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*Attorneys for Reorganized Debtor Front Sight Management LLC*

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

In re:	Case No.: 22-11824-ABL
FRONT SIGHT MANAGEMENT LLC,	Chapter 11
Debtor.	Date: June 1, 2, 4, 5, and 6, 2023 Date: 9:00 a.m.

**DECLARATION OF DR. IGNATIUS PIAZZA IN SUPPORT OF  
AMENDED OBJECTION TO CLAIM NO. 284  
FILED BY LAS VEGAS DEVELOPMENT FUND, LLC**

I, Dr. Ignatius Piazza, hereby declare under penalty of perjury under the laws of the United States of America, as follows:

1. I am over the age of 18 and mentally competent. The facts stated herein are within my personal knowledge unless otherwise indicated. I submit this declaration in support of the *Amended Objection to Claim No. 284 Filed by Las Vegas Development Fund, LLC* (the "Objection").<sup>1</sup> Unless stated on information and belief, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would do so. For those items stated on information and belief, I believe them to be true.

<sup>1</sup> Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Objection.

1           2.       I was the manager of Front Sight Management LLC (“Front Sight”), the debtor in  
2 the above-captioned proceeding and am now authorized to pursue the Objection on behalf of the  
3 reorganized Front Sight. Unless stated on information and belief, I have personal knowledge of  
4 the facts set forth herein and, if called upon to testify, could and would do so. For those items  
5 stated on information and belief, I believe them to be true.

6           3.       I founded Front Sight in 1996.

7           4.       In 1998, Front Sight purchased 550 acres of raw land 45 minutes from Las Vegas,  
8 acquired s water rights, and began building what is now considered the finest and largest private  
9 firearms training facility in the world (the “Front Sight Property”).

10          5.       As a result of my twenty-five years of tireless devotion to Front Sight, the business  
11 grew immensely. The Front Sight Property is currently comprised of 50 outdoor firearms training  
12 ranges, live fire tactical training simulators, an 8,000 square foot classroom and pro shop, and  
13 assorted accessory buildings, bathrooms, three water wells, and thousands of square yards of  
14 completed grading for future development (the “Front Sight Firearms Facility”).

15          6.       Front Sight historically provided firearms training courses which promoted the  
16 defensive use of various firearms. Courses were offered to the general public, members of law  
17 enforcement, and military members. The Front Sight Firearms Facility was the most successful  
18 firearms training facility of its type in the United States. Front Sight provided classes and  
19 instruction annually to upward of 40,000 gun and weapons enthusiasts. Front Sight was considered  
20 the leader in its field, and provided additional training and instruction for numerous city and state  
21 agencies seeking to improve performance of their respective law enforcement departments. Front  
22 Sight’s long term goal was to develop a vacation club and resort (the “Vacation Club & Resort”)  
23 to expand the Front Sight Firearms Facility to also be a word class destination for travel.

24          7.       Front Sight began researching its financing options to complete the Vacation Club  
25 & Resort in the early 2010s. In 2012, Front Sight was approached by Robert W. Dziubla  
26 (“Dziubla”) and John Fleming (“Fleming”), who represented themselves as “like-minded, pro-gun  
27 patriots” who told me they would be able to obtain a financing package to fund Front Sight’s  
28 construction of the proposed Vacation Club & Resort.



8. Front Sight and I initially declined Dzibula and Fleming's advances twice. Dziubla and Fleming persisted and promised that they had vast experience raising foreign investments, personal connections in China, a desire to help Front Sight complete its development, and that they could raise the necessary funds within a year. Ultimately, based on their representations regarding their experience and ability to raise funds through EB-5<sup>2</sup> investments, Front Sight entered into a letter agreement (the "EB5IA Agreement") with EB5 Impact Advisors, LLC ("EB5IA"), a company owned by Dzibula and Fleming.

9. EB51A required, as an initial payment, Front Sight to pay \$300,000 in fees needed to secure approval from the United States Customs and Immigration Service ("USCIS") for a regional center, the EB5 Impact Capital Regional Center, LLC ("EB5IC" and together with EB51A, the "EB5 Entities"), and initial approvals, plus \$100,000 in marketing costs to solicit foreign investors to participate in an EB-5 immigration investment plan.

10. Instead of taking a year to secure the USCIS approval, as Dzibula and Fleming had promised, approval was not forthcoming for more than two years. Dzibula and Fleming demanded, and Front Sight paid, an additional \$220,000, allegedly for "marketing fees." Despite Dziubla's and Fleming's representations and Front Sight's payments of \$520,000, the promised funding did not materialize in 2012.

11. Four years later, in 2016, Dziubla and Fleming stated that LVDF had secured the first \$2.5 million in investor funding, and that LVDF had "hundreds" of investors in the pipeline, each to invest no less than \$500,000, to fund the proposed Vacation Club & Resort.

12. In October of 2016, Front Sight signed the CLA which provided, unequivocally, that LVDF would provide up to \$75 million in funding. A true and correct copy of the CLA is attached hereto as **Exhibit "1."**

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<sup>2</sup> The EB-5 program is a federal foreign direct investment, immigration and regional economic development program that provides access to capital to U.S. businesses from overseas investors, which investors are looking to apply for permanent residency in return for investments that create full-time for qualified U.S. workers.

1           13. Front Sight satisfied each of the conditions and, upon request for an Advance,  
2 LVDF was obligated to fund it. Indeed, LVDF did commence funding Advances under the CLA  
3 because the conditions had been met.

4           14. On July 1, 2017, Front Sight and LVDF executed a First Amendment to the Loan  
5 Agreement which reduced the maximum loan amount from \$75,000,000 to \$50,000,000 (a change  
6 that makes no sense if, as LVDF asserts, it had not obligation to raise any amount in the first  
7 instance) and still nowhere did LVDF indicate that it was not obligated to fund the Commitment  
8 consistent with the terms of the CLA. A true and correct copy of the First Amendment to the Laon  
9 Agreement is attached hereto as **Exhibit “2.”**

10           15. On February 28, 2018, Front Sight and LVDF executed a Second Amendment to  
11 the Loan Agreement which extended the deadline for LVDF to obtain Senior Debt, and which still  
12 nowhere indicated that LVDF was not obligated to fund the Commitment consistent with the terms  
13 of the CLA. A true and correct copy of the Second Amendment to the Loan Agreement is attached  
14 hereto as **Exhibit “3.”**

15           16. Ultimately, LVDF provided only \$6.375 million in funding, *less than 10% the*  
16 *original amount contractually promised and less than 13% of the revised amount contractually*  
17 *promised*, over the next two years, all of which was used by Front Sight in accordance with the  
18 parameters of the CLA. This amount, however, was far short of the amounts necessary to fund the  
19 Vacation Club & Resort.

20           17. Despite LVDF’s utter failure to perform, Front Sight continued to pay the interest  
21 payments on the drawn funds every month on time and in full.

22           18. However, by 2018 – two years after executing the CLA – Front Sight became  
23 suspicious that the funds advanced to the EB-5 Entities (the \$300,000 in fees and \$220,000 for  
24 marketing) had not actually been used to secure USCIS approval and for marketing the project to  
25 foreign investors.

26           19. Front Sight requested that Dziubla and Fleming produce evidence to support their  
27 representations to Front Sight in this regard. Dziubla and Fleming refused to show proof of where  
28 the funds Front Sight paid had been spent, and apparently *in retaliation for Front Sight’s*

1 ***demands***, Dziubla and Fleming claimed falsely and intentionally that Front Sight was in default  
2 on a number of non-monetary terms (the “Manufactured Defaults”) of the CLA (notwithstanding  
3 that Front Sight was not in default).

4 20. To be clear, Front Sight performed all of its material obligations, and made  
5 demands and qualified for provision of funding, under the CLA; however, LVDF never advanced  
6 more than \$6,375,000. LVDF never provided the additional funding to which Front Sight was  
7 entitled and for which it qualified under the CLA because LVDF simply never had or obtained the  
8 financial wherewithal to provide such funding. By failing to provide the funding on which Front  
9 Sight reasonably relied, the LVDF breached its contractual obligations.

10 21. Front Sight was never obligated to, in fact, secure Senior Debt, and especially not  
11 before LVDF had met its obligation to fund the loan.

12 22. In any event, on October 31, 2017, Front Sight did obtain a revolving line of credit  
13 in the maximum principal amount of thirty-six million dollars from TOP Rank Builders, Inc.,  
14 Morales Construction, Inc., and All American Concrete and Masonry. Fully executed copies of  
15 the loan documents were provided to LVDF.

16 23. In turn, LVDF advised its investors of this positive development, as follows:

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

23 24. LVDF now claims that the senior loan was a sham and that the lenders were never  
24 obligated to provide monies to Front Sight. Front Sight denies this allegation as categorically  
25 untrue.


26 25. At all material times, Front Sight performed under the CLA. Not only did it pay  
27 contractual interest when due through the maturity date specified in the CLA, but in the State Court  
28 Action and Adversary Proceeding, Front Sight has presented undisputed evidence that it used the



1 CLA proceeds it received as required under the CLA. Indeed, Front Sight presented evidence  
2 demonstrating that it spent more on the Project than it received from LVDF under the CLA, which  
3 the State Court relied upon in entering its *Findings of Fact, Conclusions of La, and Order Denying*  
4 *Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary Restraining Order*  
5 *and to Appoint a Receiver*, a copy of which is attached hereto as Exhibit "4."

6 I declare under the penalty of perjury of the laws of the United States of America that the  
7 foregoing is true and correct.

8 DATED December 30, 2022

9 By /s/   
10 Dr. Ignatius Piazza  
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# EXHIBIT 1

# EXHIBIT 1

**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 1.6 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.

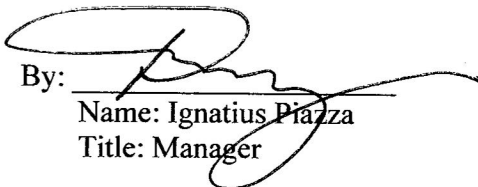
**Section 8.14 Borrower-Lender Relationship.** The relationship between Borrower and Lender created hereby and by the other Loan Documents shall be that of a borrower and a lender only, and in no event shall Lender be deemed to be a partner of, or a joint venturer with, Borrower.

***[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)

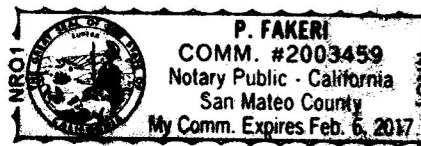
personally appeared IGNATIUS PIAZZA,

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 2**

# **EXHIBIT 2**

## 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

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.

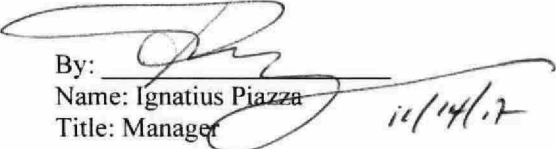
**11. COUNTERPARTS.** This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

[Signature page follows]

A handwritten signature in black ink, appearing to be "JW", is written next to 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



# **EXHIBIT 3**

# **EXHIBIT 3**

## 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.

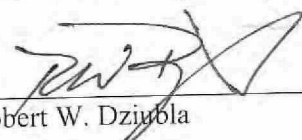
BORROWER:

FRONT SIGHT MANAGEMENT, LLC,  
A Nevada Limited Liability Company

By:   
Name: Ignatius Piazza  
Title: Manager

LENDER:

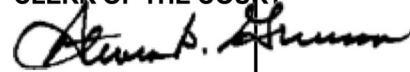
LAS VEGAS DEVELOPMENT FUND, LLC,  
A Nevada Limited Liability Company

By:   
Name: Robert W. Dziubla  
Title: President & CEO



# **EXHIBIT 4**

# **EXHIBIT 4**

**FFCL**

John P. Aldrich, Esq.

Nevada Bar No. 6877

Catherine Hernandez, Esq.

Nevada Bar No. 8410

**ALDRICH LAW FIRM, LTD.**

7866 West Sahara Avenue

Las Vegas, NV 89117

Telephone: (702) 853-5490

Facsimile: (702) 227-1975

*Attorneys for Plaintiff/Counterdefendants***EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**FRONT SIGHT MANAGEMENT LLC, a  
Nevada Limited Liability Company,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-18-781084-B  
DEPT NO.: 16**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW, AND**  
**ORDER DENYING DEFENDANT**  
**LAS VEGAS DEVELOPMENT FUND**  
**LLC'S MOTION TO DISSOLVE**  
**TEMPORARY RESTRAINING**  
**ORDER AND TO APPOINT A**  
**RECEIVER**

AND ALL RELATED COUNTERCLAIMS.

This matter having come before the Court on September 20, 2019 and November 26, 2019 on Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary Restraining Order and to Appoint Receiver, John P. Aldrich, Esq. appearing on behalf of Plaintiff and Kathryn Holbert, Esq. and C. Keith Greer, Esq., appearing on behalf of Defendants, the Court having reviewed the pleadings on file herein, having heard oral argument of the parties through their respective counsel, this Court makes the following Findings of Fact and Conclusions of Law.

JAN 10 2020

Insofar as any conclusion of law is deemed to have been or include a finding of fact, such a finding of fact is hereby included as a factual finding. Insofar as any finding of fact is deemed to have been or to include a conclusion of law such is included as a conclusion of law herein.

### **FINDINGS OF FACT**

The Court makes the following Findings of Fact based on the evidence presented:

1. In Section IIB of Defendant/Counterclaimant Las Vegas Development Fund, LLC's ("LVDF") Motion to Dissolve Temporary Restraining Order and Appoint a Receiver, Defendant LVDF asserts thirteen breaches of the Construction Loan Agreement ("CLA"):
  - a. Alleged Breach #1: Improper Use of Loan Proceeds – CLA §1.7(e) (Motion, p. 10);
  - b. Alleged Breach #2: Failure to Provide Government Approved Plans – CLA §3.2(b) (Motion, p. 10);
  - c. Alleged Breach #3: Failure to Timely Complete Construction – CLA §5.1 (Motion, p. 10);
  - d. Alleged Breach #4: Material Change of Costs, Scope or Timing of Work – CLA §5.2 (Motion, p. 11);
  - e. Alleged Breach #5: Refusal to Comply Regarding Senior Debt – CLA §5.27 (Motion, p. 11);
  - f. Alleged Breach #6: Failure to Provide Monthly Project Costs – CLA §3.2(a) (Motion, p. 11);



1 g. Alleged Breach #7: Failure to Notify of Event of Default – CLA §5.10

2 (Motion, p. 11);

3 h. Alleged Breach #8: Refusal to Allow Inspection of Records – CLA §5.4

4 (Motion, p. 12);

5 i. Alleged Breach #9: Refusal to Allow Inspection of the Project – CLA §3.3

6 (Motion, p. 12);

7 j. Alleged Breach #10: Failure to Provide EB-5 Information – CLA §1.7(f)

8 (Motion, p. 12);

9 k. Alleged Breach #11: Non Payment of Default Interest – CLA §1.2 (Motion, p.

10 12);

11 l. Alleged Breach #12: Non Payment of Legal Fees – CLA §8.2 (Motion, p. 12);

12 and

13 m. Alleged Breach #13: Failure to Comply with Applicable Laws (CLA §5.13)

14 and Failure to Give Written Notice of Criminal Complaint (CLA §5.14)

15 (Motion, p. 13).

16 2. The first allegation of breach focuses on the alleged misuse of loan proceeds by  
17 Plaintiff/Counter-Defendant, Front Sight Management, LLC (Front Sight). However,  
18 in its Opposition to Defendant/Counter-Claimant LVDF's Motion to Dissolve the  
19 TRO and Appoint a Receiver, Front Sight supplied evidence to establish project cost  
20 and expenditures which exceed the loan amounts advanced by LVDF.

21 3. There are four (4) paragraphs of the Construction Loan Agreement that relate to loan  
22 proceeds. They are as follows:  
23  
24

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

2       ....  
 3       (e)     Borrower shall use the proceeds of the Loan solely for the purpose  
 4       of funding directly, or advancing to Affiliates to pay, the costs of the Project, in  
 5       accordance with the terms and conditions of this Agreement, as set forth in the  
 6       Budge and the Project documents submitted to, and approved by, USCIS.

7       ....  
 8       **Section 3.7    Use of Loan Proceeds.** Borrower shall use and apply the Loan  
 9       proceeds solely to all or any number of the individual Project components in  
 10       accordance with the Budge and also to pay some or all of any or all existing  
 11       indebtedness encumbering the Project pursuant to a Permitted  
 12       Encumbrance. Borrower shall use its best business judgment based upon  
 13       then-current real estate market and availability of other financing resources  
 14       to allocate the proceeds of the Loan in such a manner as to assure the full  
 15       expenditure of the Loan proceeds advanced to Borrower. Borrower will  
 16       comply with the requirements of the EB-5 Program and the other EB-5 Program  
 17       covenants and requirements contained in this Agreement.

18       **Section 4.29    Use of Loan Proceeds.** The proceeds of the Loan shall be used  
 19       to pay and obtain release of the existing liens on the Land, to pay for or  
 20       reimburse Borrower for soft and hard costs related to the pre-construction,  
 21       development, promotion, construction, development and operation of the  
 22       Project in connection with the FSFTI Facility and the construction,  
 23       development, operation, leasing and sale of the timeshare portion of the  
 24       Project, all as more particularly described on Exhibit F, 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.

25       **Section 5.3    Using Loan Proceeds.** Subject to Section 3.2, Borrower shall  
 26       use the Loan proceeds in its sole discretion to pay, or to reimburse Borrower  
 27       for paying, costs and expenses incurred by Borrower in connection with the  
 28       pre-construction, promotion, construction, development, operating and  
 29       leasing of the Project on the Land and the equipping of the Improvements,  
 30       together with the payoff and release of any existing liens and encumbrances  
 31       on the Land. Borrower shall take all steps necessary to assure that Loan  
 32       proceeds are used by its contractors and subcontractors to pay such costs and  
 33       expenses which could otherwise constitute a mechanic's lien claim against the  
 34       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.

(Emphases added.)

4. Exhibit 47 to the Evidentiary Hearing Exhibits, Front Sight's "Response to Notice of  
 Default dated July 30, 2018," shows project costs and expenditures well in excess of  
 \$6.3 million LVDF advanced. In Exhibit C to that document, Front Sight provided

copies of QuickBooks monthly reports that showed the following Project costs and expenditures:

<b><u>TIME PERIOD</u></b>	<b><u>TOTAL</u></b>
October 2015 – December 2015	\$3,387,591.35
January 2016 – December 2016	\$7,466,570.24
January 2017 – December 2017	\$12,454,018.84
	<b>\$23,308,180.43</b>

5. Exhibit 48 to the Evidentiary Hearing Exhibits is Front Sight's "Additional Response to Notices of Default dated July 31, 2018, and August 24, 2018 and Initial Response to Notice of Default dated August 28, 2018." In that exhibit, Front Sight provided to Defendant Dziubla a multitude of documents showing the following expenses which were paid by Front Sight between the closing of the loan in October 2016 and June 30, 2017:

<b><u>EXPENSE CATEGORY</u></b>	<b><u>TOTAL</u></b>
Reimbursable construction costs prior to the closing date of the Construction Loan Agreement	\$994,336.56
Construction costs from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,031,728.10
Class Action lien payoff as of the time of closing of the Construction Loan Agreement	\$551,871.50
Class action lien pay-down prior to the closing date of the Construction Loan Agreement	\$1,860,000.00
Holecek note paydown prior to the closing date of the Construction Loan Agreement	\$6,004,000.00
Holecek note paydown from the closing date of the Construction Loan Agreement to June 30, 2017	\$1,422,000.00
Project legal fees	\$81,551.25
Fees Paid to Chicago Title in connection with original closing	\$9,217.01
EB5 Impact Advisor fees	\$244,730.00
Fees paid to US Capital Partners evidencing efforts to secure "Senior Debt" prior to securing construction line of credit from Morales Construction	\$62,500.00
Project consulting fees	\$82,550.00
	<b>\$12,344,484.42</b>



6. Adding construction costs prior to closing with construction costs **from closing to June 30, 2017**, plus the class action lien payoff as of the closing date of the CLA, Front Sight's expenses far exceed the US\$2.625M in EB5 funds delivered on or before June 30, 2017.
7. Exhibit 49 to the Evidentiary Hearing Exhibits is Front Sight's "EB-5 Documentation and Additional Information for the Period **July 1, 2017, through October 31, 2018** Delivered Pursuant to Section 5.10(e) of the Construction Loan Agreement." In that exhibit, Front Sight provided to Defendant Dziubla several hundred additional pages of documents showing the following expenses which were paid by Front Sight:

<b><u>EXPENSE CATEGORY</u></b>	<b><u>TOTAL</u></b>
Construction costs from June 30, 2017, through and including July 1, 2018	\$2,088,490.00
Holecek note paydown from June 30, 2017, through and including July 1, 2018	\$1,896,000.00
Project legal fees from June 30, 2017, through and including July 1, 2018	\$14,116.00
Construction costs from July 1, 2018, through and including October 30, 2018	\$402,621.00
Holecek note paydown from July 1, 2018, through and including October 30, 2018	\$632,000.00
Project legal fees from July 1, 2018, through and including October 30, 2018	\$6,984.00
Construction costs from September 6, 2016, through and including August 24, 2018 (commercial revolving charge account of Front Sight established with Home Depot)	\$66,173.67
Construction costs from October 11, 2016, through and including July 13, 2018 (charged to the Visa credit card account of Front Sight established with City National Bank)	\$43,212.07
Construction costs from August 30, 2016, through and including February 20, 2018 (charged to the Premier Rewards Gold charge and credit card account of Front Sight established with American Express)	\$92,868.00
	<b>\$5,242,464.74</b>

8. Based on this uncontroverted evidence, the Court finds Front Sight's expenses on the Project far exceed the amount of the loan from Defendant LVDF.

1 9. As to the fourth breach alleged by Defendant/Counterclaimant LVDF, the alleged  
2 material change in size, scope, and timing of the project, it appears that the size of the  
3 classroom was reduced but not the overall size of the facility, and therefore, the Court  
4 finds that there is an issue of fact as to this alleged breach of the CLA.

5 10. Regarding the second, third, and fifth through thirteenth alleged breaches, as asserted  
6 by Defendant/Counterclaimant LVDF, the parties asserted multiple competing factual  
7 positions and made conflicting factual assertions regarding Defendant LVDF's  
8 allegations of breach of the CLA. Based on the state of the evidence as of the date of  
9 the hearing on the instant Motion, the Court finds that genuine issues of fact remain  
10 as to the second, third, and fifth through thirteenth alleged breaches, as asserted by  
11 Defendant/Counterclaimant LVDF.

### 12 **CONCLUSIONS OF LAW AND ORDER**

13 The Court makes the following Conclusions of Law:

14 1. Regarding alleged Breach #1, the Court concludes that Front Sight's expenses on  
15 the Project far exceed the amount of the loan from Defendant LVDF has Defendant LVDF's  
16 assertion that Front Sight improperly used loan proceeds is without merit, and consequently,  
17 LVDF has failed to establish this alleged breach.

18 2. As to the second, third, and fifth through thirteenth alleged breaches, as asserted  
19 by Defendant/Counterclaimant LVDF, the Court concludes that LVDF has not established that  
20 Plaintiff is in breach of the Construction Loan Agreement, and consequently, LVDF is not  
21 entitled to the relief it seeks by this Motion.

22 4. Regarding the fourth alleged breach, pertaining to the reduction in the size of the  
23 Patriot Pavilion, because it appears that the size of the classroom was reduced but not the overall  
24

size of the facility, creating an issue of fact as to this alleged breach, the Court concludes that LVDF has not established that Plaintiff is in breach of the construction Loan Agreement, and consequently, LVDF is not entitled to the relief it seeks by this Motion.

**ORDER**

**IT IS HEREBY ORDERED** that Defendant Las Vegas Development Fund LLC's Motion to Dissolve Temporary Restraining Order and to Appoint Receiver is DENIED.

**IT IS SO ORDERED.**

DATED this 22<sup>nd</sup> day of January, 2020.

  
DISTRICT COURT JUDGE  


Respectfully submitted by:

**ALDRICH LAW FIRM, LTD.**

  
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