loan (i) Borrower is not and will not be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, (ii) none of the assets of Borrower constitutes or will constitute, by virtue of the application of 29 C.F.R. Section 2510.3-101(f) as modified by Section 3(42) of ERISA, "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) ERISA, and (iv) transactions by or with Borrower are not and will not be subject to state statutes regulating investment of, and fiduciary obligations with respect to, governmental plans.

**Section 4.22 Compliance.** Borrower:

- (a) is in compliance and conformity with all Governmental Requirements the violation of which, individually or in the aggregate, would constitute a Material Adverse Occurrence as to Borrower; and
- (b) has not received and does not anticipate the receipt of any order or notice of any violation or claim of violation of any Governmental Requirement which would constitute a Material Adverse Occurrence as to Borrower.

**Section 4.23 Consents.** To the extent that any franchises, licenses, permits, certificates, authorizations, approvals or consents from any federal, state or local (domestic or foreign) government, commission, bureau or agency are material to the present conduct of the business and operations of Borrower or are required for the acquisition, ownership, operation or maintenance by Borrower of the Project, such franchises, licenses, permits, certificates, authorizations, approvals and consents have been, or will be upon Completion, validly granted, in full force and effect, and be valid and sufficient authorization therefor.

**Section 4.24 Environmental Laws.** Except as specifically disclosed in the Environmental Impact Study previously delivered to, and approved by, Lender, Borrower: (a)



has not received any notice or otherwise learned of any Environmental Liability relating to the Project which would individually or in the aggregate constitute a Material Adverse Occurrence as to Borrower arising in connection with (i) any non-compliance or alleged non-compliance with or violation of the requirements of any Environmental Law, or (ii) the Release or threatened Release of any Hazardous Substance, or other substance into the environment; (b) has no knowledge of any threatened or actual liability in connection with the Release or threatened Release of any Hazardous Substance, or other substance into the environment relating to the Project which would individually or in the aggregate constitute a Material Adverse Occurrence; or (c) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a Release or threatened Release of any Hazardous Substances into the environment where such liability individually or in the aggregate for all such liabilities would constitute a Material Adverse Occurrence as to Borrower. Borrower has not received any notice of any violation or alleged non-compliance of any Environmental Laws relating to the Project where such violation would constitute a Material Adverse Occurrence as to Borrower.

**Section 4.25 Anti-Terrorism Regulations.**

(a) General. None of Borrower, or, to the best of Borrower's knowledge, any Affiliate thereof is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Executive Order No. 13224. None of the Borrower, or, to the best of Borrower's knowledge, any Affiliate thereof or their respective agents acting or benefiting in any capacity in connection with the Loan or other transactions hereunder, is any of the following (each a "**Blocked Person**"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(iii) a Person or entity with which Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224;

(v) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a person or entity who is affiliated or associated with a person or entity listed above.

(c) None of Borrower, or, to the best of Borrower's knowledge, any Affiliate thereof nor any of their agents acting in any capacity in connection with the Loan, any letters of credit or other transactions hereunder (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(d) Neither Borrower nor, to the best of Borrower's knowledge, any Affiliate thereof nor any person owning an interest therein, are a "Special Designated National" or "Blocked Person" as those terms are defined in the office of Foreign Asset Control Regulations (31 C.F.R. § 500 et. seq.).

**Section 4.26 Subsidiaries.** Borrower has no Subsidiaries.

**Section 4.27 Leases.** Except as provided below in Section 5.24, there is no Lease in effect relating to the Project, or any portion of the Project, except for Leases that have been approved in writing by Lender.

**Section 4.28 Ownership and Control of Borrower.** As of the date of this Agreement, the direct owners of Borrower are set forth on Exhibit G to this Agreement and the indirect owners set forth thereon are accurate and complete.

**Section 4.29 Use of Loan Proceeds.** The proceeds of the Loan shall be used to pay and obtain release of the existing liens on the Land, to pay for or reimburse Borrower for soft and hard costs related to the pre-construction, development, promotion, construction, development and operation of the Project in connection with the FSFTI Facility and the construction, development, operation, leasing and sale of the timeshare portion of the Project, all as more particularly described on Exhibit E, attached hereto. The Loan is made exclusively for business purposes in connection with holding, developing and financially managing real estate for profit, and none of the proceeds of the Loan will be used for the personal, family or agricultural purposes of the Borrower.

**Section 4.30 Insurance.** Borrower has obtained or caused to be obtained the insurance required pursuant to Section 5.6 of this Agreement.

(B) Lender represents, warrants and covenants to Borrower that:

(i) General. None of Lender, or, to the best of Lender's knowledge, any Affiliate or member thereof is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(ii) Executive Order No. 13224. None of the Lender, or, to the best of Lender's knowledge, any Affiliate or member thereof or their respective agents acting or benefiting in any capacity in connection with the Loan or other transactions hereunder, is a Blocked Person.

(iii) None of Lender, or, to the best of Lender's knowledge, any Affiliate or member thereof nor any of their agents acting in any capacity in connection with the Loan, any letters of credit or other transactions hereunder (a) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (b) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(iv) Neither Lender nor, to the best of Lender's knowledge, any Affiliate or member thereof nor any person owning an interest therein, are a "Special Designated National" or "Blocked Person" as those terms are defined in the office of Foreign Asset Control Regulations (31 C.F.R. § 500 et. seq.).

THE WARRANTIES AND REPRESENTATIONS IN THIS ARTICLE IV, AND ANY ADDITIONAL WARRANTIES AND REPRESENTATIONS CONTAINED HEREIN AND IN THE OTHER LOAN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN RENEWED AND RESTATED BY BORROWER AT THE TIME OF EACH REQUEST BY BORROWER FOR AN ADVANCE OF LOAN PROCEEDS.

## ARTICLE V

### (A) COVENANTS OF BORROWER

While this Agreement is in effect, and until Lender has been paid in full the principal of and interest on all Advances made by Lender hereunder and under the other Loan Documents, Borrower agrees to comply with, observe and keep the following covenants and agreements:

**Section 5.1 Completing Construction.** Borrower shall commence construction of the Improvements no later than the Commencement Date. Borrower shall not become a party to any contract, other than the General Contract and the Architect's Agreement, for the performance of any work on the Project or for the supplying of any labor, materials or services for construction of the Improvements, except upon such terms and with such parties as shall be approved in writing by Lender and subject to the condition that each Contractor party to any approved contract execute and deliver to Lender agreements in form acceptable to Lender that either subordinate or waive the lien rights of such Contractors to the liens of Lender under the Loan Documents including, without limitation, the liens of Lender evidenced by the Deed of Trust; provided, however, Borrower may, without the approval of Lender, enter into one or more contracts with any Contractor whose contracts' aggregate amount with such Contractor is less than \$250,000. Borrower shall provide to Lender a list, within thirty (30) days after the end of each calendar quarter, of all Contractors, including all subcontractors, who have entered into written contracts directly with either Borrower or the General Contractor during the preceding calendar quarter. No approval by Lender of any contract or change order shall make Lender

responsible for the adequacy, form or content of such contract or change order. Borrower shall expeditiously complete and fully pay for the construction of the Project in a good and workmanlike manner and in accordance with the Plans submitted or to be submitted to and approved by Lender, and in compliance with all applicable Governmental Requirements, and any covenants, conditions, restrictions and reservations applicable thereto so that Completion of the construction of the Project occurs on or before the Completion Date. Borrower assumes full responsibility for the compliance of the Plans and the Project with all Governmental Requirements, covenants, conditions, restrictions and reservations, and with sound building and engineering practices, and, notwithstanding any approvals by Lender, Lender shall have no obligation or responsibility whatsoever for the Plans or any other matter incident to the Project or the construction of the Improvements. Borrower shall correct or cause to be corrected (a) any defect in the Improvements, (b) any departure in the construction of the Improvements from the Plans or Governmental Requirements, and (c) any encroachment by any part of the Improvements or any other structure located on the Land on any building line, easement, property line or restricted area that is in violation of any applicable Governmental Requirements, or any private agreements for which Borrower has not received a waiver approved by the Lender in writing. Borrower shall cause all roads necessary for the utilization of the Project for its intended purposes to be completed and dedicated (if dedication thereof is required by any governmental authority), the bearing capacity of the soil on the Land to be made sufficient to support the Improvements, and sufficient local utilities to be made available to the Project and installed at costs (if any) set out in the Budget, on or before the Completion Date.

**Section 5.2 Changing Costs, Scope or Timing of Work.** Borrower shall deliver to Lender revised, estimated costs of the Project, showing changes in or variations from the original Estimated Construction Cost Statement, as soon as such changes are known to Borrower. 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.

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). Borrower shall promptly furnish Lender with a copy of all changes or modifications in the Plans, contracts or subcontracts for 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.

**Section 5.3 Using Loan Proceeds.** Subject to Section 3.2, Borrower shall use the Loan proceeds in its sole discretion to pay, or to reimburse Borrower for paying, costs and expenses incurred by Borrower in connection with the pre-construction, promotion, construction, development, operating and leasing of the Project on the Land and the equipping of the

Improvements, together with the payoff and release of any existing liens and encumbrances on the Land. Borrower shall take all steps necessary to assure that Loan proceeds are used by its contractors and subcontractors to pay such costs and expenses which could otherwise constitute a mechanic's lien claim against the Project. Within thirty (30) days after the Completion Date, Borrower shall provide the documentation and supporting accounting records and contract documents necessary, in Lender's discretion, to demonstrate that between the Closing Date and the date of delivery of such documentation not less than the total amount of the Advances has been spent directly or indirectly on the Project substantially in a form acceptable to Lender for compliance with the EB-5 Program.

**Section 5.4 Keeping of Records.** 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. Any such inspection by Lender shall be for the sole benefit 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 or other limitation.

**Section 5.5 Providing Evidence of Completion.** Upon completion of the Improvements, Borrower shall furnish Lender with all items required to evidence Completion, certification from the Project Architect that the Project has been completed in accordance with the approved Plans; the evidence of insurance required by Section 5.6 hereof; copies of all warranties covering materials, equipment and appliances included within the Project; copies of all licenses and permits required for operation of the Project, if not previously provided to Lender; and photographs of the completed Improvements as well as evidence that such Improvements have been fully completed, including all punch-list items, as well as such other documents and materials required pursuant to Section 3.7(b) hereof.

**Section 5.6 Maintaining Insurance Coverage.** Borrower shall, at all times until the Note and all other sums due from Borrower 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.

**Section 5.7 Transferring, Conveying or Encumbering the Project or Borrower's Ownership Interests.** Without the prior written consent of Lender, Borrower shall not voluntarily or involuntarily agree to, cause, suffer or permit any sale, conveyance, lease, mortgage, grant, lien, encumbrance, security interest, pledge, assignment or transfer of: (a) the Project or any part or portion thereof, or (b) any ownership interest in Borrower, direct or indirect, legal or equitable (including the issuance, sale, redemption, or repurchase of any such interest, the distribution of treasury stock, or the payment of any indebtedness owed to Borrower by any managers, subsidiaries, Affiliates or owners of equity interests or debentures), except for

the following:

- (i) Permitted Encumbrances;
- (ii) Leases permitted by Section 5.24 of this Agreement;
- (iii) Routine, nonexclusive utility easements entered into by Borrower in the ordinary course of business which do not subject the Property to any material financial obligations;
- (iv) In connection with transfers of member interests in Borrower made for estate planning purposes that do not affect the management or control of Borrower and are in compliance with the requirements set forth in the Loan Documents;
- (v) In the event that that Borrower obtains any Senior Debt, Borrower shall be permitted to secure such Senior Debt with a deed of trust and other applicable security documents that are senior to the lien of the Deed of Trust and Lender shall cooperate with Borrower and the provider of the Senior Debt to cause the lien of the Deed of Trust to be subordinated to the lien of any deed of trust and other applicable security documents that are to secure such Senior Debt. For the avoidance of doubt, Lender does hereby covenant and agree with Borrower that Lender shall execute, or cause to be executed, any and all documentation reasonably required by the provider of the Senior Debt, in the form and content presented by the provider of the Senior Debt, in order to cause the aforementioned subordination of the lien of the Deed of Trust, including, but not limited to, any form of subordination and intercreditor agreement that may be required by the provider of the Senior Debt.

Furthermore, the Loan may not be assumed by any Person without Lender's prior written consent.

**Section 5.8 Complying with the Loan Documents and Other Documents.**

Borrower shall comply with and perform all of its obligations under the Loan Documents, and under all other contracts and agreements to which Borrower is a party relating to the ownership, occupancy, use, construction or management of the Project, and shall comply with all requests by Lender which are consistent with the terms thereof.

**Section 5.9 Updated Appraisals.** Borrower agrees that Lender shall have the right to obtain, at Lender's expense, an updated appraisal of the Project at any time that (a) an Event of Default shall have occurred and be continuing hereunder, or (b) after an occurrence of an Event of Default Lender determines, in its sole discretion, that the security for the Loan has been physically or financially impaired in any material manner. Without limitation of the foregoing, Lender may, at Lender's expense, elect to obtain such an appraisal from time to time regardless of whether any of the events described in (a) and (b) above have occurred. In the event that Lender shall elect to obtain an appraisal, Lender may immediately commission an appraiser acceptable to Lender, at Lender's cost and expense, to prepare the appraisal. Borrower shall cooperate with Lender and the appraiser in obtaining the necessary information to prepare such appraisal. In the event that Borrower fails to cooperate with Lender in obtaining such an

appraisal, such event shall constitute an Event of Default hereunder and Lender shall be entitled to exercise all remedies available to it hereunder. In the event such appraisal is required by reason of the damage or destruction of a portion of the Project, the fair market value shall be calculated on the Project after restoration of the Improvements.

**Section 5.10 Reporting Requirements.** Borrower shall furnish to Lender the following:

(a) Financial Statements.

As soon as available and in any event within seventy-five (75) days after the end of each calendar year, unaudited consolidated annual financial statements of Borrower prepared in accordance with GAAP (or another accounting basis reasonably acceptable to Lender) consistently applied, certified by Borrower, which financial statements shall include a balance sheet and related statements of income, retained earnings and cash flow (including, without limitation, the information necessary to determine Borrower's cash flow with respect to the previous calendar year), and a detailed list of real estate owned, directly or indirectly, by Borrower. The financial statements of Borrower shall be accompanied by a no default certificate in form acceptable to Lender certifying that Borrower has no knowledge of the occurrence of any event which constitutes a Default or an Event of Default under this Agreement.

(b) Operating Statements and Operating Budgets. Starting with the month after the calendar month in which Completion occurs, Borrower shall deliver to Lender such Operating Statements and annual Operating Budget as are provided to Borrower by the Management Company prior to the start of each Fiscal Year thereof starting with the Fiscal Year in which Completion occurs. All such Operating Statements shall be certified as true, correct and complete by Borrower and shall be prepared in accordance with GAAP.

(c) Litigation and Other Proceedings. Promptly in writing, notice of (i) all litigation against Borrower in which the amount sought to be recovered exceeds \$50,000 except in cases when the claim is covered by insurance and the insurance company has agreed to assume the defense of the claim and (ii) all proceedings before any Governmental Authority affecting Borrower which, if adversely determined, would constitute a Material Adverse Occurrence as to Borrower.

(d) Defaults. Within five (5) Business Days after the occurrence of any event actually known to Borrower which constitutes a Default or an Event of Default, notice of such occurrence, together with a detailed statement of the steps being taken to cure such event, and the estimated date, if known, on which such action will be taken.

(e) Additional EB-5 reporting. Without limiting the foregoing, information to be provided to Lender by Borrower prior to October 31 of each year, shall specifically include:

(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.

(ii) Annual report of payroll records and I-9 records – Borrower shall require its contractors to provide quarterly employment records (form 941) so that the information available for its submissions to Lender.

(iii) Annual report of actual number of full-time jobs (35 hours per week minimum) at the Project.

(iv) Federal / state quarterly employment tax returns.

(v) Annual limited liability company income tax returns for the prior calendar year.

**Section 5.11 Taxes and Claims.** Borrower shall pay and discharge all taxes, when due, assessments and other governmental charges upon the Project, as well as all claims for labor and materials which, if unpaid, might become a lien or charge upon the Project; provided, however, that Borrower shall have the right to contest the amount, validity and/or applicability of any of the foregoing which is being contested in good faith and by proper proceedings, and strictly in accordance with the terms of the Deed of Trust.

**Section 5.12 Maintain Existence.** Borrower shall preserve and maintain its name, existence, rights and privileges in the jurisdiction of its organization and qualify and remain qualified in each jurisdiction in which such qualification is necessary in view of its business and operations.

**Section 5.13 Compliance with Applicable Laws.** Borrower shall promptly and faithfully comply with, conform to and obey all present and future Governmental Requirements, including, but not limited to, all Environmental Laws, where failure to so do might have a Material Adverse Occurrence; provided, however, that Borrower shall have the ability to contest any alleged failure to conform to or comply with such Governmental Requirements 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,.

**Section 5.14 Notice.** Borrower shall give prompt written notice to Lender (a) of any action or proceeding instituted by or against Borrower, in any federal or state court or before or by any commission or other regulatory body, federal, state or local, or any such proceedings threatened against Borrower which, if adversely determined, would be a Material Adverse Occurrence as to Borrower or where the amount is \$250,000 or more, (b) any material loss or unusual depreciation of any material asset and the amount of the same, (c) any material dispute that may arise between Borrower or any subsidiary and any Governmental Authority, (d) any



labor controversy resulting or likely to result in a strike or work stoppage against Borrower or any subsidiary, (e) any proposal by any governmental unit to acquire all or any part of Borrower or any subsidiary's assets or business, (f) any change in Borrower's place of business or location of any fixtures or other assets, and (g) any other matters which has resulted or is reasonably likely to result in a Material Adverse Occurrence.

**Section 5.15 Contingent Liability.** Borrower shall not assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligation of any Person (other than Borrower), 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 Borrower to a title insurance company or a bonding company in connection with any project being constructed or sold by Borrower, including the Project.

**Section 5.16 Merger, Consolidation, and Management.** Borrower and its subsidiaries shall not dissolve, merge or consolidate into any Person, convert into any other type of Person, form or dispose of any subsidiary of Affiliate, or permit any other Person to merge into it, or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all of the assets of any other Person. Furthermore, Borrower shall not make a material change to its management without a minimum of thirty (30) days' prior written notice to Lender.

**Section 5.17 Loss of Note or other Loan Documents.** Upon notice from Lender of the loss, theft, or destruction of the Note and upon receipt of an affidavit of lost note and an indemnity reasonably satisfactory to Borrower from Lender, or in the case of mutilation of a Note, upon surrender of such mutilated Note, Borrower shall make and deliver a new note of like tenor in lieu of the then-to-be-superseded Note. If any of the other Loan Documents were lost or mutilated, Borrower agrees to execute and deliver replacement Loan Documents in the same form of such Loan Document(s) that were lost or mutilated.

**Section 5.18 Distributions.** Borrower shall not, directly or indirectly, prior to the later to occur of Completion of all of the Improvements or the Completion Date, (a) make any distribution of money or property to any Related Party, or (b) make any loan or advance to any Related Party, or (c) pay any principal or interest on any indebtedness due any Related Party, or (d) pay any fees or other compensation (other than payments made to the General Contractor or Manager pursuant to the Budget in conformance with the terms of this Agreement or payments made to any principal of Borrower in accordance with prior historical distributions) to itself or to any Related Party, if any such payment in (a) through (d), inclusive, might adversely affect Borrower's ability to repay the loan in accordance with its terms, provided, however, after Completion of all of the Improvements and the Completion Date, Borrower may make the distributions, loans, advances and payments described in (a), (b), (c) and (d) as long as no Event of Default has occurred and is continuing, and Borrower is in compliance with the reporting requirements set forth in Section 5.12 of this Agreement and further provided that no such payments described in (a) through (d) above shall be made at any time if such payment might adversely affect the ability of the Borrower repay the Loan in accordance with its terms.

**Section 5.19 Permits and Licenses.** Borrower shall promptly obtain and comply with all necessary licenses, permits and approvals from, and has satisfied the requirements of, all governmental entities necessary to commence and complete construction of the Improvements.

**Section 5.20 Patriot Act.** Borrower shall not (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, the USA Patriot Act or any other Anti-Terrorism Law. Borrower shall deliver to Lender any certification or other evidence requested from time to time by Lender in its sole discretion, confirming Borrower's compliance with this Section. Borrower shall not authorize or enable any of their respective Affiliates or agents to do any of the foregoing in this Section.

**Section 5.21 Related Party Transactions.** Without Lender's prior written consent, Borrower shall not enter into, or be a party to, any contract or other transaction with a Related Party (including transactions involving the purchase, sale, or exchange of property, the rendering of services or sale of stock) except in the ordinary course of business and upon fair and reasonable terms no less favorable to itself than it would obtain in a comparable arms-length transaction. All Lender-approved Related Party agreements shall satisfy the following conditions: (i) the contract or other agreement therefore is terminable immediately at the election of Lender after the occurrence of an Event of Default, (ii) such agreements must provide that any amount payable by Borrower under any such contract or agreement with a Related Party is expressly made subordinate by Borrower and Related Party to Borrower's payment Obligations under the Loan Documents, and (iii) the contract or transaction is not otherwise prohibited by this Agreement or any of the other Loan Documents. In addition to the foregoing restrictions, Borrower shall not make any distributions of any type to any Related Party, except for salary and reimbursement of reasonable expenses actually incurred and consistent with the Budget, whether such proposed additional distribution is in the form of dividends, interest, returns of capital, distributions of profit, bonuses or any other form of distribution.

**Section 5.22 Leases.** Borrower shall not enter into any Lease, and shall not substantially modify or terminate any Lease, unless (a) Lender has been notified on or prior to the date of execution of such Lease, and (b) such Lease is made subordinate to the lien, operation and effect of the Deed of Trust pursuant to a subordination, non-disturbance and attornment agreement satisfactory each Lease is entered into in the ordinary course of Borrower's business. Borrower shall comply in all respects with the terms, the covenants, agreements, conditions and requirements of each of the Leases, as, when and in the manner required thereby. Borrower shall promptly notify Lender when Borrower receives notice of any default by Borrower as landlord under any Lease.

**Section 5.23 Debt; Operations and Fundamental Changes of Borrower. Borrower:**

(a) will not own any asset other than (i) the Project and (ii) incidental personal property necessary for the ownership, operation, management and financing of the Project;

(b) will not engage in any business other than the ownership, development, management, leasing, operation and sale of the Project and will conduct and operate its business in substantially the manner as presently anticipated to be conducted and operated;

(c) except for the Senior Debt, will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Loan, and (ii) trade payables or accrued expenses incurred in the ordinary course of business of operating the Project provided the same are paid when due in accordance with customary trade terms or contested in good faith by appropriate proceedings with adequate reserves as determined by Lender;

(d) will not and will not permit any subsidiary of Borrower to create, incur, or suffer any security interest upon any of its present or future assets that are collateralized by Lender, other than (i) in favor of Lender, (ii) in favor of the provider of the Senior Debt or (iii) liens or claims of materialmen, mechanics, carriers, warehousemen, or processors arising by operation of law in the ordinary course of business and securing obligations that are either paid when due or contested in good faith by appropriate proceedings with adequate reserves as determined by Lender.

(e) will not permit the Project or any portion thereof to secure any debt whatsoever (senior, subordinate or pari passu) other than the Loan and/or any Senior Debt;

(f) will not make any loans or advances to any third party other than financing to timeshare purchasers, and will not acquire obligations or securities of its Affiliates;

(g) will not make any payment on any indebtedness in violation of any subordination agreement made by the holder of such indebtedness;

(h) will not purchase or acquire obligations owed by third parties;

(i) will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from Borrower's assets as the same shall become due;

(j) will do all things necessary to observe organizational formalities and preserve Borrower's existence;

(k) will at all times hold itself out to the public as a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, and shall not identify itself or any of its Affiliates as a division or part of the other;

(l) will maintain or have access to adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(m) will not make or consent to any material change in its method of accounting (including the basis of application of GAAP) or in its tax elections under any Law;

(n) will not sell, lease, transfer or otherwise dispose of all or any material part of its present or future assets other than the sale of timeshare interests in the Project;

(o) will, to the fullest extent permitted by law, not seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Borrower; and

(p) except as otherwise permitted in this Agreement or any of the other Loan Documents, will not commingle its funds and other assets with those of any Affiliate or constituent party of Borrower or any other Person, and will hold all of its assets in its own name.

**Section 5.24 Accessibility Regulation.** Borrower shall comply with all Accessibility Regulations which are applicable to the Project.

**Section 5.25 Reports and Returns.** Borrower shall file with the appropriate Governmental Authority every report and notice required by all Laws (including tax returns, levies, and assessments) on or before the initial due date or the extended due date, if there exists a valid extension for filing without interest or penalties.

**Section 5.26 Management Agreement.** Borrower shall deliver to Lender a copy of the fully-executed Management Agreement at least thirty (30) days before the issuance of any certificates of occupancy for the Project.

**Section 5.27 Senior Debt.** 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, 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) COVENANT OF LENDER

Lender shall not (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224, the USA Patriot Act or any other Anti-Terrorism Law. Lender shall deliver to Borrower any certification or other evidence requested from time to time by Borrower in its sole discretion, confirming Lender's compliance with this Section. Lender shall not authorize or enable any of their respective Affiliates, members or agents to do any of the foregoing in this Section.

### ARTICLE VI

#### DEFAULTS

**Section 6.1 Events of Default.** Any of the following events shall constitute an Event of Default under this Agreement (each an "Event of Default"):

(a) Borrower shall default in any payment of principal or interest due according to the terms hereof or of the Note, and such default shall remain uncured for a period of five (5) days after the payment became due, provided, however, there is no cure period for payments due on the Maturity Date;

(b) Borrower shall default in the payment of undisputed fees or other amounts payable to Lender hereunder or under any other Loan Document other than as set forth in subsection (a) above, and such default continues unremedied for a period of ten (10) days after notice from Lender to Borrower thereof.;

(c) Borrower shall default in the performance or observance of any agreement, covenant or condition required to be performed or observed by Borrower under the terms of this Agreement, 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 Borrower 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 Borrower 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, however, 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 Borrower 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;

(d) Any representation or warranty made by Borrower in this Agreement or by Borrower 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 Borrower to be untrue or incomplete at the time made and such representation or warranty is corrected by Borrower and disclosed by Borrower to Lender;

(e) Borrower shall be in default under any term, covenant or condition of any of the Note or of any of the other Loan Documents to which Borrower 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;

(f) Work on the Project, once commenced, shall be substantially abandoned, or shall, by reason of Borrower'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;

(g) Any of Borrower, 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;

(h) 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 Borrower 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-lienable items), at Lender's option;

(i) A default shall occur with respect to the Senior Debt and shall remain uncured after the expiration of any applicable notice or grace period;

(j) A default occurs in the performance of Borrower'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, hereof;

(k) The General Contract shall be 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;

(l) Any uncured default by Borrower under the Management Agreement.

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

**Section 6.2 Rights and Remedies.** Upon the occurrence of an Event of Default, unless such Event of Default is subsequently waived in writing by Lender, Lender may exercise any or all of the following rights and remedies, consecutively or simultaneously, and in any order:

(a) make one or more Advances of Loan proceeds without liability to make any subsequent Advance;

(b) suspend the obligation of Lender to make Advances under this Agreement, without notice to Borrower;

(c) declare that the Commitment is terminated whereupon the Commitment shall terminate;

(d) declare the entire unpaid principal balance of the Note to be immediately due and payable, together with accrued and unpaid interest on such Advances, without notice to or demand on Borrower;

(e) exercise any or all remedies specified herein and in the other Loan Documents, including (without limiting the generality of the foregoing) the right to foreclose the Deed of Trust, and/or any other remedies which it may have therefor at law, in equity or under statute;

(f) cure the Event of Default on behalf of Borrower, and, in doing so, enter upon the Project, and expend such sums as it may deem desirable, including reasonable attorneys' fees, all of which shall be deemed to be Advances hereunder, even though

causing the Loan to exceed the face amount of the Note, shall bear interest at the Default Rate provided herein and shall be payable by Borrower on demand; and/or;

(g) Lender may declare an Event of Default under any other Loan Document in accordance with the terms and conditions thereof, and may effectuate any remedies provided for in such agreement.

In addition to the other remedies set forth herein and in the other Loan Documents, Borrower hereby irrevocably authorizes Lender, at any time while an Event of Default continues, to set off any sum due to or incurred by Lender against all accounts, deposits and credits of Borrower with, and any and all claims of Borrower against Lender. Such right shall exist whether or not Lender shall have made any demand hereunder or under any other Loan Document, whether or not said sums, or any part thereof, or deposits and credits held for the account of Borrower is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, or any other security, right or remedy available to Lender. Lender agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify Borrower of its exercise of such setoff right; provided, however, that the failure of Lender to provide such notice shall not affect the validity of the exercise of such setoff rights. Nothing in this Agreement shall be deemed a waiver or prohibition of or restriction on Lender to all rights of banker's lien, setoff and counterclaim available pursuant to law.

**Section 6.3 Completion of Project by Lender.** In addition, in case of the occurrence of an Event of Default specified in Section 6.1(f) hereof, or any Event of Default caused by, or which results in, Borrower's failure, for any reason, to continue with the completion of the construction of the Improvements as required by this Agreement, then Lender may (but shall not be obligated to), in addition to, or in concert with, the other remedies referred to above, take over and complete such construction 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. Lender may assume or reject any contracts entered into by Borrower in connection with the Project with the exception of timeshare purchase contracts, may enter into additional or different contracts for work, services, labor and materials required, in the judgment of Lender, to complete the Project, may pay, compromise and settle all claims in connection with the construction of the Improvements. All sums, including reasonable attorneys' fees, and charges or fees for supervision and inspection of the construction of the Improvements and for any other necessary or desirable purpose in the discretion of Lender expended by Lender in completing or attempting to complete the construction of the Improvements (whether aggregating more, or less, than the aggregate face amount of the Note), shall be deemed Advances made by Lender to Borrower hereunder, and Borrower shall be liable to Lender, on demand, for the payment of such sums, together with interest on such sums from the date of their expenditure at the rates provided herein. Lender may, in its discretion, at any time abandon work on the Project, after having commenced such work, and may recommence such work at any time, it being understood that nothing in this Section shall impose any obligation on Lender either to complete or not to complete the construction of the Improvements. For the purpose of carrying out the provisions of this Section, Borrower irrevocably appoints Lender its attorney-in-fact, with full power of substitution, to execute and deliver all such documents, to pay and receive such funds, and to take such action as may be necessary, in the judgment of Lender, to complete the Project. This



power of attorney is coupled with an interest and is irrevocable. Lender, however, shall have no obligation to undertake any of the foregoing, and, if Lender does undertake any of the same, it shall have no liability for the adequacy, sufficiency or completion thereof.

## **ARTICLE VII**

### **INTEREST, FEES AND EXPENSES**

#### **Section 7.1 Interest; Fees; and Expenses.**

(a) Included in the Loan are amounts for Interest Reserve. Borrower hereby authorizes Lender to disburse the Interest Reserve to pay interest accrued on the Note and all other expenses and fees directly to the party to whom such payment is owed as set forth in this Article 7. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization to Lender to make such advances provided for in this Article 7, and no further authorization from Borrower shall be necessary to warrant such direct advances, and all such direct advances shall be secured by the Deed of Trust as if made directly by Borrower.

(b) Lender in its sole discretion may (but shall not be obligated to do so) make such disbursements authorized under this Article 7 notwithstanding that an Event of Default exists under the terms of this Agreement or any other Loan Document. Such disbursements shall constitute an Advance and be added to the principal balance of the Note, and the Lender shall make the applicable Advances to fund any such disbursements. Such disbursements shall bear interest at the Default Rate. The authorization hereby granted is irrevocable, and no further direction or authorization from Borrower is necessary for Lender to make such disbursements. Nothing contained in this Article 7 shall require Lender to disburse Loan proceeds to pay for any of the items set forth in subsection (a) above if the other conditions set forth in this Agreement for Advances are not satisfied.

#### **Section 7.2 Authorization to Make Loan Advances to Cure Borrower's Defaults.**

If an Event of Default shall occur, Lender (subject to the provisions of this Article 7) may (but shall not be required to) perform any of such covenants and agreements with respect to which Borrower is in Default. Any amounts expended by Lender in so doing and any amounts expended by Lender in connection therewith shall constitute an Advance and be added to the outstanding principal amount of the Loan, and the Lender shall make the applicable Advances to fund any such disbursements. The authorization hereby granted is irrevocable, and no prior notice to or further direction or authorization from Borrower is necessary for Lender to make such disbursements.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**Section 8.1 Waiver and Amendment.** No failure on the part of Lender or the holder of the Note to exercise and no delay in exercising any power or right hereunder or under any

other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right preclude any other or further exercise thereof or the exercise of any other power or right. The remedies herein and in any other instrument, document or agreement delivered or to be delivered to Lender hereunder or in connection herewith are cumulative and not exclusive of any remedies provided by law. No notice to or demand on either party hereunder not required hereunder or under the Note or any other Loan Document shall in any event entitle such party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Lender, the holder of the Note or Borrower to any other or further action in any circumstances without notice or demand.

No amendment, waiver or consent shall affect the rights or duties of Lender under this Agreement or any other Loan Document unless it is in writing and signed by Lender.

**Section 8.2 Expenses and Indemnities.**

(a) Loan Documents. 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. Borrower agrees to pay, and save Lender harmless from all liability for, any mortgage registration, mortgage recording, transfer, recording, stamp, or similar tax or other charge due to any governmental entity, which may be payable with respect to the execution or delivery of the Loan Documents. Borrower agrees to indemnify Lender and hold Lender harmless from any loss or expense which may arise or be created by the acceptance of telephonic or other instructions for making the Loan or disbursing the proceeds thereof except for losses or expenses caused by Lender, gross negligence or willful misconduct.

(b) General Indemnity. In consideration of the Commitment, Borrower further agrees to indemnify and defend Lender and its directors, officers, agents and employees (the "Indemnified Parties") from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, deficiencies, interest, judgments, costs or expenses incurred by them or any of them, including, but without limitation, amounts paid in settlement, court costs, and reasonable fees and disbursements of counsel incurred in connection with any investigation, litigation or other proceeding, arising out of or by reason of any investigation, litigation or other proceeding brought or threatened, arising out of or by reason of their execution of any Loan Document and the transaction contemplated thereby, including, but not limited to, any use effected or proposed to be effected by Borrower of the proceeds of the Loan, but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the gross negligence or willful misconduct of the relevant Indemnified Party. Any Indemnified Party seeking indemnification under this Section will notify Borrower of any event requiring indemnification within thirty (30) Business Days following such Indemnified Party's receipt of notice of commencement of any action or proceeding, or such Indemnified Party's obtaining knowledge of the occurrence of any other event, giving rise to a claim for indemnification hereunder. Borrower will be entitled (but not obligated) to assume the defense or settlement of any such action or proceeding or to participate in any

negotiations to settle or otherwise resolve any claim using counsel of its choice; provided that:

- (i) Borrower notifies such Indemnified Party in writing that Borrower will indemnify such Indemnified Party from and against the relevant claim;
- (ii) such counsel is reasonably satisfactory to such Indemnified Party;
- (iii) such claim involves only money damages and does not seek an injunction or other equitable relief;
- (iv) if such Indemnified Party is the Lender, settlement of, or an adverse judgment with respect to, such claim is not, in the good faith judgment of such Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests of such Indemnified Party;
- (v) Borrower conducts the defense of such claim actively and diligently;
- (vi) no conflict of interest has arisen which would prevent counsel for Borrower from also representing such Indemnified Party because the defendants in any action include both such Indemnified Party and Borrower; and
- (vii) Borrower will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the prior written consent of such Indemnified Party (not to be withheld unreasonably).

So long as Borrower has assumed the defense of such claim and is conducting such defense in accordance with the foregoing, such Indemnified Party: (y) may retain separate co-counsel at its sole cost and expense and participate in the defense of such claim; and (z) will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the prior written consent of Borrower with respect to such claim (not to be withheld unreasonably).

If Borrower fails to assume such defense or, after doing so, Borrower fails to satisfy any of the above conditions to Borrower's defense, such Indemnified Party (and its counsel) may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, such claim in any manner it may reasonably deem appropriate (and such Indemnified Party need not consult with, or obtain any consent from, Borrower in connection therewith) and Borrower will reimburse such Indemnified Party promptly and periodically for the costs of defending against such claim (including reasonable attorneys' fees and expenses) and Borrower will remain responsible for any loss which such Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by such claim to the fullest extent provided for and required by this Agreement.

**Section 8.3 Binding Effect; Waivers; Cumulative Rights and Remedies.** The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto

and their respective heirs, executors, administrators, personal representatives, legal representatives, successors and assigns; provided, however, that neither this Agreement nor the proceeds of the Loan may be assigned by Borrower voluntarily, by operation of law or otherwise, without the prior written consent Lender. No delay on the part of Lender in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder constitute such a waiver or exhaust the same, all of which shall be continuing. The rights and remedies of Lender specified in this Agreement shall be in addition to, and not exclusive of, any other rights and remedies which Lender would otherwise have at law, in equity or by statute, and all such rights and remedies, together with Lender's rights and remedies under the other Loan Documents, are cumulative and may be exercised individually, concurrently, successively and in any order.

**Section 8.4 Incorporation By Reference.** Borrower agrees that until this Agreement is terminated by the repayment to Lender of all principal and interest due and owing on the Note and other sums due and owing pursuant to the other Loan Documents, the Note and the other Loan Documents shall be made subject to all the terms, covenants, conditions, obligations, stipulations and agreements contained in this Agreement to the same extent and effect as if fully set forth in and made a part of the Note and the other Loan Documents.

**Section 8.5 Survival.** All agreements, representations and warranties made in this Agreement shall survive the execution of this Agreement, the making of the Advances by Lender, and the execution of the other Loan Documents, and shall continue until Lender receive payment in full of all of the Obligations and the Indebtedness of Borrower incurred under this Agreement and under the other Loan Documents.

**Section 8.6 Governing Law; Waiver of Jury Trial; Jurisdiction.** IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE OBLIGATIONS ARISING HEREUNDER, AND ALL QUESTIONS AND ISSUES ARISING HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTE, AND THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA.

BORROWER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE LOAN DOCUMENTS. BORROWER, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE

OF NEVADA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEVADA, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM. BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESSES FOR NOTICES DESCRIBED IN THIS AGREEMENT, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

**Section 8.7 Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute a single Agreement.

**Section 8.8 Notices.** All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "**Notice**") required, permitted or desired to be given hereunder shall be in writing and shall be sent by (a) registered or certified mail, postage prepaid, return receipt requested, (b) Federal Express, UPS or another reputable overnight courier, or (c) by hand by commercial courier service, addressed to the party to be so notified at its address set forth opposite its signature, below, or to such other address as such party may hereafter specify in accordance with the provisions of this Section. Any Notice shall be deemed to have been received: (i) three (3) days after the date such Notice is mailed, (ii) on the date of delivery by hand (or refusal to accept such delivery) if delivered during business hours on a Business Day (otherwise on the next Business Day), and/or (iii) on the next Business Day if sent by an overnight commercial courier. Notices shall be deemed effective if given by counsel to either party, as if given directly by such party. No notice under this Agreement or any other Loan Document shall be ineffective because of the failure to provide a copy of any notice to any party to whom a courtesy copy is to be sent under this Agreement.

Any party may change the address to which any such Notice is to be delivered by furnishing ten (10) days' prior written notice of such change to the other parties in accordance with the provisions of this Section. Notices shall be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any such Notice because of a changed address of which no Notice was given, or there is a rejection or refusal to accept any Notice offered for delivery.

**Section 8.9 No Third-Party Reliance.** No third party shall be entitled to rely upon this Agreement or to have any of the benefits of Lender's interest hereunder, unless such third party is an express assignee of all or a portion of Lender's interest hereunder.

**Section 8.10 Lender Assignment.** Borrower agrees that Lender may assign its interest in the Loan at any time without the prior consent of Borrower, provided that, upon such assignment, the terms of the Loan shall not be modified or amended in any way and provided further, that any such assignment does not violate any terms or conditions of the EB-5 Program.

**Section 8.11 Time of the Essence.** Time is of the essence hereof with respect to the dates, terms and conditions of this Agreement.

**Section 8.12 No Oral Modifications.** No modification or waiver of any provision of this Agreement shall be effective unless set forth in writing and signed by the parties hereto.

**Section 8.13 Captions.** The headings or captions of the Articles and Sections set forth herein are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

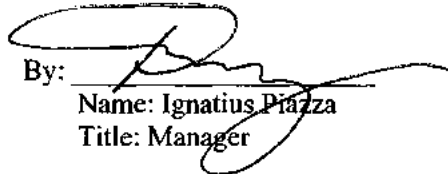
**Section 8.14 Borrower-Lender Relationship.** The relationship between Borrower and Lender created hereby and by the other Loan Documents shall be that of a borrower and a lender only, and in no event shall Lender be deemed to be a partner of, or a joint venturer with, Borrower.

***[END OF AGREEMENT; SIGNATURE PAGES FOLLOW]***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**BORROWER:**

FRONT SIGHT MANAGEMENT, LLC, a Nevada  
limited liability company

By:   
Name: Ignatius Piazza  
Title: Manager

Borrower's Address:

1 Front Sight Road  
Pahrump, NV 89061

With a copy to (which copy shall not constitute  
notice):

Scott A. Preston, Esq.  
Preston Arza LLP  
8581 Santa Monica Boulevard, #710  
West Hollywood, CA 90069

*[Signature page 1 of 2 of Construction Loan Agreement]*

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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, Notary Public,  
(Here insert name and title of the officer)

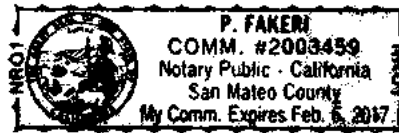
personally appeared IGNATIUS PIAZZA

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 of Notary Public



(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

Construction Loan  
(Title or description of attached document)

Agmt  
(Title or description of attached document continued)

Number of Pages 51 Document Date 10/6/16

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/~~they~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document.



**LENDER:**

LAS VEGAS DEVELOPMENT FUND, LLC, a  
Nevada limited liability company

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

Lender's Address:

P.O. Box 3003  
916 Southwood Blvd., Suite 1G  
Incline Village, NV 89450

With a copy to (which copy shall not constitute  
notice):

EB5 Impact Capital Regional Center LLC  
916 Southwood Blvd., Suite 1G  
Incline Village, NV 89450

And

Michael A. Brand, Esq.  
2924 Selwyn Circle  
Santa Barbara, California 93105

And:

C. Matthew Schulz, Esq.  
Dentons US LLP  
1530 Page Mill Road, Suite 200  
Palo Alto, CA 94304-1125

*[Signature page 2 of 2 of Construction Loan Agreement]*

# Exhibit 4

## FIRST AMENDMENT TO LOAN AGREEMENT

This FIRST AMENDMENT TO LOAN AGREEMENT (this "**First Amendment**") is entered into and effective as of July 1, 2017 (the "**First Amendment Effective Date**") by and between Las Vegas Development Fund, LLC, a Nevada Limited Liability Company ("**Lender**") and Front Sight Management, LLC, a Nevada Limited Liability Company, ("**Borrower**"). Lender and Borrower 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**"). The Original Loan Agreement as amended by this First Amendment is referred to herein as the "**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 (the "**Deed of Trust**"). Initially capitalized terms not defined herein shall have the respective meanings assigned to such terms in the Original Loan Agreement.

B. The Parties desire to amend the Original Loan Agreement, the Original Note and the 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 further agree as follows:

- 1. COMMENCEMENT DATE.** The definition of "Commencement Date" in the Original Loan Agreement is hereby deleted and replaced with:

"Commencement Date means October 4, 2016."

- 2. INTEREST RATE.** The definition of Loan Rate in the Original Loan Agreement is amended to read as follows:

"Loan Rate" means the interest rate applicable to the Loan as calculated at an annual rate of 6% during the Initial Term with respect to all Advances made prior to July 1, 2017 and, with respect to such Advances, if extended, at an annual rate of 7% during the Extension Term; and with respect to all Advances made after July 1, 2017 as calculated at an annual rate of 7% during the Initial Term, and, if extended, at an annual rate of 8% during the Extension Term."

And Section 4 of the Note is amended to read as set forth in the Amended and Restated Promissory Note attached hereto as Exhibit A.

- 3. MAXIMUM LOAN AMOUNT.** The maximum Loan amount is hereby reduced from seventy-five million Dollars (\$75,000,000) to fifty million Dollars (\$50,000,000). Accordingly, the reference in Recital A of the Loan Agreement to SEVENTY-FIVE MILLION DOLLARS (\$75,000,000) is hereby amended to FIFTY MILLION DOLLARS (\$50,000,000), and the first sentence of the definition of

"Commitment" in the Loan Agreement is hereby amended to read: "Commitment" means an amount not to exceed Fifty Million Dollars (\$50,000,000)".

Furthermore, the amount shown as the maximum principal amount on the Promissory Note is amended by replacing "\$75,000,000" with "\$50,000,000," and the amount of "Seventy-Five Million and No/100 Dollars (\$75,000,000)" in the first sentence of the Promissory Note is replaced by "Fifty Million and No/100 Dollars (\$50,000,000)" as set forth in the Amended and Restated Promissory Note attached hereto as Exhibit "A".

Additionally, the first sentence of Section 1.1 of the Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing has been amended in said document to read: "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."

**4. DATE TO OBTAIN SENIOR DEBT.** The date of December 31, 2016, in the last sentence of the definition of Senior Debt, which is the outside date for Borrower to obtain such Senior Debt, is hereby amended to December 31, 2017, provided, however, that Borrower, at its sole election, may extend said date for an additional sixty (60) days from and after said date of December 31, 2017.

**5. MAINTENANCE OF JOBS REQUIRED FOR EB-5 PURPOSES.** Borrower agrees and covenants to continue to employ sufficient full-time employees to meet the jobs creation requirement of the EB-5 Program.

**6. EB-5 INFORMATION.** Borrower has provided Lender with a portion of the information and documentation required pursuant to Section 5.10 of the Original Loan Agreement. The parties acknowledge that Borrower's copies of certain documentation were in an office in or around Santa Rosa, California, which was burned down in a major wildfire in Northern California. Notwithstanding the foregoing, on or before June 30, 2018, Borrower shall provide Lender with copies of major contracts, bank statements, receipts, invoices and cancelled checks or credit card statements or other proof of payment reasonably acceptable to Lender that document that Borrower has invested in the Project at least the amount of money as has been disbursed by Lender to Borrower on or before the First Amendment Effective Date, it being understood that such documentation may evidence investments occurring at any time from and after the date of the Original Loan Agreement up to and including June 30, 2018. Borrower further agrees that, in the event that there is an audit, compliance review or other form of request for such documentation by the USCIS or any successor or affiliated agency, including the U.S. Securities and Exchange Commission or the U.S. Department of Justice, Borrower will, at Borrower's sole cost and expense, promptly reconstruct in its entirety such documentation evidencing the investment of the amount of funds disbursed on or before the First Amendment Effective Date by obtaining copies from third parties. Borrower further agrees that the provisions of the Original Loan Agreement continue to apply with respect to the EB-5 Information (as defined in the Original Loan Agreement) and all provisions of the Original Loan Agreement which require Borrower to provide information and/or documentation to Lender continue to apply and Borrower will comply fully therewith.

**7. INDEMNIFICATION.** Borrower agrees to defend, indemnify and hold Lender harmless from any actual expense, cost, loss or damage, including reasonable attorneys' fees and court costs, paid or incurred by Lender due to (i) Borrower's failure to provide the EB5 documentation for the period from the first disbursement of the Loan proceeds through October 31, 2017, or (ii) Borrower's breach of its obligations contained in Paragraph 6, above.

**8. AGREEMENT RATIFIED.** Except as specifically amended or modified herein, each and every term, covenant, and condition of the Original Loan Agreement, Note and Deed of Trust as amended is

*[Handwritten initials]*



hereby ratified and shall remain in full force and effect. Each and every reference to the "Agreement" in the Original Loan Agreement (including, without limitation, the attachments thereto) shall be deemed to refer to the Original Loan Agreement as amended by this First Amendment.

**9. GOVERNING LAW.** This instrument shall be interpreted and construed in accordance with the laws of the State of Nevada.

**10. 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.

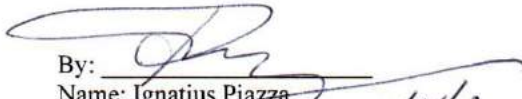
**11. COUNTERPARTS.** This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

[Signature page follows]

A handwritten signature in black ink, appearing to be "RW", is written to the right of the text "[Signature page follows]".


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 11/14/17

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

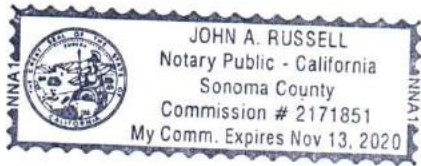
CIVIL CODE § 1189

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 November 14, 2017 before me, John A Russell Notary Public
Date 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.



Place Notary Seal and/or Stamp Above

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

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 Loan Agreement

Document Date: 11/14/2017 Number of Pages: 4

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:

# Exhibit 5



## SECOND AMENDMENT TO LOAN AGREEMENT

This SECOND AMENDMENT TO LOAN AGREEMENT (this "Second Amendment") is entered into and effective as of February 28, 2018 (the "Second Amendment Effective Date") by and between Las Vegas Development Fund, LLC, a Nevada Limited Liability Company ("Lender") and Front Sight Management, LLC, a Nevada Limited Liability Company, ("Borrower"). Lender and Borrower and their respective permitted successors and assigns are sometimes referred to in this Second 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"). The Original Loan Agreement as amended by this First Amendment is referred to herein as the "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 (the "Deed of Trust"). Initially capitalized terms not defined herein shall have the respective meanings assigned to such terms in the Original Loan Agreement. The Original Loan Agreement was amended by a First Amendment to Loan Agreement effective as of July 1, 2017 (the "First Amendment") to further extend the date for obtaining the Senior Financing.
- B. Borrower has represented to Lender that further extending the date for obtaining the Senior Debt will benefit the Project by reducing borrowing costs by delaying the Senior Debt until it is strictly necessary to allow construction to proceed at the fastest feasible pace. Borrower has further represented to Lender that construction is currently proceeding at the most expedited pace reasonably possible and that Borrower has received preliminary pricing terms from two lenders for the Senior Debt ("Senior Debt Term Sheets"). The Parties desire to further amend the Original Loan Agreement, as modified by the First Amendment, 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 further agree as follows:

- 1. DATE TO OBTAIN SENIOR DEBT.** The date of December 31, 2016, in the last sentence of the definition of Senior Debt in the Original Loan Agreement, which was the outside date for Borrower to obtain such Senior Debt, and which date was extended in the First Amendment, is hereby amended to June 30, 2018. Concurrently with the execution of this Second Extension, Borrower shall provide to Lender copies of term sheets, emails and other materials related to the Senior Debt Term Sheets and shall periodically, but no less than monthly, update the same.
- 2. AGREEMENT RATIFIED.** Except as specifically amended or modified herein, each and every term, covenant, and condition of the Original Loan Agreement, Note and Deed of Trust as amended is hereby ratified and shall remain in full force and effect. Each and every reference to the "Agreement" in



the Original Loan Agreement (including, without limitation, the attachments thereto) shall be deemed to refer to the Original Loan Agreement as amended by the First Amendment and this Second Amendment.

**3. GOVERNING LAW.** This instrument shall be interpreted and construed in accordance with the substantive laws of the State of Nevada, excluding choice of law principles.

**4. BINDING AGREEMENT.** This Second Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**5. COUNTERPARTS.** This Second 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.

IN WITNESS WHEREOF, Lender and Borrower have signed this Second Amendment as of the 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 W. Dziubla

Title: President & CEO

# Exhibit 6

Official Records Nye County NV  
Deborah Beatty - Recorder  
01/18/2019 10:51:43 AM  
Requested By: E-DOCS SOLUTIONS L  
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Recording Fee: \$285.00  
Non Conformity Fee: \$  
Page 1 of 5

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

**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.

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

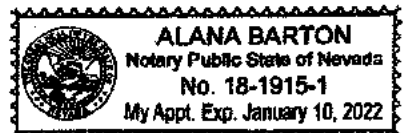
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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. DZIUBLA, 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

**AFFIDAVIT OF AUTHORIZATION**

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.

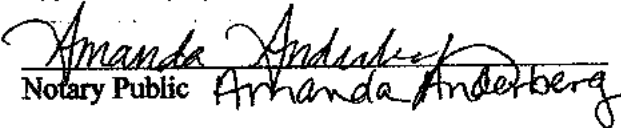
  
Robert W. Dziuba, President and CEO of beneficiary  
LAS VEGAS DEVELOPMENT FUND, LLC

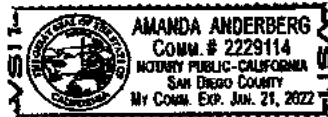
January 4, 2019  
Dated

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. Dziuba, 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



**AFFIDAVIT OF AUTHORIZATION**



# Exhibit 7

**AMENDED AND RESTATED PROMISSORY NOTE**

\$50,000,000.00

Date: July 1, 2017 (the "Effective Date")

FOR VALUE RECEIVED, the undersigned, FRONT SIGHT MANAGEMENT LLC, a Nevada limited liability company ("**Borrower**"), having an address at 1 Front Sight Road, Pahrump, NV 89061, promises to pay, as hereinafter provided, to the order of LAS VEGAS DEVELOPMENT FUND LLC, a Nevada limited liability company ("**Lender**"), having an address at P.O. Box 3003, 916 Southwood Blvd., Suite 1G, Incline Village NV 89450, without set-off, counterclaim or deduction, the sum of Fifty Million and No/100 Dollars (\$50,000,000.00), or so much thereof as may have been advanced to or made available for the benefit of Borrower pursuant to the Loan Agreement (as such term is hereinafter defined) and remains unpaid from time to time (hereinafter called "**Principal Balance**"), with interest on the Principal Balance, until paid in full, at the rates per annum hereinafter specified in legal tender for the payment of public and private debts in the United States of America, all in accordance with the terms hereinafter set forth. All interest payable hereunder shall be computed on the basis of a 360-day year, but shall be charged for the actual number of days principal is unpaid.

1. Payment Location. All payments of principal and interest under this Note shall be made in lawful money of the United States of America by wire transfer in immediately available funds to such account as may be designated by Lender to Borrower in writing.

2. Capitalized Terms. Unless the context otherwise indicates, capitalized terms not otherwise defined herein shall have the meanings provided for such terms in that certain Construction Loan Agreement of October 6, 2016, as amended by that certain First Amendment to Construction Loan Agreement of even date herewith by and between Borrower and Lender (as the same may be further amended, modified or supplemented from time to time hereinafter collectively referred to as the "**Loan Agreement**"), and which terms are incorporated by this reference as if fully set forth herein.

3. Identification of Note. This Amended and Restated Promissory Note (this "**Note**") is the Promissory Note referred to in the Loan Agreement and shall amend, restate and replace in its entirety that certain Promissory Note, made as of October 6, 2016, by Borrower, in favor of Lender, for the purpose of clarifying certain terms and conditions intended to be effective from and after the Effective Date. The Loan Agreement governs the terms of the indebtedness of Borrower to Lender evidenced by this Note and such other indebtedness as more particularly set forth in the Security Documents (defined below).

4. Payments. This Note shall be payable by Borrower to Lender as follows:

(a) Interest shall accrue commencing upon the date upon which funds are first released to Borrower from the Loan Escrow, and continuing until such time as Borrower repays such funds to Lender, in whole or in part, as and when permitted in accordance with



the Loan Agreement. Borrower shall make current payments of interest on the first (1<sup>st</sup>) day of each calendar month on that portion of the Principal Balance then outstanding calculated at an annual rate of 6% during the Initial Term with respect to all Advances made prior to July 1, 2017 and, with respect to such Advances, if extended, at an annual rate of 7% during the Extension Term; and, with respect to all Advances made after July 1, 2017 at an annual rate of 7% during the Initial Term, and, with respect to such Advances, if extended, at an annual rate of 8% during the Extension Term.

If any payment date is on a weekend or national holiday, payment shall be made on the next business day.

(b) The entire unpaid Principal Balance and all interest accrued thereon shall be due and payable in full on the Initial Maturity Date, subject, however, to Borrower's election to extend the Initial Maturity Date in accordance with the terms and conditions set forth in Section 1.6 of the Loan Agreement.

(c) In the event that the maturity date is extended as set forth in Section 4(b) above, all accrued and unpaid interest pursuant to Section 4(a) above shall be paid to Lender on the Initial Maturity Date.

(d) Following any Event of Default hereunder or under the Loan Agreement, interest shall accrue at the Default Rate together with, as applicable, any Late Charge in accordance with the Loan Agreement.

(e) No payment of interest or other consideration made or agreed to be made by Borrower pursuant to this Note or any other instrument referring to or securing this Note shall, at any time, be deemed to have been computed at an interest rate in excess of the maximum rate of interest permissible by law, if any. In the event such payments of interest or other consideration provided for in this Note or any other instrument referring to or securing this Note shall result in payment of an effective rate of interest which, for any period of time, is in excess of the limit of the usury law or any other law applicable to the loan evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party or parties hereto, be applied to the Principal Balance immediately upon receipt of such monies by Lender with the same force and effect as though Borrower had specifically designated, and Lender had agreed to accept, such extra payments as a principal payment, without premium or penalty. If the Principal Balance has been fully paid, any such excess amount shall be refunded to Borrower. This provision shall control over every other obligation of Borrower hereunder and under any instrument that secures this Note.

(f) Except as set forth in Section 4(e) above, all payments made hereunder shall be applied to amounts due in accordance with the Loan Agreement.

5. Prepayment. The Principal Balance and accrued interest thereon may be prepaid in full or in part only as provided in the Loan Agreement.

6. Security. The payment and performance of this Note and other Obligations are secured by the lien of that certain Deed of Trust, Assignment of Leases and Rents, Security





Agreement and Fixture Filing of even date herewith (“**Deed of Trust**”), by Borrower for the benefit of Lender encumbering certain real and personal property located in Nye County, Nevada, as more specifically described therein (the “**Project**”). Advances of the sums evidenced by this Note are to be made pursuant to the Loan Agreement.

Each Borrower, co-maker, endorser, surety and guarantor hereby guaranties payment of this Note, and waives demand for payment, presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of intent to foreclose on any collateral securing this Note, all other notices as to this Note, diligence in collection as to each and every payment due hereunder, and all other requirements necessary to charge or hold such person or entity to any obligation hereunder, and agrees that without any notice Lender may take additional security herefor or may release any or all security herefor, or alone or together with any present or future owner or owners of all or any part of the Project or by any other security documents, may from time to time extend, renew, or otherwise modify the date or dates or amount or amounts of payment above recited, or Lender may from time to time release any part or parts of the property and interest subject to the Deed of Trust or any other security documents from the Deed of Trust and/or any other security documents, with or without consideration, and that, in any such case, each Borrower, co-maker, endorser, surety and guarantor shall continue to be bound hereby and to be liable to pay the unpaid balance of the indebtedness evidenced hereby, as so additionally secured, extended, renewed or modified, and notwithstanding any such release, and further agrees to indemnify Lender against and hold Lender harmless from and pay all costs and expenses of collection, including court costs and reasonable attorneys' fees (prior to trial, at trial and on appeal) incurred in collecting the indebtedness evidenced hereby, or in exercising or defending, or obtaining the right to exercise, the rights of Lender hereunder, under the Loan Agreement or under any security document, whether suit be brought or not, and in foreclosure, in bankruptcy, insolvency, arrangement, reorganization and other debtor-relief proceedings, in probate, in other court proceedings, or otherwise, whether or not Lender prevails therein, and all costs and expenses incurred by Lender in protecting or preserving the property and interests which are subject to the Deed of Trust and/or any other security documents.

7. Default. Time is of the essence hereof. The occurrence of an Event of Default under the Loan Agreement shall constitute an Event of Default under this Note. Upon the occurrence of an Event of Default, Lender shall have the rights set forth in Section 6.2 of the Loan Agreement.

Lender shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies, and no waiver of any kind shall be valid unless in writing and signed by Lender. All rights and remedies of Lender under the terms of this Note, under the terms of the Loan Agreement and/or of any other security document, and under any statutes or rules of law shall be cumulative and may be exercised successively or concurrently by Lender. Borrower agrees that Lender shall be entitled to all the rights of a holder in due course of negotiable instruments. Any provision of this Note which may be unenforceable or invalid under any law shall be ineffective to the extent of such unenforceability or invalidity without affecting the enforceability or validity of any other provision hereof.





8. Interest Rate Limitation. It is the intent of Borrower and Lender in the execution of this Note and all other instruments securing this Note that the loan evidenced hereby be exempt from the restrictions of the usury laws of the State of Nevada. In the event that, for any reason, it should be determined that the Nevada usury law is applicable to the Loan, Lender and Borrower stipulate and agree that none of the terms and provisions contained herein or in any of the other Security Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Nevada. In such event, if any holder of this Note collects monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of Nevada, all such sums deemed to constitute interest in excess of such maximum rate will, at the option of Lender, be credited to the payment of the sums due hereunder (without penalty or premium to Borrower) or returned to Borrower. Borrower agrees to pay an effective contracted for rate of interest equal to the rate of interest resulting from all interest payable as provided in this Note, plus any fees, costs and expenses which may be deemed interest under Nevada law.

9. Applicable Law; Jury Trial. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS NOTE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA, APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS NOTE AND THE SECURITY DOCUMENTS, AND THIS NOTE AND THE SECURITY DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA.

BORROWER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION RELATING TO THE LOAN AND/OR THE SECURITY DOCUMENTS. BORROWER, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF NEVADA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS NOTE, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN CLARK COUNTY IN THE STATE OF NEVADA, (C) SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURTS AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT, AND (D) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM. BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESSES FOR NOTICES DESCRIBED IN THIS NOTE, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY

RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed and delivered effective as of the day and year first above set forth.

BORROWER:

FRONT SIGHT MANAGEMENT LLC,  
a Nevada limited liability company

By: 

Name: Ignatius Piazza 11/14/17

Title: Manager

**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 before me, John A Russell Notary Public  
Date 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.

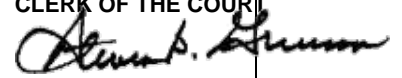
**Description of Attached Document**

Title or Type of Document: Amended and Restated Promissory Note  
Document Date: 11/14/2017 Number of Pages: 6  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
 Corporate Officer - Title(s): \_\_\_\_\_  Corporate Officer - Title(s): \_\_\_\_\_  
 Partner -  Limited  General  Partner -  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian of Conservator  Trustee  Guardian of Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_ Signer is Representing: \_\_\_\_\_





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  
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**

1 **NOTICE OF ENTRY OF ORDER**

2 PLEASE TAKE NOTICE that a Stipulation and Order Resetting Evidentiary Hearing and  
3 Extending Temporary Restraining Order was entered by the Court in the above-captioned action  
4 on the 16<sup>th</sup> day of May, 2019, a true and correct copy of which is attached hereto.

5 DATED this 16<sup>th</sup> day of May, 2019.

6 **ALDRICH LAW FIRM, LTD.**

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

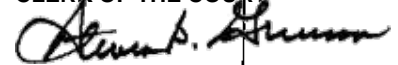
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 16<sup>th</sup> day of May, 2019, I caused the foregoing  
3 **NOTICE OF ENTRY OF ORDER** to be electronically filed and served with the Clerk of the  
4 Court using Wiznet which will send notification of such filing to the email addresses denoted on  
5 the Electronic Mail Notice List, or by U.S. mail, postage prepaid, if not included on the  
6 Electronic Mail Notice List, to the following parties:

7 Anthony T. Case, Esq.  
Kathryn Holbert, Esq.  
8 FARMER CASE & FEDOR  
2190 E. Pebble Rd., Suite #205  
9 Las Vegas, NV 89123  
*Attorneys for Defendants LAS VEGAS DEVELOPMENT FUND*  
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15 *JON FLEMING and LINDA STANWOOD*

16  
17  
18 /s/ T. Bixenmann  
An employee of ALDRICH LAW FIRM, LTD.



1 **SAO**

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

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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

**STIPULATION AND ORDER**  
**RESETTING EVIDENTIARY**  
**HEARING AND EXTENDING**  
**TEMPORARY RESTRAINING**  
**ORDER**

1 Plaintiff FRONT SIGHT MANAGEMENT LLC, by and through its attorney of record,  
2 John P. Aldrich, Esq., and Defendants LAS VEGAS DEVELOPMENT FUND LLC, EB5  
3 IMPACT CAPITAL REGIONAL CENTER LLC, EB5 IMPACT ADVISORS LLC, ROBERT  
4 W. DZIUBLA, JON FLEMING, and LINDA STANWOOD, by and through their attorneys of  
5 record Kathryn Holbert, Esq. and C. Keith Greer, Esq., hereby stipulate and agree as follows:

6 **IT IS HEREBY STIPULATED AND AGREED** that due to the Court's trial calendar,  
7 the Evidentiary Hearing on Plaintiff's Second Motion for Temporary Restraining Order and  
8 Preliminary Injunction, previously scheduled for May 2, 2019 at 10:30 a.m. be moved to June  
9 3, 2019, June 4, 2019, and June 5, 2019, commencing at 9:15 a.m. each day.

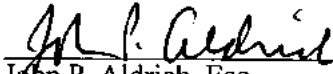
10 **IT IS FURTHER STIPULATED AND AGREED** that the temporary restraining  
11 order previously entered enjoining Defendants from proceeding with the foreclosure process in  
12 any fashion, filing a Notice of Sale, and/or selling the subject property under the Notice of  
13 Breach and Default and of Election to Sell Under Deed of Trust, which was recorded with the  
14 Nye County Recorder's Office on January 18, 2019, shall be extended and shall remain in effect  
15 until further order of this Court.

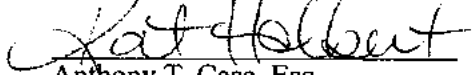
16 Dated this 7<sup>th</sup> day of May, 2019.

Dated this 7<sup>th</sup> day of May, 2019.

17 **ALDRICH LAW FIRM, LTD.**

**FARMER CASE & FEDOR**

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HEARING DATE(S)  
ENTERED IN  
ODYSSEY





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

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REPORTER'S TRANSCRIPT

16

OF  
MOTION

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED MONDAY, JUNE 3, 2019

22

23

24

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

25

Peggy Isom, CCR 541, RMR

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LAS VEGAS, NEVADA; MONDAY, JUNE 3, 2019

9:06 A.M.

P R O C E E D I N G S

\* \* \* \* \*

09:30:34

THE COURT: All right. Good morning to everyone.

IN UNISON: Good morning, your Honor.

09:38:43

THE COURT: Let's go ahead and place our appearances on the record.

MR. ALDRICH: Good morning, your Honor. John Aldrich on behalf of the plaintiff. And just for the Court's information, seated with me at counsel table is my legal assistant, Traci Bixenmann.

09:38:55

MS. BIXENMANN: B-I-X-E-N-M-A-N-N.

MS. HOLBERT: Good morning, your Honor. Kathryn Holbert on behalf of the defendants.

09:39:09

MR. GREER: Good morning, your Honor. Keith Greer also on behalf of the defendant here today with Robert Dziubla.

THE COURT: Once again, good morning. And it's my understanding this is a continuation of the preliminary injunction hearing; is that correct?

MR. ALDRICH: Yes, your Honor.

09:39:19

MS. HOLBERT: Yes, except we didn't really

09:39:21 1 start before.

2 THE COURT: Pardon?

3 MS. HOLBERT: We didn't really start before.

4 THE COURT: I know, but --

09:39:22 5 MS. HOLBERT: But, yes, it is.

6 THE COURT: Yeah. Yes. We did have it  
7 scheduled at one point and we moved it.

8 MS. HOLBERT: Right. Right.

9 THE COURT: All right. So where do we start?

09:39:31 10 MR. GREER: Housekeeping, first. A couple of  
11 issues, your Honor.

12 One, there has been -- plaintiffs have  
13 subpoenaed Linda Stanwood, who is Robert Dziubla's  
14 wife. She was named as an officer of LVD Fund towards  
09:39:52 15 the end of the time frame of 2018. I'm objecting to  
16 the subpoena because she doesn't have any pertinent  
17 information or testimony that will relate to the case  
18 at all and definitely not to this hearing.

19 Prior to being appointed as an officer of the  
09:40:06 20 corporation in 2018, she was -- as Mr. Dziubla's wife,  
21 they talked about business, but she wasn't formally  
22 involved in any way. Mr. Dziubla had a heart attack in  
23 2018. And in order to maintain continuity of the  
24 business, she was brought on as an officer and signer  
09:40:25 25 on the checking account with instructions of how to

Peggy Isom, CCR 541, RMR

09:40:27 1 handle the business in case he should have another  
2 heart attack -- which he didn't -- which he wouldn't  
3 recover from.

4           So she really hasn't -- this is all, you know,  
09:40:36 5 mid to late 2018 this is happening. She wasn't  
6 involved in any of the representations about the EB-5  
7 markets, about the transition, and the creation of LVD  
8 Fund, et cetera. So she really just has nothing to  
9 offer, and I think it's just really been burdensome and  
09:40:51 10 harassing to bring her out here to Las Vegas.

11           I don't know that Mr. Aldrich was aware of  
12 these facts. We haven't had any discovery yet. I just  
13 discussed that with him this morning. I've offered to  
14 put Mr. Dziubla on the stand to verify these facts  
09:41:03 15 under penalty of perjury if the Court or counsel so  
16 desire.

17           And I would just ask that my objection to that  
18 subpoena be granted, and that she be relieved of  
19 needing to come out and testify in the matter.

09:41:16 20           THE COURT: Okay. Mr. Aldrich, sir?

21           MR. ALDRICH: Good morning, your Honor.

22           I guess I have a couple of comments in this  
23 regard. We've talked about Ms. Stanwood possibly  
24 testifying previously and that I was going to want to  
09:41:29 25 ask her questions. And it was my understanding she was

Peggy Isom, CCR 541, RMR

09:41:32 1 going to be provided. I ended up subpoenaing simply  
2 because I hadn't received confirmation she was going to  
3 appear.

4 I do have in my questions some questions about  
09:41:42 5 Ms. Stanwood and what her involvement was in this  
6 process.

7 I will also certainly concede that in the  
8 pleading stage as we have -- or the motion practice  
9 that we've done, the defendant's position has been that  
09:41:57 10 Ms. Stanwood had little or no involvement.

11 My concern is that agreeing to that right  
12 now -- I subpoenaed her for a reason and I may need her  
13 here. Exhibit 1, which we'll talk about, is an email  
14 from Mr. Dziubla to my clients telling them about  
09:42:14 15 Ms. Stanwood's involvement in the company now, and it  
16 makes reference to the fact that she had been involved.  
17 And I'm summarizing. I could quote it, I guess, but  
18 it's something about with the company formally since  
19 the first of 2018 and informally for years. And so I  
09:42:30 20 have some questions about informal involvement.

21 So anyway, that's why I subpoenaed her, and I  
22 think she may be necessary. I am certainly happy to  
23 revisit this issue after we've talked to Mr. Dziubla if  
24 it becomes clear that we don't need her, but I think  
09:42:48 25 maybe it makes sense certainly to wait to rule on

Peggy Isom, CCR 541, RMR

09:42:51 1 the -- what is essentially an oral motion to quash the  
2 subpoena.

3 MR. GREER: Yeah. We'd stipulate to that,  
4 your Honor.

09:42:57 5 THE COURT: Yeah. I mean, ultimately the way  
6 I look at it, and for the purposes of this hearing, if  
7 necessary, she could appear via some sort of video  
8 conferencing and/or telephonic. I mean, if the concern  
9 is whether there's a hardship on her, I think at the  
09:43:13 10 end of the day, we need to at least have testimony for  
11 her saying, Look, I didn't have any involvement in  
12 this.

13 Then she's off. I mean, we don't have an  
14 affidavit or anything like that. And so I'm not going  
09:43:23 15 to quash the subpoena necessarily.

16 But understand, this matter is -- it's not a  
17 trial. It's not a jury trial. It's in business court.  
18 And one of the nice things about business court is  
19 this: We can accommodate witnesses and the like in a  
09:43:37 20 slightly different manner than you would in a  
21 full-blown jury trial, right, where she'd have to  
22 appear.

23 But I'm not concerned about that right now.  
24 If she appeared telephonically or by videoconferencing,  
09:43:50 25 it would have no impact on her testimony as far as

Peggy Isom, CCR 541, RMR

09:43:53 1 veracity is concerned. I'd listen.

2 But the bottom line is if she has no  
3 involvement, she has no involvement. And she can say  
4 that, you know. But I can't make that decision without  
09:44:08 5 something more, I guess, is the best way I can say  
6 that.

7 MR. GREER: That will come.

8 THE COURT: If you want to work it out, you  
9 work it out. And if not, I'm not going to force her  
09:44:17 10 necessarily to fly to Vegas if that's the big concern.

11 MR. GREER: Yeah. We'll wait and see what the  
12 testimony is with Mr. Dziubla on the topic.

13 THE COURT: Yeah. And that's fine.

14 MR. GREER: The second issue is witness order.  
09:44:29 15 We have -- we had an agreement between counsel, when a  
16 witness goes on the stand the other side could do their  
17 full direct and cross-examination at the same time with  
18 that witness so we don't have to call them back again.

19 THE COURT: That's something we routinely do.

09:44:45 20 MR. GREER: Yeah. And I've opted to do that  
21 for Mr. Fleming, who is one of the defense -- defendant  
22 in the case. He will be here this afternoon and  
23 available. I'd like to do that with him so we can not  
24 have to call him back.

09:44:58 25 But I have opted to not do that with

Peggy Isom, CCR 541, RMR

09:45:00 1 Mr. Dziubla so I can reserve my questioning of him  
2 until our case in chief. And I think Mr. Aldrich took  
3 exception to that maybe.

4 MR. ALDRICH: Yeah. We talked about how we  
09:45:13 5 were going to handle the hearing. My notes indicated  
6 on April 19th we talked about how we were going to do  
7 it. We talked about taking care of all the witnesses  
8 at once like he said. I would examine and then he  
9 would examine until it's done.

09:45:28 10 As far as Mr. Dziubla is concerned, just the  
11 way I timed it, it's a little -- it may be a little bit  
12 off. So I guess I object on that basis, but I guess  
13 I'll call it a soft objection because I -- I don't like  
14 to be unreasonable, but at the same time, I prepared a  
09:45:43 15 certain way and so...

16 THE COURT: Anything else you want to add,  
17 sir?

18 MR. GREER: No, your Honor.

19 THE COURT: I see no problem in handling it  
09:45:55 20 the way you've suggested, sir. That's fine.

21 MR. GREER: Thank you, your Honor.

22 THE COURT: Anything else?

23 MR. GREER: I don't think so.

24 THE COURT: Okay. So are we ready to call our  
09:46:07 25 first witness?



09:46:08 1 MR. ALDRICH: We are.

2 THE COURT: Okay.

3 MR. ALDRICH: We'll call Mr. Dziubla.

4 THE COURT: We can go off the record for one

09:46:23 5 second before he's sworn in.

6 (A discussion was held off the record.)

7 THE COURT: Let's go back on the record. You  
8 can go ahead and swear the witness in.

9 ROBERT DZIUBLA,

09:47:25 10 having been first duly sworn to testify to the truth,  
11 the whole truth and nothing but the truth, was examined  
12 and testified as follows:

13 THE COURT CLERK: Thank you. You may be  
14 seated.

09:47:25 15 Would you also please state your full name,  
16 spelling your first and last name for the record,  
17 please.

18 THE WITNESS: Robert Dziubla. R-O-B-E-R-T.  
19 Last name D-Z-I-U-B-L-A.

09:47:46 20 DIRECT EXAMINATION

21 BY MR. ALDRICH:

22 Q. We've exchanged pleasantries off the record,  
23 but good morning.

24 A. Good morning, Mr. Aldrich.

09:48:00 25 Q. Sir, could you start by telling the Court

Peggy Isom, CCR 541, RMR

09:48:03 1 about your education.

2 A. Oh, my. Got my BA in Asian studies from  
3 Northwestern.

4 I got my MA in political science, focusing on  
09:48:17 5 China, from the University of Chicago.

6 I received my JD from Northwestern University  
7 where I was on the international law journal and moot  
8 court team.

9 I then received -- I worked, and then I went  
09:48:34 10 back to school. Got my LLM in Asian law from the  
11 University of Washington.

12 And then I was a Senior Fulbright Fellow at  
13 the University of Kyoto on the faculty of law in Japan.

14 Q. Okay. And can you just roughly give me the  
09:48:56 15 year so about when you graduated with a bachelor's  
16 degree?

17 A. That was '74.

18 Q. And master's degree?

19 A. '78 or so.

09:49:06 20 Q. And your JD?

21 A. 1980.

22 Q. And LLM?

23 A. '82, '83. I don't recall exactly.

24 Q. And then when you went to Japan, what year was  
09:49:22 25 that?

Peggy Isom, CCR 541, RMR

09:49:22 1 A. That would have been '82, midyear, I think.

2 Q. All right. So I assume you're a licensed

3 attorney?

4 A. I am a recovering attorney.

09:49:41 5 Q. Recovering attorney?

6 A. I stopped practicing in 1998.

7 Q. What have you been doing since 1998?

8 A. Working on various deals. In 1998, I retired

9 from the practice of law. Gave it to my partners. And

09:50:10 10 moved to Bangkok, Thailand, where I established a real

11 estate private equity fund.

12 Q. And what was that private equity fund called?

13 A. Orchid Asset Advisors.

14 Q. And how long did you do work with Orchid Asset

09:50:33 15 Advisors?

16 A. It was about five years.

17 Q. And what exactly did Orchid Asset Advisors do?

18 A. Thailand had gone into recession in 1997 or so

19 when George Soros attacked the Thai baht. And Thailand

09:50:59 20 was in a world of economic hurt. And so the government

21 relaxed its historical prohibition on foreign ownership

22 of real estate. And so I talked with my capital

23 partners, and we decided that there was an opportunity

24 in Thailand for us to go in and bring in foreign

09:51:19 25 capital to help rejuvenate the Thai real estate market.

Peggy Isom, CCR 541, RMR

09:51:25 1 Q. Okay. So you brought money from outside  
2 Thailand into Thailand to invest in real estate?  
3 A. Correct.  
4 Q. So you did that for about five years. What  
09:51:43 5 did you do after that?  
6 A. I came back to the United States.  
7 Q. Okay. So about 2003?  
8 A. 2003, 2004.  
9 Q. What did you do once you came back to the US?  
09:51:56 10 A. I established a boutique investment banking  
11 firm with some of my buddies.  
12 Q. What was that called?  
13 A. The Noblemen Group.  
14 Q. And what did The Noblemen Group do?  
09:52:15 15 A. Boutique investment banking.  
16 Q. Investing in what kind of projects?  
17 A. Well, we would raise capital or help companies  
18 reposition themselves to take advantage of market  
19 opportunities or to deal with distressed situations  
09:52:33 20 that they might be facing.  
21 Q. So I do have an econ undergrad, but in a  
22 little bit plainer English, what did that company do?  
23 A. Okay. Well, as an example, our first client  
24 was a Nevada company based in Reno that manufactured  
09:52:58 25 semiconductor capital equipment and they were seriously

Peggy Isom, CCR 541, RMR

09:53:02 1 under water and being threatened by their investors and  
2 creditors with bankruptcy proceedings. And so we took  
3 a look at their technology and their operations and,  
4 ultimately, we structured a sale of their key patents  
09:53:20 5 to one of the leading Japanese technology companies  
6 based in Kyoto.

7 Q. Okay. So in that instance, you structured a  
8 sale of the patents; didn't raise financing for the  
9 company. Is that fair?

09:53:35 10 A. Well, it did actually because we sold the  
11 patents to the Japanese company, and it brought in a  
12 15-year stream of revenue.

13 Q. Okay. So how long did you work with The  
14 Noblemen Group?

09:53:54 15 A. It was -- it's hard to say. Three, four,  
16 maybe five years.

17 Q. So 2007, 2008?

18 A. Maybe 2007.

19 Q. Okay. What was your position with The  
09:54:10 20 Noblemen Group?

21 A. At that point I had, for a short period of  
22 time, reactivated my bar -- my bar membership. And so  
23 I was responsible for -- because I'm bilingual in  
24 Japanese, I was responsible for negotiating the  
09:54:31 25 contract with the Japanese purchaser and then drafting

09:54:35 1 the contracts.

2 Q. So there were a title? Were you like a  
3 general counsel?

4 A. Yes, for all intents and purposes. I was --  
09:54:45 5 you know, we were partners together, and I was the  
6 general counsel.

7 Q. I forgot to ask about the Orchid Asset  
8 Advisors. What was your position with that entity?

9 A. I was the CEO and chief investment officer.

09:55:12 10 Q. All right. And in 2007 what did you do?

11 A. 2007 I had a falling out -- or my partners and  
12 I had a falling out at Noblemen Group and I withdrew  
13 and then began working -- looking at other deals and  
14 ultimately began advising a gaming company that was  
09:55:37 15 based here in Las Vegas on potential international  
16 expansion into Macau.

17 Q. And how long did that last?

18 A. That went on for two or three years.

19 Q. Okay. And were you engaged in any other  
09:56:03 20 business ventures during that time?

21 A. I would look at deals that came across my desk  
22 to determine whether I wanted to work on them. And,  
23 you know, there might have been a few small ones where  
24 I had some passing involvement.

09:56:33 25 Q. And were you just working as a consultant in

Peggy Isom, CCR 541, RMR

09:56:36 1 your own name or did you have an entity you were using?

2 A. I was working as a consultant in my own name  
3 and through my company, Kenworth Capital.

4 Q. And when did you first become involved with  
09:57:01 5 Kenworth Capital?

6 A. I established Kenworth sometime in the mid to  
7 late 2000s. I don't recall exactly when.

8 Q. What did Kenworth Capital do?

9 A. It was a boutique investment banking firm.

09:57:30 10 Q. So is it fair to say after you left Noblemen  
11 you established Kenworth?

12 A. Yes.

13 Q. What was your position with Kenworth?

14 A. President and CEO.

09:57:52 15 Q. And how many partners did you have in  
16 Kenworth?

17 A. None.

18 Q. How long were you involved with Kenworth?

19 A. Kenworth continues to exist until this day.

09:58:14 20 And so depending on whether I'm working on other  
21 transactions, I either spend all of my time working on  
22 Kenworth transactions or I focus on other ones through  
23 different legal entities.

24 Q. What kind of transactions does Kenworth focus  
09:58:33 25 on?

09:58:33 1 A. Ones that attract my attention and engage my  
2 brain. Sorry. It can be all over. I -- you know,  
3 largely real estate, which is an area where I've spent  
4 a lot of my career.

09:58:54 5 Q. Does Kenworth deal in EB-5 financing?

6 A. It did not. You know, I -- if I may explain.  
7 You know, Kenworth -- you know, I was working through  
8 Kenworth Capital on the Macau gaming deal that I worked  
9 on. I was doing that through Kenworth Capital. And I  
09:59:18 10 ended up taking a Macau gaming company public on NASDAQ  
11 through Kenworth.

12 And then I began -- you know, the transaction  
13 consumed a few years and endless amounts of time on an  
14 airplane flying back and forth to Macau. And so I  
09:59:38 15 really wanted to focus on something more in the United  
16 States. And at that point the EB-5 marketplace was  
17 really beginning to take off. And so I began to look  
18 at that and, you know, talk with some of my former law  
19 partners at Baker & McKenzie and determined whether  
10:00:00 20 that was a viable business opportunity.

21 Q. When did you begin to look into whether EB-5  
22 was a viable business opportunity?

23 A. I had been aware of EB-5 from its start in  
24 1990. It was at that point I was a partner at Baker &  
10:00:20 25 McKenzie. And one of my good friends from law school

Peggy Isom, CCR 541, RMR



10:00:26 1 headed up the firm's global immigration practice in  
2 Hong Kong. And so he was responsible for the  
3 immigration legal practice and I was doing real estate  
4 and real estate finance.

10:00:38 5 And Chinese investors in particular were  
6 beginning to look at moving, you know, out of Hong Kong  
7 and China to Canada and the United States using either  
8 the EB-5 program or the Canadian equivalent of it.

9 Q. And so about what year did you start talking  
10:01:03 10 to your friends at Baker McKenzie about whether EB-5  
11 was promising?

12 A. It was probably in the 2010 area period, I  
13 would think.

14 Q. All right. So Kenworth exists today.

10:01:36 15 Obviously, we all know we're here talking  
16 about an EB-5 loan involving Front Sight, correct?

17 A. Yes.

18 Q. And the main time frame we're going to talk  
19 about is from about 2012 really to the present; is that  
10:01:50 20 fair?

21 A. Correct.

22 Q. Okay. In this time frame of 2012 to the  
23 present, has Kenworth continued to explore  
24 opportunities and do business?

10:02:04 25 A. In EB-5?

Peggy Isom, CCR 541, RMR

10:02:05 1 Q. No. In general first?

2 A. What happened is as I decided that I was  
3 really going to focus on EB-5, for obvious business  
4 planning reasons, I then established EB-5 Impact  
10:02:22 5 Advisors, and Kenworth Capital largely went dormant at  
6 that point. And I focused my activities and energies  
7 on EB-5 through EB-5 Impact Advisors.

8 Q. Okay. So you mentioned that Kenworth was  
9 largely dormant?

10:02:44 10 A. Correct.

11 Q. Was Kenworth doing any business at all in the  
12 2012 to the present time frame?

13 A. Nothing of any significance.

14 Q. Okay. Not to quibble. When you say "nothing  
10:02:55 15 of any significance," can you define what  
16 "significance" is for me?

17 A. Anything that would generate substantial  
18 income.

19 Q. Okay. What is substantial income to you?

10:03:06 20 A. Depends on the year and the cash flow. A  
21 minimum of 100,000 to \$200,000.

22 Q. Net to you?

23 A. Yes.

24 Q. So is it fair to say then that in the 2012 to  
10:03:37 25 the present time frame, Kenworth was doing work; it

Peggy Isom, CCR 541, RMR

10:03:43 1 just was on transactions that would have netted  
2 Kenworth less than \$100,000?

3 A. There were no transactions during that period  
4 where Kenworth earned anything in that range. You know  
10:03:57 5 I consulted on a couple of projects but didn't make any  
6 money at it.

7 Q. Okay. So but Kenworth was still doing some  
8 things in that time frame?

9 A. Well, Kenworth was essentially myself. You  
10:04:11 10 know, I would hire employees from time to time if I  
11 needed them. But, you know, people would call me up  
12 and show me deals and ask if I was interested.

13 Q. Okay. So back to my question: Kenworth was  
14 doing work on other projects during the 2012 to the  
10:04:28 15 present time frame?

16 A. For -- in 2012, 2013, yes. But then we became  
17 so involved with Front Sight and EB5 Impact Advisors  
18 that Kenworth Capital really did go dormant.

19 Q. So Kenworth Capital went dormant after 2013?

10:04:53 20 A. In the 2012, 2013 period, yes.

21 Q. So ask you a couple questions. You mentioned  
22 earlier about Baker & McKenzie. You worked at Baker &  
23 McKenzie, correct?

24 A. Yes.

10:05:16 25 Q. When did you work at Baker & McKenzie?

Peggy Isom, CCR 541, RMR

10:05:19 1 A. From about 1983 or '84 until about 1990,  
2 approximately.

3 Q. And it's my understanding the EB-5 program was  
4 first established in about 1990, correct?

10:05:46 5 A. Yes.

6 Q. So when you were at Baker & McKenzie, what was  
7 your focus of your practice?

8 A. International joint ventures, finance, and  
9 real estate.

10:06:05 10 Q. And, obviously, it couldn't have been EB-5  
11 because EB-5 didn't exist yet, correct?

12 A. EB-5 did exist in 1990. It started in 1990.

13 Q. Okay. And did your practice at Baker &  
14 McKenzie involve EB-5 financing?

10:06:20 15 A. I worked on one small transaction where I was,  
16 as a partner, supervising some associates in the real  
17 estate group. And we were doing a transaction for an  
18 EB-5 investor.

19 Q. And between 1990 and 1998 -- if I asked you  
10:06:52 20 this already, I'm sorry -- what was your practice then  
21 and where were you?

22 A. Okay. In 1990, Jones Day recruited me away  
23 from Baker & McKenzie to head up their Asia practice.  
24 So I was at Jones Day for a couple of years. Got tired  
10:07:09 25 of the big firm politics, the rat race, and established

Peggy Isom, CCR 541, RMR

10:07:15 1 my own firm.

2 Q. That was about 1992?

3 A. '92, '93, somewhere in that period.

4 Q. What was your firm called?

10:07:27 5 A. Brand, Farrah, Dziubla, Freilich & Kolstad.

6 Q. Can you spell those? I believe the court

7 reporter needs it, but I certainly do.

8 A. Yes. Brand, B-R-A-N-D. And Farrah,

9 F-A-R-R-A-H. Dziubla, D-Z-I-U-B-L-A. Freilich,

10:07:48 10 F-R-E-I-L-I-C-H. Kolstad, K-O-L-S-T-A-D.

11 Q. Thank you. I appreciate that. There wasn't a

12 Smith in there.

13 A. There wasn't.

14 Q. All right. And so you were there for -- from

10:08:07 15 '93 to about '98?

16 A. Correct.

17 Q. And out of curiosity, is the name Brand, is

18 that the Mike Brand that I've seen in some of the

19 exhibits?

10:08:16 20 A. Yes.

21 Q. And what was the focus of your practice in

22 your own law firm?

23 A. It really continued to be international joint

24 ventures with a heavy focus on Japan. And then as

10:08:35 25 Japan sank into its ever-continuing recession, I really

Peggy Isom, CCR 541, RMR

10:08:41 1 switched my focus over to China.

2 Q. So what I -- I'm just going to let you know  
3 where I'm heading. I'm going to ask you some questions  
4 about your relationship with the defendants in this  
10:09:10 5 case.

6 I understand you're married to Linda Stanwood;  
7 is that correct?

8 A. Yes.

9 Q. What's your relationship with Jon Fleming?

10:09:22 10 A. I met Jon many years ago through a mutual  
11 friend's introduction. And we would get together for  
12 lunch every now and then and talk about deals that we  
13 were working on, see if there were opportunities for  
14 collaboration.

10:09:41 15 Q. And you said you met him many years ago. Can  
16 you give me just a rough estimate when that was?

17 A. After I moved back from Thailand, so it was  
18 probably 2006, 2007, 2008.

19 Q. Okay. And prior to -- strike that and back  
10:10:11 20 up.

21 Mr. Fleming was an officer in EB-5IC or IA?

22 A. IA.

23 Q. Okay. And before he became an officer in  
24 EB-5IA, had you worked with him before?

10:10:37 25 A. No.

10:10:41 1 Q. What was your understanding of his background?

2 A. Jon was a longtime banker. He had worked for  
3 Security Pacific and then for Home Federal Savings  
4 Bank. And then he left and struck out on his own.

10:10:59 5 Q. Okay. And when you say "he left and struck  
6 out on his own," did he have his own consulting firm or  
7 something, or do you mean when he joined EB-5IA?

8 A. He worked -- you better ask him about it.  
9 He's got a better knowledge of his history than I do.

10:11:14 10 Q. Sure. And I will ask him about it. I just  
11 want to know what your knowledge is.

12 A. He worked for a couple of small firms doing  
13 note sales and other financial transactions. And then  
14 he got tired of working for other people and had his  
10:11:30 15 own business for a number of years.

16 Q. Do you know the name of that business?

17 A. Legacy Realty Capital, I think.

18 Q. Do you currently work with Mr. Fleming in any  
19 capacity?

10:11:53 20 A. No.

21 Q. When was the last time that you talked to  
22 Mr. Fleming?

23 A. Yesterday.

24 Q. And do you know what Mr. Fleming's education  
10:12:19 25 is?

10:12:20 1 A. I know he graduated from college in Canada  
2 with a degree, I think, in business and economics or  
3 business economics or something of that sort.

4 Q. And prior to Mr. Fleming joining EB-5IA, what  
10:12:51 5 was his experience with EB-5 lending?

6 A. None.

7 Q. What is your relationship to the defendant  
8 EB-5IC?

9 A. I -- could you please explain who that is?

10:13:32 10 Q. EB-5 Impact Capital, which is the -- my  
11 understanding is the regional center.

12 A. Oh, the full name is EB-5 Impact Capital  
13 Regional Center, LLC.

14 Q. There you go.

10:13:42 15 A. Okay.

16 Q. Fair enough. I have been abbreviating those  
17 EB-5IC, and so that's what I mean when I refer to that.

18 A. Okay. Generally speaking, I would refer to it  
19 as the regional center.

10:13:56 20 Q. Fair enough. I will do my best to do that to  
21 make it easier for you. And I make no promises.

22 A. Thank you.

23 Q. So what is your relationship to the regional  
24 center?

10:14:06 25 A. I am the president and CEO and founder.

Peggy Isom, CCR 541, RMR



10:14:16 1 Q. Has that relationship changed at all or has it  
2 always been that?

3 A. It has always been that.

4 Q. And we have a defendant EB-5 Impact Advisors,  
10:14:32 5 LLC, which I refer to generally as EB-5IA. What's your  
6 relationship to EB-5IA?

7 A. I'm the founder, along with Mr. Fleming. And  
8 I was the president and CEO.

9 Q. And you say you were the president and CEO?

10:14:55 10 A. Yes. The entity is dissolved.

11 Q. During the existence of the EB-5IA, were you  
12 always the president and CEO?

13 A. Yes.

14 Q. Okay. Why was it dissolved?

10:15:14 15 A. Because there was no longer any need for it  
16 within our legal structure.

17 Q. And why is that?

18 A. Because its services had ended.

19 Q. And when you say "its services had ended,"  
10:15:32 20 what do you mean?

21 A. Its services had ended. It wasn't doing  
22 anything.

23 Q. I'll agree with that.

24 When you say "its services had ended," what  
10:15:46 25 services was EB-5IA engaged in?

Peggy Isom, CCR 541, RMR

10:15:50 1 A. We had an engagement letter with Front Sight  
2 to help them explore whether EB-5 financing would be a  
3 good fit for them and to establish a regional center  
4 and a funding platform to help raise the money for  
10:16:11 5 their long-promised resort.

6 Q. So had -- is it your position that EB-5IA had  
7 fulfilled its purpose before it dissolved?

8 A. Yes.

9 Q. All right. And what is your relationship to  
10:16:47 10 defendant Las Vegas Development Fund, LLC?

11 A. I am the president and CEO.

12 Q. And has that always been the case, or has that  
13 changed at all?

14 A. It has always been the case.

10:17:05 15 Q. During your testimony today, will you agree  
16 with me that you would be the proper person to speak on  
17 behalf of each of those defendant entities?

18 MR. GREER: Vague and ambiguous.

19 THE COURT: Anything you want counsel to add  
10:17:24 20 to that?

21 MR. ALDRICH: I guess I'll rephrase it if your  
22 Honor doesn't like the question.

23 THE COURT: No, no, I don't like it. Just  
24 anything you want to add. It seemed to me you were  
10:17:36 25 asking whether he would be the appropriate 30(b)(6) to

10:17:39 1 speak on behalf of those entities.

2 MR. ALDRICH: That is what I'm asking.

3 THE WITNESS: I'm sorry. I didn't hear that,  
4 your Honor.

10:17:44 5 THE COURT: Whether you would be the  
6 appropriate 30(b)(6) designee to speak on behalf of  
7 those entities. That's my understanding.

8 Is that correct, sir?

9 MR. ALDRICH: That's correct.

10:17:51 10 MR. GREER: It's vague and ambiguous as to  
11 which topics under the 30(b)(6).

12 THE COURT: Okay. You can, in general, ask  
13 him in general and then break it down into topics.

14 BY MR. ALDRICH:

10:18:07 15 Q. Let me ask you this: Is there anyone  
16 affiliated with the regional center, EB-5IA, or Las  
17 Vegas Development Fund that has more knowledge about  
18 those entities and their dealings in this case that  
19 we're here to talk about than you?

10:18:27 20 A. It would depend on the topic because Jon  
21 Fleming and I, you know, each had our roles. And on  
22 some topics he might have more knowledge than I do.

23 Q. Okay. What was Mr. Fleming's role?

24 A. Mr. Fleming was the senior vice president in  
10:18:44 25 each of those entities, and he was more deeply involved

10:18:52 1 in operational matters than I was.

2 Q. And when you say "more deeply involved in  
3 operational matters," what operational matters do you  
4 mean?

10:19:06 5 A. Operations and administration of the various  
6 entities.

7 Q. Which would include what?

8 A. Depending on time and energy and other things  
9 we had going on, he could be responsible for primarily  
10:19:28 10 maintaining and interacting with the EB-5 investors,  
11 with some of the agents. It was a two-person  
12 operation, and we both covered many bases depending on  
13 our time and availability.

14 Q. All right. So Mr. Fleming was senior vice  
10:20:03 15 president of the Regional Center, correct?

16 A. Yes.

17 Q. And has that relationship ever changed?

18 A. Yes.

19 Q. And when did it change?

10:20:15 20 A. The end of 2018.

21 Q. And how did it change?

22 A. Mr. Fleming withdrew from all three entities.

23 Wait a second. Was that 2017? I'm sorry.

24 2017. That's when he withdrew.

10:20:38 25 Q. End of 2017?

10:20:40 1 A. Correct.

2 Q. Why did he withdraw from those three entities?

3 A. Because he was going bankrupt and his wife was

4 very angry with him and wanted him to pursue other

10:21:03 5 business opportunities.

6 Q. So if I understand from what you said just a

7 minute ago, that you and Mr. Fleming were the only

8 people working on behalf of the Regional Center,

9 EB-5IA, and Las Vegas Development Fund?

10:21:47 10 A. Yes. We would hire independent contractors as

11 necessary to handle other matters that came up. And at

12 one point we also hired a young man by the name of

13 Ethan Devine to help us with the marketing in China and

14 internationally.

10:22:12 15 Q. Mr. Devine was an independent contractor,

16 correct?

17 A. Yes.

18 Q. All right. So the Regional Center is an LLC,

19 correct?

10:22:31 20 A. Yes.

21 Q. And it is 80 percent owned by defendant

22 EB-5IA, correct?

23 A. It was, yes.

24 Q. Okay. So is that not currently the case?

10:22:47 25 A. It is not.

Peggy Isom, CCR 541, RMR

10:22:47 1 Q. Okay. Who owns the Regional Center right now?

2 A. It is owned 80 percent by Kenworth Capital and

3 20 percent by Impact Econometrics LLC.

4 Q. And when did that change in ownership occur?

10:23:10 5 A. When Mr. Fleming withdrew from the companies.

6 Q. So at the end of 2017?

7 A. Correct.

8 Q. Okay. When was EB-5IA dissolved?

9 A. I'd have to look at the dissolution papers.

10:23:44 10 Sometime, I believe, in 2018.

11 Q. So in the time between when the ownership

12 changed in the Regional Center and you dissolved

13 EB-5IA, was EB-5IA still operating to raise funds for

14 the Front Sight project?

10:24:16 15 A. No.

16 THE COURT: What was that date again?

17 MR. ALDRICH: The ownership change occurred at

18 the end of 2017. We haven't gotten to the dissolution

19 yet. His recollection is it was in 2018.

10:25:19 20 BY MR. ALDRICH:

21 Q. Did you report to the USCIS that the ownership

22 of the Regional Center had changed?

23 A. We did that in our annual filing at the end of

24 2018.

10:25:46 25 Q. It was in your annual filing at the end of

Peggy Isom, CCR 541, RMR

10:25:49 1 2018?

2 A. Correct.

3 Q. Did you report it in your annual filing at the  
4 end of 2017?

10:25:54 5 A. It hadn't occurred yet.

6 Q. And does the USCIS give any sort of response  
7 when an ownership changes like that?

8 A. Not unless they have concerns for reasons that  
9 only they know.

10:26:11 10 Q. Okay. And did they express any concern to you  
11 about that ownership change?

12 A. No.

13 Q. I understand that the Regional Center is owned  
14 20 percent -- looks like I didn't write it down -- by  
10:26:29 15 an entity owned by Sean Flynn, correct?

16 A. Yes.

17 Q. Can you tell me the name of the entity? I'm  
18 sorry. I didn't write it down.

19 A. Impact Econometrics.

10:26:45 20 Q. Who is Sean Flynn?

21 A. Sean Flynn is a world-famous economist. He  
22 had been one of my students at USC back in the 1990s.  
23 He then went on and got his PhD at Berkeley in  
24 economics working under a couple of Nobel laureates.

10:27:08 25 He then became a professor of economics at Vassar

Peggy Isom, CCR 541, RMR

10:27:13 1 College. And then he moved to Scripps College where he  
2 was a professor of economics and has, from time to  
3 time, been the dean of the economics department.

4 Q. You said he was one of your students at USC?  
10:27:33 5 Is that when you were a master student or something?

6 A. I don't understand the question.

7 Q. You said he was one of your students at USC.  
8 I didn't remember you telling me you had taught, so I  
9 was trying to make that link real quick.

10:27:46 10 A. I've taught all of my life.

11 Q. Okay. And what is it that you taught  
12 Dr. Flynn?

13 A. Dr. Flynn I taught the Japanese self-defense  
14 martial art of Aikido.

10:28:03 15 Q. Okay. All right. I made an assumption. I  
16 shouldn't do that, should I?

17 So he was a martial arts student, not a  
18 student at USC?

19 A. He --

10:28:15 20 Q. I'm sorry. Can you explain that for me?

21 A. I was an adjunct law professor at USC where I  
22 taught international business transactions and  
23 international finance.

24 Q. Okay.

10:28:24 25 A. I also taught the Japanese martial art of



10:28:28 1 Aikido as a club at USC.

2 Sean was an undergrad at USC and joined the  
3 club, and he was one of my students at that time.

4 Q. All right. So what contribution did

10:29:00 5 Dr. Fleming make to earn his 20 percent interest in the  
6 Regional Center?

7 MR. GREER: You said Dr. Fleming.

8 MR. ALDRICH: Did I say Fleming? I'm sorry.  
9 Let me ask that again.

10:29:10 10 BY MR. ALDRICH:

11 Q. What contribution did Dr. Flynn make to earn  
12 the 20 percent in the Regional Center?

13 A. He contributed services and advice to the  
14 Regional Center.

10:29:25 15 Q. What services?

16 A. Economic impact advisory services with regard  
17 to EB-5.

18 Q. Okay. So he was a consultant?

19 A. He had his own company and he -- we engaged  
10:29:44 20 him and worked with him to analyze job creation for  
21 EB-5 projects.

22 Q. Okay. Did he do the economic study that was  
23 required for you to have the regional center approved?

24 A. Yes.

10:30:04 25 Q. Is there a conflict of interest that Dr. Flynn

10:30:11 1 prepared the economic study for a project that he has  
2 interest in?

3 A. I don't know the answer.

4 Q. Did Dr. Flynn have any role in the day-to-day  
10:30:30 5 operations of the Regional Center?

6 A. No.

7 Q. What compensation or benefits has Dr. Flynn  
8 received for his interest in the Regional Center?

9 A. He has been -- he's received payment for  
10:31:04 10 economic impact studies that he's done on various EB-5  
11 projects.

12 Q. So -- and I -- it sounded like that was plural  
13 for studies he has done?

14 A. Correct.

10:31:24 15 Q. Okay. And for -- when you say "for various  
16 projects," do you mean for projects besides the Front  
17 Sight project?

18 A. Correct.

19 Q. What other projects has he done an economic  
10:31:45 20 study for on behalf of this regional center?

21 A. None for this regional center.

22 Q. I'm sorry. Maybe I'm -- I'm confused. I  
23 asked what compensation or benefits he had received  
24 from the regional center.

10:32:02 25 A. My apologies. I misunderstood the question.

Peggy Isom, CCR 541, RMR

10:32:04 1 Q. Okay. So what compensation or benefits has  
2 Dr. Flynn received for his interest in the Regional  
3 Center, EB-5IC that's involved in this litigation?

4 A. He received an ownership stake of 20 percent  
10:32:25 5 in return for doing the economic impact analysis.

6 Q. And has he received any sort of compensation  
7 for that 20 percent?

8 A. We have referred him to other EB-5 projects  
9 for other regional centers, because we have  
10:32:45 10 relationships in -- across the industry. And so when  
11 we weren't directly involved, we would refer Sean to  
12 those projects and he would get compensated for them.

13 Q. Would that compensation come through your  
14 regional center?

10:32:59 15 A. No.

16 Q. Okay. So what compensation or benefits has  
17 Dr. Flynn received from your regional center?

18 A. Just referrals.

19 Q. So he's received no cash payment whatsoever  
10:33:15 20 for his involvement in the regional center?

21 A. Correct.

22 Q. Did he receive a cash payment for drafting the  
23 economic study related to this Front Sight project?

24 A. No.

10:33:27 25 Q. Did Front Sight give you \$20,000 for him to --

10:33:31 1 for Dr. Flynn to conduct an economic study?

2 A. Yes.

3 Q. What happened to the \$20,000 that Front Sight  
4 gave you?

10:33:40 5 A. We used it to cover operating expenses and  
6 keep the doors open.

7 Q. Did you disclose to Front Sight that you took  
8 the \$20,000 and used it for operating expenses?

9 A. No.

10:34:14 10 Q. Would you agree with me that \$20,000 was given  
11 to you specifically for Dr. Flynn's economic study?

12 A. No, I would not agree with that.

13 Q. Okay. Why would you disagree?

14 A. It was given to EB-5 Impact Analysis -- Impact  
10:34:33 15 Advisors to provide to Front Sight an economic impact  
16 analysis on their project, and that's exactly what they  
17 got.

18 Q. All right. Besides this Front Sight project,  
19 what is your experience in EB-5 lending?

10:35:02 20 A. This was our first direct project.

21 Q. So it was your first project and it was Jon  
22 Fleming's first EB-5 project; is that fair?

23 A. Yes.

24 Q. Besides the Front Sight project and the  
10:35:48 25 project that you oversaw as a partner at Baker &

10:35:53 1 McKenzie in 1990, did you have any experience in EB-5  
2 lending?

3 A. No.

4 Q. How was the regional center capitalized?

10:36:33 5 A. Jon and I each put in our initial  
6 contributions. I forgot exactly what it was. It was a  
7 couple thousand dollars.

8 Q. A couple thousand dollars apiece or total?

9 A. I'd have to go back and look at the paperwork.

10:36:58 10 It's been a long time.

11 Q. Fair to say that the total capitalization that  
12 came from you and Mr. Fleming was under \$5,000?

13 A. Again, I would need to look at the paperwork  
14 to figure that out.

10:37:17 15 Q. Do you have that paperwork available to you?

16 A. (No audible response.)

17 Q. Not today. I mean that you could look at  
18 after today.

19 A. I might. It was a long time ago.

10:37:39 20 Q. Was there subsequent capitalization of the  
21 regional center?

22 A. Yes.

23 Q. Where did that money come from?

24 A. It came from us and from administration fees

10:37:54 25 that we received early on in the Front Sight

10:37:59 1 transaction from the investors.

2 Q. When you say "us," whom do you mean?

3 A. I mean the regional center.

4 Q. Okay. I'm talking -- I'm asking about

10:38:15 5 subsequent capitalization of the regional center.

6 A. Right.

7 Q. Okay.

8 A. The Regional Center, you know, we may well

9 have put money directly in out of our own pockets. And

10:38:26 10 we also -- the Regional Center received money from

11 investors' administration fees.

12 Q. So investors had an administration fee of

13 \$50,000?

14 A. Yes.

10:38:41 15 Q. And that's the administration fee you're

16 referring to?

17 A. That was the total administration fee that

18 they paid for the transaction. It's not the amount

19 that the Regional Center received.

10:38:52 20 Q. Okay. How is it determined what amount the

21 Regional Center would receive?

22 A. Based on individual negotiations with the

23 agents.

24 Q. Was every transaction different?

10:39:10 25 A. Pretty much.

Peggy Isom, CCR 541, RMR

10:39:11 1 Q. Okay. Can you give me an estimate what an  
2 average would be? Of that \$50,000, did the Regional  
3 Center get half or 30 percent?

4 MR. GREER: I just want to object, your Honor,  
10:39:26 5 to the extent this -- the exact amount and the type of  
6 financial relationship that the Regional Center and LVD  
7 Fund has with agents is a trade secret, very  
8 proprietary and, if released publicly, would cause them  
9 to lose their agents. But more importantly, that Front  
10:39:44 10 Sight has been trying to get their hands on that  
11 information from both LVD Fund and the Regional Center  
12 for a long period of time. And they've not shared it  
13 because they're direct competitors that end runned it  
14 around them before.

10:39:57 15 So while generalities, I think, may be okay,  
16 we're going to be delving into an area here where this  
17 is -- this is like the -- you know, the formula for  
18 Coca-Cola kind of level of trade secret, and would ask  
19 that the witness not be required to disclose that  
10:40:13 20 information, particularly to a competitor. I don't  
21 know where counsel is going. I kind of intervened  
22 there to kind of, like, set parameters, if we could.

23 MR. ALDRICH: As to the question that I asked,  
24 I asked for roughly an average of how much would come  
10:40:35 25 to the Regional Center. I'm definitely going to ask

10:40:38 1 for more information later, but --

2 THE COURT: And that would be of the \$50,000?

3 THE WITNESS: That's correct.

4 MR. ALDRICH: That's correct.

10:40:44 5 THE WITNESS: It varied from one investor to

6 another investor.

7 BY MR. ALDRICH:

8 Q. Understood. In this -- in this deal we're

9 here talking about involving Front Sight, there are 13

10:40:57 10 investors, correct?

11 A. No. There are more than that at this point.

12 Q. I'll rephrase that.

13 The amount that's been provided from Las Vegas

14 Development Fund to Front Sight involves money received

10:41:10 15 from how many investors?

16 A. I would need to look at my records.

17 Q. Okay. You don't know as you sit here?

18 A. Not offhand. It's probably in the --

19 somewhere between 12 and 17 investors.

10:41:23 20 Q. Okay. And you can't give me a rough average

21 of whether it would be half of the \$50,000

22 administration fee or 30 percent, on average?

23 A. It started out to be a decent amount and it

24 has dwindled to virtually nothing.

10:41:51 25 Q. Okay. Started out to be a decent amount

Peggy Isom, CCR 541, RMR



10:41:54 1 meaning how much?

2 A. Less than 50 percent.

3 Q. And now you're saying it has dwindled to where

4 there is no --

10:42:14 5 A. Virtual --

6 Q. -- no administration?

7 A. Nothing or virtually nothing.

8 Q. Okay. So that's the administrative fees.

9 As to subsequent capitalization beyond the

10:42:30 10 first couple thousand dollars that you and Mr. Fleming

11 put in, did you put more money into the Regional

12 Center?

13 A. The Regional Center had income from its

14 business activities, and we then used that to

10:42:46 15 capitalize EB5 Impact Advisors because it was starving

16 of capital.

17 Q. What income and what business activities did

18 the Regional Center have beyond the Front Sight

19 project?

10:43:08 20 A. Front Sight was the only one we were handling

21 at that point. And then a couple of years ago, we

22 looked at another one, and we received some initial

23 income for that.

24 Q. So when you say "a couple of years ago," you

10:43:28 25 mean literally in 2017 or could it have been 2016?

Peggy Isom, CCR 541, RMR

10:43:32 1 A. I'd have to look at my records.

2 Q. Okay. What's your best estimate?

3 A. I'd have to look at my records.

4 Q. You don't have any estimate?

10:43:42 5 A. No.

6 Q. Do you have records that would tell you?

7 A. Yes.

8 Q. Okay. Can you look at the records tonight so

9 we can talk about it tomorrow?

10:43:56 10 A. I'm not sure if I can look at them tonight.

11 They're at my office. But I can try.

12 Q. This other project, what did it involve?

13 A. It involved what in the industry we call a

14 rent-a-center project -- a rent-a-center model where a

10:44:17 15 project needed EB-5 sponsorship, and so we would agree

16 simply on paper to sponsor it within the parameters of

17 the federal EB-5 program.

18 Q. So you said you agree on paper to sponsor it.

19 What becomes your regional center's responsibilities?

10:44:45 20 A. It's spelled out in the sponsorship agreement,

21 but essentially it is simply to be a rent-a-center

22 sponsoring the project that the developer and its

23 immigration agents abroad are doing.

24 Q. So when you say "be a rent-a-center," what do

10:45:06 25 you mean?

Peggy Isom, CCR 541, RMR

10:45:07 1 A. We agree to sponsor the program -- the project  
2 within the parameters of the EB-5 program.

3 Q. Is your role as a rent-a-center different than  
4 the regional center's role in Front Sight's project?

10:45:23 5 A. Yes. Substantially.

6 Q. How?

7 A. In the Front Sight project, the Regional  
8 Center is the majority owner in Las Vegas Development  
9 Fund, and we agreed to use our best efforts to raise  
10:45:39 10 EB-5 financing for Front Sight.

11 Q. Okay. In your role as a rent-a-center, how  
12 does that differ?

13 A. We do none of the fund-raising.

14 Q. And how many of the projects did the Regional  
10:46:09 15 Center engage in as a rent-a-center?

16 A. I believe it was just one.

17 Q. And did that project go through to fruition?

18 A. It did not.

19 Q. How much in fees did the Regional Center  
10:46:36 20 receive for that other project?

21 A. It was many thousands of dollars.

22 Q. More than 10,000?

23 A. I'd have to look at my records, but probably.

24 Q. More than 25?

10:46:49 25 A. No.

Peggy Isom, CCR 541, RMR

10:47:06 1 Q. So beyond that one project as a rent-a-center,  
2 has the Regional Center been engaged in any other EB-5  
3 funding projects while it's been in existence?

4 A. No.

10:47:30 5 Q. Regarding the Regional Center EB-5IC, did  
6 Front Sight contribute any capital to that entity?

7 A. Pursuant to the engagement letter, we had an  
8 agreed -- a proposed budget, and Front Sight agreed  
9 that they would fund the establishment of our regional  
10 center so that we could sponsor their project.

10:47:55 10 Q. And about how much did Front Sight provide for  
11 the regional center?  
12

13 A. Pursuant to the budget attached to the  
14 engagement letter.

10:48:23 15 Q. You don't remember that amount?

16 A. If you hand me the engagement letter and the  
17 budget, I'll tell you.

18 Q. We'll get to it. Just want to know if you  
19 remember.

10:48:33 20 A. Okay. It was probably in the neighborhood of  
21 \$250,000 for all of the activities specified in the  
22 engagement letter.

23 Q. Regarding the Regional Center, I assume there  
24 are business expenses associated with the Regional  
10:49:03 25 Center?

Peggy Isom, CCR 541, RMR

10:49:04 1 A. Modest annual filing fees.

2 Q. Okay. And any expenses that were paid on

3 behalf of the Regional Center, you would keep records

4 for whatever those expenses were, correct?

10:49:21 5 A. Yes.

6 Q. Were you the person who approved the

7 expenditures?

8 A. Yes.

9 Q. Did Mr. Fleming have authority to approve

10:49:31 10 expenditures for the Regional Center?

11 A. Not to approve. We would discuss them and

12 then I would make the final decision.

13 Q. All right. Regarding defendant EB-5IA, how

14 was that capitalized initially?

10:50:10 15 A. We contributed a few thousand dollars.

16 Q. "We" being you and Mr. Fleming?

17 A. Correct.

18 Q. Was there subsequent capitalization of EB-5IA?

19 A. Yes.

10:50:41 20 Q. And where did those funds come from?

21 A. The Regional Center.

22 Q. Did they come from any other source besides

23 the Regional Center?

24 A. No.

10:51:24 25 Q. All right. So if there were expenses related

Peggy Isom, CCR 541, RMR

10:51:30 1 to the business operations of EB-5IA, you would have  
2 approved those expenditures, correct?

3 A. Yes.

4 Q. Did Mr. Fleming have authority to approve the  
10:51:44 5 expenditures?

6 A. After consultation with me, he could.

7 Q. But you were -- you had the final say?

8 A. Yes.

9 Q. Did you have an internal policy that sort of  
10:52:06 10 gave a criteria for approval of expenditures?

11 A. No.

12 Q. And did you keep records such as receipts and  
13 invoices related to the expenditures of EB-5IA?

14 A. We had credit card statements, and we kept  
10:52:38 15 them for a while. And then we tossed them a few  
16 years -- you know, later on after time had passed  
17 simply because time had passed and we had bank  
18 statements, credit card statements, checks, and, you  
19 know, our QuickBooks ledger.

10:52:56 20 Q. So you're telling me that you tossed the  
21 underlying records?

22 A. Many times we didn't even have the records.  
23 We had the bank statements. We had debit cards. We  
24 didn't have credit cards. So generally speaking, we  
10:53:11 25 put it through the debit card and it showed up on the

Peggy Isom, CCR 541, RMR

10:53:14 1 bank statement.

2 Q. And so you didn't keep the receipt related to  
3 the expenses that would show up on the bank statement?

4 A. No.

10:53:27 5 Q. Did you ever keep any receipts for the  
6 expenses that would show up on the bank statements?

7 A. Some of them, yes. If they came -- if we were  
8 paying with checks, we would often keep the invoices.

9 Q. Did you file taxes for EB-5IA every year?

10:53:54 10 A. I'm not sure if -- I think we did, but I'm not  
11 sure if my accountants rolled it up into the upstream  
12 entities or not. I'd have to look.

13 Q. And you didn't have to provide receipts and  
14 invoices to your accountant so you could do taxes?

10:54:09 15 A. We gave them what we had and gave them the  
16 bank statements and the credit cards statements.

17 Q. Have you disposed of any receipts, invoices,  
18 or underlying documentation for expenses from EB-5IA  
19 since it was dissolved?

10:54:39 20 A. No.

21 Q. You're aware that in this litigation plaintiff  
22 brought a motion to compel an accounting, correct?

23 A. Yes.

24 Q. And that motion was granted, correct?

10:55:00 25 A. Yes.

Peggy Isom, CCR 541, RMR

10:55:01 1 Q. And you, through your counsel, have provided  
2 documents to plaintiff, correct?  
3 A. Yes.  
4 Q. Have you provided every document that you have  
10:55:11 5 that relates to that order compelling the accounting?  
6 A. Yes.  
7 THE COURT: You want to take a break?  
8 MR. ALDRICH: If we need a break, that's fine.  
9 THE COURT: Okay. You want a break, Peggy?  
10:55:44 10 Okay. We'll take 15.  
11 MR. ALDRICH: Okay.  
12 -o0o-  
13 (Recess)  
14 -o0o-  
15 THE COURT: I'm ready when you are.  
11:24:18 16 MR. ALDRICH: Okay. I didn't want to start  
17 too quickly. Thank you.  
18 BY MR. ALDRICH:  
19 Q. I couldn't clear my throat.  
20 All right. Mr. Dziubla, before we took a  
11:24:32 21 break -- excuse me -- I had asked you about some  
22 records that were kept and then discarded related to  
23 EB-5IA.  
24 Have you discarded any records related to  
25 EB-5IC, the Regional Center?  
A. I couldn't say offhand. I don't think so, but

Peggy Isom, CCR 541, RMR



11:25:01 1 I can't say definitively.

2 Q. Okay. And why would you have kept all the  
3 records for the Regional Center but not for EB-5IA?

4 MR. GREER: Well, your Honor, if I could.

11:25:11 5 This is a discovery motion. This is a preliminary  
6 injunction regarding a lender and a borrower. And I  
7 think it's not a proper venue for digging into  
8 discovery fishing-type expeditions.

9 MR. ALDRICH: Well, it is pertinent. We have  
11:25:29 10 fraud allegations and other things like that.

11 THE COURT: We're not -- you're not asking  
12 whether he should produce them today. You're just  
13 asking him whether records were kept or not?

14 MR. ALDRICH: That is correct.

11:25:39 15 THE COURT: Okay. Overruled.

16 Go ahead.

17 THE WITNESS: Could you please repeat the  
18 question?

19 MR. ALDRICH: Sure.

11:25:45 20 BY MR. ALDRICH:

21 Q. I believe it was: Can you tell me why you've  
22 not discarded any of the records related to the  
23 Regional Center, but you have discarded records related  
24 to EB-5IA?

11:26:03 25 A. That's not what I said.

11:26:04 1 MR. GREER: Misstates testimony. Lacks  
2 foundation that they were discarded.  
3 THE COURT: Okay. He disagrees.  
4 MR. GREER: I understand.  
11:26:13 5 THE WITNESS: That's not what I said. What I  
6 said is we may have discarded records from the Regional  
7 Center. I don't know. Offhand, I don't think so, but  
8 we set it up a long time ago, and there was really very  
9 little activity per se in the Regional Center.  
11:26:31 10 BY MR. ALDRICH:  
11 Q. Is there any obligation through USCIS  
12 regulations for you to keep accurate records for the  
13 Regional Center?  
14 A. Accurate records for sponsorship of EB-5  
11:26:51 15 projects, yes.  
16 Q. Any records related to expenditures of the  
17 Regional Center?  
18 A. Not that I know of offhand.  
19 Q. Las Vegas Development Fund LLC is the lender  
11:27:23 20 in this case, correct?  
21 A. Yes.  
22 Q. And how was Las Vegas Development Fund  
23 capitalized?  
24 A. Again, we contributed a few thousand dollars  
11:27:32 25 of capital to set it up.

Peggy Isom, CCR 541, RMR

11:27:34 1 Q. And when you say "we," you mean yourself and  
2 Mr. Fleming?

3 A. Perhaps. Or we might have done it through the  
4 Regional Center. I'd really have to check the records  
11:27:56 5 and see exactly how it was done.

6 Q. And was there any subsequent capitalization of  
7 Las Vegas Development Fund?

8 A. No further paid-in capital that I remember.

9 Q. Can you explain to me how -- what role Las  
11:28:31 10 Vegas Development Fund plays in the EB-5 lending  
11 mechanism in this transaction?

12 A. It is the secure construction lender to Front  
13 Sight.

14 Q. So where does the money come from for Las  
11:28:47 15 Vegas Development Fund to lend?

16 A. From our EB-5 investors.

17 Q. And just so that I'm sure we're talking about  
18 the same -- on the same terms, money from the EB-5  
19 investors that comes into Las Vegas Development Fund is  
11:29:10 20 not considered capital, is that fair?

21 A. It's the -- they come in as Class B members  
22 into the LLC and they pay the subscription amount  
23 pursuant to the offering documents. And then we lend  
24 that money to Front Sight.

11:29:32 25 Q. And the subscription amount is \$500,000?

Peggy Isom, CCR 541, RMR

11:29:35 1 A. Yes.

2 Q. Does Las Vegas Development Fund have expenses,  
3 operating expenses?

4 A. Yes.

11:29:48 5 Q. Okay. And how are those paid?

6 A. Those are paid with money that we receive from  
7 Front Sight as interest payments.

8 Q. Do the individual investors receive any  
9 portion of the interest payments?

11:30:14 10 A. Yes.

11 Q. What portion do they receive?

12 A. Pursuant to the subscription agreement on the  
13 offering documents, they receive 1 percent.

14 Q. And when there are expenses of Las Vegas  
11:30:35 15 Development Fund, who approves those?

16 A. I do.

17 Q. Does Mr. Fleming have authority to approve  
18 expenses for Las Vegas Development Fund?

19 A. Not anymore.

11:30:49 20 Q. Okay. Did he before?

21 A. In consultation with me, he could have.

22 Q. But you remain the final approver, correct?

23 A. Correct.

24 Q. And was there any internal criteria that Las  
11:31:06 25 Vegas Development Fund has for approving expenses?

Peggy Isom, CCR 541, RMR

11:31:11 1 MR. GREER: Object as vague and ambiguous.  
2 THE COURT: Anything you want to add, sir?  
3 MR. ALDRICH: I'm sorry?  
4 THE COURT: I just want to make sure your  
11:31:25 5 response.  
6 MR. ALDRICH: No. I'll rephrase if the Court  
7 tells me to.  
8 THE COURT: You can rephrase.  
9 MR. ALDRICH: Okay.  
11:31:30 10 BY MR. ALDRICH:  
11 Q. Does Las Vegas Development Fund have an  
12 internal process for approving expenses?  
13 A. We pay all of our obligations.  
14 Q. Okay. Is there -- did you have some sort of  
11:31:49 15 criteria for deciding what was a valid expense and what  
16 was not?  
17 A. Well, I look at it and decided whether it's a  
18 legal obligation of the company to pay it. And if it's  
19 an obligation, we pay it.  
11:32:03 20 Q. So you're the decision maker on that, correct?  
21 A. Yes.  
22 Q. And do you keep records related to expenses  
23 such as receipts and invoices for Las Vegas Development  
24 Fund?  
11:32:28 25 A. As I responded earlier, we have the bank

Peggy Isom, CCR 541, RMR

11:32:31 1 statements, we use debt cards, we've got the  
2 QuickBooks. And if we have, you know, a formal invoice  
3 from a contractor, we may keep it for a period of time.

4 Q. And have you discarded any invoices or  
11:32:51 5 receipts related to expenses of Las Vegas Development  
6 Fund?

7 A. Not that I remember.

8 Q. So if I'm understanding correctly, the only  
9 entity you remember throwing out the invoices and  
11:33:08 10 receipts is for EB-5IA?

11 MR. GREER: Misstates testimony.

12 THE WITNESS: I didn't say we threw them out.  
13 I said we may have. I don't remember. It was many  
14 years ago.

11:33:27 15 BY MR. ALDRICH:

16 Q. All right. I'm going to talk about a couple  
17 of things here. I want to, I guess, lay down a couple  
18 of things, make sure we're on the same page. There's  
19 some -- it's a government discussion here, so there's  
11:33:43 20 numbers and letters and all that stuff, so...

21 If I understand correctly, before my 924 is  
22 the application that you submitted for EB-5 Impact  
23 Capital to become a regional center; is that correct?

24 A. To receive federal government approval as a  
11:34:09 25 regional center, yes.

Peggy Isom, CCR 541, RMR

11:34:09 1 Q. Okay. And then an I-526 is the first  
2 application that each individual investor submits?  
3 A. Correct.  
4 Q. Okay. And then the IA29 is the immigrant  
11:34:29 5 investors application to remove the conditions and  
6 receive permanent status?  
7 A. Correct. At the end of the investment period.  
8 Q. Okay.  
9 A. When the jobs have been proved up.  
11:34:42 10 Q. There you go. The jobs proved up or money at  
11 risk; right?  
12 A. Correct.  
13 Q. So prior to your application for this regional  
14 center, how many times had you set up a regional  
11:35:13 15 center?  
16 A. None.  
17 Q. How did you learn about the requirements to  
18 set up a regional center?  
19 A. I hired EB-5 counsel and received his advice.  
11:35:32 20 Q. And who was that?  
21 A. Matthew Schulz.  
22 Q. And did you create a new regional center  
23 instead of working with an existing one?  
24 A. Because Front Sight asked us to.  
11:36:02 25 Q. Who at Front Sight asked you to?

Peggy Isom, CCR 541, RMR

11:36:05 1 A. Mr. Piazza and Mr. Meacher.

2 Q. Did you make Front Sight aware that the  
3 approval process for a new regional center back in 2013  
4 was about 12 to 24 months?

11:36:27 5 A. The timeline was attached to the engagement  
6 letter.

7 Q. So let me -- I'm going to ask you this  
8 question again.

9 Did you advise them that the approval process  
11:36:47 10 for a new regional center back in 2013 was  
11 approximately 12 to 24 months?

12 A. Yes.

13 Q. And that that timeline is attached to the  
14 engagement letter?

11:37:03 15 A. Yes. Whether or not that timeline is exactly  
16 12 to 24 months or a little shorter or a little longer,  
17 I don't know. You can show me the engagement letter.

18 Q. And in this instance, meaning this case, this  
19 project, it took about 15 months to obtain approval for  
11:37:34 20 the regional center, correct?

21 A. I believe it was about that amount, yes.

22 Q. So if you had entered into an agreement to do  
23 this project with an existing regional center, it would  
24 have saved 15 months, correct?

11:37:57 25 A. Perhaps.

Peggy Isom, CCR 541, RMR



11:38:04 1 Q. There's reference in the documents to this  
2 Emyrean West entity. Are you familiar with that  
3 entity?

4 A. Yes.

11:38:11 5 Q. They were an approved regional center at the  
6 time, weren't they?

7 A. Yes.

8 Q. And you actually called them a partner in your  
9 early correspondence to Front Sight, correct?

11:38:23 10 A. I'd have to look at the -- whatever document  
11 it is you're referring to. But we had, quote, unquote,  
12 partnered with Liberty West, Emyrean West to possibly  
13 sponsor the Front Sight project as a rent-a-center.

14 Q. All right. If you would, in the binders --  
11:39:00 15 it's the first binder, Volume I. If you'll turn to  
16 Exhibit 3 for me.

17 MR. ALDRICH: Your Honor, just so your Honor  
18 is aware, we had a discussion when the Court wasn't  
19 here. We've talked about these exhibits. We're not  
11:39:40 20 necessarily admitting them all. We don't think there's  
21 going to be a lot of objection, but I let Mr. Greer  
22 know that I would give him a moment to take a quick  
23 look and let me know if he objects and then whether I  
24 need to lay a foundation or we just agree it's  
11:39:54 25 admitted.

Peggy Isom, CCR 541, RMR

11:39:55 1 THE COURT: I understand.

2 MS. HOLBERT: 3; right?

3 MR. ALDRICH: Exhibit 3.

4 MR. GREER: Just a quick question. Exhibit 3

11:40:08 5 is dated -- is the letter dated February -- or

6 September 13th?

7 MR. ALDRICH: Yes.

8 MR. GREER: That's the one.

9 (A discussion was held off the record.)

11:40:22 10 MR. GREER: No objection, your Honor.

11 THE COURT: All right.

12 BY MR. ALDRICH:

13 Q. All right. Mr. Dziubla, can you do me a favor

14 and turn to page 2 of Exhibit 3. And if -- I'll just

11:40:50 15 let you know, Mr. Dziubla, and the Court, to clear any

16 confusion. So there's Bates labels at the bottom. So

17 if there's confusion and you ask me for the Bates

18 label, sometimes I may mix them up.

19 But it's the second page of this document in

11:41:05 20 Exhibit 3 that I'm looking at in the -- that first full

21 paragraph that has the No. 2 next to it, third line

22 from the bottom where it says "our partners."

23 Do you see that?

24 A. I do.

11:41:23 25 Q. So "Our partners, Emyrean West (Dave Keller

Peggy Isom, CCR 541, RMR

11:41:28 1 and Jay Carter), are the owners and managers of a USCIS  
2 approved regional center, Liberty West Regional Center,  
3 through which we will invest the \$65 million of EB-5  
4 funding."

11:41:45 5 Did I read that correctly?

6 A. That's what it says.

7 Q. All right. So your representation to them was  
8 that, indeed, Emyrean West was your partner, correct?

9 A. In the generic term, yes.

11:41:56 10 Q. Okay. There's also reference in this document  
11 to the \$65 million of EB-5 funding, correct, that we  
12 just looked at?

13 A. Yes.

14 Q. Did you ever speak or consult with any person  
11:42:25 15 or entity related to an existing regional center before  
16 you created the Regional Center EB-5IC?

17 A. Yes.

18 Q. Okay. With whom did you speak?

19 A. Emyrean West.

11:42:39 20 Q. Anybody else?

21 A. Yes.

22 Q. Who else?

23 A. Several other regional centers. I'd have to  
24 look at my records.

11:42:52 25 Q. Do you have records that would tell you who

11:42:55 1 else you consulted with?

2 A. Yes, probably.

3 Q. All right. And -- strike that. Sorry.

4 If you'll turn back one page to the first page

11:43:32 5 of Exhibit 3. Under the heading "Background/Project  
6 Scope," do you see where I am?

7 A. Yes.

8 THE COURT: Is that page 1?

9 MR. ALDRICH: It is the first page of

11:43:45 10 Exhibit 3, yes.

11 THE COURT: Okay. 005?

12 MR. ALDRICH: Yes, your Honor.

13 THE COURT: Okay.

14 BY MR. ALDRICH:

11:43:54 15 Q. All right. In that section,

16 Background/Project Scope, second sentence says, "The  
17 first tranche will be about \$65 million," correct?

18 A. Yes.

19 Q. Then if we jump down to the next paragraph.

11:44:14 20 It says, "The follow-on 100 million to be raised in  
21 Phases 2 and 3 of the development will be applied to

22 building additional hospitality and recreational

23 facilities at Pahrump, plus acquisition and development

24 of additional Front Sight training facilities in other

11:44:33 25 parts of the country."

Peggy Isom, CCR 541, RMR

11:44:34 1 Did I read that correctly?

2 A. You did. This is what Front Sight had  
3 proposed raising.

4 Q. And you are making a proposal to Mr. Meacher  
11:44:45 5 that you're going to raise \$165 million, correct?

6 A. No.

7 Q. Okay. So it's your position that you're not  
8 telling him you can raise \$165 million?

9 A. No.

11:45:02 10 Q. On that same page under the heading "EB-5  
11 Financing for Front Sight," the second sentence starts,  
12 "In just Q1 of 2012."  
13 Do you see where I am?

14 A. Yes.

11:45:32 15 Q. "In just Q1 of 2012, \$1.2 billion of EB-5  
16 financing poured into the United States, and 70 percent  
17 of that amount came from China, i.e., \$840 million. On  
18 an annualized basis, therefore, we can expect about  
19 \$3.36 billion of EB-5 money to be invested into the US  
11:45:56 20 from Chinese investors."  
21 Did I read that correctly?

22 A. You did read it correctly.

23 Q. Of the \$1.2 billion that was raised in 2012,  
24 Quarter 1, what percentage of that were you involved  
11:46:11 25 in?

Peggy Isom, CCR 541, RMR

11:46:12 1 A. None.

2 Q. And where did you get those statistics?

3 A. From USCIS and other industry publications.

4 Q. Did you disclose to Front Sight that you had

11:46:24 5 absolutely no involvement in any of that EB-5 funding

6 you reference in this paragraph?

7 A. Of course.

8 Q. Did you do that in writing?

9 A. No.

11:47:07 10 Q. All right. If you'll go ahead and turn the

11 page to page 2 of that letter. It's 0006 at the

12 bottom. Under No. 4, "Compatible Timing."

13 Do you see where I am?

14 A. I do.

11:47:21 15 Q. It says, "EB-5 funding initiatives typically

16 take five to eight months before first funds are placed

17 into escrow with a balance of the funds being deposited

18 during the next six to eight months."

19 Did I read that correctly?

11:47:34 20 A. You did.

21 Q. Is that a true statement?

22 A. Yes. At that point in time it typically,

23 according to industry standards, was taking about that

24 amount of time.

11:47:45 25 Q. And if you were going to create a regional

Peggy Isom, CCR 541, RMR

11:47:47 1 center, that timeline is not correct, is it?

2 A. I don't understand the question.

3 Q. If you are going to create a regional center,  
4 meaning use a regional center that's not already in

11:48:05 5 existence, the timeline set forth in that paragraph is  
6 wrong, correct?

7 A. It would have been appropriate for a  
8 rent-a-center model such as was contemplated by this  
9 letter with -- that included Emyrean West that had an  
11:48:22 10 approved regional center.

11 Q. And at this point when this representation was  
12 made, how many EB-5 jobs had you done through a  
13 rent-a-center?

14 A. None.

11:48:53 15 Q. All right. Let's move up a couple of  
16 paragraphs. Under No. 3, the second paragraph under  
17 No. 3 that says, "I personally have been conversant."

18 Do you see where I am?

19 A. Yes.

11:49:07 20 Q. You state, "I have personally" -- sorry. "I  
21 personally have been conversant with and involved in  
22 EB-5 financing since the program was first established  
23 in 1990 as one of my oldest friends and a fellow  
24 partner of mine at Baker & McKenzie, the world's  
11:49:26 25 largest law firm, ran the firm's global integration

Peggy Isom, CCR 541, RMR

11:49:31 1 practice out of Hong Kong office."  
2 Did I read that correctly?  
3 A. You did.  
4 Q. Would you agree with me that by saying you are  
11:49:39 5 personally conversant since 1990, you leave the  
6 impression that you know what you're doing in EB-5  
7 funding?  
8 MR. GREER: Calls for speculation.  
9 THE COURT: I'll overrule.  
11:49:50 10 THE WITNESS: As I say, I have been conversant  
11 with EB-5. That's exactly what it says.  
12 BY MR. ALDRICH:  
13 Q. What does that mean?  
14 A. Please look at a dictionary.  
11:50:02 15 Q. So will you agree with me that by saying that  
16 you've been conversant in EB-5 funding since 1990, that  
17 you have given Front Sight the impression that you know  
18 what you're doing in EB-5 lending?  
19 MR. GREER: Again, calls for speculation.  
11:50:16 20 Asks for the opinion or thoughts of another person.  
21 MR. ALDRICH: Who signed the letter?  
22 THE WITNESS: I did.  
23 MR. ALDRICH: His words.  
24 THE COURT: I'll overrule. Go ahead.  
11:50:31 25 THE WITNESS: Can you restate the question,

Peggy Isom, CCR 541, RMR



11:50:33 1 please?

2 BY MR. ALDRICH:

3 Q. Is it possible to read the question back?

4 (Requested portion was readback by the  
5 court reporter)

11:50:36

6 MR. GREER: Calls for speculation of what  
7 Front Sight thinks.

8 THE COURT: Overruled.

9 THE WITNESS: I have no idea what Front Sight  
10 thought about this. It says what it says. And I had  
11 told them that we were embarking on this new venture  
12 and they could try it with a rent-a-center. They  
13 decided that they didn't want to do that.

11:51:06

14 BY MR. ALDRICH:

11:51:23 15 Q. Was it your intention to give Front Sight the  
16 impression that you knew what you were doing in EB-5  
17 lending when you said this?

18 A. I intended to convey to them that I was  
19 conversant with EB-5 financing.

11:51:36

20 Q. And so -- strike that.

21 Moving down that paragraph a little bit more.

22 Third line from the bottom, it says, "This experience."

23 Do you see where I'm at? "This experience has  
24 provided"?

11:52:10

25 MR. GREER: Where?

11:52:11 1 MR. ALDRICH: Same paragraph.

2 THE WITNESS: Got it.

3 MR. ALDRICH: Third line from the bottom of

4 that paragraph.

11:52:15 5 MR. GREER: Yes.

6 THE WITNESS: Yes.

7 BY MR. ALDRICH:

8 Q. "This experience has provided me with an

9 expansive network of relationships throughout China for

11:52:22 10 sourcing EB-5 investors. And this personal network is

11 coupled with our collective relationships with the

12 leading Visa advisory firms operating in China."

13 Did I read that correctly?

14 A. Yes, you did.

11:52:42 15 Q. That statement that you've got an expansive

16 network for sourcing EB-5 investors, you'd never

17 sourced an EB-5 investor from China, had you?

18 A. That's incorrect.

19 Q. Okay. You had sourced EB-5 investors from

11:52:59 20 China?

21 A. Yes, on the first project we had done with

22 Liberty West.

23 Q. Okay. What -- I'm sorry. I thought you told

24 me you had done no projects in EB-5 financing prior to

11:53:11 25 this one?

Peggy Isom, CCR 541, RMR

11:53:11 1 A. Directly through our own regional center, no.  
2 But through with -- in partnership with Liberty West,  
3 yes, we had.

4 Q. Okay. When you say "we," who do you mean?

11:53:21 5 A. Well, Jon and I and the principals of Liberty  
6 West.

7 Q. Okay. What project had you done?

8 A. We had worked on the San Diego Hyatt project.

9 Q. And when was that?

11:53:41 10 A. That was at about this period of time. I'd  
11 have to check my records, but I think it was in the  
12 2012, 2013 period.

13 Q. And did you complete that project?

14 A. Hyatt pulled the flag on the project before we  
11:54:03 15 could complete it.

16 Q. So did you complete the project?

17 A. No, we didn't.

18 Q. Did -- in that Hyatt project, did you actually  
19 have an EB-5 investor from China that you sourced who  
11:54:20 20 put money into the project?

21 A. Yes.

22 Q. How many?

23 A. Through our agent in China.

24 Q. How many?

11:54:28 25 A. Several. I'd have to go back and look at the

Peggy Isom, CCR 541, RMR

11:54:30 1 numbers. It was -- we had a number in escrow and then  
2 we had dozens and dozens more in the pipeline.

3 Q. So I guess I need to go back and clarify the  
4 record because my recollection is that you told me  
11:55:00 5 earlier you had not done any projects in EB-5  
6 financing.

7 A. I thought you were referring through our own  
8 regional center.

9 Q. Okay. So now to understand, you are telling  
11:55:12 10 me you do have experience in EB-5 lending?

11 A. Yes, EB-5 financing.

12 Q. Okay. In what capacity?

13 A. We were working with our agents in China to  
14 source investors for the San Diego Hyatt project, and  
11:55:31 15 we had taken those agents to Front Sight to show them  
16 the project.

17 Q. Okay. So you were working on that with  
18 Liberty West Regional Center?

19 A. Yes.

11:55:43 20 Q. And were you an employee of Liberty West  
21 Regional Center?

22 A. No.

23 Q. What was your relationship to Liberty West  
24 Regional Center?

11:55:53 25 A. We were basically joint venture partners.

Peggy Isom, CCR 541, RMR

11:55:55 1 They were going to sponsor the project within the EB-5  
2 program through their regional center, and we were  
3 going to raise the funds through our agent network in  
4 China and elsewhere that we might develop.

11:56:15 5 Q. So besides the San Diego Hyatt project, what  
6 experience do you have in EB-5 funding?

7 A. As I had explained earlier, when I was a  
8 partner at Baker & McKenzie I had worked with my  
9 partner in Hong Kong working with his Chinese investors  
11:56:40 10 to invest their money into the United States and  
11 Canada.

12 Q. Okay. And I -- make sure I understand this  
13 correctly. I believe you told me you were the  
14 supervising partner overseeing work done by associates  
11:56:52 15 on one deal, correct?

16 A. Yes.

17 Q. So I want to be really clear. The EB-5  
18 funding experience that you have is the one deal where  
19 you were the partner supervising associates in 1990 and  
11:57:12 20 the San Diego Hyatt project with Liberty West Regional  
21 Center?

22 A. The project with Baker & McKenzie was during  
23 the 1990s. The program itself came into existence in  
24 1990. And I worked on it for a couple of years during  
11:57:31 25 the 1990s.

Peggy Isom, CCR 541, RMR

11:57:34 1 Q. So back to my question.

2 The sum total of your EB-5 funding experience  
3 before the project we're here to talk about today was  
4 as a partner overseeing associates handling one deal in  
11:57:52 5 the '90s and this one San Diego Hyatt project that we  
6 just were talking about?

7 A. Just to make sure we're on the same page, as  
8 the supervising partner, I had to be very conversant  
9 with EB-5 and make sure that the investments were  
11:58:14 10 coming in properly and complying with the program. And  
11 so I worked with my partner in Hong Kong to make sure  
12 that all that happened. And then the actual drafting  
13 of the real estate transaction documentation, I  
14 supervised the associates doing that.

11:58:32 15 Q. Okay. So just to be clear, I'm going to ask  
16 the same question again. Okay?

17 A. Uh-huh.

18 Q. Because I want us to be clear. The sum total  
19 of your EB-5 funding experience prior to the Front  
11:58:48 20 Sight project was one deal somewhere in the '90s when  
21 you were at a firm, Baker & McKenzie; right?

22 A. Correct.

23 Q. And the San Diego Hyatt project?

24 MR. GREER: Object as argumentative and asked  
11:59:03 25 and answered.

11:59:05 1 THE COURT: Overruled. Go ahead.

2 THE WITNESS: That's correct. It was that  
3 transaction during the 1990s that spanned a couple of  
4 years, and then the San Diego Hyatt project.

11:59:13 5 BY MR. ALDRICH:

6 Q. Okay. So just to be clear, to make sure I  
7 understood correctly from before, you left Baker &  
8 McKenzie in -- I wrote it down. Just a second. I want  
9 to say it was, like, '92 to start your own firm; right?

11:59:31 10 A. No. Jones Day recruited me away from Baker &  
11 McKenzie in about 1990. And then I left Jones Day and  
12 established my own firm in '92, '93.

13 Q. Okay. You're right. I had written Jones Day  
14 in 1992.

11:59:46 15 But you're sure that the EB-5 you did was at  
16 Baker & McKenzie?

17 A. Yes.

18 Q. Okay. And you left there in around 1992?

19 A. Yes.

11:59:55 20 Q. Okay. And we fast forward about 20 years,  
21 give or take, to the San Diego project, correct?

22 A. Yes.

23 Q. Okay. Now, to the San Diego project for a  
24 minute. The -- you said you were joint ventures  
12:00:13 25 partners with Liberty West Regional Center, correct?

Peggy Isom, CCR 541, RMR

12:00:19 1 A. Loosely speaking, yes.

2 Q. Okay. And you said that you used your agent  
3 network, correct?

4 A. Yes.

12:00:27 5 Q. Okay. And that it was your personal agent  
6 network that brought the money in for that San Diego  
7 project?

8 A. Yes.

9 THE COURT: How many more questions do we  
10 have?

11 MR. ALDRICH: Oh, a lot.

12 THE COURT: Is this a good time to break?

13 MR. ALDRICH: It's fine. Whatever the Court  
14 wants to do.

12:01:07 15 THE COURT: Okay. Yeah, we'll break.

16 MR. ALDRICH: It's noon.

17 THE COURT: It's noon, yes. It's time for  
18 lunch. We'll break until 1:15.

19 MR. ALDRICH: Thank you.

12:01:14 20 (Lunch recess.)  
21

22 THE COURT: Let's go ahead and place our  
23 appearances on the record.

24 MR. GREER: Yeah. Just as an additional,  
01:18:55 25 we're going to have Jon Fleming, who is a defendant in

Peggy Isom, CCR 541, RMR



01:18:58 1 the case, is also attending the afternoon session, your  
2 Honor.

3 THE COURT: All right. That's fine.

4 Are we ready to proceed?

01:19:06 5 MR. ALDRICH: Yes, your Honor.

6 THE COURT: Okay.

7 And, sir, you do understand you're under oath?

8 THE WITNESS: I do.

9 THE COURT: Okay. Mr. Aldrich, you can  
01:19:20 10 continue, sir.

11 MR. ALDRICH: Thank you, your Honor.

12 BY MR. ALDRICH:

13 Q. Good afternoon, Mr. Dziubla.

14 A. Mr. Aldrich.

01:19:34 15 Q. Before the break, we were looking at  
16 Exhibit 3. And so if you still have that in front of  
17 you, if you don't, if you can turn to it for me.

18 On the second page of that exhibit has the  
19 Bates label 0006. We have had a discussion about the  
01:19:59 20 sentence under No. 3, second paragraph, where you said.

21 "I personally have been conversant with and  
22 involved in EB-5 financing since the program  
23 was first established in 1990."

24 And then it goes on from there. Do you  
01:20:10 25 remember that discussion?

Peggy Isom, CCR 541, RMR

01:20:11 1 A. I do.

2 Q. Okay. You invited me to look up the word

3 "conversant" and so I did. And this is what I found on

4 dictionary.com.

01:20:23 5 MR. GREER: If we could, just a moment, your

6 Honor.

7 BY MR. ALDRICH:

8 Q. "Familiar by use or study." And then in

9 parentheses it says, "usually followed by *with*."

01:20:36 10 No. 2 says, "Archaic. Having" -- excuse me.

11 MR. GREER: That's brilliant. Create your own

12 diagram.

13 MR. ALDRICH: Yes. It's an app.

14 BY MR. ALDRICH:

01:20:43 15 Q. And then "having regular or frequent

16 conversation; intimately associating; acquainted."

17 MR. ALDRICH: Did I read that correctly,

18 Mr. Greer?

19 MR. GREER: Yes, you did, sir.

01:20:56 20 MR. ALDRICH: Okay.

21 BY MR. ALDRICH:

22 Q. Do you agree with that definition of what you

23 meant when you said "conversant" in this document?

24 A. I'm not sure about the "archaic," but, yeah,

01:21:06 25 at least portions of it, yes.

01:21:07 1 Q. Okay. You'll agree that it means you are  
2 intimately familiar with what you're talking about  
3 here?

4 A. It's not my understanding of the general usage  
01:21:15 5 of "conversant."

6 Q. Okay. So given that definition, will you  
7 agree with me that the -- what you have described in  
8 this paragraph we've been talking about gave the  
9 impression that you were intimately familiar with EB-5  
01:21:35 10 funding?

11 MR. GREER: Calls for speculation how it was  
12 perceived, your Honor.

13 THE COURT: I'll sustain.

14 BY MR. ALDRICH:

01:21:43 15 Q. By using that term "conversant" in describing  
16 your familiarity with EB-5 funding, did you intend for  
17 Front Sight to believe that you knew what you were  
18 doing with regard to EB-5 funding?

19 A. I don't know how they took it. What I meant  
01:22:00 20 is I was familiar with EB-5.

21 Q. In that same paragraph, we talked about this  
22 some a little bit, but the last sentence in that  
23 paragraph says.

24 "This experience has provided me with an  
01:22:32 25 expansive network of relationships throughout

01:22:36 1 China for sourcing EB-5 investors. And this  
2 personal network is coupled with our collective  
3 relationships with the leading visa advisory  
4 firms operating in China."

01:22:46 5 Did I read that correctly?

6 A. You did.

7 Q. Okay. And what was your personal network with  
8 these advisory firms in China you're referencing?

9 A. Well, I'm talking about mine and collectively  
01:22:59 10 with my legal firm's. And so on the San Diego Hyatt  
11 project we had already engaged a firm, one of the firms  
12 that I knew, to help us raise money for the San Diego  
13 Hyatt project. And they had talked with several other  
14 firms about potentially engaging them as well.

01:23:17 15 Q. And who had you already engaged for this San  
16 Diego Hyatt project?

17 A. It was a firm called First Way was their name  
18 at the time.

19 Q. Do they have a different name now?

01:23:30 20 A. They did. They changed it to Sunny Way.

21 Q. Okay. And that was a personal relationship  
22 that you had?

23 A. Yes.

24 Q. Okay. What other personal relationships did  
01:23:50 25 you have with advisory firms operating in China?

Peggy Isom, CCR 541, RMR

01:23:55 1 A. Well, with my friends and colleagues in Hong  
2 Kong and China, we had, you know, introductions and --  
3 you know, introduction. We knew of several other firms  
4 and we had been in conversations with them about  
01:24:12 5 potentially raising money.

6 Q. Okay. You say you knew of them. Beyond  
7 knowing of them, what was your relationship?

8 A. With my lawyers and advisers -- with my  
9 lawyers that worked with several of them and had worked  
01:24:32 10 against them in some transactions. It's, at the end of  
11 the day, a relatively small world.

12 Q. Okay. So and in this sentence, you say you  
13 have your personal network and then it is coupled with  
14 collective relationships.

01:24:51 15 So I'm asking about your personal network.  
16 And so far you've mentioned one firm. Are there more  
17 firms from your personal network based in China that  
18 you intended to work with?

19 A. There were individual friends that I had  
01:25:07 20 across China that had relationships with the  
21 immigration advisory firms.

22 Q. How did you know they had relationships with  
23 those advisory firms?

24 A. Because they told me they did.

01:25:24 25 Q. So you didn't have the relationship with the

01:25:26 1 firm. You had a relationship with a friend who told  
2 you he had a relationship with the firm; is that  
3 correct?

4 A. With several friends, yes.

01:25:34 5 Q. But to be clear, your relationship was with  
6 several friends, and they told you they had a  
7 relationship with an advisory firm, correct?

8 A. Yes. And we had talked with a couple of the  
9 first, and we had actually engaged Sunny Way, First  
01:25:51 10 Way, for the San Diego Hyatt project. And they, in  
11 turn, had contracted with multiple subagents across  
12 China.

13 Q. All right. If you would turn ahead one page  
14 to page 3 of that letter. It's Bates label 0007.

01:26:32 15 Under No. 6, the third paragraph, that starts,  
16 "Perhaps most importantly."

17 Do you see where I am?

18 A. Yes.

19 Q. It says.

01:26:41 20 "Perhaps most importantly, because Front  
21 Sight has been in business for over 15 years  
22 and has generated substantial positive cash  
23 flow, we will be able to structure the  
24 \$65 million of EB-5 financing as nonrecourse  
01:26:58 25 debt secured only by mortgage on the property."

Peggy Isom, CCR 541, RMR

01:27:00 1 Did I read that correctly?

2 A. You did.

3 Q. So here you are advising Front Sight that you  
4 will be able to structure \$65 million in EB-5 funding,  
01:27:15 5 correct?

6 A. It was more that it was being structured as  
7 nonrecourse financing to Front Sight because Mr. Piazza  
8 was extraordinarily averse to personal guarantees.  
9 Everybody always knew that the amount was a goal, not a  
01:27:36 10 promise.

11 Q. And -- but you said.

12 "We will be able to structure the  
13 \$65 million of EB-5 financing as nonrecourse  
14 debt secured only by a mortgage on the  
01:27:52 15 property,"

16 Correct?

17 A. Right. But this is simply -- this is a  
18 proposal letter, and we subsequently had contracts that  
19 codified what our relationship was. And so we had  
01:28:05 20 multiple discussions with Front Sight after this letter  
21 on multiple topics, including the amount of the  
22 financing and the speculative nature of it.

23 Q. But this letter which is a proposal from you  
24 to Front Sight says. "We will be able to structure the  
01:28:29 25 \$65 million of EB-5 financing," doesn't it?

Peggy Isom, CCR 541, RMR

01:28:32 1 A. The letter says what it says.

2 Q. Agreed.

3 It doesn't say, "We may be able to," does it?

4 A. This isn't a contract. It was a discussion

01:28:46 5 letter.

6 Q. Okay. If you'll on that same page move down

7 under "Cost" and there are a bunch of check marks, that

8 first paragraph under that. It says, "One of your

9 questions" -- I'm sorry.

01:29:12 10 Do you know where I am?

11 A. I see it now.

12 Q. Okay.

13 "One of your questions to us was 'How do we

14 know this money won't go down in a black hole?'

01:29:24 15 The simple answer is that this money simply

16 covers our direct expenses. There is no profit

17 component. And we don't make any money until

18 we have successfully raised the \$65 million, at

19 which point we will have earned an appropriate

01:29:41 20 origination fee."

21 Did I read that correctly?

22 A. You did.

23 Q. Do you agree with me that that leaves the

24 impression that you and your entities will not be paid

01:29:50 25 any money other than the \$300,000 in costs that you

Peggy Isom, CCR 541, RMR



01:29:54 1 said was going to be required until you raised the  
2 \$65 million in EB-5 funding?

3 MR. GREER: Calls for speculation of what the  
4 reader thinks.

01:30:05 5 THE COURT: Overruled.

6 THE WITNESS: I don't know what impression  
7 Front Sight took from it. It was simply a proposal  
8 letter. And the deal was they would front the costs to  
9 establish the EB-5 financing platform. At the end of  
01:30:19 10 it, we'd get paid a success fee, and then we'd start  
11 making some money, maybe.

12 BY MR. ALDRICH:

13 Q. But you'll agree with me this document says  
14 that you don't take any money "until we have  
01:30:31 15 successfully raised the \$65 million"? That's what it  
16 says, correct?

17 A. No. What it says is: The simple answer is  
18 that this money, the \$300,000 that was under  
19 discussion, would cover our direct expenses.

01:30:52 20 And that's what it did.

21 Q. That's the first part of the sentence.

22 The second part of the sentence says.

23 "There is no profit component, and we don't  
24 make any money until we have successfully  
01:31:07 25 raised the \$65 million, at which point we will

01:31:11 1 have earned an appropriate origination fee."  
2 Correct?  
3 A. That's what it says.  
4 Q. Didn't say that we will get paid when we raise  
01:31:24 5 \$6 million, does it?  
6 A. It says --  
7 MR. GREER: Argumentative.  
8 THE WITNESS: It says what it says.  
9 MR. GREER: Argumentative. Document speaks  
01:31:30 10 for itself.  
11 THE COURT: Overruled. I'll overrule. Go  
12 ahead.  
13 Was there a pending response or did he answer?  
14 MR. ALDRICH: He answered.  
01:31:36 15 THE COURT REPORTER: He answered, "It says  
16 what it says."  
17 THE COURT: Okay. That's fine.  
18 BY MR. ALDRICH:  
19 Q. All right. If you would turn one more page  
01:31:57 20 ahead to page 4. It is Bates labeled 0008.  
21 There's a heading, "Commitment to Front Sight  
22 EB-5 Raise."  
23 Do you see that?  
24 A. I do.  
01:32:15 25 Q. There is -- I'm going to kind of talk to you

Peggy Isom, CCR 541, RMR

01:32:17 1 about this whole paragraph. It says.

2 "One of the other questions you asked was  
3 'How do we know that you guys will not dilute  
4 your energies by taking on too many projects  
01:32:27 5 and thereby dilute Front Sight's results?'

6 There are three answers to that."

7 Have I read that correctly so far?

8 A. Yes.

9 Q. Okay.

01:32:37 10 "First, because we don't make any money  
11 until the project is successfully funded, we  
12 have every reason in the world to make sure  
13 that we have the focus, energy, and capacity to  
14 handle Front Sight's raise of \$65 million."

01:32:51 15 Did I read that correctly?

16 A. You did read it correctly.

17 Q. So you have again told them you will make no  
18 money until the project is successfully funded,  
19 correct?

01:33:05 20 A. Aside from the upfront costs that they agreed,  
21 ultimately, to fund pursuant to the contract.

22 Q. Was that ultimately true?

23 MR. GREER: Objection, your Honor. This --  
24 it's vague and ambiguous as to this isn't the contract  
01:33:17 25 that they entered into. And I think the question

01:33:20 1 implies this is a contract that they entered into.

2 THE COURT: Any response?

3 MR. ALDRICH: We're here on fraudulent  
4 inducement as part of our claim. This absolutely  
01:33:31 5 relates to that.

6 THE COURT: Well, I think you were asking  
7 whether the proposition that's set forth in the letter  
8 was ultimately true.

9 MR. ALDRICH: That is correct.

01:33:42 10 THE COURT: It could be as contained in the  
11 final contract. I don't know. But I think it's an  
12 appropriate question.

13 MR. GREER: Okay.

14 THE WITNESS: We did not earn any profit on  
01:33:55 15 this deal until it actually got funded and Front Sight  
16 started paying interest. Front Sight paid the agreed  
17 structuring costs to establish the platform and do the  
18 marketing.

19 BY MR. ALDRICH:

01:34:09 20 Q. And you'll agree with me, though, \$65 million  
21 was not funded, correct?

22 A. That's what -- what Front Sight wanted. You  
23 have to remember that they had come to us and said.

24 "This is how much money we want to raise.

01:34:26 25 What do you think you can do?"

Peggy Isom, CCR 541, RMR

01:34:27 1

And we said.

2

"We'll try to raise it. No guarantees.

3

But if that's what you want, fine. We'll try

4

to raise \$65 million."

01:34:36 5

Q. So where it says.

6

"We don't make any money until the project

7

is successfully funded, we have every reason in

8

the world to make sure that we have the focus,

9

energy, and capacity to handle Front Sight's

01:34:51 10

raise of \$65 million."

11

Did you or any of the entities you are the CEO

12

of related to this transaction make any money prior to

13

the raising of \$65 million?

14

MR. GREER: Vague and ambiguous and

01:35:09 15

argumentative.

16

THE COURT: Overruled.

17

THE WITNESS: I'm not sure what you mean by

18

"make any money." Front Sight agreed to pay the

19

marketing and project structuring costs. And so, of

01:35:24 20

course, we had normal day-to-day business operating

21

expenses that we paid. But we didn't put profits into

22

our pocket until after the deal funded.

23

BY MR. ALDRICH:

24

Q. And they never funded \$65 million, correct?

01:35:39 25

A. It hasn't gotten there yet.

01:36:07 1 Q. The next -- continuing on in that same  
2 paragraph, it says.

3 "Second, we have the luxury in this  
4 intensity" -- sorry -- "intensely  
01:36:16 5 capital-deprived marketplace of picking and  
6 choosing the EB-5 projects we want to accept,  
7 and we accept only those projects that we think  
8 will be readily funded since we don't get paid  
9 otherwise."

01:36:28 10 Did I read that correctly?

11 A. You did.

12 Q. Again, another assurance to Front Sight that  
13 you don't make any money until they get their  
14 \$65 million, correct?

01:36:40 15 A. No, that's not correct. It says we don't make  
16 a profit until the deal is funded. It doesn't say how  
17 much. Everybody knew from the beginning, and as we  
18 will discuss it later at length later, I'm sure, Front  
19 Sight desperately wanted whatever amount of money we  
01:37:00 20 could raise, period.

21 Q. So I'm drawing your attention back to the end  
22 of that second sentence where it says, "Since we don't  
23 get paid otherwise." That says what it says, correct?

24 A. It does.

01:37:26 25 Q. The last one says.

Peggy Isom, CCR 541, RMR

01:37:27 1 "Finally, and perhaps most importantly, all  
2 of us are strong believers in the Second  
3 Amendment right to bear arms and the  
4 concomitant need for all of us who bear arms to  
01:37:49 5 be well-trained. Front Sight is doing a  
6 superlative job in preserving our  
7 constitutional rights and training our  
8 citizens, and we very much want you to be even  
9 more successful."

01:37:59 10 Did I read that correctly?

11 A. You did.

12 Q. Are you indeed a strong believer in the Second  
13 Amendment right to bear arms?

14 A. I am.

01:38:08 15 Q. There is what looks to me like an electronic  
16 signature at the end of this letter; is that accurate?

17 A. Yes.

18 Q. And is that to symbolize that you adopt what's  
19 in the letter?

01:38:24 20 A. It's my signature on the letter.

21 Q. And we sign letters to show that we've adopted  
22 what's in the letter, correct?

23 A. This is a proposal letter, nothing more than  
24 that.

01:39:12 25 Q. Front Sight originally told you they didn't

Peggy Isom, CCR 541, RMR

01:39:13 1 want to do an EB-5 raise, didn't they?

2 A. No. That's not true.

3 Q. Would you turn to Exhibit 2 for me, please.

4 MR. ALDRICH: Your Honor, I'd actually move

01:39:37 5 for admission of Exhibit 3.

6 THE COURT: Any objection?

7 MR. ALDRICH: This is 3, not 2.

8 MR. GREER: Yes. No objection.

9 MR. ALDRICH: I didn't actually move --

01:39:46 10 THE COURT: Okay. So admitted.

11 (Exhibit 3 admitted)

12 THE COURT: It's admitted.

13 MR. ALDRICH: Thank you. I'm just giving

14 Mr. Greer one moment to look at Exhibit 2.

01:39:54 15 MR. GREER: No objection.

16 MR. ALDRICH: Okay. I'll move to admit

17 Exhibit 2, and Mr. Greer has indicated no objection,

18 your Honor.

19 THE COURT: Okay. So admitted, sir.

01:39:59 20 (Exhibit 2 admitted)

21 MR. ALDRICH: Thank you.

22 BY MR. ALDRICH:

23 Q. Mr. Dziubla, I want to give you a second just

24 to at least look at this and familiarize yourself a

01:40:11 25 little bit. And then let me know if you'll agree with



01:40:14 1 me that it's some correspondence between yourself and  
2 Mr. Meacher, who is a representative of Front Sight.

3 A. Are we looking at all of the pages?

4 Q. For now, yes. Just to --

01:40:30 5 A. Just 0002?

6 Q. Through 0004, just to let you know it's an  
7 email string between you and Mr. Meacher.

8 A. Okay.

9 Q. And so it is an email string between you and

01:41:01 10 Mr. Meacher, correct?

11 A. Yes.

12 Q. And Mr. Meacher is a representative of Front  
13 Sight, correct?

14 A. Yes.

01:41:06 15 Q. All right. So if you'll turn to what is  
16 page 2 of this exhibit, but it's 0003 at the bottom.

17 A. Okay.

18 Q. Okay. So in No. 3, you -- on the second line  
19 you make reference to a -- to "the kind of creative and

01:41:42 20 experienced approach that we bring to financing  
21 raises."

22 Do you see that?

23 A. I do.

24 Q. What were you referring to when you talked

01:41:54 25 about a "creative and experienced approach to financing

01:41:58 1 raises"?

2 A. Bringing in private equity funding.

3 Q. Okay. So at this point you were referencing  
4 private equity?

01:42:11 5 A. Yes.

6 Q. Okay. Let's see.

7 All right. Turn one page over to page 3 of  
8 that email Bates labeled 0004. Looking at No. 7., it  
9 says.

01:43:03 10 "We have great depth of experience and  
11 expertise in the real estate and real estate  
12 financing market. And I personally have been  
13 involved in over \$10 billion of hospitality and  
14 leisure transactions during my 35-year career  
01:43:17 15 as an investor, owner, operator, investment  
16 banker, and lawyer."

17 Did I read that correctly?

18 A. Yes.

19 Q. Okay. And is everything in that sentence  
01:43:31 20 true?

21 A. Yes.

22 Q. And you continue.

23 "We have been underwriting over a dozen  
24 hospitality transactions during the past eight  
01:43:42 25 months, with two of them located in the desert

01:43:46 1 just like Front Sight, so we have a keen  
2 appreciation and understanding of the  
3 peculiarities of that market and how to  
4 structure the transaction appropriately."

01:43:53 5 Did I read that correctly?

6 A. Yes.

7 Q. When you're talking about structuring the  
8 transaction appropriately, what are you referencing?

9 A. Private equity financing.

01:44:22 10 Q. All right. Then in that last paragraph you  
11 say.

12 "We would enjoy the chance to work with  
13 Front Sight on this development and have  
14 attached a proposed engagement letter that, as  
01:44:30 15 previously discussed, is on a success fee basis  
16 so that we don't get paid unless we raise the  
17 financing."

18 Did I read that correctly?

19 A. Yes.

01:44:40 20 Q. And you again -- I'm sorry. Strike that for a  
21 second.

22 Exhibit 3 was a letter that was from September  
23 of 2012, correct?

24 A. Yes.

01:45:00 25 Q. And this email -- now going back to Exhibit 2.

01:45:04 1 I'll try to keep that from being confusing. And I  
2 apologize if I am doing that.

3           Back to Exhibit 2, on page 2, which is Bates  
4 labeled 0003, the date of that email is Saturday,  
01:45:16 5 April 7, 2012, correct?

6           A. Yes.

7           Q. Okay. So about four months before Exhibit 3  
8 was sent, correct?

9           A. Actually --

01:45:26 10           Q. It was actually probably five months.

11           A. Going from April 7, yeah. May, June, July.  
12 About five months.

13           Q. Okay. And so this is actually prior to  
14 Exhibit 3. You, again, said you get paid on a success  
01:45:45 15 fee basis and you won't get paid unless you raise the  
16 financing, correct?

17           A. Yes.

18           Q. And then you -- the last sentence there is.

19                   "We are confident enough in our ability to  
01:46:02 20 raise the money that we're willing to invest  
21 our time, energy, credibility, and resources  
22 without compensation, but in turn expect to be  
23 appropriately paid when we do succeed."

24                   Did I read that correctly?

01:46:15 25           A. Yes.

01:46:34 1 Q. All right. So when you look at Exhibit 2, now  
2 to the first page of Exhibit 2, 0002, and this is an  
3 email from April 24, 2012, from Mr. Meacher to you,  
4 correct, at the bottom there?

01:46:51 5 A. Yes.

6 Q. Second paragraph, said.

7 "I have forwarded this information to  
8 Ignatius Piazza, the owner of Front Sight, and  
9 he is currently not interested in moving  
01:47:02 10 forward with this type of capital-raising  
11 structure."

12 Did I read that correctly?

13 A. Yes.

14 Q. Okay.

01:47:08 15 A. It's the EB-5 proposal -- not the EB-5. PE,  
16 private equity proposal.

17 Q. Okay. So it's your testimony that that's  
18 referring to a private equity proposal, not to EB-5  
19 funding?

01:47:19 20 A. Yes.

21 Q. All right.

22 A. Bear with me a minute. I just want to make  
23 sure. Because we're -- by starting it backwards and --  
24 starting later and going backwards, it's confusing  
01:47:58 25 somewhat.

01:48:15 1           Okay. You need to look at Exhibit 2  
2 carefully, because we've got two emails separated by a  
3 five-month period. The first email of April 7, 2012,  
4 is referring to a private equity financing of Front  
01:48:41 5 Sight. Okay?

6           Mr. Meacher responds to that, says, we're not  
7 interested in a PE financing, private equity financing.

8           Q. Okay.

9           A. Then in August of 2012, five months later, I  
01:48:57 10 come back and say I'm looking at a different financing  
11 platform and approach.

12          Q. Correct.

13          A. And that was EB-5.

14          Q. Okay. And that's what we're going to talk  
01:49:09 15 about right now.

16          A. Right.

17          Q. So we're on -- we're literally on the same  
18 page.

19          A. Okay.

01:49:13 20          Q. All right.

21          A. And then that is what led up to the engagement  
22 letter -- not -- the proposal letter of September 13,  
23 which we spent this morning going over, which is in --  
24 later, five months later.

01:49:29 25          Q. Correct.

01:49:29 1 A. All right. Yep.

2 Q. Okay. So back to Exhibit 2, the first page  
3 which is Bates labeled 0002, to that top email that  
4 you're talking about, which is now Monday, August 27,  
01:49:43 5 2012; right?

6 A. Yes.

7 Q. We're in the same place, correct?

8 A. Yes.

9 Q. All right. In the third paragraph, you say.  
01:49:53 10 "For quite some time now I have been  
11 working on developing an investment platform  
12 that takes advantage of my long experience in  
13 China and working with Chinese and other Asian  
14 investors for, as you know, the Chinese have  
01:50:10 15 large surplus capital stemming from their large  
16 trade balance with the US."

17 Did I read that correctly?

18 A. Yes.

19 Q. So what is the investment platform that you  
01:50:22 20 had been working on developing?

21 A. EB-5.

22 Q. Okay. So you -- you have left the impression  
23 with Front Sight through your statements that you were  
24 developing EB-5 financing?

01:50:38 25 A. I don't know what impression I left with them.

01:50:41 1 I know what my email says.

2 Q. Okay. EB-5 financing is a government program,  
3 correct?

4 A. Yes.

01:50:47 5 Q. Okay. Created in about 1990, correct?

6 A. Yes.

7 Q. Okay. Then you -- the next sentence says,

8 "Those efforts" -- I'll get back to that, but I assume

9 "those efforts" are your working on developing the

01:51:09 10 investment platform. Those are the efforts you're

11 talking about, correct?

12 A. Yes.

13 Q.

14 "Those efforts have come to fruition and I

01:51:16 15 think we may be able to put together a

16 financing package for some or perhaps all of

17 the 150 million you were seeking to raise."

18 Did I read that correctly?

19 A. You did.

01:51:35 20 Q. Then in the last sentence of that same

21 paragraph, you mention the loan would be nonrecourse;

22 right?

23 A. Yes.

24 Q. And there's no mention of EB-5 at this point,

01:51:45 25 just this investment platform that you have been



01:51:51 1 developing, correct?

2 A. Well, no. There's more detail to it than  
3 that. If you'll just read it, it says.

4 "Five-year term loan bearing a 6 percent  
01:52:00 5 interest rate with a two-year extension  
6 possible and/or origination fees of 2 to  
7 3 percent payable out of each draw down under  
8 the loan."

9 Q. Um-hum.

01:52:11 10 A. And so that was -- were the general parameters  
11 of the financing platform I was looking at and it  
12 contemplated EB-5. And that is what Front Sight got,  
13 in large part.

14 Q. Your email here leaves the impression that you  
01:52:32 15 have developed a platform that no one else had thought  
16 of, doesn't it?

17 MR. GREER: Calls for speculation.

18 THE COURT: I'll sustain.

19 BY MR. ALDRICH:

01:52:47 20 Q. There's no mention in here of EB-5 at this  
21 point, is there?

22 A. No.

23 Q. If you would turn for me to Exhibit 10.

24 MR. ALDRICH: If we can get Mr. Greer to look  
01:53:29 25 at it.

01:53:29 1 MR. GREER: No objection.

2 MR. ALDRICH: Okay. Your Honor, I'll move to  
3 admit Exhibit 10.

4 THE COURT: It shall be admitted, sir.

01:53:37 5 (Exhibit 10 admitted)

6 BY MR. ALDRICH:

7 Q. Mr. Dziubla, can you tell me what this is?

8 A. This is a letter from US Citizenship and  
9 Immigration Services addressed to our EB-5 counsel

01:53:49 10 saying that they received the I-924 application for the  
11 Regional Center and the exemplar project of Front  
12 Sight.

13 Q. So this essentially approves your Regional  
14 Center to be a Regional Center, correct?

01:54:11 15 A. Yes. And Front Sight as an exemplar  
16 project --

17 Q. Okay. When you say --

18 A. -- pursuant to the 9 pounds of submission  
19 documents.

01:54:21 20 Q. My apologies. I didn't mean to speak over  
21 you.

22 What does an exemplar project mean?

23 A. It means that the USCIS has approved the  
24 project which has been proposed for sponsorship by the  
01:54:42 25 Regional Center for functioning within the EB-5

01:54:47 1 program. And the practical effect of that is very  
2 important, because it means that in subsequent  
3 adjudications of the investors' individual I-526  
4 applications, those I-526s must be granted substantial  
01:55:08 5 deference by USCIS.

6 Q. When you said "must be granted substantial  
7 deference," what do you mean?

8 A. That USCIS adjudicators cannot willy-nilly  
9 come back in and demand that we resubmit the project or  
01:55:28 10 answer endless questions pursuant to their requests.  
11 That the project that's been submitted is approved as  
12 an exemplar.

13 Q. All right. If you'll turn for me to the  
14 second page of that exhibit, it's Bates labeled 0039.  
01:55:59 15 And there under Section A, Geographic Area, it lists  
16 several counties, two in Nevada and about six in  
17 California.

18 Do you see that?

19 A. I do.

01:56:13 20 Q. What is that -- what does that refer to?

21 A. That means that our Regional Center could  
22 sponsor EB-5 projects within those counties.

23 Q. And is there a limit on the number of regional  
24 centers for a given county?

01:56:32 25 A. I don't really know. I don't think so, but I

01:56:35 1 don't know.

2 Q. And has your Regional Center done any projects  
3 in California?

4 A. Have we -- what do you mean by "done any  
01:56:48 5 projects"?

6 Q. Have you been involved in any projects in  
7 California, whether it was a rent-a-center or as a  
8 separate project?

9 A. Yes.

01:56:59 10 Q. Okay. And what projects were those?

11 A. There was one. It was an assisted living  
12 project in Indio.

13 Q. Assisted living project where?

14 A. Indio.

01:57:17 15 Q. Indio?

16 A. The Palm, Palm Springs area.

17 Q. Got it.

18 And what was that place called? Do you know?

19 A. We just referred to it as the Indio project.

01:57:31 20 Q. Okay. How big of a raise was that?

21 A. I don't know. We were a rent-a-center. We  
22 weren't raising the money.

23 Q. Okay. Besides the Indio project, any other  
24 projects you've been involved in either as a

01:57:45 25 rent-a-center or on your own?

01:57:51 1 MR. GREER: Vague and ambiguous.  
2 THE COURT: Overruled.  
3 THE WITNESS: Through our Regional Center, no.  
4 I've -- I don't know what you mean by "involved with."  
01:58:01 5 I talk with lots of people about potential deals, and  
6 people call me up asking for advice which I, you know,  
7 often give them on a gratis basis because they're  
8 friends.  
9 BY MR. ALDRICH:  
01:58:25 10 Q. I think I asked you this, but I can't remember  
11 the answer. How big of a project was the Indio  
12 project?  
13 A. I don't remember. We were a rent-a-center.  
14 Q. Okay. You did answer that. I apologize.  
01:58:40 15 All right. And then you -- to obtain this --  
16 I'm going back to Exhibit 10, by the way.  
17 A. Okay.  
18 Q. To obtain this approval, there are various  
19 things that you have to submit. I think you said it  
01:58:59 20 was like a 9-pound box of documents, correct?  
21 A. Yes.  
22 Q. All right. And that outlines the Front Sight  
23 project that you're intending to raise money for,  
24 correct?  
01:59:09 25 A. Among other things, yes.

01:59:10 1 Q. Okay. And, well, what else is there besides  
2 sort of outlining the project? What else do you have  
3 to provide?

4 A. Oh, my word. There's the comprehensive  
01:59:26 5 business plan that covers both the regional center and  
6 the exemplar project.

7 There is the jobs creation report prepared by  
8 Professor Flynn. There were all of the securities  
9 documents, the offering memorandum, the partnership,  
01:59:48 10 the operating agreement for the lender LVD Fund, market  
11 studies, appraisals. Just there was a ton of  
12 documents.

13 Q. And for all those documents that you submit  
14 for approval, if any of those things change, do you  
02:00:17 15 have to then send something to USCIS to update what's  
16 going on in the project?

17 A. We have to submit annual filings by the end of  
18 each year which requires information from Front Sight.  
19 And then if there is a -- I'd have to talk with my  
02:00:38 20 legal counsel. There may be other times when we  
21 have -- we might be required to notify them. But I  
22 don't remember without talking with Matt.

23 Q. If something about the business plan changes,  
24 do you have to notify USCIS?

02:00:57 25 A. I'm not entirely sure. I don't think so,

02:00:59 1 because it really goes to the investors. If there's a  
2 material change in the business plan, then it's going  
3 to have an impact on the adjudication of the investor's  
4 application when it comes up several years down the  
02:01:17 5 road.

6 Q. Um-hum.

7 A. And so if there is a material change, we could  
8 do it in the annual filing or, if necessary, based on  
9 advice of legal counsel, we might do it before then.

02:01:29 10 Q. Okay. All right. If you would, there in  
11 Exhibit 10 turn to page 3 which has the Bates label  
12 0040. Under the table right there, there is a thing  
13 that says "note." And then it says --

14 Do you see where I am?

02:01:59 15 A. Yes.

16 Q.

17 "If changes to this project and its  
18 supporting documents are found in subsequent  
19 Form I-526 or Form I-829 petitions, USCIS will  
02:02:12 20 review the supporting documents once more to  
21 ensure compliance with EB-5 program  
22 requirements."

23 Did I read that correctly?

24 A. Yes.

02:02:23 25 Q. Have you had USCIS notify you at all about

02:02:29 1 being in compliance with what was submitted?

2 A. Once we received the approval, no.

3 Oh, actually I have to take that back. I  
4 believe that with regard to one or two of our

02:02:48 5 investors, they had a question about whether Front  
6 Sight had a valid business license and they wanted to  
7 see a copy of that, I think. You know, it's a vague  
8 memory, but there was something, and it was easily  
9 resolved.

02:03:28 10 Q. All right. Jumping down two paragraphs there  
11 where it says, "The NCE will loan."

12 Do you see that?

13 A. Yes.

14 Q. What does NCE stand for?

02:03:42 15 A. That is EB-5 terminology for a new commercial  
16 enterprise.

17 MR. ALDRICH: Okay. And actually for the  
18 Court's reference, it looks like the paragraph above  
19 that defined NCE as Las Vegas Development Fund.

02:03:55 20 THE COURT: I have that.

21 MR. ALDRICH: I didn't see that initially, so  
22 sorry about that.

23 THE COURT: Yes.

24 BY MR. ALDRICH:

02:03:59 25 Q. And here it says.



02:04:00 1           "The NCE will loan the \$75 million of EB-5  
2           capital to a third-party entity of Front Sight  
3           Resort and Vacation Club and Front Sight  
4           Firearm Training Institute,"

02:04:14 5           Correct?

6           A.     That's what it says.

7           Q.     If you'll turn to page 5 for me. It's 0042 on  
8           the Bates label. The top paragraph says.

9           " If the job creation estimated in the  
02:04:57 10          business plan material change -- materially  
11          changes or will not be realized, then it will  
12          be the responsibility of the EB-5 investor to  
13          notify USCIS of an agreed-upon methodology to  
14          allocate job creation among eligible  
02:05:14 15          investors."

16          Can you explain what that means, because it  
17          looks like the investor is the one who has the  
18          obligation to justify the jobs creation?

19          A.     Well, that's not what it says. What it says  
02:05:28 20          is an agreed-upon methodology to allocate job creation  
21          among eligible investors.

22          Q.     Okay.

23          A.     So, yes, that's the obligation of the investor  
24          when their I-526 petition comes up for final  
02:05:44 25          adjudication, if the project has not been built, then

02:05:51 1 there needs to be an agreement as to how the jobs will  
2 be allocated among the eligible investors at that  
3 stage.

4 Q. And how do the eligible investors receive  
02:06:03 5 updates on what's going on with the project?

6 A. They receive it from us as the project sponsor  
7 under the regional center --

8 Q. And how long --

9 A. -- LVD Fund.

02:06:15 10 Q. I'm sorry. I apologize.

11 How often do you update the investors?

12 A. We tried to do it on a quarterly basis.

13 Q. And are those updates to investors considered  
14 confidential in any way?

02:06:40 15 A. They're confidential to our investors who are  
16 members of our LLC.

17 Q. Do you provide those updates to Front Sight as  
18 well?

19 A. Front Sight generally prepares the bulk of  
02:06:51 20 that update because it's their project that's being  
21 built.

22 Q. And have you -- strike that.

23 When was the last update you gave to the  
24 investors?

02:07:12 25 A. It might -- I'm -- we've been going through a

02:07:18 1 pretty tough stretch here trying to get information  
2 from Front Sight, so it was maybe the end of last year,  
3 maybe the end of Q1 2019, but I don't know because we  
4 don't get information from Front Sight.

02:07:42 5 Q. And you have to do annual reports to the USCIS  
6 as well, correct?

7 A. Yes.

8 Q. And has your annual report to USCIS included  
9 the fact that this project is now in litigation?

02:08:03 10 A. No. That's not one of the reporting fields.

11 Q. Sorry. I lost my cross-reference. Give me  
12 just a second here.

13 All right. On page 5 of Exhibit 10, Bates  
14 label 0042, under -- the last paragraph under Section 4  
02:09:27 15 says "Note." Do you see that? It talks about project  
16 timeline?

17 A. Yes.

18 Q. It says.

19 "Note: If the project timeline has changed  
02:09:39 20 significantly from the original business plan,  
21 a narrative that explains the changes in the  
22 project timeline along with the timeline that  
23 realistically reflects the status of the  
24 project should be submitted."

02:09:49 25 Did I read that correctly?

02:09:52 1 A. You did.

2 Q. And that is for any investor looking to submit  
3 their initial application to be part of this project,  
4 correct?

02:10:02 5 A. Right. If they want to come in as a new  
6 investor in this project, they need to disclose that.

7 Q. When is the last time that you had an  
8 investor, a new investor in this project?

9 A. Before this litigation was filed.

02:10:19 10 Q. Do you know how much before? Was it several  
11 months? Or ...

12 A. I don't recall. I'd have to look.

13 Q. Was it before you dissolved EB-5IA?

14 A. I don't know.

02:10:38 15 Q. Did any of the investors have to submit an  
16 updated timeline for this project?

17 A. Not yet that I know of.

18 Q. All right. Same page, under Section 5,  
19 Designees' responsibilities in the Operation of the  
02:11:32 20 Regional Center. The designee, as specified in this,  
21 is the Regional Center EB-5IC, correct?

22 A. Yes.

23 Q. All right. And then it says.  
24 "As provided in 8 CFR Section 204.6(m)(6),  
02:12:00 25 to ensure that the regional center continues to

02:12:04 1 meet the requirements of Section 610(a) of the  
2 appropriations act, a regional center must  
3 provide USCIS with updated information to  
4 demonstrate the regional center is continuing  
02:12:16 5 to promote economic growth, improved regional  
6 productivity, job creation, and increased  
7 domestic capital investment in the approved  
8 geographic area."

9 Then it says.

02:12:34 10 "Such information must be submitted to  
11 USCIS on an annual basis or as otherwise  
12 requested by USCIS."

13 Did I read all that correctly?

14 A. You did.

02:12:45 15 Q. All right. Have you submitted all of this  
16 information to the USCIS on an annual basis?

17 A. Yes.

18 Q. And when are those reports due generally?

19 A. By the end of the calendar year.

02:13:14 20 Q. Then that sentence that says it has to be  
21 submitted annually or otherwise as otherwise requested  
22 by USCIS, has USCIS requested any additional  
23 information from you about this project?

24 A. No.

02:13:28 25 Can we go ahead and read the next sentence of

02:13:58 1 that letter, please, because it's really important  
2 here.

3           "Such, the applicant must monitor all  
4 investment activities under the sponsorship of  
02:14:11 5 the regional center and to maintain records in  
6 order to provide the information required on  
7 Form I-924A, which is the annual filing."

8           And I'm getting into a real bind here because  
9 Front Sight is not providing the information and I  
02:14:25 10 cannot monitor the project.

11           Q. Has the regional center told the USCIS that  
12 it's having problems with Front Sight?

13           A. No. But we've got another annual filing  
14 coming up, and there's going to be a lot of unpleasant  
02:14:57 15 and unhappy people not very far in the future.

16           Q. So the -- it talks about the applicant having  
17 to maintain records in order to provide the information  
18 required. Is the regional center maintaining the  
19 records it needs to to meet the requirement?

02:15:18 20           A. We can't at this point because Front Sight is  
21 not providing the information to us.

22           Q. Is the regional center maintaining the records  
23 that it's supposed to maintain?

24           MR. GREER: Asked and answered.

02:15:30 25           MR. ALDRICH: It wasn't answered.

02:15:31 1           THE WITNESS: We can't because we're not  
2 getting the information from Front Sight. We have made  
3 repeated demands on them for information, and they  
4 don't provide it.

02:15:39 5 BY MR. ALDRICH:

6           Q. Well, we can -- we can talk about that in a  
7 minute. But my question to you is, is the regional  
8 center maintaining the records that it needs to  
9 maintain?

02:15:49 10          A. To the best of our ability, yes.

11          Q. The next paragraph down makes reference to the  
12 supplement, I-924A supplement, that has to be filed  
13 each year. And it makes reference to supporting  
14 documentation that has to be filed.

02:16:18 15           What supporting documentation has to be filed  
16 with that I-924 supplement?

17          A. I don't recall offhand. I'd have to talk with  
18 my EB-5 counsel and take a look at the form.

19          Q. Does it involve the financial liability of the  
02:16:36 20 regional center?

21          A. It involves financial liability of the sponsor  
22 project and jobs creation which comes from investing  
23 the EB-5 money in the project approved by USCIS.

24          Q. Then the last paragraph on that page makes  
02:17:13 25 reference to fail to file -- timely file the supplement

02:17:19 1 it could result in issuance of an intent to terminate  
2 participation of the regional center, correct?

3 A. That's what it says.

4 Q. And has your regional center received an  
02:17:32 5 intent to terminate participation of the regional  
6 center?

7 A. Not so far.

8 Q. Did the plan documents that you submitted for  
9 approval to USCIS have any provision for what might  
02:18:29 10 happen if you weren't able to raise \$75 million?

11 A. Yes.

12 Q. And what was that?

13 A. Front Sight would go out and obtain a bridge  
14 senior loan to finance the difference.

02:18:44 15 Q. So it's your testimony that the proposal you  
16 submitted to USCIS told USCIS that Front Sight would  
17 finance the amount between what you raised and  
18 \$75 million?

19 A. And what they needed to build the project  
02:19:06 20 detailed in the business plan, yes.

21 Q. And if you -- if your regional center was  
22 unable to raise the \$75 million, was there any Plan B  
23 besides Front Sight has to finance it?

24 A. Our agreement with Front Sight was that they  
02:19:29 25 would go out and raise the difference, because it is



02:19:35 1 their project at the end of the day.

2 Q. Okay. So in answering the question that I  
3 asked, there was no Plan B if you did not raise the  
4 money other than Front Sight finding it somewhere else?

02:19:48 5 A. No.

6 Q. So what I said was correct?

7 A. Their -- their argument with Front Sight is we  
8 would raise as much EB-5 money as we could. If it  
9 wasn't enough for them to build the project, they would  
02:20:06 10 go out and get a senior loan as a bridge to finance the  
11 development so they could build the project, sell the  
12 time-share units to their members, and repay the senior  
13 lender and then us.

14 Q. Does the USCIS ask for an update on job  
02:20:30 15 creation numbers at any point during a project?

16 A. As part of the annual filing, yes.

17 Q. Okay. And what information did you give on  
18 the job creation numbers in your latest annual filing?

19 A. I would have to take a look at it and see.

02:20:51 20 Q. You don't remember?

21 A. Not offhand. Unsurprisingly, it's a  
22 convoluted federal form.

23 Q. Do you recall if the report that you sent to  
24 USCIS on job creation demonstrated that the number of  
02:21:08 25 jobs created thus far were much less than they've been

02:21:13 1 projected to be?

2 A. It shows that the jobs are sub -- phenomenally  
3 behind the jobs that were projected.

4 Q. Do you receive any form of compensation or  
02:21:47 5 benefit from Las Vegas Development Fund?

6 A. Yes.

7 Q. And what is that?

8 A. It's my personal information. That's my  
9 money.

02:21:59 10 MR. GREER: Yeah, just checked on it. He does  
11 have a right to privacy. I don't see the relevance.

12 MR. ALDRICH: Well, I'm asking the question  
13 about all three of the entity defendants here because,  
14 number one, it's fraud allegations that we have here.

02:22:14 15 And I think it's going to be relevant to whether he was  
16 inducing my client into entering into an agreement for  
17 his own benefit.

18 MR. GREER: Your Honor, if I could, there  
19 is -- nowhere in the complaint is fraudulent inducement  
02:22:27 20 pled. I know we've been talking about it here. If  
21 plaintiff wants to do that, they're going to need to  
22 move to amend the complaint and add it because it's  
23 just not there. So we don't have that allegation even  
24 before the Court at this time.

02:22:37 25 Two, what Mr. Dziubla makes as an employee of

02:22:44 1 Las Vegas Development Fund is not material to the  
2 issues here of whether or not Front Sight has breached  
3 the contract thus supporting the filing of the notice  
4 of default with the Nye County Recorder, which is what  
02:22:55 5 we are here for in this preliminary injunction to  
6 determine whether LVD Fund has the right to keep that  
7 notice of default in place because of the breaches by  
8 Front Sight.

9           So all of this fishing around about personal  
02:23:11 10 information I just will submit is just not relevant to  
11 these proceedings.

12           THE COURT: Mr. Aldrich?

13           MR. ALDRICH: Paragraph 76 of the complaint  
14 references paragraphs 11 through 73 -- I'm sorry. It's  
02:23:32 15 the second amended complaint, by the way. Also says at  
16 line 15.

17           "Defendants Dziubla and Fleming acted in  
18 concert throughout the time frame described  
19 herein as officers and representatives of the  
02:23:45 20 instant defendants and individually because  
21 they benefited individually from their unlawful  
22 conduct."

23           THE COURT: I'm sorry. What page?

24           MR. ALDRICH: Page 29, paragraph 76.

02:24:01 25           It talks about at line 22 -- I'm sorry -- it

02:24:07 1 talks about how there's all those emails and  
2 representations that were made, commingling and the  
3 misappropriation of funds.

4 And the paragraph 78, numerous false  
02:24:27 5 statements and concealment of material.

6 79, starting at line 1 on page 31.

7 "Defendants made these untrue statements  
8 and/or concealed facts with the intent of  
9 inducing plaintiff to enter into the contracts  
02:24:41 10 with defendants and to continue paying money to  
11 defendants for marketing fees, setup costs for  
12 the regional center, and to allow defendants to  
13 divert plaintiff's funds for defendant's own  
14 nonproject-related purposes."

02:24:54 15 Then it talks about reliance in paragraph 80.  
16 And paragraph 81 lists several misrepresentations.  
17 Concealment of funds, how they were spent. And on from  
18 there.

19 MR. GREER: Your Honor, each of the  
02:25:21 20 allegations of misrepresentations are related to EB-5  
21 Impact Advisors. They -- even the alleged comments  
22 about how much they were going to raise having stopped  
23 by May of 2016. At that point in time, both Front  
24 Sight and all of -- Mr. Dziubla and Jon Fleming all  
02:25:43 25 agreed that it was time to make a decision on whether

02:25:45 1 to part paths or go forward with the change in the  
2 circumstances in taking away that maximum -- the  
3 minimum raise requirement and disburse the money that  
4 was raised to date and treat it as a lender-borrower  
02:26:01 5 relationship, a standard lender-borrower relationship  
6 from that point forward. So any type of comments about  
7 fraud or fraudulent statements may have something to do  
8 about the allegations with regard to EB-5 Impact  
9 Advisors, but it has nothing to do -- and according to  
02:26:17 10 the allegations in the complaint even has nothing to do  
11 with LVD Fund, which is --

12 MS. HOLBERT: I think it was dismissed.

13 MR. GREER: What's that?

14 MS. HOLBERT: I think our motion to dismiss  
02:26:23 15 was dismissed against --

16 MR. GREER: Oh, that's right. We had a motion  
17 to dismiss. This complaint was subject to the motion  
18 to dismiss, and there were -- which allegations were --

19 MS. HOLBERT: I think the whole cause of  
02:26:35 20 action --

21 MR. GREER: The whole cause of action.

22 MS. HOLBERT: -- was dismissed except for EB-5  
23 and LVD Fund.

24 MR. GREER: Yeah.

02:26:40 25 MS. HOLBERT: Do you have that, John?

02:26:40 1 MR. GREER: What have you got here?

2 MR. ALDRICH: I have a fourth cause of action

3 for civil conspiracy.

4 THE COURT REPORTER: Are we on the record

02:26:42 5 right now, because I'm having a hard time.

6 THE COURT: You can't take all that.

7 MR. ALDRICH: Let's go off the record.

8 (A discussion was held off the record.)

9 THE COURT: Are we back on the record?

02:27:47 10 Is there a cause of action for fraud in the

11 inducement?

12 MR. ALDRICH: There's a cause of action for

13 fraud and intentional misrepresentation. And then I

14 just read the paragraph that talks about fraud in the

02:27:58 15 inducement.

16 THE COURT: Okay.

17 MR. ALDRICH: Those fraud claims remain

18 against all defendants. There is also a civil

19 conspiracy claim that remains against all the

02:28:06 20 defendants.

21 MR. GREER: Your Honor, in the complaint

22 itself, the first cause of action is for fraud,

23 intentional misrepresentation, concealment against all

24 defendants. There is no reference to fraud in the

02:28:15 25 inducement. There is no allegation of fraud in the

02:28:17 1 inducement as to the LVD loan agreements anywhere in  
2 the cause of action.

3 MR. ALDRICH: Paragraph 79.

4 THE COURT: Well, I guess, the controlling  
02:28:31 5 question -- I want to make sure I got it correctly --  
6 you were asking -- or questioning whether he had been  
7 paid, right?

8 MR. ALDRICH: Been compensated. The question  
9 was -- this specific question was with regard to  
02:28:47 10 Las Vegas Development Fund, which is the lender.  
11 That's the underlying question.

12 THE COURT: And I think he said, yes.

13 MR. ALDRICH: He did. And, yeah, you're  
14 right, your Honor. Then I asked a follow-up, I'm sure  
02:29:03 15 inartfully worded, but it was essentially, "In what  
16 form were you compensated?"

17 MR. GREER: There's no basis for going into  
18 what he made.

19 But the way the loans are set up, the money  
02:29:18 20 goes to Front Sight. Then they pay interest to the  
21 lender. What the lender does with that money is the  
22 lender's business, your Honor, and how -- what  
23 Mr. Dziubla makes as an employee of the lender is not  
24 relevant to anything related to this preliminary  
02:29:32 25 injunction as to whether or not the notice of default

02:29:37 1 needs to be expunged or whether Las Vegas Development  
2 Fund can go forward with its foreclosure. That's what  
3 we're here for.

4 THE COURT: Well, I think one of the issues,  
02:29:45 5 at least I'm attempting to follow everything, goes back  
6 to the original series of letters of intent, I guess --  
7 that's what I will call them -- that they would not be  
8 paid until the final sums of monies were raised.

9 MR. ALDRICH: That's correct.

02:30:02 10 MR. GREER: Your Honor, but that was a totally  
11 different company. That was EB-5 Impact Advisors.  
12 That contract was a two-year contract. It expired.  
13 The EB-5 Impact Advisors was dissolved. It's a  
14 different deal. And that's -- I think it's very  
02:30:18 15 important that we realize that there are several  
16 different distinct entities here. There is the EB-5  
17 Impact Advisors that started up and set up the regional  
18 center and developed this framework to go forward.  
19 There is the regional center that we've discussed. And  
02:30:32 20 then with regard to the money that was put in by the  
21 investors, that was put into Las Vegas Development  
22 Fund. That money was then lent from Las Vegas  
23 Development Fund to Front Sight.

24 We're here today on this motion because we  
02:30:49 25 allege that Front Sight breached the construction loan



02:30:53 1 agreement. And the question is do -- does Las Vegas  
2 Development Fund have the right to continue with the  
3 foreclosure process? That's why we're here.

4 All of these -- talking about language in a  
02:31:05 5 proposal letter that did not convert into a contract  
6 many, many years before the creation of the lender in  
7 this case, Las Vegas Development Fund, is just the two  
8 don't tie together. They're -- they're -- they're  
9 separate and distinct and should not in any way impact  
02:31:28 10 the lender itself.

11 THE COURT: Anything you want to add to that,  
12 sir?

13 MR. ALDRICH: Sure. There is fraud claims.  
14 Paragraph 79 talks about fraud in the inducement.  
02:31:45 15 We've got civil conspiracy claims against the  
16 defendants as well. There's an issue as to what has  
17 happened with my client's funds that they paid for  
18 certain things to happen.

19 And then we see as we look at these documents,  
02:31:58 20 we already looked at Exhibit -- I believe it was 3 --  
21 that's on this Kenworth entity's letterhead. And then  
22 we move to a different entity, and now we have EB-5IA,  
23 EB-5IC, Las Vegas Development Fund. All of these  
24 questions are pertinent to what has gone on here  
02:32:20 25 because we are alleging that our client was duped. And

02:32:23 1 there was never even a possibility that they were going  
2 to get what they were trying to get.

3           And we've already gone through a couple of  
4 these emails and letters that show the promise was  
02:32:40 5 \$65 million. There's reference to 150 million, but  
6 \$65 million with 100 million to follow it up, and we're  
7 not going to get paid one cent until we get the  
8 \$65 million.

9           MR. GREER: Your Honor, here's -- I guess, if  
02:32:56 10 what Front Sight is arguing, your Honor, is that  
11 because they alleged that there were -- that EB-5  
12 Impact and they didn't raise enough money, they didn't  
13 raise 65 million, so the 7 million, \$6.75 million that  
14 they received from investors in the EB-5 program, if  
02:33:17 15 they're saying that they don't have to follow the terms  
16 of the construction loan agreement because more money  
17 wasn't raised, I think we can -- that -- that means  
18 that what Mr. Dziubla made has nothing to do with this  
19 case. If that's what their argument is, what he made  
02:33:35 20 as an officer of the bank or the lender doesn't matter  
21 at all in that argument.

22           And that's why the danger that -- you'll  
23 notice that counsel, Front Sight, is arguing all these  
24 allegations about how much we're going to raise, how  
02:33:48 25 much we're going to raise in the early stages of the

02:33:51 1 process. Well, once the money was in the bank,  
2 literally, and a decision was made what to do with it,  
3 give it back to the investors, start over, or move  
4 forward as a traditional borrower and lender with the  
02:34:04 5 money we have, and Front Sight -- we have documentation  
6 as part of the exhibits that are admitted in counsel's  
7 binder, decided to go with the deal, let's take the  
8 money that's there, let's borrow it. And they were  
9 obligated to follow the terms of the loan agreement  
02:34:20 10 when they made that decision. And that's what we're  
11 here -- that's what this hearing is about.

12           So tying all these other things together  
13 just -- it's smoke and mirrors and it avoids what the  
14 true issues are, and that is: We've got the foreign  
02:34:35 15 investors' monies that were lent to Front Sight. And  
16 the question is, did they breach the agreement? We say  
17 they did. Do they have an excuse for breaching it or  
18 why we shouldn't be able to foreclose? And the only  
19 thing I'm hearing from counsel is the defendants didn't  
02:34:49 20 raise more money so, therefore, Front Sight doesn't  
21 have to follow the obligations of the -- of the loan  
22 agreement. If that's where we are, Mr. Dziubla's  
23 salary does not matter at all.

24           THE COURT: What's the response to that?

02:35:05 25           MR. ALDRICH: Again, we've got -- there are a

02:35:07 1 lot of allegations in the complaint. It's a long  
2 complaint because there is a lot that's happened here.  
3 But like I said, we've got the fraud in the inducement  
4 issues. We won't take any money till we raise

02:35:18 5 \$65 million, which hasn't happened. Nobody disputes  
6 that.

7 We've got -- we can even go and argue breach  
8 of contract claims if we want to as an alternative  
9 theory. And we can argue that they can't foreclose  
02:35:33 10 because they didn't do what they said they would do,  
11 which in the construction loan agreement says they're  
12 going to raise \$75 million.

13 MR. GREER: No, that's not in the agreement.

14 MR. ALDRICH: And so it -- that -- that  
02:35:44 15 becomes the issue, right? Even if we're going to talk  
16 about the contract, what's been going on here, where  
17 the money's going matters. But it matters because my  
18 client was duped into investing all this money and not  
19 getting what they were supposed to get. So ...

02:36:02 20 THE COURT: You can ask him the source of his  
21 salary. Is it from a loan? Is it from -- because  
22 right now, I mean, I've been trying to follow all the  
23 different entities and now we're at Las Vegas  
24 Development, and I guess they funded the EB-5 money  
02:36:18 25 apparently \$7 million or so.

02:36:21 1 MR. ALDRICH: A little under, I think.

2 THE COURT: A little under; right?

3 And how do we get there versus all the other

4 entities? You see where I'm going on that? I just

02:36:32 5 want to make sure how we got there and how does -- does

6 Las Vegas Development Fund change the -- the source of

7 the funding? Does it matter?

8 MR. ALDRICH: I'm not sure I understand the

9 Court's question.

02:36:52 10 MR. GREER: Of course, the funding then comes

11 in from the -- the investors' money is given to Front

12 Sight.

13 THE COURT: No. I ...

14 MR. GREER: Front Sight pays the interest.

02:36:58 15 THE COURT: No, I understand. It's still EB-5

16 money; right?

17 MR. GREER: Right.

18 THE COURT: I get that, but we just have a

19 different -- it seems to me the Las Vegas Development

02:37:05 20 Fund ultimately was the entity that was able to obtain

21 some of the funding; is that correct? Am I saying --

22 MR. GREER: All of the funding went into

23 Las Vegas Development Fund.

24 THE COURT: Yeah.

02:37:17 25 MR. ALDRICH: Seven --

02:37:17 1 MR. GREER: All the actual money that was  
2 allowed to be distributed through the EB-5 program.

3 THE COURT: Yeah. And when I -- the only  
4 reason I said "some of the funding," it wasn't the  
02:37:25 5 entire \$65 million or whatever.

6 MR. GREER: No.

7 MR. ALDRICH: Correct.

8 MR. GREER: The amount raised was put into the  
9 fund and then lent.

02:37:31 10 MR. ALDRICH: And there again, there's no  
11 dispute about the fact that the actual foreign investor  
12 money -- at least right now there's not a dispute --  
13 that the foreign investor money came to Las Vegas  
14 Development Fund. Our beef with EB-5IA is they were  
02:37:50 15 the marketing entity that was supposed to be raising  
16 the money that ultimately would have come through and  
17 been loaned to my client. But we haven't gotten into  
18 that as much yet, but ...

19 MR. GREER: And I do think -- I disagree with  
02:38:02 20 the allegations, but I do think the allegations do make  
21 a claim against EB-5 Impact Advisors. That's a  
22 monetary claim. It's separate and distinct from LVD  
23 Fund and from the investor money that's on a totally  
24 different track.

02:38:14 25 If Front Sight has a beef with Investment

02:38:16 1 Advisors for not raising more money, that's where their  
2 beef lies. It can't be carried over into the  
3 subsequent lending of foreign investors' monies.

4 MR. ALDRICH: It goes back to the allegation  
02:38:30 5 of the second amended complaint. The disturbing part  
6 is we have the same people running all the entities and  
7 making all the representations that all ties together.  
8 That's how we end up with a civil conspiracy claim and  
9 fraud claim against all the defendants.

02:39:00 10 THE COURT: So, I guess, he did admit he was  
11 paid.

12 MR. ALDRICH: Correct.

13 THE COURT: And what's the source? From who?

14 MR. ALDRICH: That was where we were headed.

02:39:06 15 THE COURT: Okay.

16 MR. ALDRICH: And I'll just tell the Court  
17 since we're talking about it, I was going to ask how  
18 much, so ...

19 MR. GREER: I see what you're saying. Okay.  
02:39:12 20 Another analogy was brought to my attention here. This  
21 is like the Wells Fargo case where they got problems  
22 with which loans? With their auto loans.

23 MS. HOLBERT: The auto loans.

24 MR. GREER: But that doesn't mean the people  
02:39:21 25 with mortgages didn't have to pay any more.

02:39:22 1 MS. HOLBERT: Right. But at the same time --  
2 THE COURT REPORTER: One at a time.  
3 MR. GREER: Got the same people involved, same  
4 everything. There's two different tracks of money.  
02:39:32 5 MS. HOLBERT: Even if it was a total breach,  
6 you still have to pay the loan back.  
7 MR. GREER: Right. And that's just it.  
8 For the record, because it's not loud  
9 enough --  
02:39:38 10 MS. HOLBERT: Sorry.  
11 MR. GREER: -- even if there's a total breach  
12 of the marketing agreement, you still have to pay the  
13 loan back.  
14 MS. HOLBERT: It's a different agreement.  
02:39:51 15 THE COURT: Is your client taking a position  
16 they don't have to pay that 7 million back or ...  
17 MR. ALDRICH: Your Honor, my client has  
18 alleged fraud in the inducement of the loan. I'm  
19 thinking before I talk.  
02:40:18 20 THE COURT: That's okay. That's fine.  
21 MR. GREER: I think the remedy --  
22 THE COURT: Okay. We know this.  
23 MR. GREER: But the remedy for fraud in the  
24 inducement is to give the money back, so ...  
02:40:27 25 THE COURT: I understand that, but that's



02:40:28 1 another day.

2           Okay. We've -- you know, we don't have to go

3 on how much he has -- he was paid now, but maybe at a

4 later date. But he was paid, and what was the source?

02:40:38 5 Who paid him?

6           MR. ALDRICH: Okay.

7           THE COURT: Right?

8 BY MR. ALDRICH:

9           Q. So you've testified that you did receive

02:40:50 10 compensation from Las Vegas Development Fund, correct?

11          A. Yes.

12          Q. Okay.

13          THE COURT: Okay.

14 BY MR. ALDRICH:

02:40:55 15          Q. And what was the source of that compensation?

16          A. The interest payments from Front Sight under

17 the secured construction loan agreement.

18          THE COURT: Okay.

19 BY MR. ALDRICH:

02:41:11 20          Q. Okay. And did you receive any other benefits

21 from Las Vegas Development Fund?

22          A. This lawsuit, if you want to call it a

23 benefit. I don't.

24          Q. Most people don't.

02:41:26 25                 Did you have health insurance?

02:41:27 1

A. No.

2

Q. That was a "no"?

3

A. No.

4

Q. I'm sorry. Just didn't hear you.

02:41:34 5

6 The Las Vegas Development Fund paid for a car  
7 or anything like that?

8

9 A. I received compensation from Las Vegas  
10 Development Fund, and that is based on interest  
11 payments that we received from Front Sight.

02:41:49 12

THE COURT: I understand.

13

BY MR. ALDRICH:

14

15 Q. And it would have -- you would have been the  
16 person to authorize that compensation, correct?

17

A. Yes.

02:42:15 18

19 Q. And did you receive any form of compensation  
20 from EB-5 Impact Advisors?

21

A. Did I personally receive compensation?

22

Q. Yes.

23

24 A. No. To the contrary, we had to put our own  
25 capital into EB-5 Impact Advisors to keep it afloat.

02:42:41 26

27 Q. And you say you put your own capital. Do you  
28 mean your own personal funds or funds from your  
29 regional center?

30

A. Funds from our regional center.

02:43:09 31

Q. Did you receive any sort of benefits from EB-5

02:43:17 1 Impact Advisors such as health insurance or anything  
2 like that?

3 A. No.

4 Q. And did you receive any form of compensation  
02:43:29 5 from the regional center?

6 A. No.

7 Q. And did Mr. Fleming receive any form of  
8 compensation from Las Vegas Development Fund?

9 A. No.

02:44:20 10 Q. Did Mr. Fleming receive any form of  
11 compensation from EB-5 Impact Advisors?

12 A. I thought that was the question you just  
13 asked.

14 Q. I meant to ask about Las Vegas Development  
02:44:32 15 Fund, so let me just start over again.

16 Did Mr. Fleming receive any compensation from  
17 Las Vegas Development Fund?

18 A. I don't recall exactly whether we'd already  
19 received -- you'll have to ask Mr. Fleming. Depends on  
02:44:51 20 the timing of when Front Sight began paying interest on  
21 the loan and his withdrawal.

22 Q. And did Mr. Fleming receive any compensation  
23 from EB-5 Impact Advisors?

24 A. No.

02:45:14 25 Q. Did Mr. Fleming receive any compensation from

02:45:18 1 the regional center?

2 A. No.

3 Q. Has Ms. Stanwood received any compensation  
4 from Las Vegas Development Fund?

02:45:38 5 A. No.

6 Q. And has Ms. Stanwood received any compensation  
7 from EB-5 Impact Advisors?

8 A. No.

9 Q. Has Ms. Stanwood received any form of  
02:45:59 10 compensation from the regional center?

11 A. No.

12 Q. Did defendant Las Vegas Development Fund ever  
13 have any other employees besides you and Mr. Fleming?

14 A. We had several independent contractors but no  
02:46:25 15 full-time employees.

16 Q. Do you remember the names of any of these  
17 independent contractors?

18 A. Ethan Devine and then bookkeepers and  
19 accountants.

02:46:44 20 Q. And what did Mr. Devine do for Las Vegas  
21 Development Fund?

22 A. Ethan was superbly fluent in Chinese, and we  
23 hired him to help manage our international marketing  
24 and especially within China.

02:47:24 25 Q. Was Mr. Devine doing marketing in China on

02:47:31 1 behalf of Las Vegas Development Fund?

2 A. Yes.

3 Q. What marketing was he doing in China for Las  
4 Vegas Development Fund?

02:47:49 5 A. Marketing the Front Sight project.

6 Q. Was Mr. Devine also employed by EB-5 Impact  
7 Advisors?

8 A. I don't recall whether his contract was --  
9 you've got it, so you tell me. Was it with EB-5IA or

02:48:12 10 Las Vegas Development Fund? I can't remember offhand.

11 Q. Is it significant to you that -- whether he  
12 was employed by Las Vegas Development Fund or EB-5  
13 Impact Advisors?

14 A. It would depend on the time, because the  
02:48:27 15 original engagement letter was with EB-5IA, and so EB-5  
16 Impact Advisors was marketing the Front Sight project  
17 and we might have engaged Ethan at that point in the  
18 timeline. But then once the loan was finalized and  
19 signed in October of 2016, Las Vegas Development Fund  
02:48:52 20 really assumed the primary role of marketing.

21 Q. So in October of 2016 Las Vegas Development  
22 Fund assumed the role of marketing the Front Sight  
23 project?

24 A. It probably assumed -- about that time frame.

02:49:23 25 Could have been a few months earlier.

02:49:40 1 Q. So what role did EB-5 Impact Advisors play in  
2 the Front Sight project after October of 2016 if Las  
3 Vegas Development Fund took over the marketing?

4 A. Very little. You know, there was a transition  
02:49:56 5 period as we moved from EB-5 Impact Advisors to Las  
6 Vegas Development Fund.

7 THE COURT: And, you know, this might have  
8 been asked, but why was there a transition from EB-5  
9 Impact Advisors to Las Vegas Development Fund?

02:50:15 10 THE WITNESS: Because EB-5 Impact Advisors had  
11 a two-year contract that started in 2013 to help  
12 establish the EB-5 funding platform, which included the  
13 establishment of Las Vegas Development Fund and the  
14 regional center. Until the contract had a two-year  
02:50:35 15 term, and then we continued on a gentleman's basis  
16 until the loan agreement was signed in October of 2016.

17 And at that point, there was no need for EB-5  
18 Impact Advisors anymore because we had a formal,  
19 full-fledged construction loan agreement with Front  
02:50:51 20 Sight.

21 THE COURT: And that was the \$7 million?

22 THE WITNESS: Correct.

23 THE COURT REPORTER: Is this a good time to  
24 take a break, Judge?

02:51:06 25 THE COURT: Yeah. If you need it, of course,

02:51:08 1 we'll take one.

2           Okay. We'll go off the record.

3           Counsel, can you approach for a second?

4                               -o0o-  
5                               (Recess)  
6                               -o0o-

7           THE COURT: All right. Are we going to  
8 continue on, or ...

9           MR. ALDRICH: Sure.

10          BY MR. ALDRICH:

03:30:16 11          Q. Mr. Dziubla, did defendant EB-5IA have any  
12 other employees besides yourself and Mr. Fleming?

13          A. No.

14          Q. And was Ms. Stanwood ever an employee of  
15 EB-5IA?

03:30:37 16          A. No.

17          Q. And did defendant EB-5IA have any independent  
18 contracts with anyone related to services it was to  
19 provide?

20          A. Yes.

03:30:58 21          Q. And with whom?

22          A. I can't recall offhand. I'd have to go back  
23 and check all the records.

24          Q. You have provided some contracts related to  
25 independent contractors. Would you have records beyond  
those that you've already provided?

03:31:20 1 A. No. We gave you everything we have.

2 Q. And does the regional center have -- I'm  
3 sorry, strike that.

4 Were you considered an employee of the  
03:31:40 5 regional center?

6 A. I'm the president and CEO, so if that's an  
7 employee, I guess I am.

8 Q. Okay. And Mr. Fleming was the senior vice  
9 president, I believe, of the regional center?

03:31:54 10 A. Yes.

11 Q. And then later Ms. Stanwood was, I think,  
12 senior vice president of one of the entities, right?

13 A. Las Vegas Development Fund.

14 Q. Was she an officer in the regional center?

03:32:13 15 A. No.

16 Q. And has the regional center had any  
17 independent contract relationships with people or  
18 entities?

19 A. Lawyers, accountants, bookkeepers.

03:32:33 20 Q. Beyond lawyers, accountants, and bookkeepers?

21 A. Not that I recall.

22 Q. When you submitted the request for approval of  
23 the regional center from USCIS, did you have to list  
24 the employees or partners for the regional center?

03:33:21 25 A. I don't recall. I'd have to take a look at



03:33:23 1 the application.

2 Q. Do you recall listing any employees or  
3 partners besides yourself and Mr. Fleming?

4 A. In the regional center?

03:33:38 5 Q. Application, correct.

6 A. I don't recall.

7 Q. And from the time that you entered into -- I'm  
8 sorry, strike that.

9 From the time the regional center was created  
03:34:18 10 to the present, have you had any other jobs for which  
11 you received compensation besides related to the Front  
12 Sight project?

13 A. I, individually?

14 Q. You, yes, sir.

03:34:32 15 A. As I referenced earlier, we did a  
16 rent-a-center model for the Indio project.

17 Q. Besides that?

18 A. I don't recall. I don't remember offhand.

19 Q. If you could turn to Exhibit 1 for me, I'd  
03:35:01 20 appreciate it.

21 MR. GREER: No objection.

22 MR. ALDRICH: Okay. I will move to admit  
23 Exhibit 1.

24 THE COURT: So admitted.

03:35:21 25 (Exhibit 1 admitted).

03:35:24 1 BY MR. ALDRICH:

2 Q. Mr. Dziubla, this is an email from you to  
3 Mr. Meacher, correct?

4 A. Yes.

03:35:30 5 Q. And looks like Linda Stanwood is also copied,  
6 correct?

7 A. Yes.

8 Q. All right. And this is from May 12, 2018,  
9 correct?

03:35:53 10 A. Yes.

11 Q. Okay. On that, I guess technically the third  
12 paragraph, it starts "in the meantime."

13 Do you see that?

14 A. Yes.

03:35:59 15 Q. It says.

16 "In the meantime, I am pleased to say that  
17 Linda Stanwood (included on this email) has  
18 joined our company as senior vice president."

19 Did I read that correctly?

03:36:11 20 A. Yes.

21 Q. It says.

22 "I have copied her on this email. Linda  
23 has been working informally with us for several  
24 years and is quite familiar with the EB-5

03:36:23 25 business. She's been working with us on a

03:36:25 1 formal and full-time basis since January 1  
2 after Jon's decision to go pursue other  
3 business opportunities."

4 Did I read all that correctly?

03:36:34 5 A. Yes.

6 Q. When it says that Ms. Stanwood has joined "our  
7 company," what company are you referring to?

8 A. Las Vegas Development Fund and the Regional  
9 Center. Primarily Las Vegas Development Fund.

03:36:53 10 Q. So was Ms. Stanwood then a senior vice  
11 president at both Las Vegas Development Fund and the  
12 Regional Center?

13 A. No. Just the Las Vegas Development Fund.

14 Q. I notice that she's -- the emails for both you  
03:37:16 15 and Ms. Stanwood are for EB-5 Impact Capital, the  
16 dotcom. EB-5 Impact Capital is the regional center,  
17 correct?

18 A. It's the generic domain name that we  
19 registered the handle, EB-5 business, the Regional  
03:37:35 20 Center, and Las Vegas Development Fund.

21 Q. And so there wasn't a separate email for  
22 Las Vegas Development Fund. You just used this one,  
23 this eb5impactcapital.com email?

24 A. Yes, because as you'll recall, the regional  
03:37:55 25 center is the majority 80 percent owner of Las Vegas

03:37:59 1 Development Fund.

2 Q. Has Ms. Stanwood ever had an ownership  
3 interest in Las Vegas Development Fund?

4 A. Only through our estate plan.

03:38:20 5 Q. And does Ms. Stanwood have any -- has she ever  
6 had any ownership interest in EB-5 Impact Advisors?

7 A. Only indirectly through our estate plan should  
8 I kick the bucket.

9 Q. Okay. And has Ms. Stanwood ever had an  
03:38:47 10 ownership interest in the regional center?

11 A. Only indirectly through our estate plan.

12 Q. What are Ms. Stanwood's qualifications and  
13 experience to be senior vice president of Las Vegas  
14 Development Fund?

03:39:11 15 A. She's been married to me for 36 years, so  
16 she's gotten a lot of kitchen table talk education.  
17 And she was also a real estate finance lawyer at the  
18 Pillsbury Winthrop firm for many years.

19 Q. She worked in real estate finance at  
03:39:38 20 Pillsbury?

21 A. Yes.

22 Q. Okay. Where did she go to law school?

23 A. Northwestern.

24 Q. Has Ms. Stanwood ever been a senior vice  
03:39:57 25 president in a regional center before?

03:39:59 1 A. No.

2 Q. And did she have any direct experience with  
3 EB-5 funding?

4 A. No.

03:40:16 5 Q. That email references that Ms. Stanwood has  
6 been working informally -- it says "with us for several  
7 years." Who is "us" as referenced there?

8 A. Me and the companies.

9 Q. So "the companies" being Las Vegas Development  
03:40:31 10 Fund, EB-5IA and the Regional Center?

11 A. Yes. All of which I am the president and CEO.

12 Q. And what do you mean when you say that she  
13 worked informally?

14 A. She listened to me discuss the transaction and  
03:40:51 15 was a sounding board and a reality check like all good  
16 wives are.

17 Q. But is it fair to say she had no direct  
18 involvement in any of -- in anything related to EB-5  
19 funding?

03:41:12 20 A. Correct.

21 Q. And when you say she is quite familiar with  
22 EB-5 business, is that related to the conversations you  
23 guys have had over 36 years, did you say?

24 A. Thirty-six years, yes.

03:41:35 25 Q. Then you said that she was working on a formal

03:41:38 1 and full-time basis since January 1st of 2018. What do  
2 you mean by "formal and full-time basis"?

3 A. She was copied on all of the emails, and I was  
4 gradually getting her more and more involved in the  
03:41:56 5 business so that should something happen to me, she'd  
6 be able to step in and help to protect the investors.

7 Q. Was she working 40 hours a week?

8 A. No.

9 Q. So the reference to working in a full-time  
03:42:22 10 basis, that --

11 A. It was her only real job.

12 MR. GREER: She's not going to get a copy of  
13 this transcript.

14 THE WITNESS: I think she would say that  
03:42:39 15 raising grandchildren is a full-time job.

16 BY MR. ALDRICH:

17 Q. And I think you already told me she did not  
18 receive any salary from any of these entities, correct?

19 A. No, she did not.

03:43:29 20 Q. All right. Look at Exhibit 2 for me. The  
21 third page of that exhibit, 0004 is the Bates number.  
22 We talked about this a little bit before, but you make  
23 reference to -- you say.

24 "I have personally been involved in over  
03:43:49 25 \$10 billion of hospitality and leisure

03:43:53 1 transactions during my 35-year career as an  
2 investor, owner, operator, investment banker,  
3 and lawyer."  
4 Have you been involved in any EB-5 funding  
03:44:08 5 projects as an investor?  
6 A. No.  
7 Q. I assume that's because you're a United States  
8 citizen?  
9 A. Correct.  
03:44:26 10 Q. Have you been involved in any EB-5 projects as  
11 an owner?  
12 A. We're a regional center and an EB-5 lender.  
13 Q. Okay. And we've already talked about those;  
14 right?  
03:44:39 15 A. We have.  
16 Q. Okay. You mentioned as an operator. What do  
17 you mean when you say "an operator"?  
18 A. When I had my real estate private equity fund  
19 in Thailand, I owned multiple resorts and industrial  
03:44:57 20 properties.  
21 Q. So your private equity fund owned those?  
22 A. Yes.  
23 Q. And you operated them as well?  
24 A. Yes.  
03:45:15 25 Q. And when you say "multiple resorts," roughly

03:45:18 1 how many?

2 A. Four resorts.

3 Q. And your projects as an investment banker, did  
4 any of those involve EB-5 funding?

03:45:39 5 A. No.

6 Q. And as an attorney, we talked about the deal  
7 back in about 1992. And there aren't any beyond that,  
8 correct? I'm sorry. Strike that. I'm going to ask it  
9 again.

03:46:08 10 As an attorney, you've not been involved in  
11 any EB-5 funding except for the one -- the transaction  
12 we talked about back in 1992, correct?

13 A. That's a --

14 MR. GREER: Misstates testimony.

03:46:23 15 THE WITNESS: How does one take off --

16 THE COURT: Wait. Wait.

17 THE WITNESS: -- a lawyer's cap?

18 THE COURT: Did you understand the question,  
19 sir?

03:46:30 20 THE WITNESS: I didn't, your Honor.

21 THE COURT: Okay. Rephrase.

22 MR. ALDRICH: Sure.

23 BY MR. ALDRICH:

24 Q. We talked about a transaction that you handled  
03:46:39 25 in the capacity as an attorney back in 1992, correct?



03:46:43 1 A. Yes.

2 Q. All right. I understand that you have a law  
3 degree and a law license, but had you been involved in  
4 any other EB-5 funding projects where your capacity was  
03:46:56 5 as the attorney?

6 A. As the attorney of record? No.

7 Q. Obviously, we're here talking about this case  
8 and you caused a notice of default to be filed,  
9 correct?

03:47:57 10 A. Yes.

11 Q. What's the plan to protect the investors so  
12 they don't lose their immigration status?

13 A. To compel Front Sight to honor its obligations  
14 under the loan agreement so that I can get the  
03:48:15 15 information I need to file the reports with the federal  
16 government so all of us don't have the FBI, the SEC,  
17 and everybody else in USCIS coming down our throats.

18 Q. And -- but foreclosing on the property doesn't  
19 actually protect the investors, does it?

03:48:35 20 A. It's going to be a big start.

21 Q. How is that?

22 A. Because I can at least have information as to  
23 what's being done. I have received zero since October  
24 despite multiple requests to Front Sight.

03:49:01 25 Q. Have you spoken to any investment bankers

03:49:04 1 about lending money on this project?

2 A. Over the past nine years, yes.

3 Q. Have you in the past two years?

4 A. No, not that I recall.

03:49:35 5 Q. And if you foreclose -- are successful in  
6 foreclosing, are you just going to try to take over the  
7 project then?

8 A. I will. I'll build it myself if I have to.

9 Q. You'll raise financing for it?

03:49:50 10 A. I will do my best, yes.

11 Q. Weren't you supposed to raise financing for it  
12 in the first place?

13 MR. GREER: Argumentative, your Honor.

14 THE COURT: I'll overrule.

03:50:01 15 THE WITNESS: But I have done the best job  
16 that I could. And when my investors' lives are at  
17 stake, they could well draw upon their own personal  
18 resources overseas to make sure that this project gets  
19 completed so they get their green card and don't lose  
03:50:16 20 all of their money.

21 BY MR. ALDRICH:

22 Q. Do you have any brokerage agreements related  
23 to this project?

24 A. No.

03:50:39 25 Q. How do you determine how someone is going to

03:50:43 1 get -- strike that.

2           If there's an agent for an investor who refers  
3 them and they contribute money, invest money, how does  
4 that agent get paid?

03:50:59 5           A.    I don't know all of the ways that they get  
6 paid.  They receive the administration fee and then --

7           MR. GREER:  Your Honor, again, also this is  
8 getting into the area of trade secrets.  Very highly  
9 protected proprietary information that Front Sight has  
03:51:14 10 tried to get before and very concerned about them using  
11 it to end run around the EB fund because harm -- if  
12 that word gets out that that information was shared,  
13 the LVD Fund loses its agents, loses its business  
14 basically.  So that's -- we're here today because of a  
03:51:33 15 preliminary injunction to expunge a notice of default  
16 on a mortgage or a loan agreement that has gone into  
17 default.  And so that's the issue here.  And how the  
18 agents get paid is not remotely related to the issue at  
19 hand.

03:51:51 20           THE COURT:  I'll sustain.

21 BY MR. ALDRICH:

22           Q.    All right.  Are there any USCIS regulations  
23 about how the agents can get paid?

24           A.    Not that I know of.

03:52:03 25           Q.    And so your position as I'm understanding from

03:52:07 1 Mr. Greer is that who your agents are is proprietary?

2 MR. GREER: I didn't say who they are. I'm  
3 sorry, your Honor. Clarification.

4 THE COURT: I understand. You said how  
03:52:16 5 they're paid; right?

6 MR. GREER: Yes, your Honor.

7 MR. ALDRICH: Fair enough. My mistake.

8 THE WITNESS: Absolutely it's proprietary.

9 BY MR. ALDRICH:

03:52:26 10 Q. Okay. Do you have agreements with those  
11 agents about the amount you will pay them?

12 A. Yes.

13 Q. And are those written agreements?

14 A. Yes.

03:52:41 15 Q. And are those agreements with the Regional  
16 Center or Las Vegas Development Fund?

17 A. I believe they're with Las Vegas Development  
18 Fund.

19 Q. Is there some sort of qualification process  
03:53:02 20 that an agent has to go through to be able to be paid  
21 whatever the fee is to bring the investor?

22 A. They have to source the investors.

23 Q. Okay. Is there any sort of USCIS regulation  
24 or SEC regulation that they have to register under or  
03:53:21 25 anything?

03:53:22 1 A. No, not at this time.

2 Q. Are there any requirements under federal law  
3 related to broker dealers and EB-5 funding?

4 MR. GREER: Vague and ambiguous.

03:54:04 5 THE WITNESS: You'd have to --

6 THE COURT: Overruled.

7 THE WITNESS: -- ask a securities lawyer.

8 THE COURT: Okay.

9 BY MR. ALDRICH:

03:54:10 10 Q. So fair to say the answer to that question is  
11 "I don't know"?

12 A. Correct.

13 Q. And have you done any business with any broker  
14 dealers related to the Front Sight project?

03:54:27 15 A. No.

16 And to clarify, you mean an SEC-registered  
17 broker dealer, correct?

18 Q. That's what I mean, yes.

19 A. Okay. The answer is, no, there is not.

03:54:49 20 Q. Okay. Is it -- strike that.

21 We talked about this a little bit earlier, but  
22 approximately how many investors have there been in  
23 this project?

24 A. Somewhere between 15 and 18. We've had a  
03:55:26 25 couple withdraw.

03:55:27 1 Q. Okay. And is it your position that the  
2 identity of those investors is proprietary or  
3 confidential in some way?

4 A. Yes. They are my investors --

03:55:42 5 Q. Okay.

6 A. -- and members of my LLC.

7 Q. Besides being members in your LLC, is there  
8 any other basis by which you would --

9 (Unreportable cross-talk)

03:55:54 10 A. I have a duty of confidentiality to my agents.

11 Q. Okay. So let me finish my question, if I can.

12 Besides being members of your LLC, is there  
13 any other basis by which you would keep their identity  
14 confidential?

03:56:11 15 A. My obligations to my agents to protect their  
16 investors.

17 Q. And is part of your agreement -- strike that.

18 Is it set forth in your written agreement with  
19 your agents that you will keep the identity of the  
03:56:30 20 investors confidential from -- away from Front Sight?

21 A. I don't recall directly whether it's a written  
22 obligation in the agreement, but at a minimum, because  
23 of the long-term personal relationships I have with  
24 these agents, I have an obligation to them to protect  
03:56:49 25 that.

03:56:53 1 Q. So your obligation arises from your long-term  
2 relationship to the agents?

3 A. Yes. And to my friends and acquaintances who  
4 have introduced me to those agents.

03:57:10 5 Q. Okay. So I just want to be clear, there is  
6 not actually a legal obligation then to keep that  
7 confidential?

8 A. I believe that there is. And if I disclose  
9 that, the likelihood of my getting sued in a foreign  
03:57:30 10 jurisdiction is not insignificant.

11 Q. But that obligation is not based on an  
12 agreement, correct?

13 A. It's based on oral agreements.

14 Q. What country -- strike that.

03:58:21 15 Did any of the investors who invest in the  
16 Front Sight project come from China?

17 A. Yes.

18 Q. How many?

19 A. I'd have to check my records.

03:58:39 20 Q. What other countries did they come from?

21 A. India and Russia.

22 Q. My understanding is that of the \$500,000 that  
23 comes in, once it's released, there is a portion that's  
24 released and a portion that's held back; is that

03:59:14 25 correct?

03:59:15 1 A. Yes.

2 Q. Can you explain that?

3 A. 75 percent of the 500- is released, so 375,000

4 is released when the I-526 application is filed, and

03:59:29 5 the remaining 125,000 is released when the I-526

6 application is approved by USCIS.

7 Q. So how much is being held back right now, if

8 you know?

9 A. There is approximately \$2 million in escrow.

03:59:55 10 Q. And have any of the investors obtained their

11 final approval to where the conditions are removed and

12 they have permanency?

13 A. No. And that's not going to happen because

14 we're not getting any information from Front Sight.

04:00:26 15 Q. And did you receive any compensation from any

16 source as a result of any of the investors who have

17 invested in the Front Sight project?

18 A. I don't understand the question.

19 Q. Have you received any compensation of any kind

04:00:46 20 as a result of any investor who has invested in the

21 Front Sight project?

22 A. Once again, the investors subscribe to units

23 in our LLC. We have lent that money to Front Sight

24 pursuant to a secured construction loan agreement.

04:01:04 25 Front Sight pays interest to the lender, Las Vegas



04:01:08 1 Development Fund. And I receive compensation from  
2 Las Vegas Development Fund.

3 Q. So to be clear then -- I understand that part  
4 and I appreciate that -- when an investor comes along  
04:01:23 5 and invests \$500,000, you don't receive any portion of  
6 the \$500,000?

7 A. No.

8 Q. Okay.

9 A. Absolutely not.

04:01:32 10 Q. And then the \$50,000 administration fee, some  
11 portion of that ends up with the regional center,  
12 correct?

13 A. Sometimes.

14 Q. Okay. Do you receive any set percentage of  
04:01:53 15 what comes into the regional center?

16 MR. GREER: Asked and answered, and also  
17 proprietary.

18 THE COURT: Sustained.

19 MR. ALDRICH: I'm sorry, your Honor. Did you  
04:02:11 20 rule on that?

21 THE COURT: I sustained the objection.

22 MR. ALDRICH: Okay. I didn't hear it. I'm  
23 sorry.

24 THE COURT: Oh, that's fine.

25 \\\

04:02:17 1 BY MR. ALDRICH:

2 Q. Related to the Front Sight project, is there  
3 any money being held right now in escrow where an  
4 investor has invested the 500,000, but the 375,000 has  
04:02:44 5 not been provided to Front Sight?

6 A. Yes.

7 Q. And how many investors?

8 A. I'd have to check my records.

9 Q. Can you give me your best estimate?

04:03:01 10 A. I'd have to check my records. It's a chunk of  
11 money.

12 Q. I understand it's a chunk of money. Can you  
13 give me your best estimate on how many people have  
14 invested but the money has not been provided to Front  
04:03:15 15 Sight?

16 A. I would say maybe somewhere between a million  
17 and a million and a half. Again, subject to  
18 confirmation with my records.

19 Q. So that would be either two or three  
04:03:32 20 investors?

21 A. Two or three or four, yeah.

22 Q. Okay. Those two or three or four investors  
23 that we've been talking about, when did they contribute  
24 their money as an investment?

04:03:50 25 A. Before this loan went into default and Front

04:03:53 1 Sight filed this lawsuit.

2 Q. How long before?

3 A. I'd have to check my records.

4 Q. Okay. Your best estimate, a month before or

04:04:12 5 longer?

6 A. Some of them could have been longer. Some of

7 them could have been a month before.

8 Q. So is there a reason that the money wasn't

9 released since there was no default?

04:04:27 10 A. Because Front Sight was not providing adequate

11 information to me to confirm that they were actually

12 spending the money on construction, and my suspicions

13 were confirmed. And Front Sight never provided the

14 required draw request.

04:04:45 15 Q. Okay. For the money that has been released,

16 the 6.3 million or so that's been released --

17 MR. GREER: Is that wrong?

18 THE WITNESS: It's closer to 6.4.

19 MR. ALDRICH: Okay.

04:05:00 20 THE WITNESS: \$6,375,000.

21 MR. ALDRICH: Okay, there you go.

22 BY MR. ALDRICH:

23 Q. For that amount, did you require Front Sight

24 to submit a draw request?

04:05:11 25 A. We didn't.

04:05:12 1 Q. So why the change of heart and requiring a  
2 draw request for these three -- two, three, or four  
3 that are being held?

4 A. Because Front Sight was continuing to drag its  
04:05:38 5 heels. They were refusing to take down the senior debt  
6 even though they held multiple term sheets to do so.  
7 And they refused to provide information.

8 Q. We'll get to some of that stuff a little bit  
9 later, but didn't you tell me that that money came in  
04:05:58 10 before we were -- before Front Sight was in default,  
11 allegedly?

12 A. Before I declared them in default, yes. I was  
13 trying to work this out, but they were not cooperating.

14 Q. All right. Does Las Vegas Development Fund  
04:06:27 15 hold any licenses?

16 A. No. A business license in the state of  
17 Nevada.

18 Q. Okay. Does it -- is it required to have any  
19 licenses as a lender?

04:06:55 20 A. As an EB-5 lender, not that I know of.

21 Q. Besides the approval from USCIS, is it  
22 required to get any other licenses or approvals from  
23 the federal government?

24 A. Not that I know of.

04:07:12 25 Q. All right. One of the -- as part of the

04:07:41 1 notice of default there is a demand for payment of  
2 default interest and attorney's fees.

3           Are you aware that Front Sight has requested  
4 on multiple occasions for documentation relating to the  
04:07:55 5 attorney's fees that are being claimed by Las Vegas  
6 Development Fund?

7           A.    I do understand that from Mr. Greer, yes.

8           Q.    Okay.  And those have not been provided,  
9 correct?

04:08:06 10          A.    I don't know.

11          Q.    Has -- have you gathered the information for  
12 attorney's fees Las Vegas Development Fund has incurred  
13 and asked that they be provided to us?

14          A.    Nobody has made that request to me.

04:08:32 15          Q.    And the construction loan agreement in  
16 reference to the claim for attorney's fees requires  
17 reasonable attorney's fees, correct?

18          A.    I'd have to look at the agreement, but I  
19 assume that's what it says.

04:08:48 20               MR. GREER:  If you're offering to pay them, I  
21 can have those bills faxed over.

22               MR. ALDRICH:  Appreciate that.

23               MR. GREER:  Okay.

24               MR. ALDRICH:  If you'll send them over, then  
04:09:12 25 I'll look at them.

04:09:18 1 BY MR. ALDRICH:

2 Q. To the best of your knowledge, would the  
3 request for attorney's fees that is being made by  
4 Las Vegas Development Fund include attorney's fees from  
04:09:36 5 any attorneys besides the two firms, the attorneys that  
6 are sitting here at the table?

7 A. Yes.

8 Q. Okay. Who else?

9 A. Mike Brand.

04:09:46 10 Q. Okay. What has Mike Brand done?

11 A. I'm sorry?

12 Q. What has Mike Brand done?

13 A. Mike Brand is our real estate counsel and he  
14 provided much of the legal advice before we ended up  
04:09:59 15 going into litigation in response to your lawsuit.

16 And also Mike Matta who is our corporate and  
17 securities lawyer, who's advised me on the securities  
18 law issues in this case.

19 And also actually -- no. They don't include  
04:10:22 20 my EB-5 lawyer yet. I will rectify that problem.

21 Q. Anybody else?

22 A. That's all I can think of at the moment.

23 Q. And are these attorney's fees paid out of the  
24 interest payments that Front Sight makes?

04:10:52 25 A. Yes.

04:10:55 1 Q. And Front Sight continues to make interest  
2 payments, correct?

3 A. Yes.

4 Q. And have you, Robert Dziubla, billed any time  
04:11:15 5 as an attorney related to any of the three defendant  
6 entities in attempts to enforce your rights under this  
7 agreements?

8 A. Heavens, no.

9 Q. All right. If you would turn for me to  
04:12:05 10 Exhibit 33. It's still in Binder No. 1.

11 MR. GREER: No objection to admission.

12 THE COURT: Okay. So admitted.

13 (Exhibit 33 admitted)

14 BY MR. ALDRICH:

04:12:48 15 Q. Mr. Dziubla, is this the construction loan  
16 agreement you referenced earlier?

17 A. It is.

18 Q. And to be clear, there are a couple of  
19 amendments; right?

04:12:58 20 A. Yes.

21 Q. We'll get to those in a minute.

22 I believe I obtained this copy because it was  
23 attached to a declaration from you in prior motion  
24 practice. Does that sound right?

04:13:18 25 A. I have no idea.