

**Testimony of Chuck Nestrud, President
Water Island Civic Association
Before the U.S. Virgin Islands Senate Committee of the Whole
June 26, 2026**

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Good Morning. Honorable Senator Potter, members of the Committee of the Whole. I am speaking today as the President of the Water Island Civic Association, which represents the vast majority of the residents and property owners of Water Island. I also represent my family, which has a long history on Water Island dating back to the 1950's when my aunt became one of the first full time residents of Water Island, and a founding member of the Civic Association that I now serve as President. When my aunt died at 98 in 2016 she was the oldest living resident on Water Island. I feel a great sense of responsibility to represent Water Islanders before you today, and my passion and emotion may show through today. There are a number of issues I have selected to address this morning, a selection from the many issues we have identified as extremely troubling with the lease that is before you. It is my hope that as you learn more about this proposal you will agree that there has been a complete lack of transparency that needs to be corrected, too many unanswered questions, and too many important issues not addressed. We only ask that you correct the secrecy, and provide a public forum so we both can conduct the type of review that this proposal desperately needs.

1. PROJECT DEVELOPMENT TEAM HAS NO TRACK RECORD OTHER THAN TWO FAILED PROJECTS

The new developer that will take over the Water Island project is Bluewater Global Advisors, LLC (Bluewater), which has NO Project Development experience of any kind. Bluewater was incorporated in 2007, dissolved in 2008, dissolved again in 2010, and dissolved again in 2022 and reinstated for the third time in 2023. Bluewater has no project development experience, but two individual project managers have been identified as qualified to lead the Water Island project.

The two projects identified by the Project Managers, both luxury hotel/real estate projects, failed. The Comprehensive Development Plan (Plan), Exhibit A to the Lease, identifies two luxury hotel/real estate projects developed by the project managers. These are the Dubai Pearl project in Saudi Arabia and the Via Mizner/Mandarin Oriental project in Boca Raton, Florida. Terry Smith, one of two Principal Managers for the Water Island Project, managed the construction for both projects, and both wound up in bankruptcy. The Dubai Pearl project has now been demolished, and both are mired in litigation. Exhibit 1. If WIDC Water Island becomes the third iteration of Dubai Pearl and Via Mizner, is the Senate prepared to appropriate the money required to manage the fallout? I raise this as a rhetorical question to give context to the remainder of my remarks today. Projects like this do fail, which these developers know too well. Responsible governments take measures to protect the public interest, through the terms of the Lease. I am going to point out numerous instances where this Lease falls short of protecting the public interest.

2. WHY IS PUBLIC PROPERTY BEING TRANSFERRED TO PRIVATE OWNERSHIP FOR LUXURY HOUSING?

The Lease/Plan identifies 20+ Villas, 20 Marina Townhouses, and 52 Condos-Fourplexes, all designated for privately owned luxury residential housing. However, the Deeds that transferred Water Island to the US Virgin Islands in 1996 and 2005 require that all transferred lands to be used for “public purposes.” When Governor deLongh issued a press release announcing the 2014 hotel lease for Water Island he stated: “the government as a general policy only leases land for business and commercial activity and not for residential development.” Exhibit 2. A sound policy for GVI then, and now. What has changed? When I asked, DPP could not answer that question. Can the transfer of government property to private ownership for luxury housing ever be in the best interest of Virgin Islanders? What are the financial and other terms of these sales? Is fair value being received? Will the new owners be good stewards of this property? How will potential insider deals be avoided? These are a few of the traditional issues the Senate evaluates when public property is sold. But the Senate will have absolutely no oversight role when the sales take place because that oversight role is being eliminated through this proposed Lease. The Lease explicitly states that the sales of public lands will be processed and title transferred “**without any further act of the Legislature.**”

The transfer of public lands for private luxury housing is even more troubling in this instance. Title to Water Island was transferred to the Government of the Virgin Islands (GVI) through Quitclaim Deeds in 1996 and 2005, following an Environmental Impact Statement and Finding of No Significant Impact, which led to a “public purpose” only designation for all transferred parcels, and important non-development and development limitation deed restrictions. Exhibit 3. Those deed restrictions have served to preserve and protect areas of historical and environmental significance from sale and improper development. DPP and WIDC have represented that they are already seeking to have “public purpose” and other development restrictions waived. These waivers, which could take years to obtain, if waivers are even possible, or prudent, is also a lease condition required for the developers to move forward. Restrictive Covenants imposed to protect the public interest should never be waived, and the Senate should prohibit waivers in any authorizing legislation.

Let me put to bed one important misconception, which is that this plan has less impact than the 2014 plan. Absolutely not true. I’ve attached to my testimony the 2014 development plan. Exhibit 4. The 2014 development plan is limited to the upland area around Flamingo Bay and Flamingo Pond, much like the hotel complex that was part of this island for nearly 30 years. While the 2014 plan included development around Honeymoon Beach, GVI has excluded that tract. In contrast, this plan extends from one end of the island to the other. Exhibit 4. The difference is stark and significant.

3. THE FEASIBILITY OF AND FINANCING FOR THIS PROJECT HAVE NOT BEEN DEMONSTRATED

Financing has not been demonstrated. All of WIDC’s obligations under the Lease are conditioned upon WIDC making the determination that the project is feasible, and WIDC obtaining financing. Nothing has been made public to address the feasibility of this project, and nothing has been provided to document the financing scheme. The developer states that the project is feasible and that financing is secure, with nothing presented to back up those statements. So let’s take a closer look at the feasibility issue.

This project cannot proceed unless GVI provides financial incentives, with no oversight. Section 6.5.1 of the Lease specifically states that the ability of Bluewater/WIDC to “construct and develop the hotel and marina are contingent upon the ability to obtain tax exemptions, benefits, guarantees and financing assistance.” In other words, this project is not feasible on its own. It can only succeed with GVI financial support, which will be provided long after your vote. All of your constituents pay taxes, residents and businesses on Water Island and St. Thomas pay taxes. Why not this developer? Interestingly, this same issue came up 10 years ago when the Senate was debating tax give aways for the prior Water Island hotel developers. A lot of hype and excitement then, as now. Here’s the exchange that occurred 10 years ago before this body, according to a VI Daily News report, which is attached to my testimony (Exhibit 5) :

Senator Nereida Rivera-O'Reilly: “When we come to the Legislature and consider measures such as these, we are telling the people of the territory that something great is going happen. . . How serious and how legitimate is the project, Attorney Dudley, that you are advocating on behalf of?”

Attorney Dudley: “All I can tell you is I’m basing my position on my reputation in this community and before this body, I don’t come here to hustle.”

That was 10 years ago. In spite of Attorney Dudley’s statement, the project was not legitimate, and it failed. As we have said so many times, we have been burned before by empty promises. Let’s do better this time, and here is one suggestion. The Lease identifies several conditions that must be fulfilled to WIDC’s satisfaction before WIDC is required to start construction, such as securing acceptable financing, obtaining acceptable permits, obtaining approvals/waivers from the Department of Interior, obtaining economic development and tax exemptions, and others. Why are these conditions not stated in the Lease as “Suspensive conditions” so the lease does not go into effect pending satisfaction of the condition? Why is there no “longstop date” that terminates the Lease when conditions cannot be timely met? These are standard public lease terms to address Pre-Condition contingencies, designed to make sure public lands are not tied up waiting for the developer to decide whether pre-conditions have been satisfied to its liking- in this case up to 99 years. These standard lease terms are further described in Exhibit 6. Not including them in this Lease betrays the public trust.

Does the financing for the Water Island Project include a scheme to assist wealthy foreigners obtain US citizenship? The financing for the Via Mizner/Mandarin Oriental project included what is known as the EB-5 program whereby multiple foreign investors put \$800,000 into a U.S. project that creates new jobs, and in return obtain a permanent green card and a path to citizenship. The Dubai Pearl project was similarly marketed to foreign investors seeking residency status, but under Dubai’s 2002 freehold law. Here is how the EB-5 version works. If the project can document a total of 10 new employees per EB-5 investor, each \$800,000 investor and his family can receive permanent green cards. EB-5 loans are not a traditional source of financing because the value of the green cards often drives the transaction, not the feasibility of the project. If the project lacks sufficient value to attract traditional lenders or is mismanaged, too often the project fails, but the EB-5 investor and his family gets to keep what he really wanted, a permanent green card that cannot be revoked. This was the Via Mizner model, a green card program, legitimized as an economic development package, for the ultra-wealthy. When we asked Bluewater if EB-5 was part of the financing scheme for Water Island the developers remained silent. They refuse to provide any financing

information. Does this sound unreasonable? The Via Mizner/Mandarin Hotel project raised approximately \$139 million from 278 EB-5 investors, a scheme revealed in an EB-5 investor class action lawsuit recently filed in federal court in Florida, which I have included as part of Exhibit 1. The Senate should demand to know whether the Water Island project includes EB-5 funding.

There are no branding partners. The project brochure identifies the Marriott, Hilton and Hyatt hotel chains as having an interest in becoming potential brand partners. There is no binding commitment from any of these or other potential brand partners. I urge you to read the letters for yourself, found in the Lease package filed by DPP. The Development Team's other luxury hotel/real estate project, Via Mizner/Mandarin Oriental, defaulted on over \$500,000 owned to that project's brand partner. The lack of a confirmed brand partner says volumes about whether the economic feasibility of this project is real or imaginary.

4. THE LEASE FAILS TO ADDRESS ISSUES THAT ARE FUNDAMENTAL TO ASSESSING THE PUBLIC INTEREST

Hotel Sequencing. We all agree on one fundamental issue. The hotel must be completed before residential construction begins. So why is there nothing in the Lease requiring that result. All I can find is the "Construction Schedule Through 2029," Exhibit A to the Lease, which appears to allow the residential development land to be cleared first, and also provides that hotel and residential development construction will occur simultaneously. Exhibit 7. The Lease must include a requirement that the hotel be completed before any construction starts on the real estate portion of the project.

Comprehensive Development Plan. The Comprehensive Development Plan is Exhibit A to the Lease. It is the only Plan that the developers have presented, and the one you are being asked to approve if you vote in favor of this Lease. Numerous problems and errors have been identified with the Plan, many of them have even been conceded as errors by the developers. Exhibit 8. DPP and the developers will tell you that the Plan is only conceptual, or their newest term, "aspirational." They ask us to trust that our concerns will be addressed down the road. They don't tell you that the Lease only allows changes that are substantially similar to the Plan. So trust, but verify. Does the Plan represent what will be constructed or not? If the Plan is as conceptual and malleable as the developers seem to suggest, it is premature to vote on the Lease. This secretive process needs to stop. If the Lease has mistakes, fix them. If the Plan is not the real plan, put the real plan on the table, now, so it can be evaluated, and become part of the Lease you are being asked to approve. Furthermore, the Lease states that there is a Submerged Lands Plan in Exhibit A to the Lease. There is not. The Senate should not be expected to vote on a concept of a plan that will be changed, an aspiration, or a submerged lands plan that does not exist.

Performance Bond. The Performance Bond is inadequate and terminates prematurely. The Performance Bond covers nothing but the obligation to secure permits. A Performance Bond for the lease of public lands typically will address all of the financial risks this project presents to the VI Government in the event of default, including:

- Providing funds to complete performance under the Lease
- Providing funds to reclaim and restore the land

- Providing funds to restore sensitive historic, cultural and environmental features damaged by the project
- Providing funds to clean up any hazardous materials released
- Providing funds to repair damaged public infrastructure
- Providing funds to rebuild following storms and other catastrophic events.

Federal regulations require such bonds when federal lands are leased, and I have attached those regulations to my testimony. Exhibit 9. A \$3 million performance bond, reducing to \$2 million after construction commences, to \$1 million after construction is complete, and potentially to \$0 when final plans are approved provides \$0 coverage for the real exposure to the VI treasury, which starts when construction starts. I don't believe the Senate is prepared to fund these liabilities if Bluewater/MIDC defaults, and that is precisely why public land leases require proper bonding. No Lease should approved until the proper bond requirements are included.

Insurance. Insurance requirements for the Lease were retained from the 2014 Lease and are totally inadequate for a Project that has dramatically increased in size and scope. For example, \$11 million for general liability is insufficient, \$2 million for debris removal following a storm is inadequate, and property damage coverage from hurricane/windstorm should specify replacement value. No Lease should be approved until the proper insurance requirements are included.

Transfer governmental obligations to Bluewater/MIDC. The cover letter from DPP, attached to the Lease, states that, with respect to the infrastructure improvements, "Importantly, these investments substantially reduce financial obligations that would otherwise fall upon the Government." The Lease does not identify the governmental obligations that are being transferred to Bluewater/MIDC. There is certainly no money "earmarked" for these obligations, or any binding agreement that Bluewater/MIDC provide anything. If GVI is transferring its obligations to Bluewater/MIDC, those obligations need to be identified and enforced through the Lease.

Lease of Other Lands. The Transfer Deed included several tracts that are essential to the functioning of life on Water Island. These tracts are now being leased to MIDC/Bluewater, and there is no identified plan for continuing these services. For example:

- The deep water dock is the only means for delivery of large supplies
- The Firehouse provides room for emergency medical and fire response training, as well as a community meeting venue
- The solid waste transfer station provides the only means of waste management
- The green waste composting site provides the only method for managing vegetation generated from landscaping
- The recycling center provides the only recycling services

The ferry dock is at least mentioned in the Lease, but the lack of a plan for the ferry dock is very troubling. The developers response to our inquiries on this issue is more of the same: trust us, we will take care of it. That is not good enough. The Senate should satisfy itself that these public use sites are preserved or

replaced, that the services provided from these sites can continue uninterrupted, and make sure there are enforceable conditions in the Lease.

5. THE FUNDS EARMARKED FOR INFRASTRUCTURE ARE UNREALISTIC AND ILLUSORY

\$40 Million for Infrastructure will not even build out the hotel, marina and residential housing. The Government's summary states that WIDC has earmarked approximately \$40 million for infrastructure (recently increased to \$52 million by the developers). The summary states that the infrastructure will “directly support the project” and also “enhance public infrastructure capacity, environmental management, and long-term resilience for the surrounding residential community.” A cursory review of project infrastructure required for just the private project components reveals a different story.

The Lease states that the “Infrastructure” is limited to the hotel/marina/real estate development, which will include:

- Install two ferry docks, one on St. Thomas and one near the employee village
- Construct roads, and install utilities, including underground electrical, for up to 20 separate development tracts
- Construct a micro-grid electrical generating plant
- Construct a wastewater treatment plant
- Construct a solid waste treatment plant
- Construct a reverse osmosis plant
- Clean contamination from Flamingo Pond and construct a 120 slip marina
- Construct a breakwater and marina with boat slips on Flamingo Bay
- Construct 2 heliports
- Re-establish two beaches in Flamingo Bay for hotel guests, and possibly another at the employee village
- Landscaping of all areas

Once these infrastructure projects are completed, the \$40, or \$52 million infrastructure commitment will be depleted, and far more, with nothing left for the remainder of the island. If the developer's aspiration for improving public infrastructure has any meaning, it should be fleshed out and included in the Lease.

6. PROJECT DEMANDS UPON EXISTING WATER ISLAND INFRASTRUCTURE AND SERVICES ARE IGNORED

Many of the roads on Water Island are in need of repair, are barely wide enough for golf cart traffic, and will become major thoroughfares under the development as planned. There will be an influx of 300 workers and their families in the “employee village,” and all construction and hotel supplies will be unloaded at the employee village ferry dock. Transportation of these employees and supplies throughout the island will destroy the already deteriorated roads, with no plan and no binding commitment for repair or maintenance of roads and other public infrastructure damaged by the development.

Project demands upon the delivery of services are also ignored. The Lease accounts for police, fire and emergency medical services for hotel guests. What about the 300 workers and their families in the employee village, and the 100 families who will occupy the new residential housing. The proposed development will double, or triple the population of the island. The volunteers who provide fire and emergency medical services, and maintain solid waste disposal and other essential services are already over extended for the approximately 100 families that currently reside on Water Island. There is nothing in the Lease that obligates Bluewater/WIDC to provide essential services for 400 new families. The public interest is not served by approving a lease that does not address the provision of essential public services for 400 new families. Is the Senate prepared to appropriate the necessary funds? I think we both know the answer to that question, which is precisely why the Senate should require the developers to submit an acceptable plan and incorporate it into the Lease.

In closing, I would like to state that there are still too many unanswered questions regarding this Lease to proceed. Assistant Commissioner Richards agrees that a public forum should be held where everyone can speak. Nothing has been arranged.

There are those who have advised me that approval of this Lease is a foregone conclusion. They say there is nothing our tiny island can do. A boutique hotel and marina? Yes, we are in support of a project that will replace the hotel and marina on Flamingo Bay. The rest of it, as proposed, is too much. I still have confidence that the Senate will not yield to political pressure, but will instead take the time required to investigate this proposal with the thoroughness it deserves. Hurricane Hugo destroyed the hotel we all enjoyed in 1989. We have been waiting for a replacement for nearly 40 years. We can afford to take the time required to properly investigate the issues we have raised, and for DPP to engage the community by having the public forum we have been promised. A public meeting where everyone is invited and all of my neighbors on Water Island and St. Thomas can speak. That is not asking for much. We endured 12 years of broken promises from the last hotel developer. And that was allowed to go on because the terms of the 2014 lease allowed it. The 2014 lease, with all its flaws, was terminated by DPP last year, but is being resurrected from a well deserved grave. We can, and should do better this time. I think we have earned the right to ask for a little time to conduct a proper investigation of the issues we have raised, to make sure that what this Senate ultimately approves, if anything, is in the public interest, with lease terms that protect the public interest.

EXHIBIT 1

Page from the Comprehensive Development Plan Identifying Project Managers for the Water Island Project, with Photos of the Dubai Pearl and Via Mizner/Mandarin Oriental Projects

Biographical Postings for Terry Miller, Bluewater Principal Who Will Manage the Water Island Project and His Responsibilities for Dubai Pearl and Via Mizner

News Articles Describing the Failures of Dubai Pearl and Via Mizner/Mandarin Oriental

Class Action Complaint Regarding Via Mizner/Mandarin Oriental Project

This exhibit includes pages from the Comprehensive Development Plan (Plan), which is attached in full as Exhibit A to the proposed lease reinstatement-lease amendment (Lease). These pages identify two luxury hotel/real estate projects identified by the Project Managers to demonstrate their capabilities to manage the Water Island project. These are the Dubai Pearl project in Saudi Arabia and the Via Mizner/Mandarin Oriental project in Boca Raton, Florida. Slick renderings of those two projects shown on the following Plan pages are the ONLY project experience photos included in the Plan. The pages from the Plan that follow also include a bios for Terry Smith, one of two Principal Managers for the Water Island Project, and the one with prior project development/construction management experience. Mr. Smith was Sr. VP Construction/Development/Engineering for the Dubai Pearl project. Mr. Smith was Senior Director of Construction for Penn-Florida Companies where he personally oversaw the construction of Penn-Florida's Via Mizner/Mandarin Oriental Hotel in downtown Boca Raton. What the Plan did not mention, but which are described in the two news articles that follow, was that in January, 2025 Bankruptcy proceedings were filed for the Via Mizner/Mandarin Oriental project to stave off a foreclosure auction over a \$145 million loan default. By December of 2025 other Via Mizner entities had filed bankruptcy proceedings. Litigation has been filed from condo purchasers, contractors and vendors, financiers and guarantors. A class action complaint describing some of the problems that led to project failures is included. The fate of the Dubai Pearl project is worse. Twelve years after the initial project announcement, Dubai Pearl construction ceased, an estimated several billion dollars lost, with litigation ongoing from investors, financiers, contractors, and the government, including claims of fraud by the developers. The Dubai government has recently demolished the project and created a special investor claims tribunal (Decree 33/2020) to manage the fallout, which included an Irish group that invested \$2.72 million for four residential units that were never built.



Sтивен Миллер, F.A.I.A., P.R.I.B.A., Principal Manager

For more than four decades, he has traveled the world as both an architect and real estate developer, shaping the skyline of luxury hospitality across continents. His career has taken him from the deserts of Abu Dhabi and Dubai to the historic cities of Florence and Prague, and onward to destinations as diverse as Riyadh, Egypt, Bali, Zanzibar, and the United States.

Among his many achievements, he played a leading role in the early development of several iconic properties, including the Mandarin Oriental, Hong Kong, and Le Meridien hotels in Prague. The three-decade Hotel in London, and the Park Hyatt in Dubai. His collaboration spans some of the world's most prestigious architectural firms, including Foster + Partners, Norman Foster, HOK, Skidmore, Merrill, and others. He has been a frequent speaker at international forums, sharing his insights on design excellence and guest experience.

Beyond his global projects, he serves his expertise as a Professor at the University of Miami's School of Architecture, where he teaches in the Master of Architecture program. He is also a frequent speaker at international forums, sharing his insights on design excellence and guest experience.

A recognized innovator in sustainable, smart modular construction, he has worked closely with Hilton, Marriott, and other major hotel groups to develop a new generation of luxury hotels. His expertise in design, construction, and investment has been instrumental in the development and design of international hotels, helping the world of design, construction, and investment.

Terry Smith, Principal Manager

An accomplished professional with a distinguished record of strategic leadership and financial acumen, he brings decades of experience driving organizational success across diverse business sectors. Throughout his career, he has led multi-million-dollar projects, guided large-scale teams, and implemented transformational strategies that have strengthened operational performance and long-term growth.

A dynamic business development leader, he has a proven ability to identify and seize new market opportunities, foster lasting client relationships, and deliver sustained revenue expansion. His expertise spans the full spectrum of real estate development—overseeing residential projects, commercial developments, and infrastructure investments. He has successfully navigated complex regulatory environments, ensuring seamless execution from initial concept through completion.

Known for his strategic approach to partnerships and negotiation, he has successfully structured and managed complex contracts that align with corporate objectives and enhance operational value. His career reflects a consistent commitment to excellence, innovation, and measurable results in every aspect of business leadership.

- Master planning for \$2 billion USD master resort, 5,000 homes, 100+ key lot, 475+ resort hotels.
- \$500M to \$1.1 billion USD master resort, 1,100 homes, 100+ resort hotels.
- \$100M to \$1.1 billion USD master resort, 1,100 homes, 100+ resort hotels.

DEVELOPMENT TEAM
A BRANDED LUXURY RESORT, MARINA, AND RESIDENCES
WATER ISLAND, ST. THOMAS, USVI



Via Mizner
Mandarin Oriental
Boca Raton



Dubai Pearl



Sr. VP Construction | Development | Engineering

Pearl Dubai FZ LLC

Aug 2006 - Jun 2009 • 2 yrs 11 mos

Terry was associated with Dubai Pearl FZ, LLC as the Sr VP

Construction/Development/Engineering. He initiated a surging construction delivery program and recruited the qualified and experienced personnel capable of growing the development, engineering & construction departments to manage a \$5+B property budget over a 40 month timeline. He transformed all 3 departments to increased productivity, initiated the "IPD" delivery model for accuracy, time management, cost controls.

Key Highlights:

- Structured financial instruments with company banking sources to meet the project needs at an annual requirement of \$1 B dollars
- Introduced Build Smart ERP System; Candy estimating software and project management programmes and related training for P-6 and other upgrades.
- Completed \$1.3 billion dollars of Infrastructure and foundations on this massive "mini city" valued at \$5.4 billion dollars

See less



Penn-Florida Companies

4 yrs 11 mos

Sr. VP of Construction

Jan 2022 - Present • 4 yrs 6 mos

As the Senior Vice President of Construction at Penn Florida Companies, I spearhead the monumental \$600 million "Mandarin Oriental Hotel & Mandarin Branded Residences" project in Boca Raton, Florida. My key aspect in this role is to direct all vertical development projects, ensuring the highest standards of construction safety. Leading multiple teams, I drive cost, schedule, quality, and safety disciplines across the organization, aligning with strategic plans to enhance operational performance and achieve financial goals. I am the linchpin in the bidding process, negotiating agreements and drafting contracts that align with organizational objectives. Constantly evaluating risks, I implement robust mitigation strategies to ensure ongoing project profitability. Reporting changes in risk assessments and project profitability to senior leadership is crucial for facilitating informed decision-making.

My notable contributions are:

- Successfully minimized overhead costs in design and construction phases of country club project.
- Supported career development of lower-tier managers by offering training and conducting performance evaluations.
- Eliminated construction change orders related to superstructure and MEP components by identifying and implementing development solutions.

[See less](#)



Terry Smith

Corporate Leadership, C - Suite, Commodities Broker
Northern Michigan University • Bluewater Global
Advisors, LLC
Miami-Fort Lauderdale Area • 500+ connections

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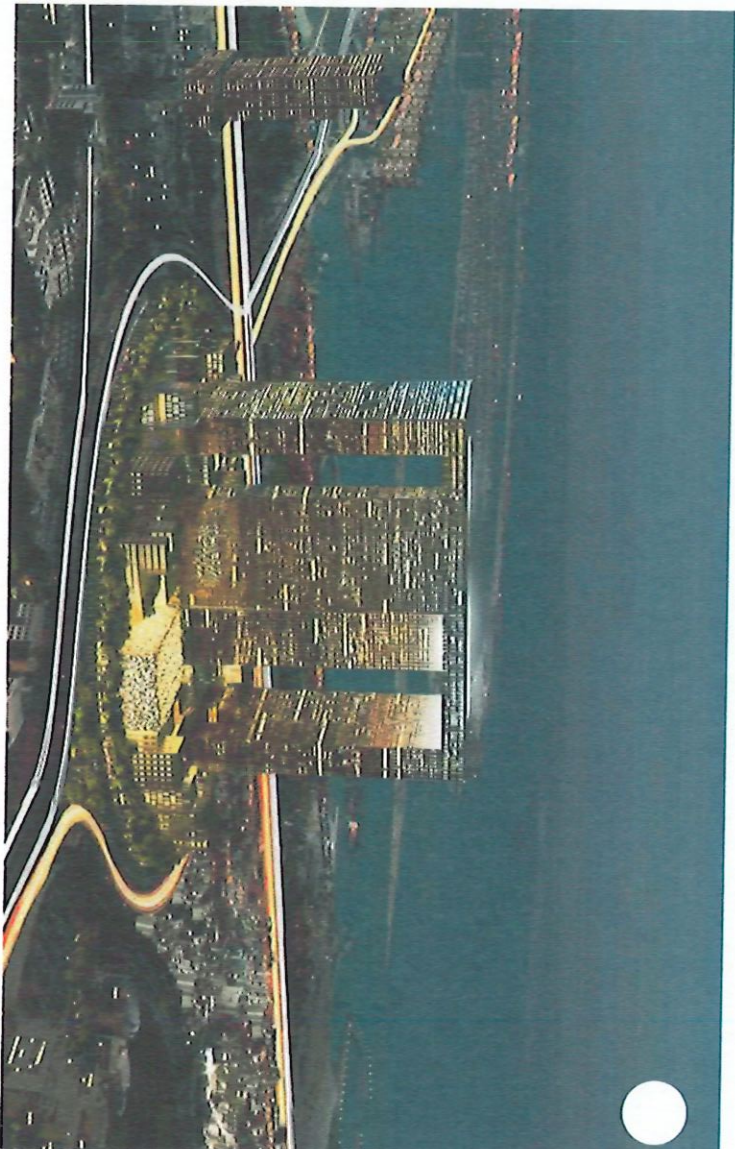
Message

About

With over 15 years at the helm of Bluewater Global Advisors, my leadership has been defined by strategic direction and robust portfolio management. At Penn-Florida Companies, directing the \$1.5 billion Mandarin Oriental project underscores my commitment to 6* design development, safety, and construction excellence. The ability to drive operational performance, reduce costs, and lead teams has been central to my mission. Cultivating key partnerships and negotiating high-stake contracts align with our company's overarching goals, showcasing my dedication to turning visionary concepts into tangible successes. Recently, I have engaged successfully in trading in commodities such as Fuel, Iron Ore, Aluminum A7, & Coal. I am new, but my relationships with refineries and resellers are getting stronger every week.

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News



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20-year-old Dubai Pearl project is being demolished

The Dubai Pearl was announced in 2002 and was never completed

By Yusra Zaki November 21, 2022

Let's go back to the year 2002.

It was a new millennium, Brazil won the FIFA World Cup and a 73-storey building, the Dubai Pearl was announced.

You might also like: [Massive casino coming to UAE: 'Bigger than Vegas'](#)

Back in the noughties, the initial plans for the [Dubai Pearl](#) involved four towers, complete with 1,490 apartments, seven five-star hotels, over 60 restaurants and a 1,600-seat theatre.

Occupying a prime location overlooking the Palm Jumeirah, between Dubai Media City and Knowledge Village, the plan was to create a "city within a city". You might notice it every time you drive onto Palm Jumeirah.

You might also like: [Dubai Moon Resort primed for go-ahead at Dubai Pearl site](#)

Fast forward 20 years, and after a struggle to get the needed cash, the demolition of the Dubai Pearl is underway, first-hand witnesses told *Arabian Business*, as deconstruction equipment was spotted at the site.

The Dhs22 billion mega-project, which overlooks [Palm Jumeirah](#) had two decades ago promised to offer premium branded residences as well as a food and entertainment destination. The Dubai Pearl website still says that once complete, 30,000 people would be able to call this project their home.

Why is the Dubai Pearl being demolished?



Basically, Dubai Pearl's construction was on-and-off because its investments were shaky.

It was originally scheduled for completion in 2006, but as investors continued to pull out, the project continued to rollercoaster until 2022 when the project may finally come to a halt.

Arabian Business reported that the site could potentially see redevelopment, with the Pearl project returning in a different form, or another development altogether.

Watch this space.

Other news you should know

Museum of the Future extends opening hours

Now you can journey into the future every evening

Owner of Long-Delayed Mandarin Oriental Property in Boca Raton Files for Bankruptcy



Daniel Nee

December 30, 2025

The owner of the Mandarin Oriental hotel and residences property in downtown Boca Raton has filed for bankruptcy protection, placing the status of the long-delayed and uncompleted development in deeper limbo.

The ownership firm, Via Mizner Owner II LLC, filed for Chapter 11 protection in the U.S. Bankruptcy Court for the Southern District of Florida on Dec. 23, 2025, according to court documents. The filing stemmed from the debtor's "inability to repay secured lenders," including IG Romsphen US Master Mortgage LP and Via Mizner Funding LP. The firms are owed \$130 million and \$80 million, respectively. A meeting of creditors was scheduled by the court to be held Jan. 29, 2026, according to documents produced since the initial filing last week.

Via Mizner will seek to reorganize the venture and continue operating to "protect the high market valuation of the property," the filing said. The project would likely be valued at about \$450 million upon completion. The filing lists the manager of property as Mark Gensheimer, CEO of Penn-Florida Companies, a Boca Raton-based development firm. Gensheimer has not received a personal salary from the development project, the filing went on to state.

Penn-Florida itself filed for bankruptcy in January 2025 to stave off a foreclosure effort from previous creditors, ultimately selling a \$235 million majority stake in the residential portion of the project – which would consist of 366 condominiums – to high-profile investor Grant Cardone. The other portion of the project includes a 164 room Mandarin Oriental hotel. The luxury hotel chain itself is listed as a creditor, being owed \$502,000. Numerous architectural, engineering and consulting firms are also listed as unsecured creditors, as well as the district court and Boca Raton, which is owed nearly \$400,000 in back property taxes.

The Palm Beach Post

BOCA RATON

Boca's Via Mizner beset by delays, lawsuits. Now a new headache

First lauded a decade ago as an "urban oasis" in downtown Boca, the \$1.5 billion project has faced financial headaches.



Alexandra Clough
Palm Beach Post

Jan. 2, 2026, 5:06 a.m. ET

A decade ago, when the Via Mizner project featuring the luxury Mandarin Oriental was first announced, it was said that the 2.3 million-square-foot complex would create an "urban oasis" in Boca Raton.

But the high-profile project has faced financial headaches, the latest being a December 2025 Chapter 11 bankruptcy reorganization filing for the unfinished hotel portion of the \$1.5 billion project.

The hotel is part of Via Mizner, a three-tower project at the northeast corner of Federal Highway and Camino Real, in the heart of downtown Boca.

Other lawsuits by unhappy pre-construction buyers soon followed. But not all yielded the same result.

In 2024, [three more lawsuits](#) sought the return of deposits ranging from \$1.3 million to \$1.75 million, court records show.

Today there are eight pre-construction buyer lawsuits pending in Palm Beach County Circuit Court.

In an Aug. 2024 interview, Penn-Florida lawyer Robert Sweetapple said the company has a strong defense to assertions that the units' closing date has come and gone.

More: [Contractor lawsuits join condo buyer lawsuits on Mandarin Oriental in Boca Raton](#)

More: [Buyers sue to recoup Mandarin Oriental deposit on unfinished Boca Raton condo](#)

Not only did the COVID pandemic cause delays, but the pandemic also created a shortage of critical materials, including concrete, Sweetapple said. In addition, a March 2020 COVID order by Gov. Ron DeSantis also resulted in delays, he said.

All these elements are part of the buyers' contracts, Sweetapple said, "and we'll sit down with each one of them and go over the facts and the law."

Developer resolved financing troubles on apartments this year

Separately, the 101 Via Mizner apartment building recently resolved its own financial troubles.

In January, the property's parent, Via Mizner Owner I LLC, filed for Chapter 11 bankruptcy reorganization. The filing staved off an effort by an affiliate of Blackstone, which had a \$195 million mortgage, to seize the property's equity.

Earlier this year, the property was recapitalized when it was sold to a group that includes real estate investor Grant Cardone.

Shraiberg, who also handled this filing, said all creditors were paid.

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This article originally appeared on Palm Beach Post: [Boca's Via Mizner beset by delays, lawsuits. Now a new headache](#)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

ZHIMAN KONG, on behalf of himself
individually and all others similarly situated, and
on behalf of VIA MIZNER FUNDING, LP, a
Florida limited partnership,

Plaintiffs,

vs.

NICHOLAS A. MASTROIANNI II; U.S.
IMMIGRATION FUND GP-MIZNER, LLC, a
Florida limited liability company; and CAMINO
INVESTMENTS HOLDINGS LIMITED
PARTNERSHIP, a Florida limited partnership,

Defendants.

CLASS ACTION

CLASS-ACTION COMPLAINT
FOR EQUITABLE RELIEF AND DAMAGES

Plaintiff Zhiman Kong, on behalf of himself individually and on behalf of all other similarly situated members of Via Mizner Funding, L.P., a Florida limited partnership (the “**Funding Partnership**”), pursuant to Federal Rule of Civil Procedure (“Rule”) 23, and on behalf of the Funding Partnership pursuant to Rule 23.2, alleges as follows upon personal knowledge as to Plaintiff’s firsthand experience and on information and belief as to all matters based on investigations by counsel.

INTRODUCTION

1. In 1990, Congress enacted the EB-5 Immigrant Investor Program (“**EB-5 Program**”) to give foreign investors the opportunity to obtain a Green Card for themselves and their immediate family by investing in a U.S. business that creates jobs for American workers.
2. Real estate developers use the EB-5 program as a source of funding for their projects because EB-5 funding often comes at a lower interest rate than traditional financing options; EB-5 investors typically have less stringent requirements compared to banks or other traditional lenders; and developers can use EB-5 funds to reduce the amount of their own equity they need to invest in a project.
3. In the present case, the Funding Partnership used the EB-5 Program to raise between \$48,000,000 and \$160,000,000 to fund a construction loan (the “**Loan**”) to help Defendant Camino Investment Holdings Limited Partnership (the “**Developer**”) defray the cost of constructing Via Mizner, a mixed-use real estate project in Boca Raton, Florida (the “**Project**”).
4. To raise the money to fund the Loan, the Funding Partnership offered prospective EB-5 investors up to 360 units of membership in the Funding Partnership for \$545,000 per unit (\$500,000 in investment capital and a \$45,000 administrative fee) in exchange for becoming Limited Partners in the Funding Partnership and 3.5% annual interest on their capital contributions,

which would be repaid when the Loan matured five years after it was distributed to the Developer (the “**Maturity Date**”), subject to two conditions.

5. First, the Developer had the option of extending the Maturity Date by a maximum of one year, which could be exercised in two six-month increments.

6. Second, the Limited Partners’ capital contributions would not be repaid until the U.S. Customs & Immigration Service (“USCIS”) had fully adjudicated the Limited Partners’ applications for permanent U.S. Citizenship; that is, if that process was not completed by the Maturity Date, the Limited Partners’ investment capital would not be returned to them until it was.

7. Because the construction of the Project was expected to occur in three phases, the Loan was to have also been distributed to the Developer in three phases. Therefore, each EB-5 investor would be designated as a “**Phase I Limited Partner**,” a “**Phase II Limited Partner**,” or a “**Phase III Limited Partner**,” depending on whether their capital investment was used to fund the first, second, or third phase of the Project’s construction.

8. Ultimately, however, the Loan was distributed in two phases, so the Limited Partners were designated as a “**Phase I Limited Partner**” or a “**Phase II/III Limited Partner**,” the Loan was referred to as the “**Phase I Loan**” and the “**Phase II/III Loan**,” and the Maturity Dates for each was **September 28, 2017**, and **February 29, 2021**, respectively.¹

9. On September 28, 2017, the Developer repaid the Phase I Loan to the Funding Partnership, but it was not repaid to the Phase I Limited Partners because USCIS had not fully adjudicated their immigration applications. Thus, on October 16, 2017, Defendant Mastroianni, in his capacity as General Partner, proposed to amend the Funding Partnership’s Limited Partnership

¹ Of the 278 EB-5 investors who became Limited Partners, 118 were designated as Phase I Limited Partners and 160 were designated as Phase II/III Limited Partners.

Agreement for the purpose of enabling him to (1) reinvest the Phase I Limited Partners' investment capital and (2) formally establish the two classes of Limited Partners (Phase I Limited Partners and Phase II/III Limited Partners) so they could vote separately from one another (*e.g.*, Phase I Limited Partners could not vote on matters relating to the repayment of the Phase II/III Loan).

10. On September 25, 2013, Plaintiff became one of the 278 EB-5 investors who paid \$545,000 for one unit of membership in the Funding Partnership, and was designated as a Phase II/III Limited Partner. As such, Plaintiff's capital investment was subject to the Maturity Date that applied to the Phase II/III Loan (on or about March 28, 2021).

11. USCIS granted Plaintiff's I-829 Petition on December 10, 2019. Plaintiff is informed and believes that USCIS has adjudicated all the I-829 Petitions that were submitted by each of the other eligible Phase II/III Limited Partners.

12. To date, however, the Developer has failed to repay the Phase II/III Loan. Instead, the Developer received several improper extensions of the Maturity Date that went well beyond the one-year maximum described in the offering documents. Initially, the Maturity Date was extended from March 28, 2021, to September 28, 2021.

13. It was extended yet again—by more than two additional years. In a letter dated March 25, 2024, Mastroianni advised the Phase II/III Limited Partners that the Maturity Date had been extended to December 31, 2023. In the same letter, Mastroianni disclosed that he had caused the Funding Partnership to enter into a forbearance agreement with the Developer, which effectively extended the Maturity Date to February 29, 2024. Mastroianni went on to explain that the Developer was served with a notice of default when it breached the forbearance agreement. Mastroianni had failed to take any action on the default, however, because the Funding Partnership lacked the funds needed to pursue litigation.

14. Until receiving Mastroianni's letter of March 25, 2024, Plaintiff was unaware that Mastroianni had permitted the Developer to extend the Maturity Date beyond the one-year maximum allowable extension, much less that Mastroianni had entered into a forbearance agreement on behalf of the Funding Partnership, without seeking the Limited Partners' consent. And when Plaintiff made a recent inquiry about the Developer's extensions of the Maturity Date and when he could expect repayment of his capital investment and the interest it has accrued, Plaintiff was advised that there is no money to repay the Phase II/III Limited Partners.

15. As alleged in more detail below, Defendants have engaged in breaches of contract and breaches of fiduciary duty. Accordingly, Plaintiff brings this action on behalf of himself and all other Phase II/III Limited Partners pursuant to Rule 23, and on behalf of the Funding Partnership pursuant to Rule 23.2.

PARTIES

PLAINTIFFS

16. Plaintiff Zhiman Kong is an individual participant in the EB-5 Program who is a member of the Funding Partnership designated as a Phase II/III Limited Partner. Plaintiff Kong was born in mainland China, has been employed as a teacher and a corporate financial planner, and now resides in El Monte, California.

DEFENDANTS

17. Defendant U.S. Immigration Fund GP-Mizner, LLC (the "**General Partner**") is a Florida Limited Liability Company ("LLC") that serves as the General Partner of Via Mizner Funding, LLC (the Funding Partnership) and whose principal place of business is Tequesta, Florida. The General Partner is managed by Defendant Mastroianni.

18. Defendant Nicholas A. Mastroianni II (“**Mastroianni**”) is an individual who resides in Palm Beach County, Florida, and who controls the General Partner as its Managing Member and Chief Executive Officer; the Funding Partnership as its General Partner; Florida Regional Center, LLC (the “**Regional Center**”), as its managing member; and U.S. Immigration Fund, LLC (“**USIF**”) as its Chief Executive Officer.²

19. Defendant Camino Investments Holdings Limited Partnership (the “**Developer**”) is a Florida LLC whose principal place of business is Boca Raton, Florida.

JURISDICTION AND VENUE

20. **JURISDICTION.** This Court has jurisdiction over the claims asserted herein on behalf of a class pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Jurisdiction under CAFA is proper because (a) the amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs; (b) the proposed class includes more than 100 members, more than one of whom resides in a state other than Florida; and (c) Defendants have purposely availed themselves of the privilege of conducting business within the State of Florida, in which the individual Defendants are citizens, in which the entity Defendants have their principal place of business, and in which Defendants engaged in unlawful conduct alleged in this Complaint.

21. **VENUE.** Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. 1391(b)(2) because most of the acts and omissions giving rise to the claims asserted herein occurred and continue to occur in this District, and where a substantial part of the property that is the subject of this action is situated.

² The Regional Center solicits foreign investors for participation in the EB-5 Program to fund real estate development projects and works with investors through the EB-5 immigration process. USIF operates the Regional Center (as well as other USCIS-designated Regional Centers in other locations) and provides services relating to real estate development, financing, and banking. Both entities were involved in the events underlying this action, but they are not parties to this action.

GENERAL ALLEGATIONS

A. **THE EB-5 PROGRAM**

22. To provide an incentive for foreign investment to benefit the American economy by creating or preserving American jobs, Congress created the EB-5 Program, by which immigrant investors could become permanent residents of the United States in exchange for investing at least \$500,000 in a U.S. business that used the funds in a manner that creates or maintains at least 10 full-time American jobs. *See, e.g.,* 8 U.S.C. § 1153(b)(5).³

23. At the outset of the application process, participants in the EB-5 Program submit a Form I-526 Immigration Petition by Alien Entrepreneur (“**I-526 Petition**”). *See* 6 USCIS Policy Manual (“**USCIS Policy Manual**”), Part G, Ch. 4 (Apr. 2020). If the I-526 Petition is approved by USCIS, EB-5 Program participants receive conditional permanent residence status, which permits them to reside and travel within the U.S. while their application is pending. *Id.* EB-5 Program participants’ capital contributions must also remain invested during the “sustainment period,” which is two years after their I-526 Petition is approved. *Id.*, Ch. 5 & n. 4.

24. EB-5 Program participants may then seek permanent U.S. residency status by submitting a Form I-829 Petition by Entrepreneur to Remove Conditions (“**I-829 Petition**”). *See id.*, Ch. 5. If the USCIS approves the I-829 Petition, those participants and their immediate family members are granted permanent immigrant visas (*i.e.*, Green Cards). *Id.*

³ Congress has since enacted the EB-5 Reform and Integrity Act of 2022, which (among other things) increased the capital requirement from \$500,000 to \$800,000 in targeted employment areas or infrastructure projects and \$1,050,000 for all other projects. *See* 8 U.S.C. § 1153(b)(5)(A), (C)(i)-(ii).

B. RAISING FUNDS FOR A LOAN TO THE DEVELOPER OF THE VIA MIZNER PROJECT FROM FOREIGN INVESTORS WHO PARTICIPATED IN THE EB-5 PROGRAM

25. On July 11, 2012, the Funding Partnership was formed for the purpose of raising up to \$160 million in EB-5 funding for Via Mizner, a mixed-use real estate development composed of a 118-room luxury hotel, 350 apartments, 100 residential condominium units, Class A office space, retail space, and restaurant space in Boca Raton, Florida (*i.e.*, the Project). The Project would be constructed in three consecutive phases by the Developer.

26. On July 20, 2012, the Funding Partnership published Offering Documents⁴ that described an opportunity for foreign investors (most, if not all, of whom spoke English as a second language, if at all) to obtain permanent residence in the United States via the EB-5 Program by investing in the Funding Partnership, which, in turn, would use the proceeds from the Offering to fund a construction loan for the Developer (*i.e.*, the Loan).⁵

27. The Offering involved the sale of up to 320 units of membership in the Funding Partnership for \$545,000 (*i.e.*, a \$500,000 capital investment, as required by the EB-5 Program, plus a \$45,000 administration fee) per unit.

⁴ The Offering Documents are composed of Subscription Instructions and a Confidential Private Placement Memorandum, to which the following exhibits are attached: (a) the Via Mizner Funding Limited Partnership Agreement; (b) the Via Mizner Funding Subscription Agreement; (c) Charts Summarizing the Immigration and Investment Procedures; (d) a Subscription and Administrative Fee Escrow Agreement; (e) an Escrow Administration Services Agreement; (f) a Loan Commitment; and (g) Area Maps and Aerial Views of the Project. A true and correct copy of the Offering Documents is attached to this Complaint as **Exhibit 1**. (Pagination, which appears in red typeface on the bottom right page of Exhibit 1, has been added for ease of reference.)

⁵ The Loan was expected to be disbursed to the Developer in accordance with the three-phase development schedule for the Project (*i.e.*, Phase I, Phase II, and Phase III). See Ex. 1 at 6, 174, 179.

28. To obtain a unit of membership in the Funding Partnership, each EB-5 investor was required to (a) fax or email signed copies of the Subscription Agreement (including the Subscription Acknowledgment and IRS forms attached thereto), the Limited Partnership Agreement, and the Subscription and Administrative Fee Escrow Agreement to the General Partner, and (b) wire the \$545,000 payment to the escrow agent. *See id.* at 3, 147.

29. Upon receipt of those funds, the escrow agent released the \$45,000 administrative fee to the Regional Center and retained the \$500,000 capital investment in escrow until the subscribing investor's I-526 Petition was submitted to USCIS (at which point 90% of the capital investment would be released to the Funding Partnership and the remaining 10% would be released when the USCIS approved the I-526 Petition). *Id.* at 6.

30. After the Funding Partnership approved their proposed investments, each EB-5 investor became a Limited Partner in the Funding Partnership. *See id.* The General Partner then designated each Limited Partner as a "Phase I Subscriber," a "Phase II Subscriber," or a "Phase III Subscriber," depending on whether a given Limited Partner's capital contribution was expected to be disbursed from the Loan to help defray the cost of the first, second, or third phase of the Project's construction, respectively. *Id.*

31. Ultimately, the offering resulted in the sale of 278 units of membership in the Funding Partnership, which raised a total of \$139 million in investment capital for the Loan to the Developer and \$12,510,000 in administrative fees for the Regional Center. Of the 278 Limited Partners, 118 were designated as Phase I Subscribers and 160 were designated as Phase II/III Subscribers. Ex. 2 at 14.⁶

⁶ Attached hereto as **Exhibit 2** is a true and correct copy of documents comprising a proposal to amend the Funding Partnership's Limited Partnership Agreement (the "Proposal") in October 2017: (a) two transmittal letters to the Phase I and Phase II/III Limited Partners; (b) a Limited

32. After the Funding Partnership received the proceeds from the sale of its membership units, it would fund the Loan in an amount no less than \$48 million and no more than \$160 million, which the Developer was to use for the exclusive purpose of developing and constructing the Project. Ex. 1 at 175-76. In exchange, the Developer would pay a 1% origination fee based on the principal amount disbursed in connection with each Phase of the Loan, plus annual interest at a rate of 3.5%. *Id.* at 175.

33. The Developer was to repay the principal and all accrued interest five years from the dates corresponding with the first disbursement of Loan funding for each of the three phases of the Project's construction (*i.e.*, the Maturity Date), subject to two exceptions. *See id.* at 47.

34. First, repayment would not occur on the Maturity Date if USCIS had yet to adjudicate the Limited Partners' I-829 Petitions. *See id.* at 47, 55, 149, 175. According to the Offering Documents, returning the Limited Partners' capital before their I-829 Petitions were adjudicated would violate the EB-5 Program's requirement that EB-5 investors' capital remain fully "at risk" until their I-829 Petitions are adjudicated. *Id.* at 55.

35. Second, repayment would not occur on the Maturity Date if the Developer exercised its right to extend the Maturity Date for up to one year (subject to the Developer giving

Partner Consent Letter; (c) a legal memorandum from I.A. Donoso Associates, LLC to the Regional Center regarding "Immigration Risks Associated with Repayment of Capital Contribution Before the Final Adjudication of an Investor's I-829 Petition"; (d) a consent letter to the Limited Partners dated October 16, 2017, from Mastroianni in his capacity as Chief Executive Officer of the Regional Center; (e) a Consent Solicitation Statement from Mastroianni in his capacity as the Funding Partnership's General Partner (which includes a detailed description of the "Modification Proposal," which is also referenced in the Limited Partner Consent Letter and the Regional Center's consent letter); and (f) the proposed Amended and Restated Limited Partnership Agreement (which is appended to the Consent Solicitation Statement as Exhibit A). Like Exhibit 1, pagination appears in red typeface on the bottom right page of Exhibit 2 for ease of reference.

written notice to the Funding Partnership at least 90 days before exercising that right, and subject to the Developer not materially breaching the Loan agreement). *See id.* at 47.⁷

C. MASTROIANNI PROPOSES TO AMEND THE LIMITED PARTNERSHIP AGREEMENT

36. On October 16, 2017—approximately five years and four months from the date the Offering Documents were published—Defendant Mastroianni, in his capacity as the Funding Partnership’s “Authorized Signatory,” distributed two different transmittal letters to the Limited Partners: one transmittal letter to the Phase I Subscribers and another transmittal letter to the Phase II and Phase III Subscribers, which Mastroianni addressed as “Phase I Limited Partners” and “Phase II/III Limited Partners,” respectively. Ex. 2 at 1-2.

37. In the transmittal letter to the Phase I Limited Partners, Mastroianni announced that “[t]he Phase I EB-5 Loan was paid off by the Developer on September 29, 2017 and the Phase II/III EB-5 Loan is set to be repaid by February 28, 2021 (subject to developer extension options).” Ex. 2 at 1.

38. Mastroianni went on to explain that the Funding Partnership had retained those funds until USCIS adjudicated the Phase I Limited Partners’ I-829 Petitions and, therefore, proposed that the Phase I Limited Partners’ investment capital be reinvested. According to Mastroianni,

USCIS’s policy relative to capital investments under the EB-5 Program requires that each Limited partner’s capital investment be sustained in the Company and remain “at risk” until final adjudication of the Limited Partner’s I-829 Petition. As such, the Managing Member believes that the proposed reinvestment will help to establish that your qualifying investment is sustained in the Company per USCIS

⁷ As discussed below, the Maturity Date of the Loan disbursement that was funded by Phase I Subscriber’s capital was **September 29, 2017**, and the Maturity Date of the Loan disbursement that was funded by Phase II and Phase III Subscriber’s capital was **February 28, 2021**, but was later extended.

guidelines. Please see the enclosed legal opinion from expert immigration counsel which confirms this analysis.

*Id.*⁸

39. Whatever may have been said at the time the Offering Documents were published in mid-2012 regarding USCIS policy prohibiting the return of the Limited Partners' capital investments until their I-829 Petitions were adjudicated, there was no longer any good-faith basis for making that assertion in connection with the proposal Mastroianni articulated in his October 16, 2017, transmittal letters and the documents that accompanied them (collectively, the "Proposal").

40. As the Regional Center's counsel explained in its legal memorandum, USCIS had clarified its Policy Manual in June 2017 for the purpose of clarifying that EB-5 investors' capital contributions need only be sustained "at risk" until the end of the two-year "sustainment period" that follows the approval of an I-526 Petition:

Recently, USCIS clarified its policy guidance on the critical question of the length of time that EB-5 investments are subject to the at-risk requirement. In the revised version of its EB-5 Policy Manual, dated June 14, 2017 (the "June 14, 2017 Policy Manual"), USCIS states that an EB-5 Investor is required to maintain the Capital Contribution invested in the NCE and at risk from the date of the original investment of the Capital Contribution until the end of the 2-year conditional Green Card status. This period of time is referred to as the "Sustainment Period" for the EB-5 Investor's Capital Contribution.

The June 14, 2017 Policy Manual provides that, *after the end of the Sustainment Period, it is permissible for the NCE to return the Capital Contribution to EB-5 Investors even before USCIS has decided the EB-5 Investor's Form I-829 Petition. USCIS expressly states in a footnote that "[a]n investor does not need to maintain his or her investment beyond the sustainment period."*

⁸ Unlike the transmittal letter addressed to the Phase II/III Limited Partners, the transmittal letter to the Phase I Limited Partners uses the terms "the Company," "Managing Member," and "Operating Agreement" as apparent references to the Funding Partnership, its General Partner, and its Limited Partnership Agreement, respectively. See, e.g., *id.* at 11 (first paragraph).

Ex. 2 at 8 (emphasis added) (quoting 6 USCIS Policy Manual, Part G, Ch. 5 & n. 4); *see also* 8 C.F.R. § 216.6(c)(1)(iii) (“The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence”).

41. In the transmittal letter to the Phase II/III Limited Partners, Mastroianni reiterated that the Developer had repaid the Phase I Limited Partners’ capital investment (without explaining that only the Funding Partnership had been repaid, not the Limited Partners who provided the capital) and that the Phase II/III Limited Partners would be repaid by February 28, 2021, subject to the Developer exercising its options to extend the Maturity Date. *See* Ex. 2 at 2.

D. THE DEVELOPER DEFAULTS ON ITS LOAN OBLIGATIONS

42. In an email message dated March 23, 2021, the Regional Center notified the Limited Partners that the Developer had extended the Maturity Date by six months, to September 28, 2021.⁹

43. On October 21, 2021, three weeks after the extended Maturity Date had passed without repayment by the Developer, Mastroianni advised the Limited Partners by letter¹⁰ that the Developer had missed deadlines, incurred unexpected costs, and had failed to persuade its senior lender “to extend the term or increase the amount of the senior loan[.]” Ex. 4 at 1.

⁹ A true and correct copy of the Regional Center’s email message is attached hereto as **Exhibit 3**.

¹⁰ A true and correct copy of the October 26, 2021, letter is attached hereto as **Exhibit 4**.

44. Nonetheless, Mastroianni added that the Developer had refinanced the Project, asserting that it was in the best interest of the Funding Partnership and the Limited Partners *to approve the replacement senior financing and the resultant modifications to the EB-5 mezzanine loan*. The manager believes that this course of action is most likely to result in the return of the EB-5 investment and on the fastest timeline *compared to the pursuit of legal remedies (particularly considering the Company does not have the financial wherewithal to pursue such remedies)*.

Id. at 1-2 (emphasis added).

45. The Limited Partners were neither provided with a copy of the modified “EB-5 mezzanine loan” agreement to which Mastroianni referred in his letter, nor were they offered an opportunity to vote on the modifications that had been made to the Loan agreement. As Mastroianni later confirmed, however, the modified Loan agreement permitted the Developer to extend the Maturity Date well beyond the maximum one-year extension described in the Offering Documents without the Limited Partners’ knowledge or consent. *See* Ex. 1 at 47.

46. In a letter dated March 25, 2024,¹¹ Mastroianni advised the Phase II/III Limited Partners that the Maturity Date had been extended to December 31, 2023. Ex. 5 at 1. Moreover, Mastroianni had caused the Funding Partnership to enter into a forbearance agreement with the Developer, which gave the Developer until February 29, 2024 to repay the Loan. *Id.* Once again, the Limited Partners were given no opportunity to vote on the additional extensions of the Maturity Date or on the forbearance agreement.

47. In the same letter, Mastroianni announced that the Developer was “in default under the loan agreement because of the [Developer’s] failure to repay the outstanding principal balance and all other amounts due and owing under the loan documents on or before December 31, 2023

¹¹ A true and correct copy of Mastroianni’s letter of March 25, 2024, is attached hereto as Exhibit 5.

(the current maturity date of the loan).” *Id.* Mastroianni also revealed that the Funding Partnership had served the Developer with a notice of default because the Developer had also defaulted on the forbearance agreement, adding that “the Developer does not presently have the capital to repay the loan, but informs us that advanced third-party negotiations are ongoing which, if successful, would result in repayment of the loan in full.” *Id.*

48. Until he received Mastroianni’s letter of March 25, 2024, Plaintiff was unaware of the events described in that letter. Plaintiff is also unaware of any other Limited Partner who was made aware of these developments or given an opportunity to vote on extending the Maturity Date.

49. USCIS granted Plaintiff’s I-829 Petition on December 10, 2019. Plaintiff is informed and believes that each of the other eligible Phase II/III Limited Partners have had their I-829 Petitions adjudicated.

50. Plaintiff recently contacted USIF (one of the companies Mastroianni controls and uses to assist with EB-5 projects, including the Project at issue in the present case) to inquire about the status of the Phase II/III Loan and when the Developer would repay it. USIF advised Plaintiff that there is no money to repay the Phase II/III Limited Partners.

VEIL-PIERCING ALLEGATIONS

51. As the founder and President of USIF, founder and CEO of the Regional Center, and the founder and Managing Member of the Funding Partnership’s General Partner, Mastroianni has used this status to dominate and control those entities to such an extent that these entities’ independent existence was, and is, non-existent and Mastroianni was, and is, their alter egos. Mastroianni commingled these entities’ assets and used their limited liability status as mere instrumentalities for personal benefit and for other improper and misleading purposes, such as frustrating creditors (*e.g.*, the Limited Partners) to the detriment of and injury to the Funding

Partnership and the Limited Partners.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this lawsuit as a class action on behalf of himself and all other persons similarly situated pursuant to Federal Rule of Civil Procedure (“Rule”) 23(a), Rule 23(b)(2), and Rule 23(b)(3), and on behalf of the Funding Partnership pursuant to Rule 23.2.

53. The class is defined as follows: All persons who invested in the Funding Partnership and were designated as Phase II/III Limited Partners (the “Class”). Excluded from the Class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees; the Court and its staff; and any Limited Partner who has entered into a valid agreement to settle, waive, or otherwise resolve their claims against Defendants.

54. Plaintiff reserves the right to modify or amend the definitions of the proposed Class before the Court determines whether class certification is appropriate.

55. The Class satisfies the requirements of Rule 23(a), Rule 23(b)(2), Rule 23(b)(3), as well as Rule 23.2.

56. **NUMEROSITY.** The Class consists of approximately 160 geographically dispersed individual Limited Partners. The Class is sufficiently numerous to warrant certification. Joinder of the class members is not practicable. The disposition of the claims of the Class members in a single action will provide substantial benefits to all parties and to the Court.

57. **ASCERTAINABILITY.** The individual Class members are ascertainable, as the names and addresses of all Class members can be identified in the business records maintained by the Developer and the General Partner. Notice of this action can thus be provided to all members of the proposed Class.

58. **TYPICALITY.** Plaintiffs were investors in the Funding Partnership at the time of the wrongdoing alleged herein. Plaintiff's claims are typical of the claims of all proposed Class members as all Limited Partners are similarly affected by Defendants' wrongful conduct as complained of herein.

59. **ADEQUACY.** Plaintiff is committed to prosecuting the action, will fairly and adequately protect the interests of the members of the proposed Class, and have retained competent counsel who are experienced in class-action and derivative litigation, including cases pertaining to breaches of fiduciary duty, breaches of contract, and other claims like those alleged herein. Plaintiff has no interests antagonistic to or in conflict with other members of the proposed Class.

60. **COMMONALITY AND PREDOMINANCE.** Common questions of law and fact exist as to all members of the proposed Class and predominate over any questions solely affecting individual members of the proposed Class. The questions of law and fact common to the Class include, but are not limited to, the following:

- a. Whether Mastroianni and the General Partner breached their fiduciary duties to the proposed Class;
- b. Whether Mastroianni and the General Partner breached the Limited Partnership Agreement; and
- c. Whether Mastroianni and the General Partner violated the Florida Revised Uniform Limited Partnership Act of 2005.

61. **SUPERIORITY.** The Class may be certified under Rules 23(b)(3), 23(c)(4), and 23.2. Questions of law or fact common to proposed Class members predominate over any questions affecting only individual members. Class treatment of such common questions of law and fact is a superior method to piecemeal litigation because class treatment will conserve the resources of

the courts and will promote efficiency of adjudication. Class treatment will also avoid the substantial risk of inconsistent factual and legal determinations on the many issues in this lawsuit. There will be no unusual difficulty in the management of this action as a Class action.

CLAIMS FOR RELIEF

**COUNT I
BREACH OF FIDUCIARY DUTY**

62. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above in paragraphs 1 through 15 and paragraphs 22 through 50 as though fully set forth herein.

63. This Count is brought on behalf of Plaintiff, the other Phase II/III Limited Partners, and the Funding Partnership against Mastroianni and the General Partner.

64. Defendants are fiduciaries of the Funding Partnership and they owed a duty to conduct its business loyally, faithfully, carefully, diligently, and prudently.

65. In blatant disregard for his fiduciary duties and for the conflicts of interests resulting from his role as the Managing Member of the General Partner, Mastroianni breached his fiduciary duties to the Funding Partnership by, *inter alia*, engaging in the following conduct:

- a. allowing the Developer to extend the Maturity Date far beyond the one-year maximum described in the Offering Documents;
- b. assisting the Developer's refinancing efforts notwithstanding the representations in the Offering Documents that refinancing before the Limited Partners' 1-829 Petitions were adjudicated would result in preventing the Developer from extending the Maturity Date;
- c. after providing material assistance to refinance the Project, allowing the Developer to repeatedly exercise options to extend the Maturity Date;

d. negotiating and entering into a forbearance agreement with the Developer on behalf of the Funding Partnership;

e. failing to make reasonable efforts to collect the Loan principal and accrued interest owed by the Developer, and refusing to seek relief through litigation even after serving a notice of default on the Developer;

f. failing to inform the Limited Partners of events that could have, and did have, a material effect on their interests and those of the Funding Partnership; and

g. failing to provide the Limited Partners with opportunities to vote on matters that could have, and did have, a material effect on their interests and those of the Funding Partnership.

66. Defendants' conduct and inaction contravened their duty to promote the interests of the Limited Partners and the Funding Partnership, and could not have been a good-faith exercise of disinterested business judgment.

67. As a direct and proximate result of Defendants' conduct and inaction, the Limited Partners and the Funding Partnership have been damaged in amounts that will be proved at trial.

68. In conducting themselves as alleged herein, Defendants acted reprehensibly, in blatant violation of the law and public policy. Moreover, Defendants acted willfully, with the intent to vex and injure the Limited Partners and the Funding Partnership with a conscious disregard of their fiduciary duties, which entitles the Limited Partners and the Funding Partnership to an award of punitive and exemplary damages.

COUNT II
BREACH OF CONTRACT—LOAN AGREEMENT

69. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above in paragraphs 1 through 15 and paragraphs 22 through 50 as though fully set forth herein.

70. This Count is brought on behalf of the Funding Partnership against the Developer.

71. On or about July 21, 2012, the Funding Partnership and the Developer agreed to the terms of a Loan Commitment.

72. Based on the terms of the Loan Commitment, the Funding Partnership and the Developer entered into a binding loan agreement by which the Funding Partnership used the Limited Partners' capital contributions to provide the Developer with a construction loan secured by recorded and perfected security interests in the Project and the real property on which it is situated, the proceeds of which would be disbursed to the Developer in tranches that corresponded with phases of the Project's construction and repaid in full to the Funding Partnership, together with 3.5% annual interest, on the Maturity Date, subject to the Developer exercising a right to extend the Maturity Date (the "**Loan Agreement**").

73. The Funding Partnership did all, or substantially all, of the significant things that the Loan Agreement required it to do.

74. All conditions required for the Funding Partnership's performance occurred when it deposited the proceeds from the sale of units of membership in the Funding Partnership, the aggregate amount of which was \$139,000,000, into the escrow account for the purpose of funding the Loan to the Developer.

75. Plaintiff is informed and believes that the Developer repaid the portion of the Loan pertaining to the Phase I Limited Partners' capital contributions (amounting to \$59,000,000) on or about September 29, 2017.

76. Notwithstanding multiple extensions of the Maturity Date and a forbearance agreement that extended the duty to repay the portion of the Loan pertaining to the Phase II/III Limited Partners' capital contributions by February 28, 2021, which was extended to December

30, 2023, and extended again to February 29, 2024, by way of a forbearance agreement, the Developer breached its obligations under the Loan Agreement and the forbearance agreement by failing to repay the Loan principal and all accrued interest.

77. As a proximate result of the Developer's breaches of contract, the Funding Partnership has been damaged in an amount equal to the \$80,000,000 it borrowed plus accrued interest.

COUNT III
BREACH OF CONTRACT—SUBSCRIPTION AGREEMENT AND LOAN AGREEMENT

78. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above in paragraphs 1 through 15 and paragraphs 22 through 50 as though fully set forth herein.

79. This Count is brought on behalf of Plaintiff and the Other Phase II/III Limited Partners against the General Partner.

80. In or before February 2016, Plaintiff and the other Phase II/III each entered into the Subscription Agreement and the Limited Partnership Agreement (which was amended in or about October 2017).

81. The Phase II/III Limited Partners did all, or substantially all, of the significant things that the Subscription Agreement and the Limited Partnership Agreements required them to do.

82. All conditions required for the Phase II/III Limited Partners' performance occurred when they deposited the proceeds of their purchases of units of membership in the Funding Partnership, the aggregate amount of which was \$80,000,000, into escrow for the purpose of funding the Loan to the Developer.

83. The Phase II/III Limited Partners were to be repaid the principal amount of their capital contributions, plus accrued interest, by the Maturity Date, subject to valid extensions of the Maturity Date by the Developer, but in no event later than February 29, 2024.

84. Due to the actions and inactions of Mastroianni and the General Partner, the Funding Partnership has defaulted on the Subscription Agreement and the Loan Agreement.

85. As a proximate result of the Funding Partnership's default (through no fault of its own), Plaintiff and the other Phase II/III Limited have been damaged in an amount equal to the \$80,000,000, plus applicable interest.

**COUNT IV
ACCOUNTING**

86. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above in paragraphs 1 through 15 and paragraphs 22 through 50 as though fully set forth herein.

87. This Count is brought on behalf of Plaintiff, the other Phase II/III Limited Partners, and the Funding Partnership against Defendants Mastroianni and the General Partner.

88. Plaintiff seeks an equitable accounting of the accounts, assets, and liabilities of the Funding Partnership.

89. Mastroianni, as Managing Member of the General Partner, has engaged in self-dealing and has mismanaged the business and affairs of the Funding Partnership in the manner alleged herein, thereby placing the Funding Partnership's assets at undue risk.

90. Plaintiff does not have an adequate remedy at law because Defendants have control over the accounts, records, and assets of the Funding Partnership. Moreover, as stated in the Amended and Restated Limited Partnership Agreement,

[e]ach Partner acknowledges and agrees that the remedy at law for any breach of any of the terms of this Agreement would be inadequate, and agrees and consents that temporary and permanent injunctive and other equitable relief may be granted

in any proceeding which may be brought to enforce any provision of this Agreement, including within such other equitable relief, specific performance, without the necessity of proof of actual damage or inadequacy of any legal remedy. Any right or remedy provided for in this Agreement shall be cumulative of any other right, power, or remedy provided for by law or in equity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the Phase II/III Limited Partners, and the Funding Partnership, demand judgment against Defendants as follows:

- (1) declaring this action to be a proper class action maintainable pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), 23(b)(3), and 23.2, and declaring Plaintiff and his counsel to be representatives of and counsel for the proposed Class;
- (2) awarding compensatory and punitive damages for Defendants' breaches of fiduciary duty, as alleged in Count I;
- (3) awarding compensatory damages for Defendants' breaches of contract, as alleged in Count II;
- (4) awarding compensatory damages for Defendants' breaches of contract, as alleged in Count III;
- (5) an accounting of the Funding Partnership's assets, as alleged in Count IV;
- (6) awarding Plaintiff and members of the proposed Class attorney fees and costs pursuant to the common fund doctrine and the substantial benefit doctrine;
- (7) awarding the Plaintiff and the proposed Class prejudgment interest at the maximum rate allowable by law; and
- (8) awarding such other and further relief the Court deems just, proper and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the proposed Class, hereby requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: January 28, 2025

Respectfully submitted,

by /s/ Jonathan M. Stein

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Yi Yao
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*Attorneys for Plaintiff Zhinan Kong
and the Proposed Class*

EXHIBIT 2

Then Governor DeJongh Press Release Announcing 2014 Water Island Hotel Project

Home > News > Archives > Government Signs Water Island Hotel Lease

ARCHIVES

Government Signs Water Island Hotel Lease

November 20, 2014

Gov. John deJongh Jr. approved a lease agreement to the Water Island Development Company to facilitate the redevelopment of the former Water Island Hotel property as a boutique resort.

The lease was signed Wednesday at a ceremony at Government House on St. Thomas. (The executive summary of the development plan can be seen [here](#).)



The Water Island Development Company was selected through an Expression of Interest issued by the government in September 2013.

"Our interest in attracting a developer of a boutique resort was to achieve an economic activity on Water Island that would be consistent with the current community," deJongh said at Wednesday's signing ceremony. "It would supplement the product diversification and re-branding that we are executing to broaden our tourism offerings while providing permanent jobs and creating business opportunities."

WEEKLY ALL-YOU-CAN-EAT BUFFETS
 Chef-Curated Menus, Air-Conditioned Dining
RESERVE YOUR TABLE NOW

DAILY	Daily Breakfast Buffet \$32 Continental \$38 Signature Buffet	
WED.	Caribbean Buffet \$45	
THURS.	Italian Buffet \$39	
FRI.	Mediterranean Buffet \$35	
SAT.	Surf & Turf Buffet \$55	
SUN.	Brunch Buffet \$55	

**USVI RESIDENTS
 SAVE 10% OFF FOOD & DRINKS**

THE WESTIN
 ST. THOMAS
 BEACH RESORT & SPA

DeJongh said the previous hotel on the island, Sea Cliff Hotel, was built in 1953 as the Water Isle Hotel and destroyed in 1989 as a consequence of Hurricane Hugo. Since that time, there has been no meaningful economic activity on Water Island, he said.

The Expression of Interest process was led by the Department of Property and Procurement with input from the V.I. Department of Justice. The government engaged REVPAR International, a hospitality advisor and asset management firm, in 2012 to assess the viability of lodging development on Water Island. On November 29, 2012, after conducting a market study and financial analysis on the feasibility of the redevelopment of a hotel and marina on Water Island, REVPAR issued its assessment confirming that such a project was indeed feasible.

Property and Procurement Commissioner Lynn Millin Maduro described the proposal process.

“The EOI resulted in proposals from three developers: LAURENS GmbH, WIDC and RED Legacy, LLC. After reviewing the proposed submissions, the evaluation committee ... along with REVPAR in an advisory role conducted two rounds of oral presentations to select the developer, in this instance WIDC.”

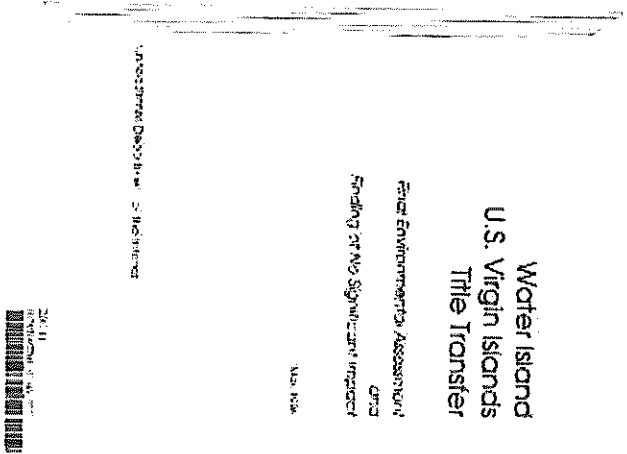
The evaluation committee was comprised of key stakeholders including the Office of the Governor, Department of Tourism, Department of Property and Procurement, Virgin Islands Economic Development Authority, and the U.S.V.I. Hotel and Tourism Association.

According to the news release announcing the signing, WIDC also has proposed constructing residential dwellings and villas in conjunction with a community center and commissary, to make the overall development more attractive to creating economic redevelopment on the island. While the government agrees that this will foster economic growth, the government as a general policy only leases land for business and commercial activity and not for residential development. For this reason, the governor wrote the Department of Interior for approval to offer certain parcels for residential development as part of the hotel project development.

According to Government House, Wednesday's event marked the second time in as many weeks that deJongh facilitated the development of new hotel properties in the Virgin Islands. A week earlier, deJongh and developers introduced plans for the development of an upscale hotel resort at the Port of Mandahl on St. Thomas, marking the first time that a new hotel would be developed on the island in more than two decades.

EXHIBIT 3

Water Island U.S. Virgin Islands Title Transfer
Final Environmental Assessment
And
Finding of No Significant Impact
May, 1996



Water_Island_U.S._Virgin_Islands_title_-
transfer-
Final_environmental_assessmen-
t_and_finding_of_no_significant_impact_
-_USACE-P16021coll7-4707.pdf (7.1 MB)

EXHIBIT 4

Comparison of 2014 and 2026 Development Plans for Water Island Hotel/Real Estate Development
and
2014 Development Plan for Water Island Hotel/Real Estate Development

2014 Plan: Honeymoon Beach plus Flamingo Pond/Bay Area)



2026 Plan: Project Elements Across the Entire Island





Reimagining tourism in the USVI.....

Public Private Partnership

Water Island Development Company LLC
&
Government of the Virgin Islands

**The first Five Star Luxury Resort Development in the
Territory in over 20 years**

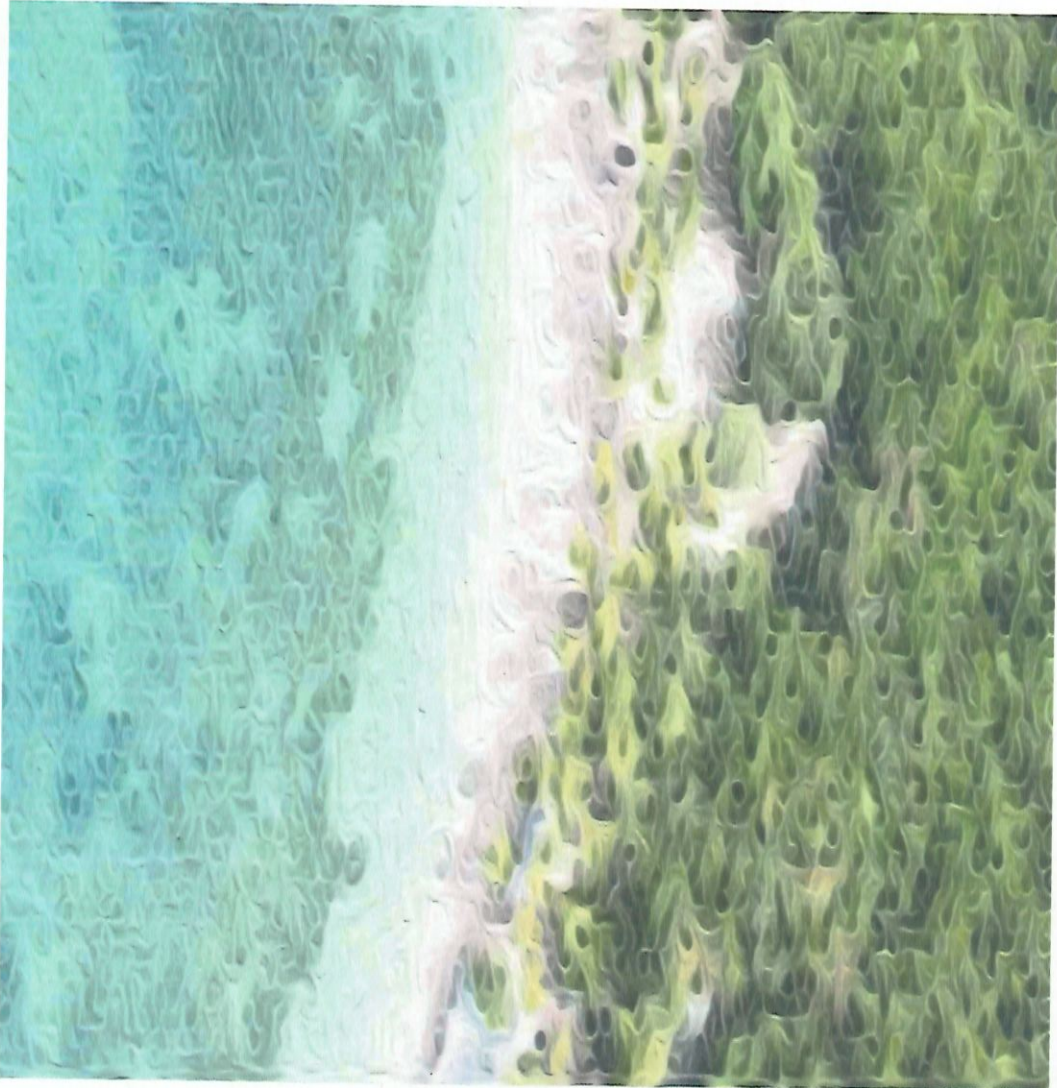
121 Key Hotel
Resort Residences
Mixed Use Village
Marina

"Water Island boasts one more opportunity to rebrand the Virgin Islands in one of the world's most beautiful natural environments, with nearby airport and water transportation, an attractive beach and marina capabilities. It is a valuable economic asset which will now be strengthened for the economic benefit of our entire Territory."

- Beverly Nicholson-Doty, Commissioner of Tourism

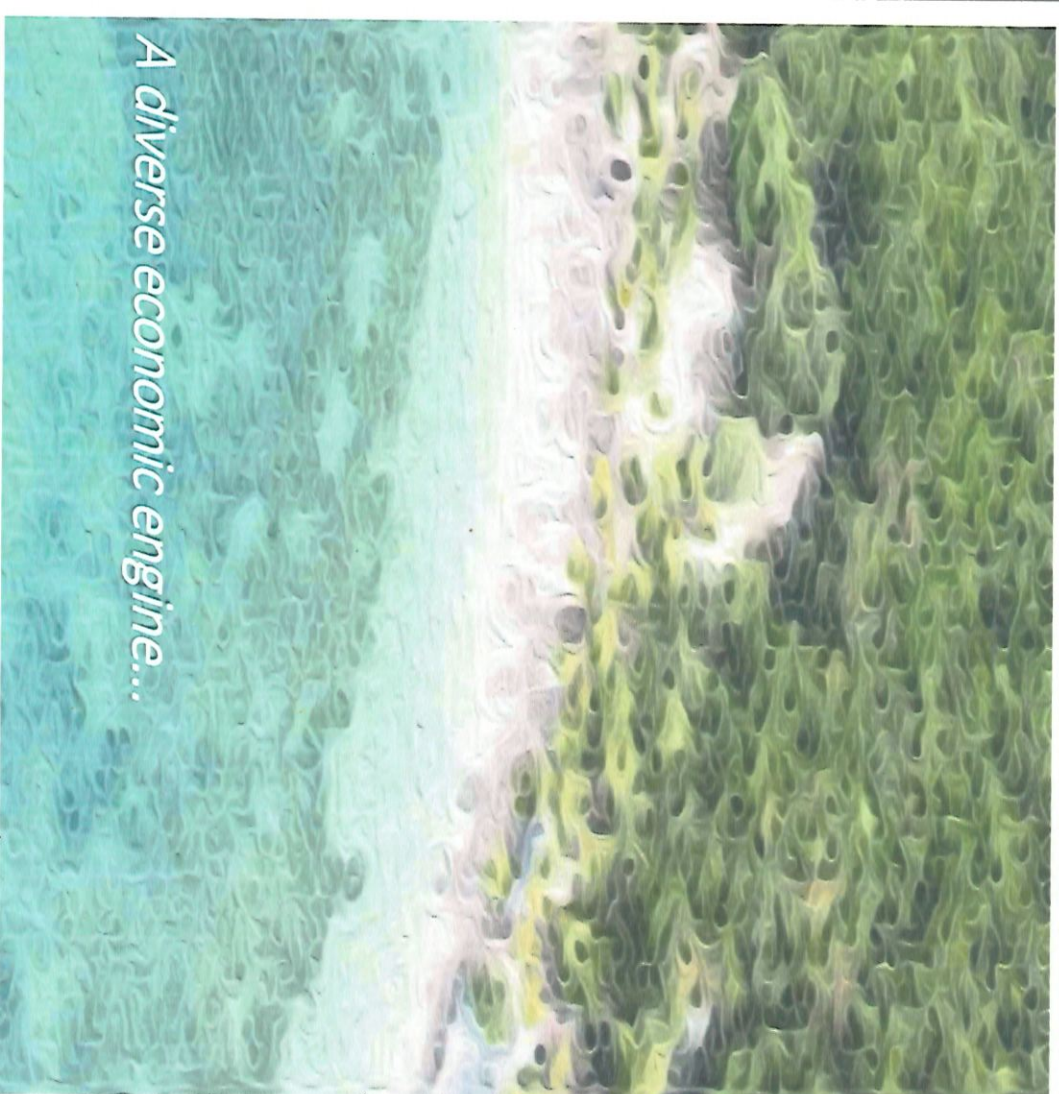


WATER ISLAND



 WATER ISLAND

INTRODUCTION

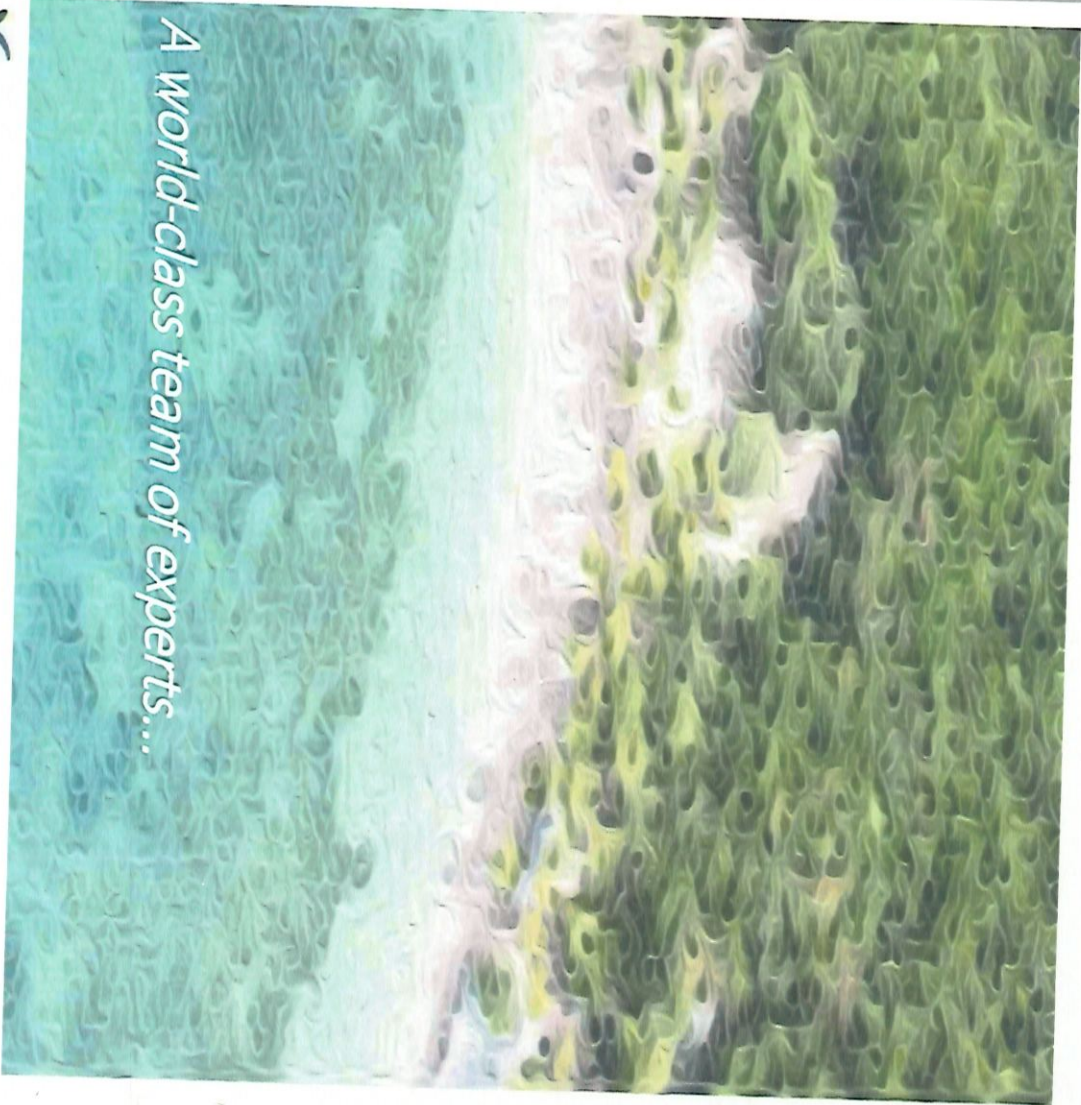


A diverse economic engine...



Objectives

- Rebrand the USVI as a luxury tourism destination
- Capture growing share of luxury Caribbean tourism market
- Generate jobs
- Attract more EDC investment
- Increase tax revenue



A world-class team of experts...



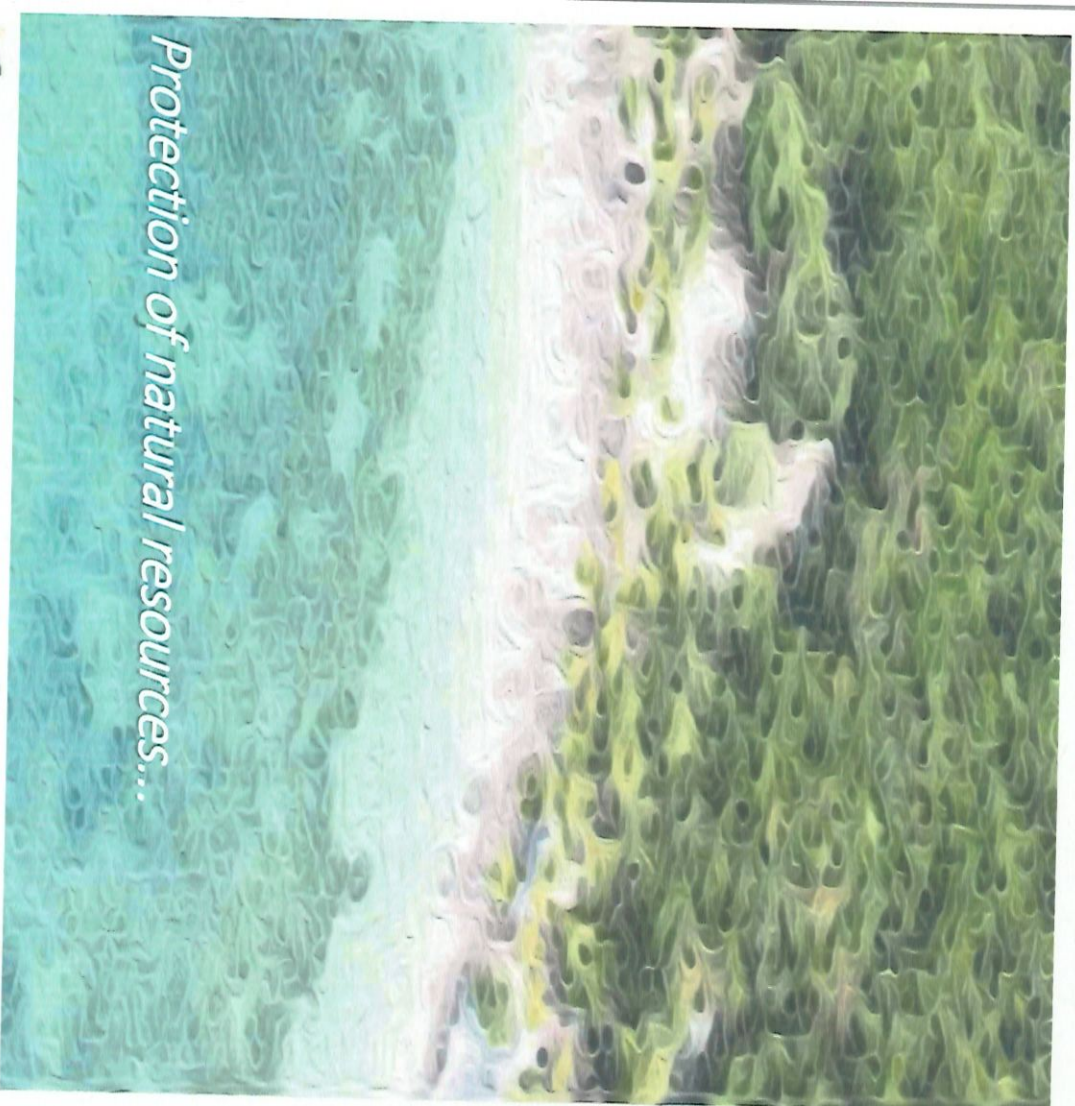
Progress update

Lease approved by Legislature December 2014

Water Island Development Team

- Assembled top-tier development team

Design and Engineering	▪ SB Architects ▪ EDSA – land planners / landscape architects ▪ Moffatt & Nichol – marine engineers ▪ BioImpact – environmental consultant
Finance and Consulting	▪ Jefferies LLC – investment banking ▪ ProForma Advisors – market analysis ▪ Four Corner Advisors – hotel consultant ▪ Johnson Consulting – TIF analysis
Legal	▪ Nixon Peabody – general counsel ▪ Dudley, Topper and Feuerzeig, LLP – local counsel ▪ Fisher & Fletcher – environmental counsel



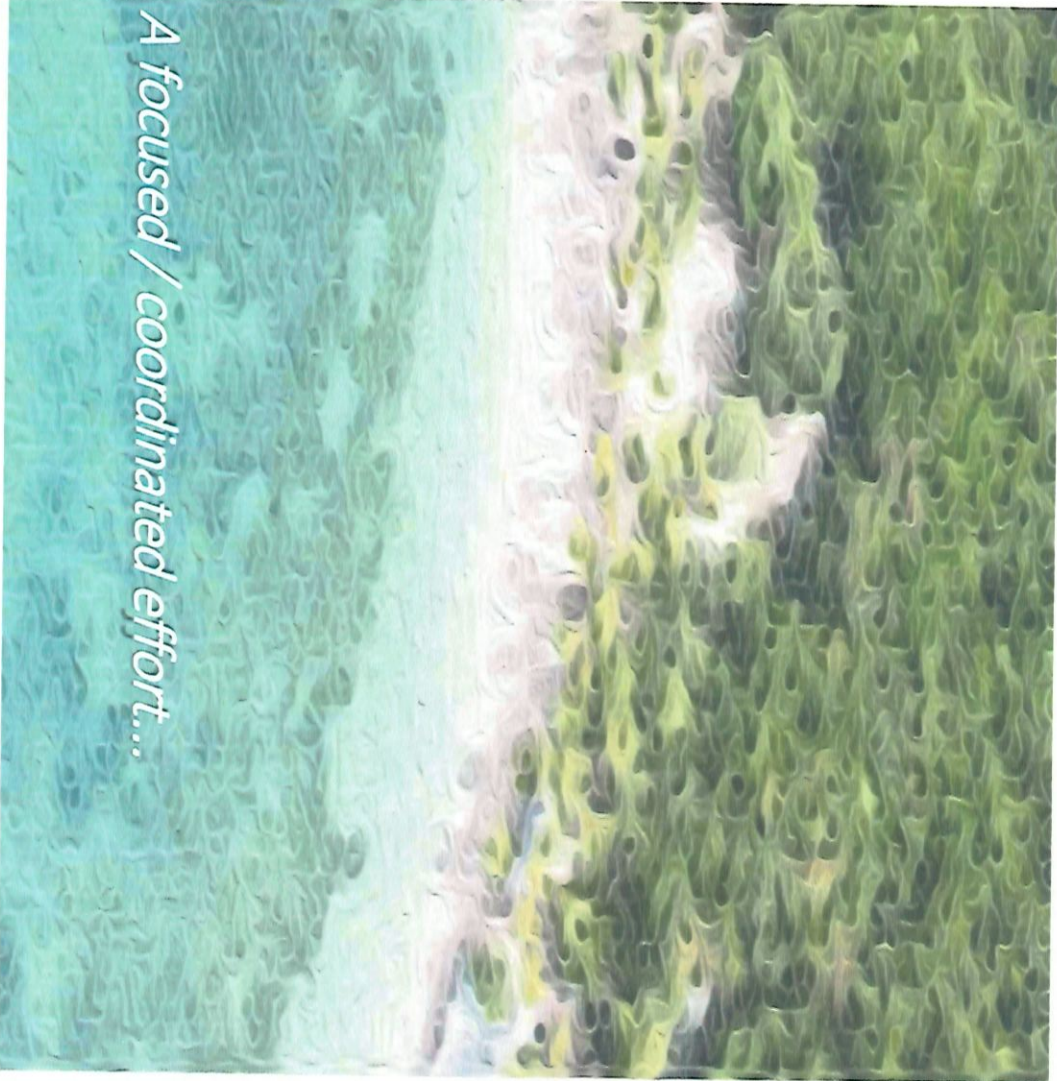
Protection of natural resources...



Progress update

Permitting

- Public meeting February 2015
- Pre-application meeting Army Corps of Engineers
- ACOE site visit
- National Marine Fisheries site visit
- Pre-application meeting DPNR / Coastal Zoning Management



A focused / coordinated effort...



Progress update

Development Team deliverables

- SB Architects completed conceptual site plan
- EDSA completed land planning
- ProForma Advisors completed market study
- Four Corners Advisors completed Development Brief
- Nixon Peabody completed preliminary tax analysis
- Jefferies completed preliminary financing plan
- Johnson Consulting finalizing TIF Analysis



PROJECT CONTEXT

Stunning Location

- 48.5 acres of leased land
- Topography prime for development
- Honeymoon Beach, Flamingo and Druif Bay
- Inner and outer marina



WATER ISLAND

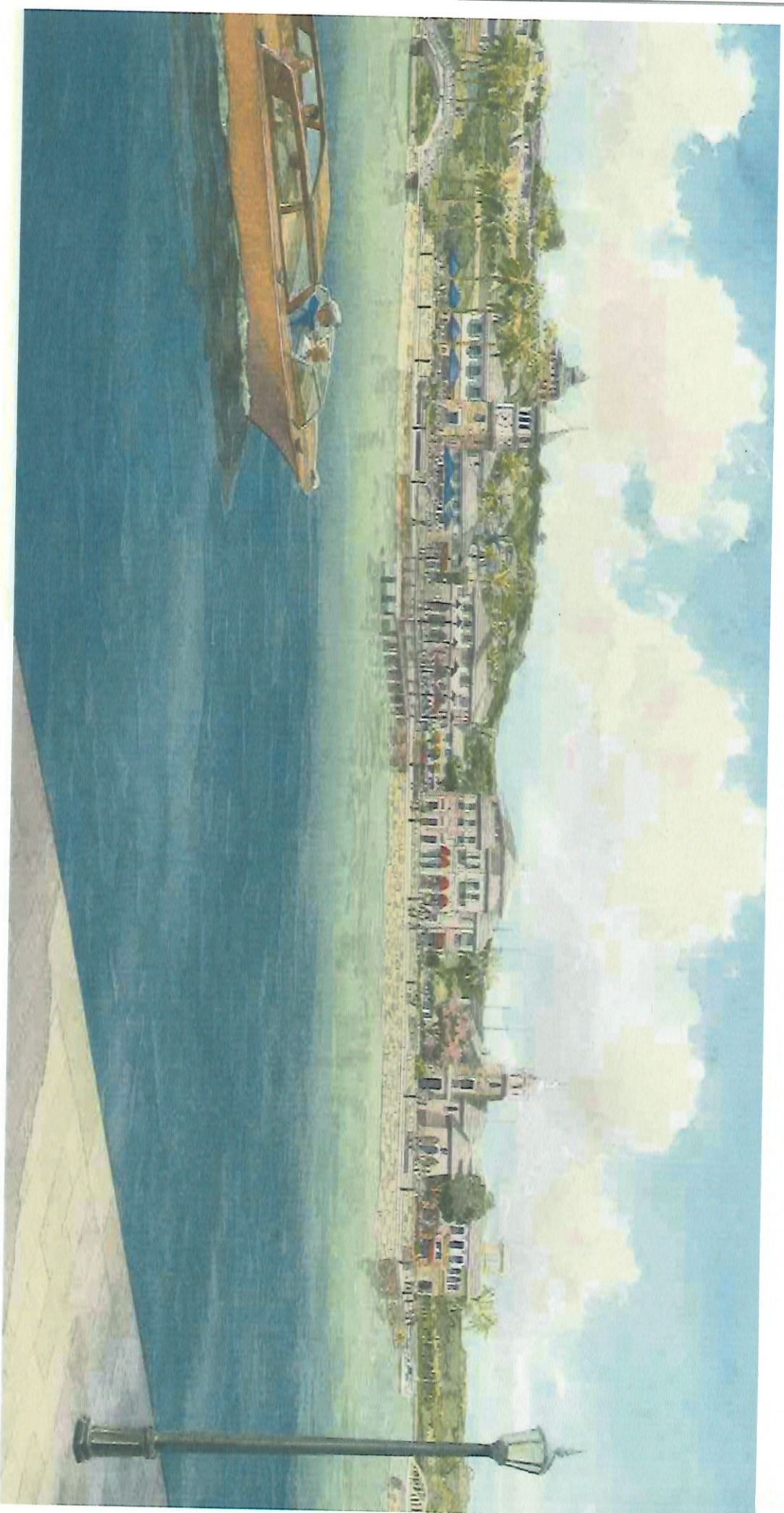




 WATER ISLAND

Aerial view rendering

NOVEMBER 20th 2008



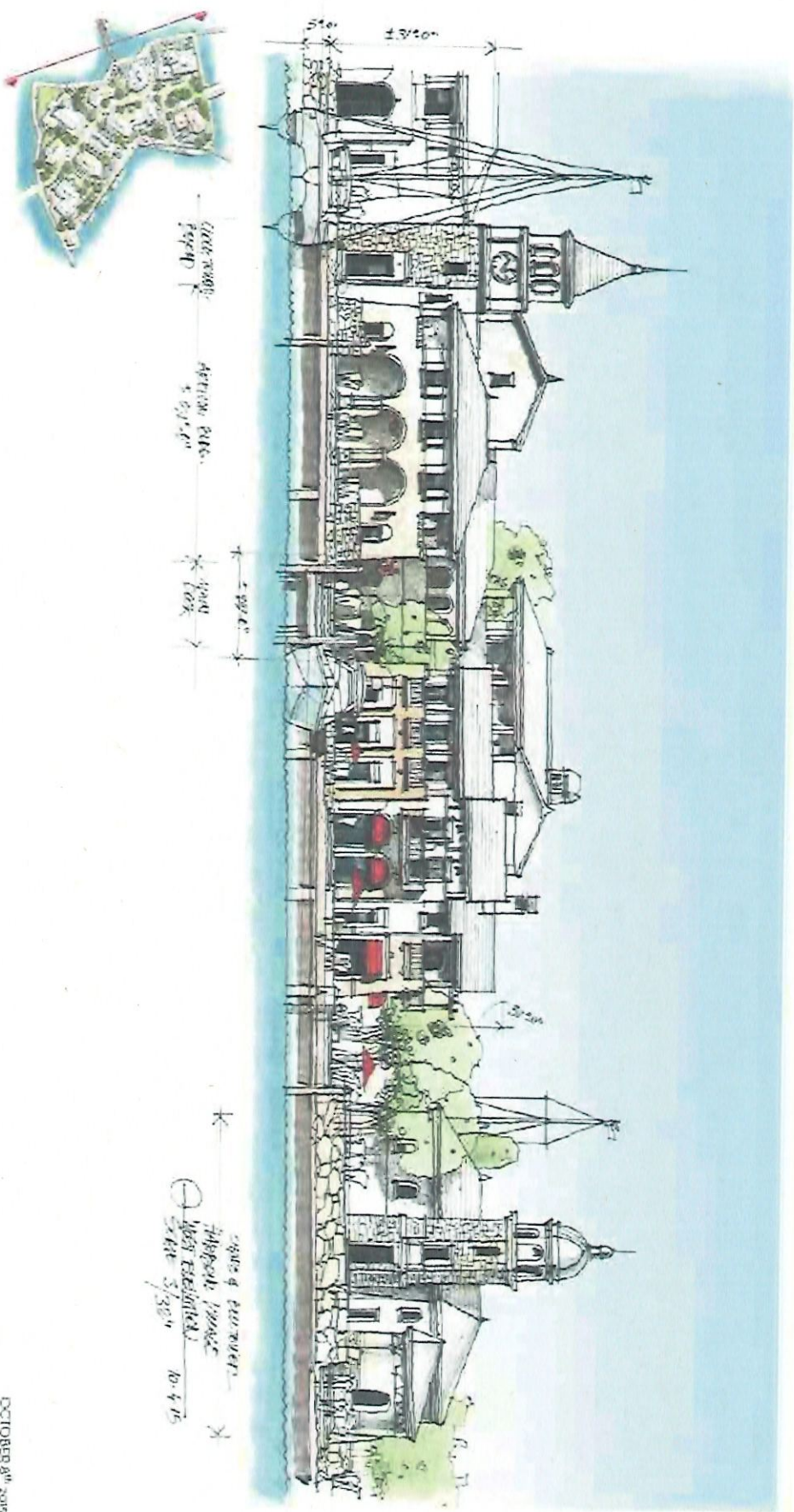
Harbor Village arrival – minutes from airport

NEWFIELD RD 2015

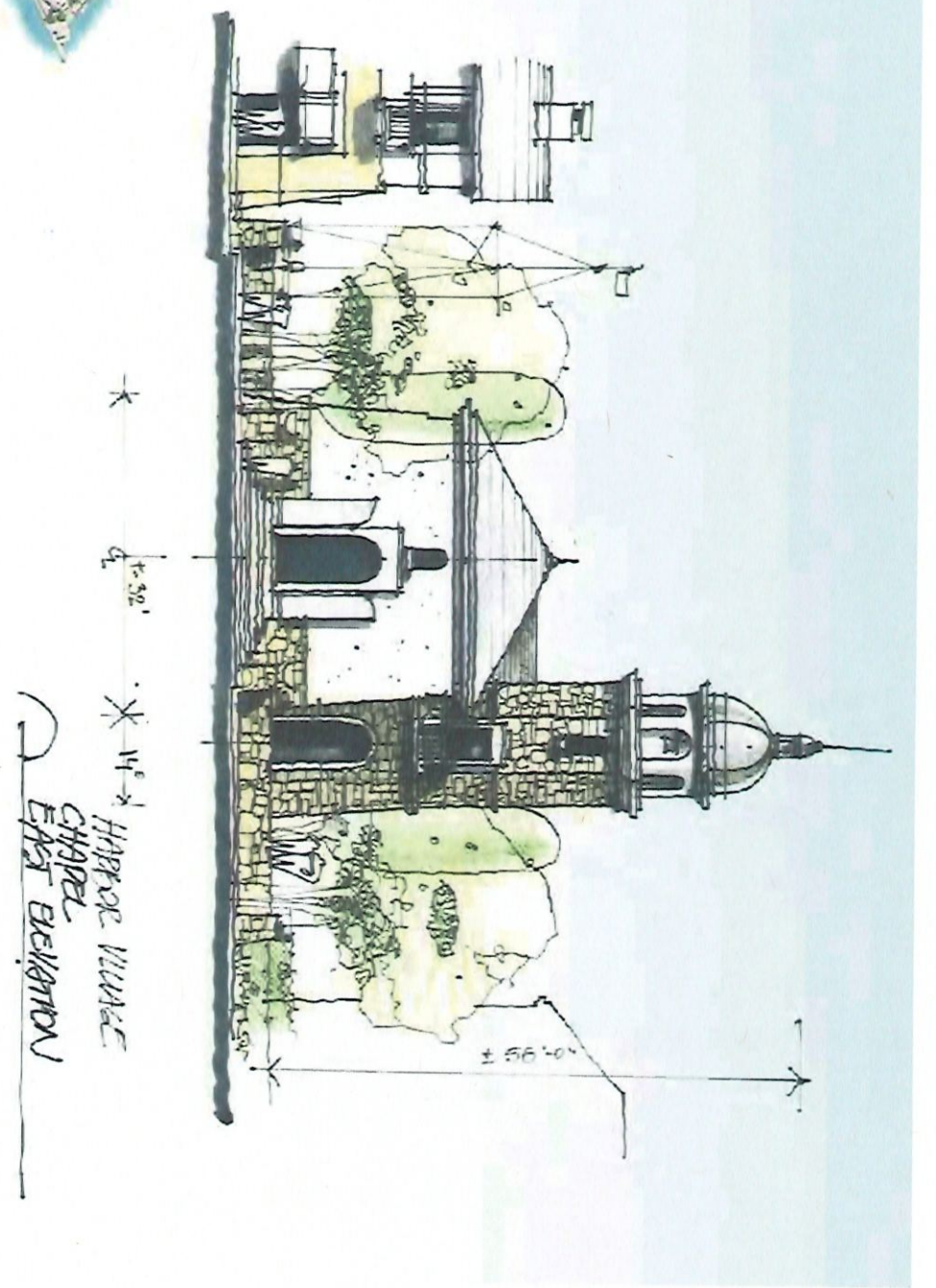


Harbor Village – seawall promenade

NOVEMBER 10th 2015

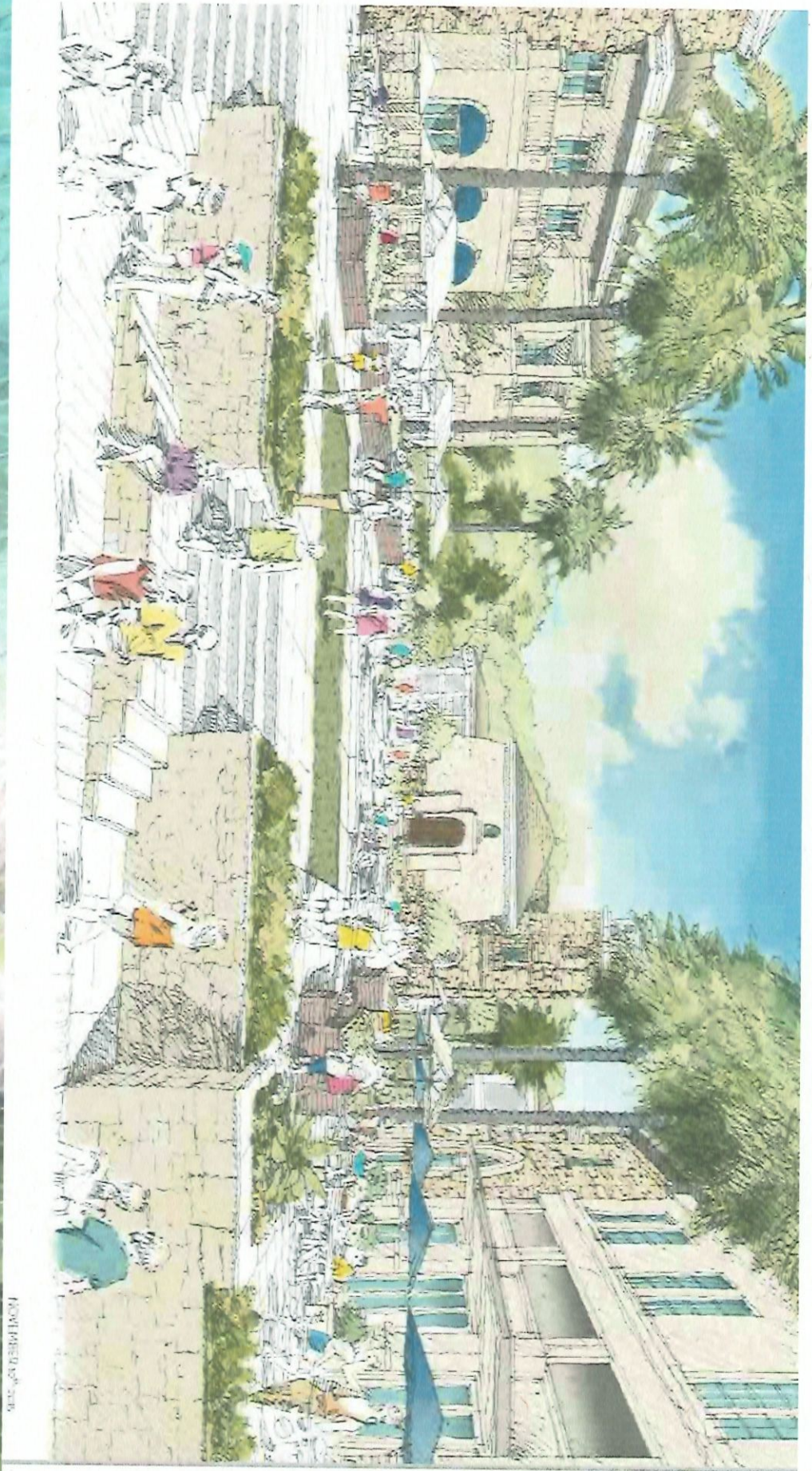


HARBOR VILLAGE ELEVATION



HARROCK VILLAGE
CHAPEL
EAST ELEVATION

CHAPEL - EAST ELEVATION



16-01105-01 10/10/2016

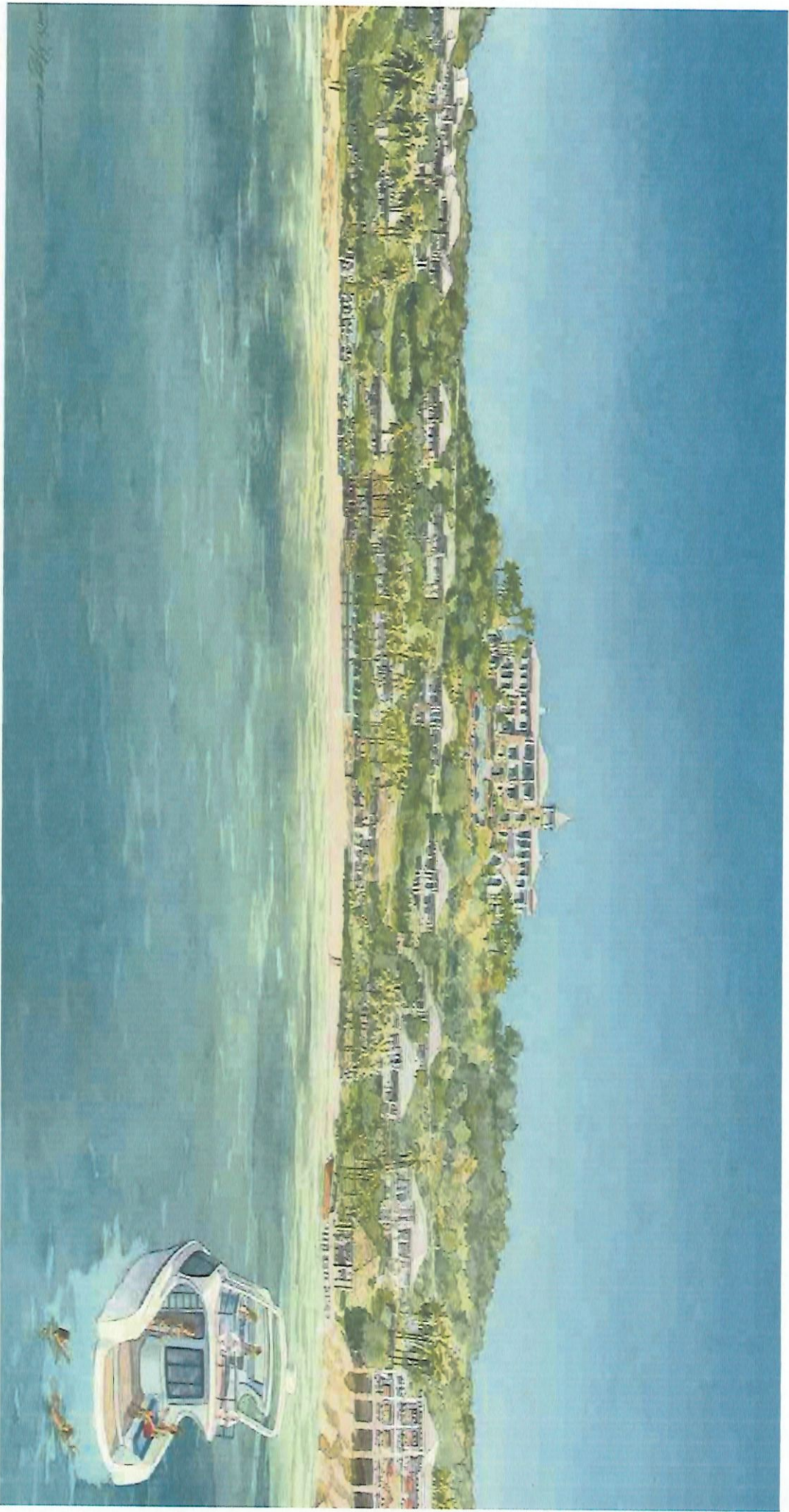
HARBOR VILLAGE – CENTRAL PLAZA



SUITE FRONT ELEVATION
THE RIDGE RETREAT



SECTION
THE RIDGE RETREAT



Honeymoon Beach and the Manor House

HOVENBERG 10th 2005



SUITE FRONT ELEVATION
HONEYMOON BEACH

OCTOBER 8th 2018



HONEYMOON BEACH
FRONT ELEVATION
ONE STORY W/2A
DATE 3/32 10-6-15



SUITE FRONT ELEVATION
HONEYMOON BEACH



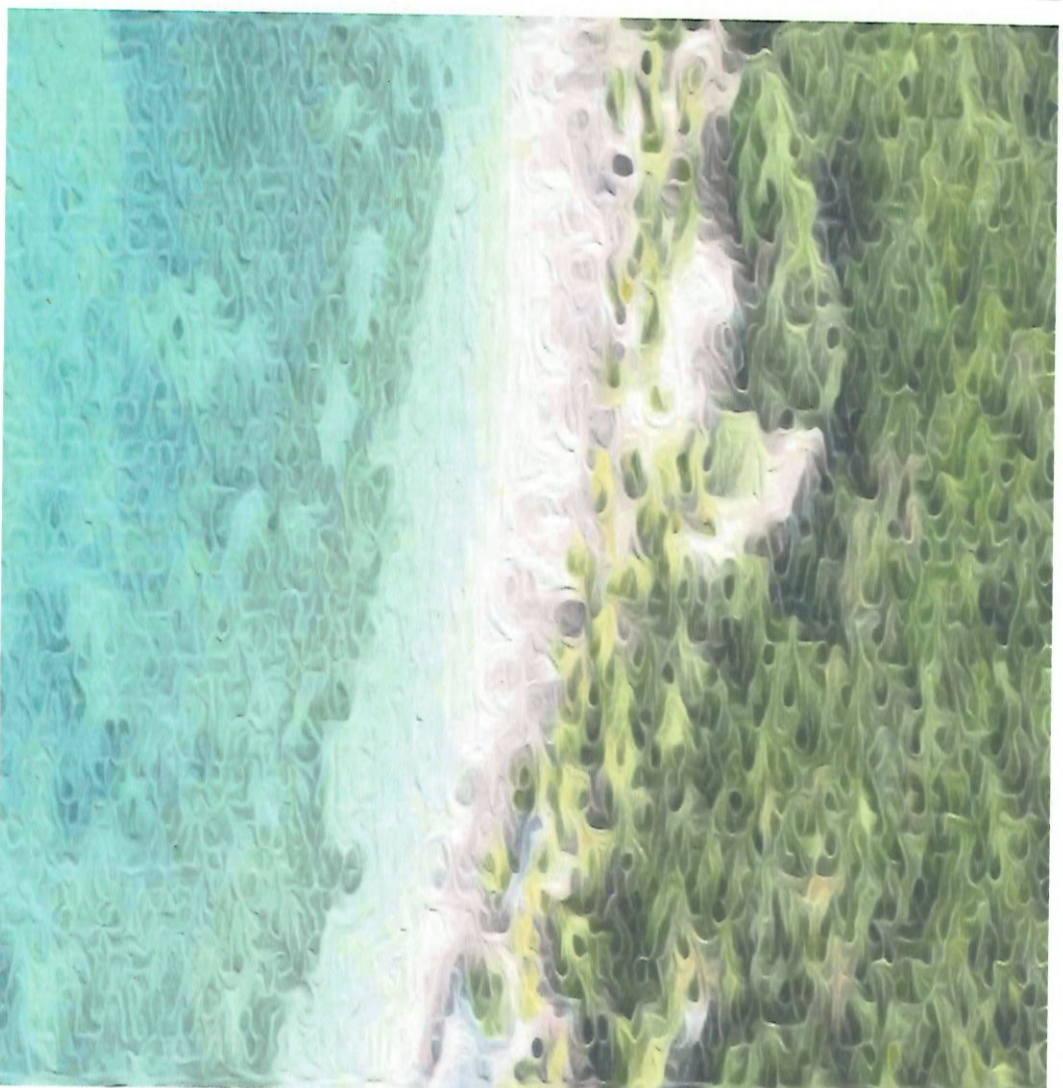
NOVEMBER 10TH 1908.

THE MANOR HOUSE



MANOR HOUSE
SOUTH SIDE ELEVATION
SCALE 3/32" = 1'-0" 7-24-15

SIDE ELEVATION - THE MANOR HOUSE



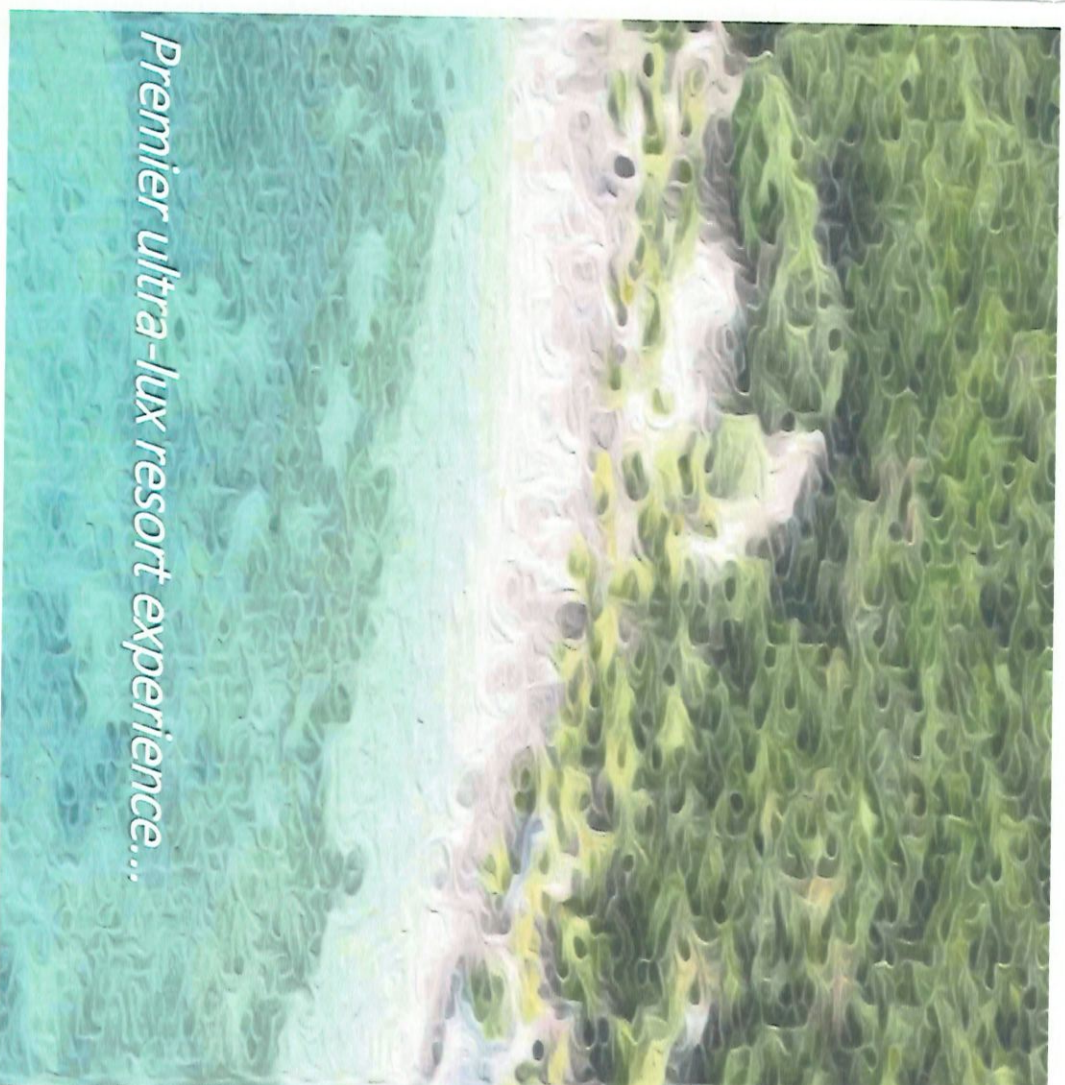
 WATER ISLAND

ECONOMIC BENEFITS

Rebrand USVI as luxury tourism destination

Market study identifies pent up demand for:

- Luxury hotel
- Luxury resort residences
- Water Island Room rates (ADR) = \$1,000+
- Branded Residences
- Most convenient access to all major US markets
- Major publicity campaign to coincide with opening

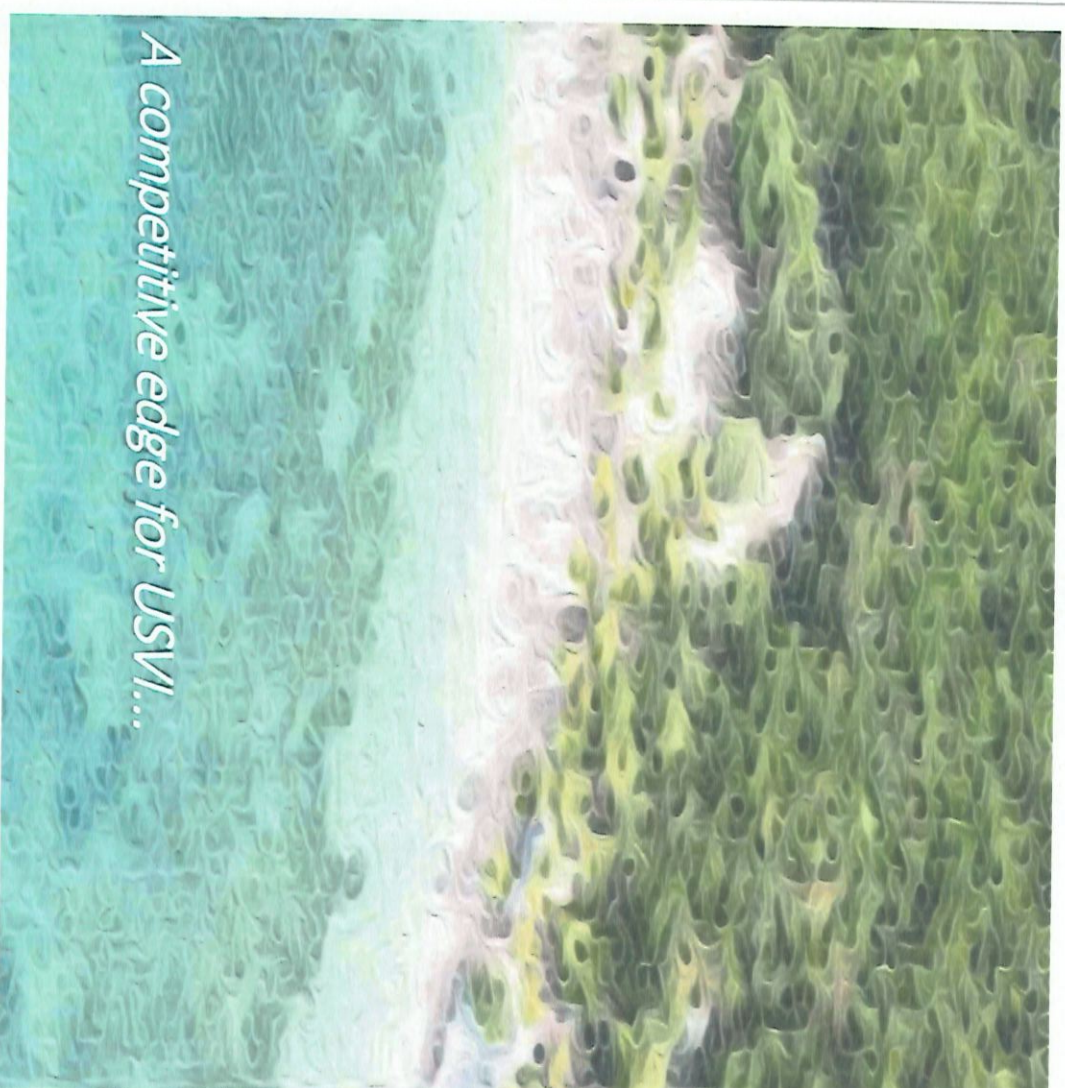


Premier ultra-lux resort experience...



Capture share of growing luxury Caribbean tourism

- Barbados – \$ 1B hotel investment
 - Sandals – 220 rooms in 2016.
 - Sugar Bay & the Sands – 300 new rooms
 - Wyndham at Sam Lord's Castle announced
 - 14.5% tourism growth in 2015 YTD
- Turks & Caicos - \$444M hotel investment
 - \$220M - 100 keys, 76 branded residences - 5 star resort
 - \$224M Ritz Carlton, Grace Bay, 124 keys, plus branded residences
- Cayman Islands – \$200M hotel investment
 - 263 keys, 66 branded residences, Kimpton – luxury resort



A competitive edge for USVI...



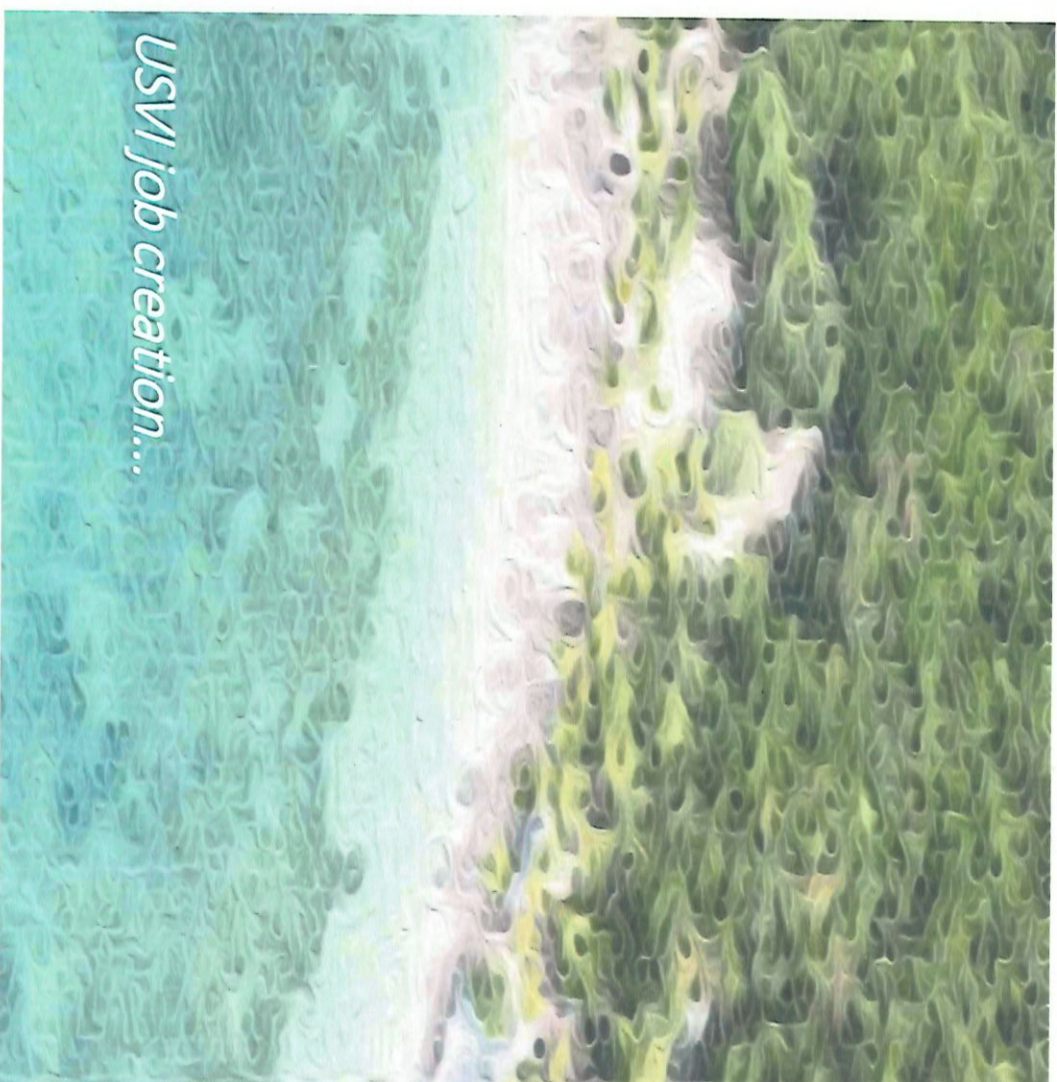
Generate jobs

Hard Construction Costs exceed
\$200,000,000

- Over 300 construction jobs

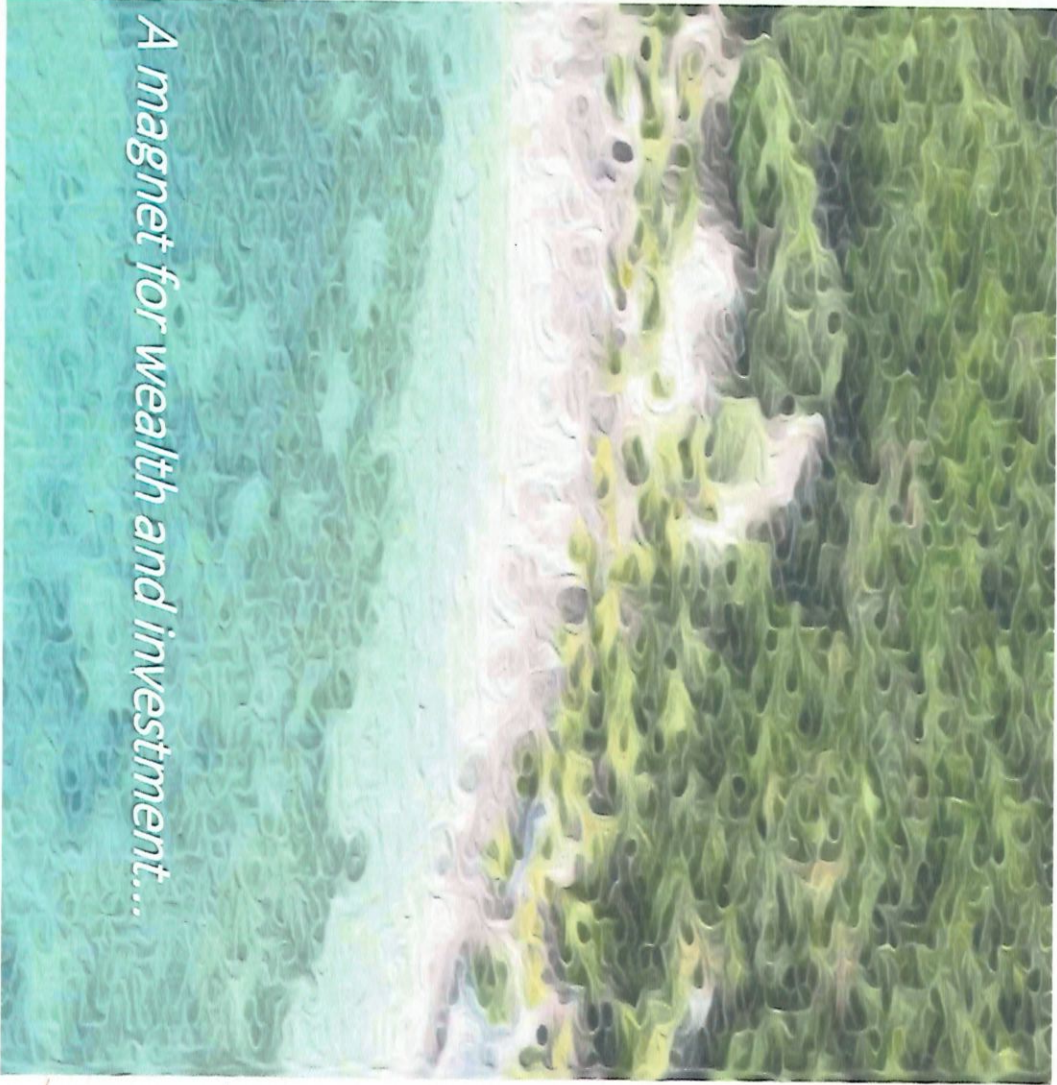
Annual stabilized revenue exceeds
\$50,000,000

- Over 200 permanent jobs



USVI job creation...





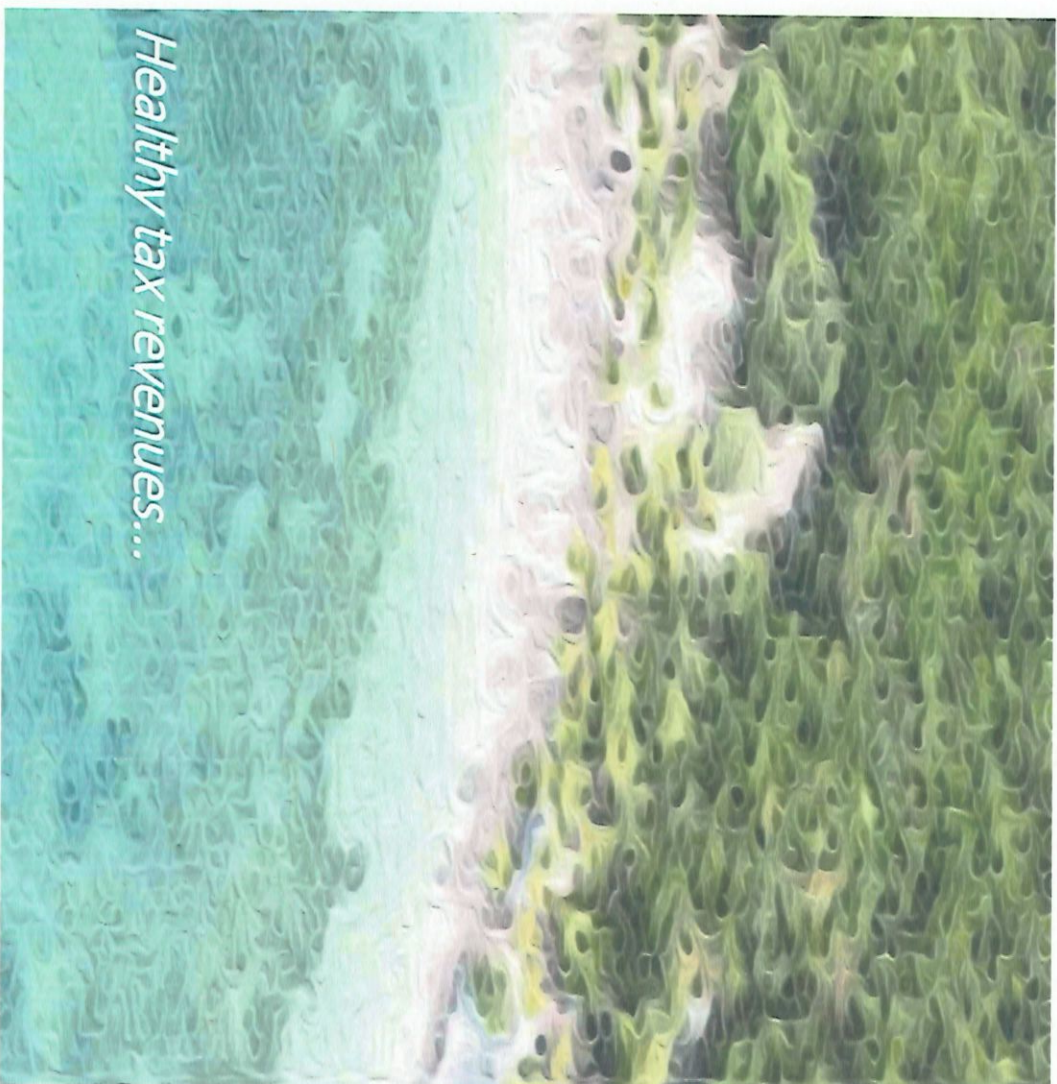
Attract more EDC investment

- Provide an attractive safe and comfortable environment conducive to attracting high net worth individuals to relocate to USVI
- Attracting 30 additional EDC companies generates:
 - 30 companies @ 5-10 jobs = 150-300 jobs
 - 30 High Net Worth tax payers @ \$500,000 annual taxes = \$15,000,000 annual tax revenue
 - 30 High Net Worth families with annual spending of \$500,000 each = \$15,000,000 additional spending in USVI

Generate Tax Revenue

The projected tax revenue generated by Water Island's redevelopment projects in stabilized year 2024 is as follows:

Real estate taxes	\$ 6,175,000
Gross receipts taxes	\$ 4,100,000
Hotel Tax	<u>\$ 8,742,240</u>
Total Increased Tax Revenue in 2024	\$19,388,277



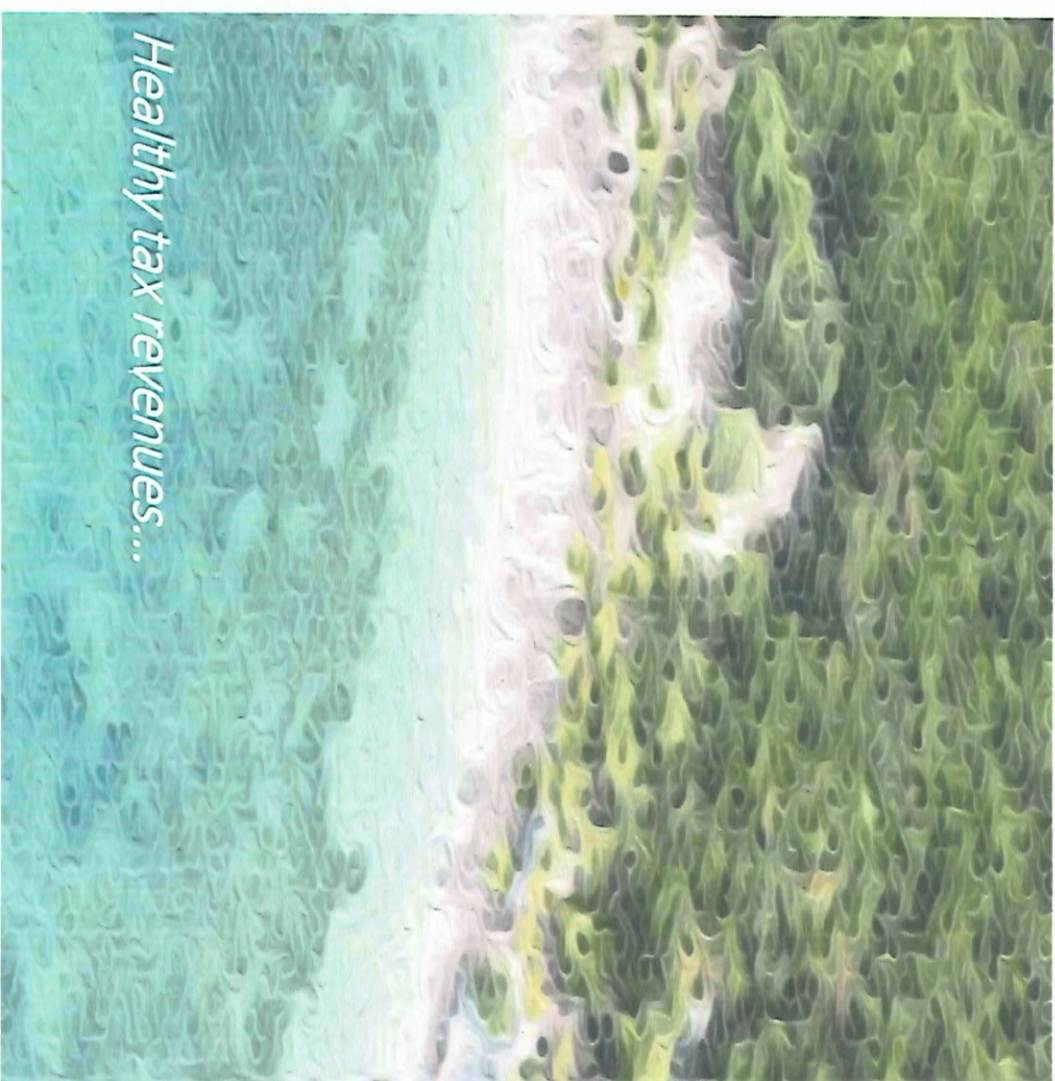
Healthy tax revenues...



Generate Tax Revenue

The projected tax revenue generated by Water Island's redevelopment over the initial 30 year term of the debt is as follows:

Real estate taxes	\$ 250,625,376
Gross receipts taxes	\$ 186,591,034
Hotel Occupancy tax	<u>\$ 349,941,097</u>
Total Increased Tax Revenue	\$787,157,507



Healthy tax revenues...



2026 Development Plan for Water Island Hotel/Real Estate Development

EXHIBIT 5

Articles Describing 2017 U.S. Virgin Islands Senate Hearing Regarding Tax Incentives
for 2014 Water Island Hotel Project

https://www.virginislandsdailynews.com/news/water-island-developers-want-tax-money-for-hotel/article_6b3fa70f-a1fc-5e54-a344-4a0d86d2260d.html

Water Island developers want tax money for hotel

By BRIAN O'CONNOR Daily News Staff
Aug 1, 2017

ST. THOMAS — The builders of a planned \$430 million development on Water Island say they need an extra push from the government to get their development off the ground.

The agreement to build a five-star development on Water Island has been in the works for years. The plan calls for a 100-room hotel and 124 permanent residences in a combination of veterans and mixed-income housing, George Dudley, an attorney representing Water Island Development LLC, the company behind the plan, said.

The plan would also lead to the construction of a marina, water treatment plant, and additional other infrastructure on the island, Dudley said.



In all, the development would bring 600 construction jobs, 300 permanent jobs, and could create as many as 1,000 additional jobs as a secondary effect, Dudley told the Committee on Economic Development and Agriculture on Monday.

The prospect of a new high-end hotel clearly had some legislators, like Sen. Brian Smith, excited.

“I’m here salivating, actually, just wanting to see this development move forward,” he said, at one point.

However, to bring the hotel to fruition — and the accompanying incomes and infrastructure — the developers are asking for the government to set aside some of the proceeds to help finance the project, Dudley said.

“Without these amendments to the existing statutes, the contemplated revenue bond financing for the development of Water Island would not be possible and the project would not get off the ground,” he said.

Specifically, the developers are asking for tax increment financing is essentially a portion of the tax money from the development set aside to help finance the cost of construction.



The developers — in this case, Water Island Development — get a guarantee that instead of paying for schools, police officers or firetrucks, the revenue will go to help pay off the cost of hotel construction until the debt is paid off. In the case of the Water Island hotel, the estimated amount that tax increment financing bonds would pay for is approximately \$325 million, while about \$110 million would be funded by money borrowed by Water Island Development, according to Dudley.

The two bills the committee considered Monday are designed to allow two separate acts — the tax increment financing laws and the Hotel Investment Act — to work together smoothly.

Some senators, including Sen. Nereida Rivera-O'Reilly, voiced skepticism.

“When we come to the Legislature and consider measures such as these, we are telling the people of the territory that something great is going to happen,” she said. “We’ve put aside \$1 million for the governor to do a study about a hotel on St. Croix. Nothing has happened. How serious and how legitimate is the project, Attorney Dudley, that you are advocating on behalf of?”

Some trust was required, Dudley said.

“All I can tell you is I’m basing my position here on my reputation in this community and before this body,” he said. “I don’t come here to hustle.”

Bill 32-0136 would expand the type of improvements that could be financed using tax increment financing to include infrastructure, not just the hotel. The bill also allows casino tax and hotel occupancy tax funds to be included as part of the tax increment financing. Current law only allows for excise tax.

Bill 32-0137 puts in place a statutory lien, essentially a legal agreement that the money will be paid first.

Both measures passed favorably out of Monday’s committee hearing, and move on to the Rules and Judiciary Committee. Senators Rivera-O’Reilly, Smith, Marvin Blyden, Dwayne DeGraff, Positive Nelson, Tregenza Roach, Samuel Sanes, Kurt Vialet and Neville James voted to approve.

— *Contact Brian O’Connor at 340-714-9130 or email bocconnor@dailynews.vi.*

Brian O’Connor

EXHIBIT 6

Articles Regarding

- (1) Suspensive Condition Lease Terms
- (2) Longstop Date Lease Terms

OUR INSIGHTS

Conditional agreements for lease and longstop dates

Published **Tuesday 15 October 2024**

COMMERCIAL REAL ESTATE REAL ESTATE

Landlords and tenants will be familiar with agreements for the lease - the contract which precedes the granting of the lease itself. Here we look at conditions that may be attached to such agreements, which conditions need to be met before the lease starts, and the timescales for meeting those conditions.

What are 'suspensive' conditions?

Whilst agreements for lease generally record the process for the parties to sign the lease, for the tenant to make the initial payments under the lease and the like, they may also record conditions that have to be met before the lease can be put in place. Examples of such conditions include:-

- the tenant obtaining any building warrant for their initial fit out works;
- the tenant obtaining a premises licence (e.g. for the sale of alcohol);
- the landlord obtaining vacant possession (VP) if there is an existing lease in place; or
- the landlord completing certain works to deliver the premises in a shell condition (e.g. removing a prior tenant's fit out).

Conditions such as these are generally referred to as "suspensive conditions" because the grant of the lease is suspended until each of the conditions have been met (also referred to as satisfied or 'purified'), or waived / deemed no

longer required. As well as agreeing the detail of what is required to meet the condition (e.g. what precise works the landlord has to do) there are other considerations. It is important to consider:

1. who controls each condition, so which party(s) either confirms whether or not the condition has been met and can be purified, or decides whether a condition can be waived; and
2. the date for doing so, known as the longstop date.

In considering the above, the parties also need to agree the consequences for the agreement for lease if a condition is not purified or waived by its longstop date. The standard consequence is that either party can terminate the agreement for lease and walk away from the proposed letting.

Who can purify the suspensive conditions?

Generally speaking, the party entitled to purify or waive will be the party who benefits from that condition. For example, a condition that the tenant must obtain local authority consents for their fit out works would ordinarily only be purified or waived by the tenant, as it's the tenant's application; and ensuring the consents are appropriate for the works is for the tenant's benefit.

However there may be some conditions that are mutual, so need both landlord and tenant sign off. The usual example of this is where the landlord is doing works to the premises before the tenant will take the lease. The tenant will want to be able to sign off the works and confirm the condition is met, as it will want to ensure the premises are in the state of repair it expects. The landlord will likely want to be part of that process, so that it has a degree of control over what works the tenant is asking the landlord to do and to what standard.

With mutual conditions one should consider if a dispute resolution process is appropriate e.g. reference to a third party. That would ensure that if the parties are at an impasse, the matter can be resolved by the third party process and the condition purified.

Longstop dates

To keep the parties focused on fulfilling any obligations on them to satisfy the suspensive condition, longstop dates would ordinarily be included to the agreement for lease. The longstop date may be different for different conditions as it would reflect both the time it reasonably takes to satisfy the condition, and

its place in the process if there is more than one condition (e.g. a landlord can't do works to the premises before it achieves VP). If there are a number of suspensive conditions, there may be a number of consequential longstop dates.

When deciding on what those longstop dates should be the parties should consider what period of time would be reasonable to enable them to fulfil the condition. They should take account of any external factors, i.e. the relevant local authority's timescales for granting building warrants or premises licences, etc; or the dates or notice periods in the current lease for the landlord to secure VP. However the longstop date should not be so long as to tie the parties into the agreement for lease for an unreasonable period: generally parties want to tick off the conditions as soon as reasonably practicable so the lease can start and the tenant take entry.

If the longstop date is not feasible, this will mean that either the option for either party to terminate the agreement for lease occurs too soon in the process; or the agreement for lease may need to be varied to push out the longstop date. If that date is part of a chain, all of the dates need to be reconsidered.

Mechanism to extend longstop dates

Depending on the nature of the condition, agreements for lease may be drafted to include a mechanism for extending longstop dates to account for legitimate periods of delay. Common examples include the ability to push out a longstop date linked to either party appealing a planning decision, or where an external event (force majeure) causes a delay in works being completed.

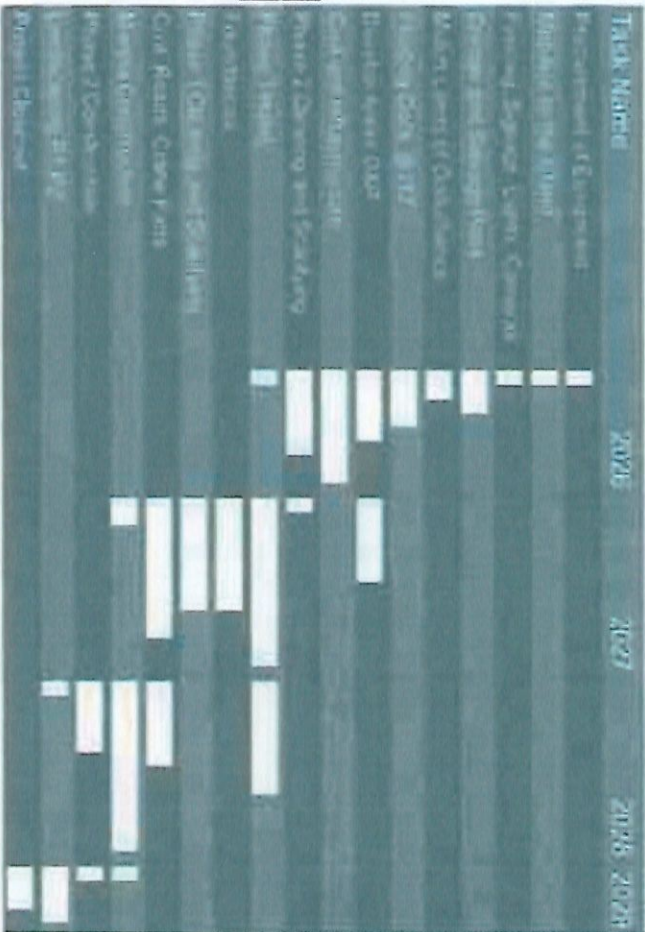
Key takeaways

Suspensive conditions are important components of agreements for lease, as they enable the landlord and tenant to get into a contract for the lease whilst certain matters are resolved or put in place.

The terms of those conditions should be clear, so both parties know what requires to be done to meet the condition. The parties should also agree (i) which of them decides whether or not the condition has been satisfactorily met; and (ii) achievable longstop dates which keep the parties focused, but also provide appropriate time to complete the steps needed to satisfy the condition.

EXHIBIT 7

Project Schedule Attached to the Lease as Part of Exhibit A



CONSTRUCTION SCHEDULE THROUGH 2029

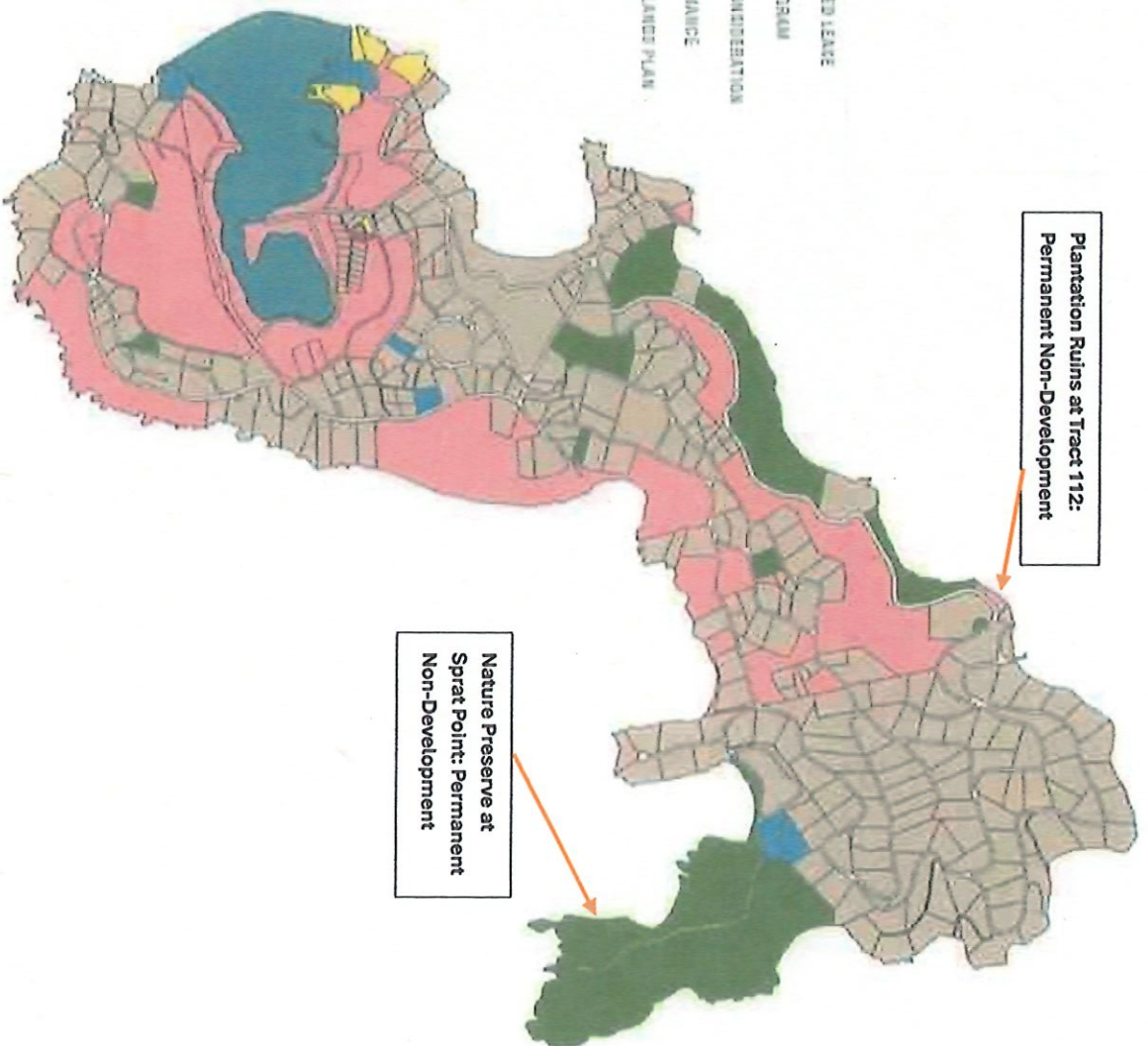
Phase 2 Clearing and Sealing
Phase 1 Hotel

Phase 2 Construction

EXHIBIT 8

**2026 Development Plan for Water Island Hotel/Real Estate Development
With Overlays to Depict Some of the Issues**

- PLOTS INCLUDED IN ANTIKID LEASE
- PLOTS IN PURCHASING PROGRAM
- PLOTS IN PROPOSED CONSERVATION
- SITES FOR LIMITED MAINTENANCE
- PRELIMINARY SUBMITTED LAND PLAN



Plantation Ruins at Tract 112:
Permanent Non-Development

Nature Preserve at
Sprat Point: Permanent
Non-Development

EXHIBIT 9

**Federal Regulations Specifying Bonding Requirements for Construction on Leased
Lands**

- LII > Electronic Code of Federal Regulations (e-CFR)
 - > Title 43—Public Lands: Interior
 - > Subtitle B—Regulations Relating to Public Lands
 - > CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR
 - > SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000) Group 2000—Land Resource Management; General
 - > PART 2800—RIGHTS-OF-WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT
 - > Subpart 2805—Terms and Conditions of Grants
 - > **§ 2805.20 Bonding requirements.**

CFR

43 CFR § 2800.2805.20 - Bonding requirements.

§ 2805.20 Bonding requirements.

If you hold a grant or lease under this part, you must comply with the following bonding requirements:

(a) The BLM may require that you obtain, or certify that you have obtained, a performance and reclamation bond or other acceptable bond instrument to cover any losses, damages, or injury to human health, the environment, or property in connection with your use and occupancy of the right-of-way, including costs associated with terminating the grant, and to secure all obligations imposed by the

grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. The BLM will periodically review your bond for adequacy and may require a new bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or lease.

(1) The BLM must be listed as an additionally named insured on the bond instrument if a State regulatory authority requires a bond to cover some portion of environmental liabilities, such as hazardous material damages or releases, reclamation, or other requirements for the project. The bond must:

(i) Be redeemable by the BLM;

(ii) Be held or approved by a State agency for the same reclamation requirements as specified by our right-of-way authorization; and

(iii) Provide the same or greater financial guarantee that we require for the portion of environmental liabilities covered by the State's bond.

(2) *Bond acceptance.* The BLM authorized officer must review and approve all bonds, including any State bonds, prior to acceptance, and at the time of any right-of-way assignment, amendment, or renewal.

(3) *Bond amount.* Unless you hold a solar or wind energy lease under subpart 2809, the bond amount will be determined based on the preparation of a RCE, which the BLM may require you to prepare and submit. The estimate must include our cost to administer a reclamation contract and will be reviewed periodically for adequacy. The BLM may also consider other factors, such as salvage value, when determining the bond amount.

(4) You must post a bond on or before the deadline that we give you.

(5) Bond components that must be addressed when determining the RCE amount include, but are not limited to:

(i) Environmental liabilities such as use of hazardous materials waste and hazardous substances, herbicide use, the use of petroleum-based fluids, and dust control or soil stabilization materials;

(ii) The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and

(iii) Interim and final reclamation, re-vegetation, recontouring, and soil stabilization. This component must address the potential for flood events and downstream sedimentation from the site that may result in offsite impacts.

(6) You may ask us to accept a replacement performance and reclamation bond at any time after the approval of the initial bond. We will review the replacement bond for adequacy. A surety company is not released from obligations that accrued while the surety bond was in effect unless the replacement bond covers those obligations to our satisfaction.

(7) You must notify us that reclamation has occurred and you may request that the BLM reevaluate your bond. If we determine that you have completed reclamation, we may release all or part of your bond.

(8) If you hold a grant, you are still liable under § 2807.12 if:

(i) We release all or part of your bond;

(ii) The bond amount does not cover the cost of reclamation; or

(iii) There is no bond in place;

(b) If you hold a grant for solar energy development outside of designated leasing areas, you must provide a performance and reclamation bond (see paragraph (a) of this section) prior to the BLM issuing a Notice to Proceed (see § 2805.12(c)(1)). We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and it must be no less than \$10,000 per acre that will be disturbed;

(c) If you hold a grant for wind energy development outside of designated leasing areas, you must provide a performance and reclamation bond (see paragraph (a) of this section) prior to the BLM issuing a Notice to Proceed (see § 2805.12(c)(1)). We will determine the bond amount based on the RCE (see paragraph (a)(3) of this section) and it must be no less than \$10,000 per authorized turbine less than 1 MW in nameplate capacity or \$20,000 per authorized turbine equal to or greater than 1 MW in nameplate capacity; and

(d) For short-term right-of-way grants for energy site or project-area testing, the bond amount must be no less than \$2,000 per authorized meteorological tower or instrumentation facility location and must be provided before the written approval to proceed with ground disturbing activities (see § 2805.12(c)(1)).