



Evaluating EB-5 Projects from an Immigration and Securities Law Perspective

Live Webinar Presentation

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This presentation is not
legal advice and is for
informational purposes only



You must engage your own
legal counsel for legal advice

Topics Covered in Today's Webinar

- ① About EB5AN
- ② About Greenberg Traurig, LLP
- ③ EB-5 Diligence to Reduce Immigration Risk
- ④ EB-5 Diligence to Reduce Financial Risk



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EB5AN: A Leading EB-5 Investment Fund Manager

2,300+ families from 60+ countries and regions have invested through EB5AN's regional center investments.



2013
Established



\$4 billion+
Assets under development



10+
USCIS-approved regional
centers covering 30+ states



100%
Regional center project
approval rate with USCIS



30+

Completed or ongoing EB-5
investment funds; numerous
I-526, I-829, and I-924
exemplar approvals

EB5AN Is Committed to 100% EB-5 Investment Transparency

EB5AN is Pleased to Make the Following Key EB-5 Investment Due Diligence Documents Available to All EB-5 Investors

- ✓ The complete set of Form I-956F “exemplar” EB-5 documents filed with USCIS
- ✓ The complete Form I-526E individual investor document set template
- ✓ The balance sheet of the Kolter parent company guarantying the repayment of the EB-5 loan
- ✓ The current financial statements of the Kolter company developing the project showing proof of developer equity invested to date
- ✓ The executed loan agreement between the company developing the project and the construction lender
- ✓ Any other available documents related to the development of the project and EB-5 investment

Other EB-5 Regional Centers

- ✗ Not willing to share the entire Form I-956F “exemplar” or Form I-526E template with all exhibits
- ✗ Not willing to share the balance sheet of the company guarantying the repayment of EB-5 funds, or no such company exists, and the EB-5 investment is unsecured with “no collateral” or only a pledge
- ✗ Not willing to share the current financial statements of the company developing the project because they do not exist, reflect losses, or reflect that no developer equity has been funded
- ✗ Not willing to share an executed senior loan agreement or other financial commitment documents because they do not exist

Use common sense. If an EB-5 company is not willing to provide the basic documents needed to evaluate the financial position of an EB-5 project, avoid that project. Get access to and review critical financial documents for the project. Invest only if you know and are comfortable with the current financial position of the companies involved.

How to Identify Red Flags for EB-5 Investments



For many EB-5 investors, an \$800K EB-5 investment will be the largest investment they have ever made.

Some EB-5 investors may not have experience making real estate investments or other private equity investments. As a result, many EB-5 investors may not know what questions to ask and what documents to focus on when evaluating potential EB-5 investments.

Many EB-5 projects appear to be “safe” and have nice renderings but have minimal security and are very risky. An inexperienced investor can have a difficult time separating these “risky” projects from safer projects.

EB5AN has prepared many articles to help EB-5 investors evaluate potential EB-5 real estate development projects. Our articles help EB-5 investors identify and understand the impact of the most common risks found in such projects.

View these articles at: www.EB5Investments.com

We strongly recommend that EB-5 investors take the time to understand real estate development investments so that they make an educated EB-5 investment decision and increase the likelihood of receiving permanent green card approval and a timely repayment of EB-5 investment funds.

If you need help, or don't know where to start, just ask, and we can point you in the right direction.

The EB5AN Management Team

The EB5AN team has been involved in more than \$4 billion of leveraged buyouts, IPOs, and real estate development.



**Samuel B.
Silverman**



**Michael B.
Schoenfeld**

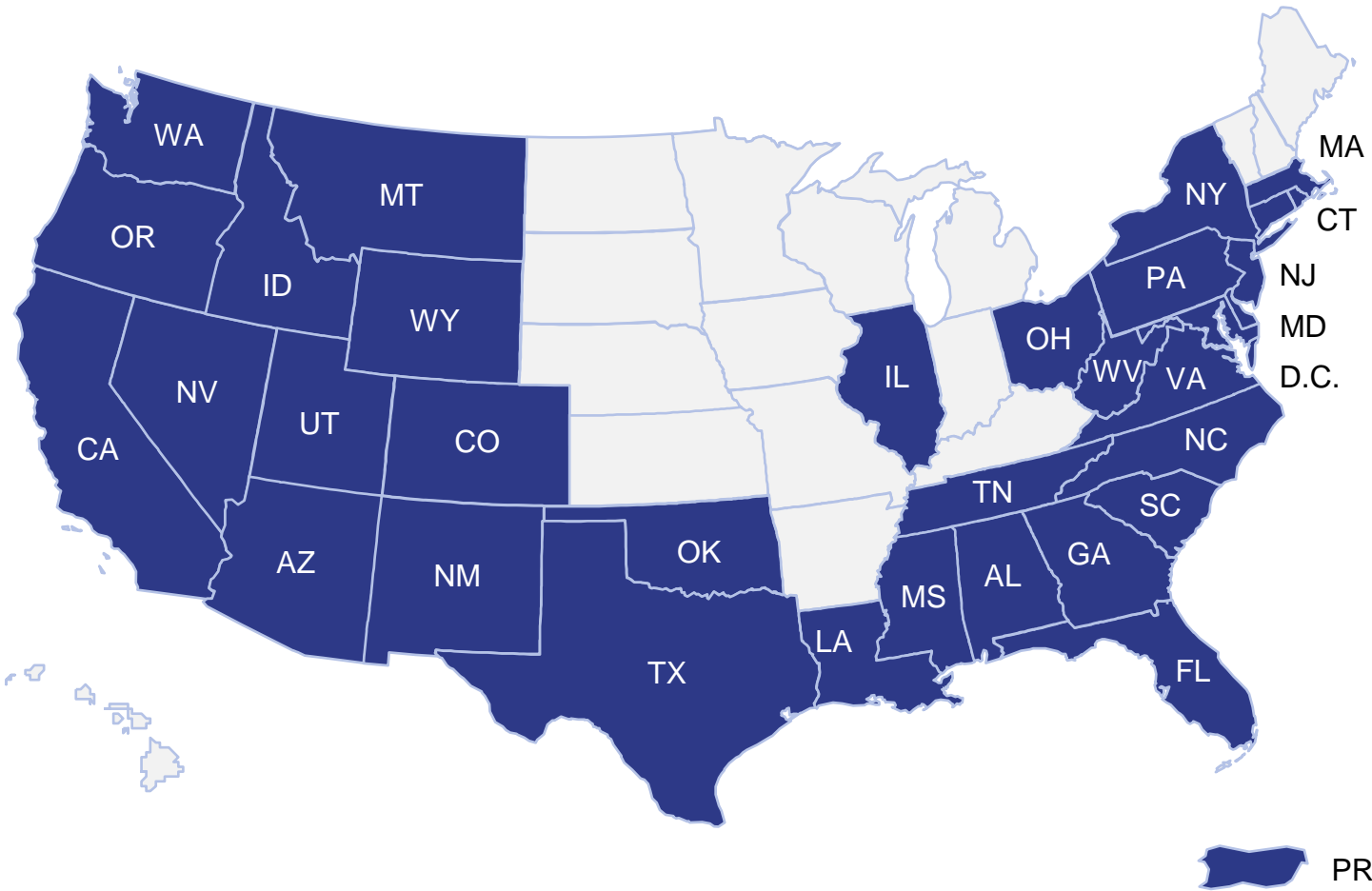


- Yale University – B.A. in Economics with a concentration in Mandarin Chinese
- Boston Consulting Group (BCG) – Business and strategy consulting
- Stanford Graduate School of Business – M.B.A.
- Forbes 30 Under 30 National Winner for Social Entrepreneurship



- University of North Carolina at Chapel Hill – B.A. in Economics; B.S. in Business Admin
- Boston Consulting Group (BCG) – Business and strategy consulting
- AEA Investors – Leading middle-market private-equity firm
- Forbes 30 Under 30 National Winner for Social Entrepreneurship

EB5AN Operates 10+ Regional Centers that cover 30+ States, Puerto Rico, and Washington, D.C.



USCIS regional center approval letters



All regional centers 100% owned and controlled by EB5AN

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Thomson Reuters
Global Elite Law Firm
Brand Index 2022



Greenberg Traurig, LLP is a multinational law firm founded in Miami in 1967

As of 2022, Greenberg Traurig is the 9th largest law firm in the United States.

The firm has 45 offices, and approximately 2650 attorneys worldwide.



Introducing Our Guest Panelists



KATE KALMYKOV
Shareholder
Greenberg Traurig, LLP

- Co-Chairs the Global Immigration & Compliance at GT
- Represented thousands of investors in obtaining green cards through EB-5 projects
- Structured the largest EB-5 offering in the program's history and has structured over \$12 billion in EB-5 deals in her career
- Co-authored the book *What Every Lawyer Needs to Know About Immigration Law*
- B.A., American University, J.D., American University Washington College of Law



BRUCE ROSETTO
Shareholder
Greenberg Traurig, LLP

- Advises clients in connection with raising capital for and establishing regional centers to administer projects qualifying for investment under the EB-5 Program
- Broad experience in public company securities, private placements, corporate governance, and alternate assets
- Forms private equity funds, family offices, and represents affiliated portfolio companies
- B.A., La Salle University, J.D., Villanova University School of Law



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- ④ EB-5 Diligence to Reduce Financial Risk



EB-5 Investment Fundamentals



Minimum Investment

\$800,000 minimum if investing in a targeted employment area (TEA) or in an infrastructure project administered by a government entity. All other projects require a minimum investment of **\$1,050,000**



Investment Term

Must stay invested until form I-829 is filed with the USCIS. Form I-829 is filed 2 years after conditional permanent residency.

Key Diligence Questions



How does the project qualify for the \$800k minimum investment? (\$800k not \$1.05M)



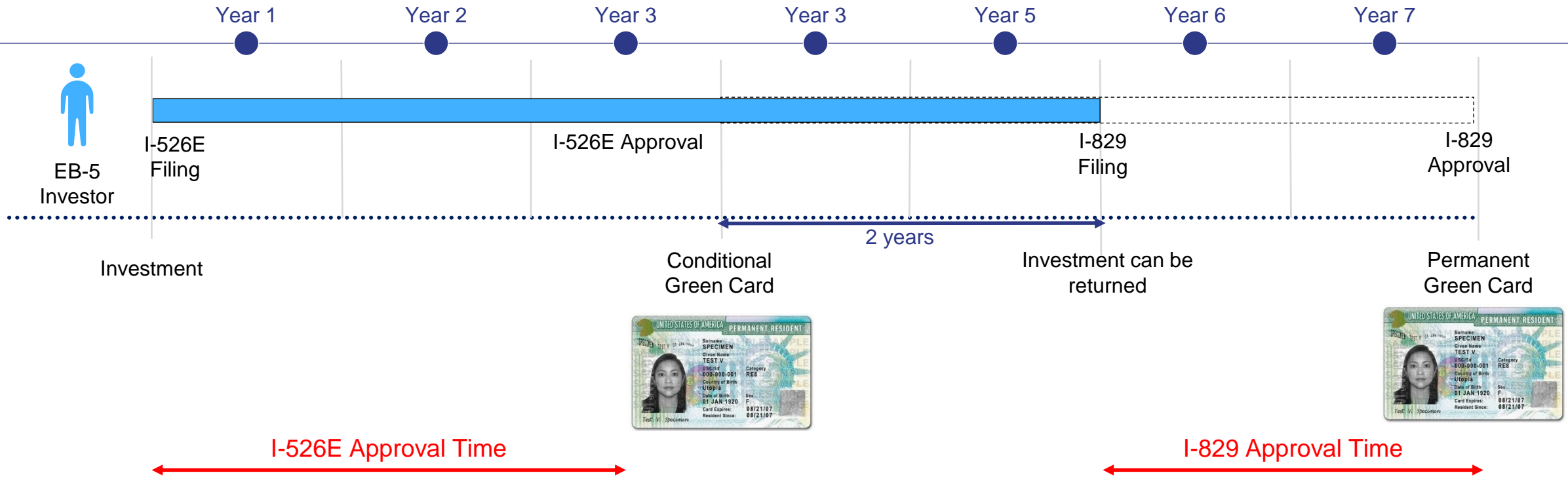
Does the investment qualify for a set aside visa category? (likely shorter investment period in a rural area)



Will the individual \$800k investment be repaid independent of the timing of any other EB-5 Investors' investment in the project?

EB-5 Investment Fundamentals

The EB-5 Investor must stay invested until form I-829 is filed with the USCIS. Form I-829 is filed 2 years after conditional permanent resident status was granted.



Rural Projects can shorten the I-526E and I-829 approval time.

Investment term typically relies on how quickly the I-526E petition is approved, if the investor's priority date is current at the time of I-526E approval, and if the investment period is separate from other EB-5 investors.

Job Creation Fundamentals

Job Creation

The project must create at least 10 jobs per EB-5 investor. I-829 filed two years after conditional permanent residency. The I-829 petition must demonstrate that an investor's investment has resulted in 10 jobs.

Regional Center Benefits

For real estate projects sponsored by a regional center, most of the EB-5-eligible jobs created are calculated based on construction expenditures and revenue generation—not number of W-2 employees.

Indirect Jobs

Not more than 90% of job creation can be indirect, and not more than 75% from construction for projects less than two years.

Key Diligence Questions



Has the project started construction and is construction over 24 months?



How many jobs will come from construction alone?

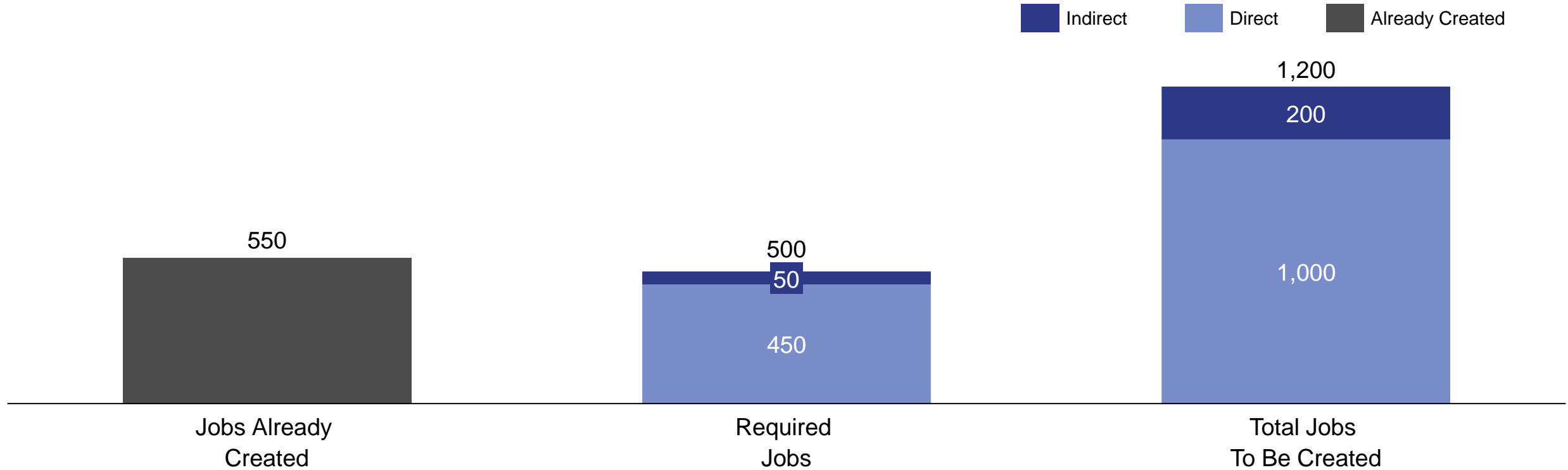


Have jobs already been created for all EB-5 investors in the project?

Job Creation Fundamentals

Example scenario of an EB-5 project under construction with 50 EB-5 investors

EB-5 job creation



10 jobs per investor required.

24 jobs per investor to be created in this example based on economic analysis.

Set Aside Visa Categories

Set Aside Visa Categories

32% of EB-5 Visas are Reserved or “Set Aside”

Rural Area

20% of EB-5 visas are reserved for investors in projects located in rural areas.

High-unemployment TEA

10% of visas are reserved for investors in projects located in high-unemployment Targeted Employment Areas (TEA).

Infrastructure

2% of visas are reserved for investors in infrastructure projects.

Key Diligence Questions



Am I from a country with significant retrogression?



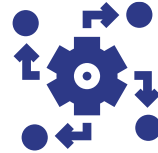
Does the project qualify for a set aside visa category? (Rural is best)

USCIS will prioritize the processing of I-526 petitions from EB-5 investors who invest into EB-5 projects in “rural” areas



New Policy Summary

USCIS must prioritize the processing of I-526 petitions submitted by EB-5 investors who invest into new EB-5 projects located in rural areas as defined by USCIS.



Impact on Individual EB-5 Investors

The Form I-526 petitions of EB-5 investors who invest into EB-5 projects located in rural areas will be prioritized by USCIS in terms of both processing and adjudication. Since this is a brand new USCIS policy, it is unknown exactly how much faster a Form I-526 petition will take for an EB-5 investor in a rural EB-5 project.



As Written in the EB-5 Reform and Integrity Act

“(ii) PROCESSING.—In processing petitions under section 204(a)(1)(H) for classification under this paragraph, the Secretary of Homeland Security—

“(I) shall prioritize the processing and adjudication of petitions for rural areas;

Visa Bulletin for July 2023

FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01FEB22	01FEB22	C	C
2nd	15FEB22	08JUN19	01JAN11	15FEB22	15FEB22
3rd	01FEB22	01APR19	01JAN09	01FEB22	01FEB22
Other Workers	01JAN20	01SEP15	01JAN09	01JAN20	01JAN20
4th	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
Certain Religious Workers	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
5th Unreserved (including C5, T5, I5, R5)	C	08SEP15	01APR17	C	C
5th Set Aside: Rural (20%)	C	C	C	C	C
5th Set Aside: High Unemployment (10%)	C	C	C	C	C
5th Set Aside: Infrastructure (2%)	C	C	C	C	C

Chinese investors who filed I-526 or I-526E petitions on or after September 8, 2015, and Indian Investors who filed I-526 or I-526E petitions on or after April 1, 2017, are facing visa backlogs as their priority dates are not current.

Investors from all countries who file I-526E petitions after March 15, 2022, can select infrastructure projects or projects located in rural TEAs or high unemployment TEAs to avoid having to wait for the unreserved visa category to become current.

The Twin Lakes Georgia rural EB-5 project qualifies for this group of set aside visas.

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Developer Track Record

Developer Track Record

The developer's track record and history of loan repayment is primary importance when evaluating risk.

History of Loan Repayment

Developers with a long history of making loan payments on time are most likely to pay on time in the future. (Similar to credit scores)

History of Foreclosures

If the developer has a history of foreclosures, that generally means they take more risk.

Balance Sheet

If developers do not have a strong balance sheet, there could be systemic risk from an inability to raise additional financing.



How many projects has the developer completed successfully?



Does the developer have any foreclosures in its history?



Can I see the developer's balance sheet?

General Partner and Developer Affiliation

General Partner and Developer Affiliation

The general partner can either be controlled by the developer, or they can be separately controlled entities.

Fiduciary Duty

If the general partner is controlled by the developer, and they waive fiduciary duty, they are not responsible for acting in the EB-5 investor's interest.

Conflict of Interest

Developers will naturally act in their own interest, the key consideration is the legal control that is provided to them in the agreements.

Incentives

For example, if the developer is controlling the general partner, they do not have an incentive to negotiate the loan agreement on behalf of the investors.

Key Diligence Questions



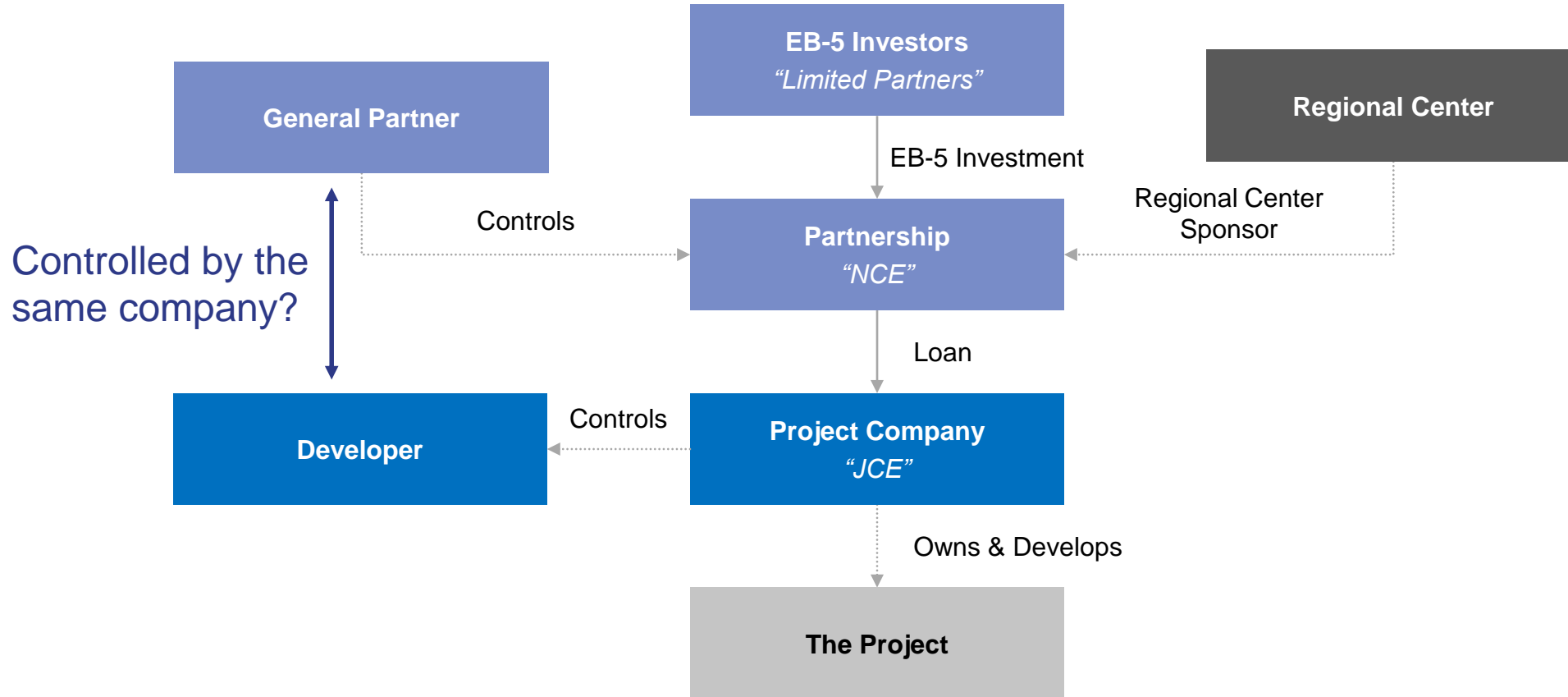
Who controls the general partner, and how are they affiliated with the developer?



Has the general partner waived fiduciary duty?

General Partner and Developer Affiliation

Is the general partner and developer controlled by the same company?



There is additional financial risk when the Developer also controls the General Partner.

Capital Stack

Capital Stack

The EB-5 position in the capital stack is a major factor in evaluating the investment risk. The capital stack position determines payment priority.

Collateral

If the developer does not provide a lien on collateral of significant value, investors are unlikely to be repaid in a foreclosure.

Guarantees

Guarantees are only useful if the guarantor has significant assets.

Cost of Senior Financing

Financing costs are a considerable line item in total project cost. Also, the cost of financing generally indicates the level of risk.

Key Diligence Questions



What position is the EB-5 investment?



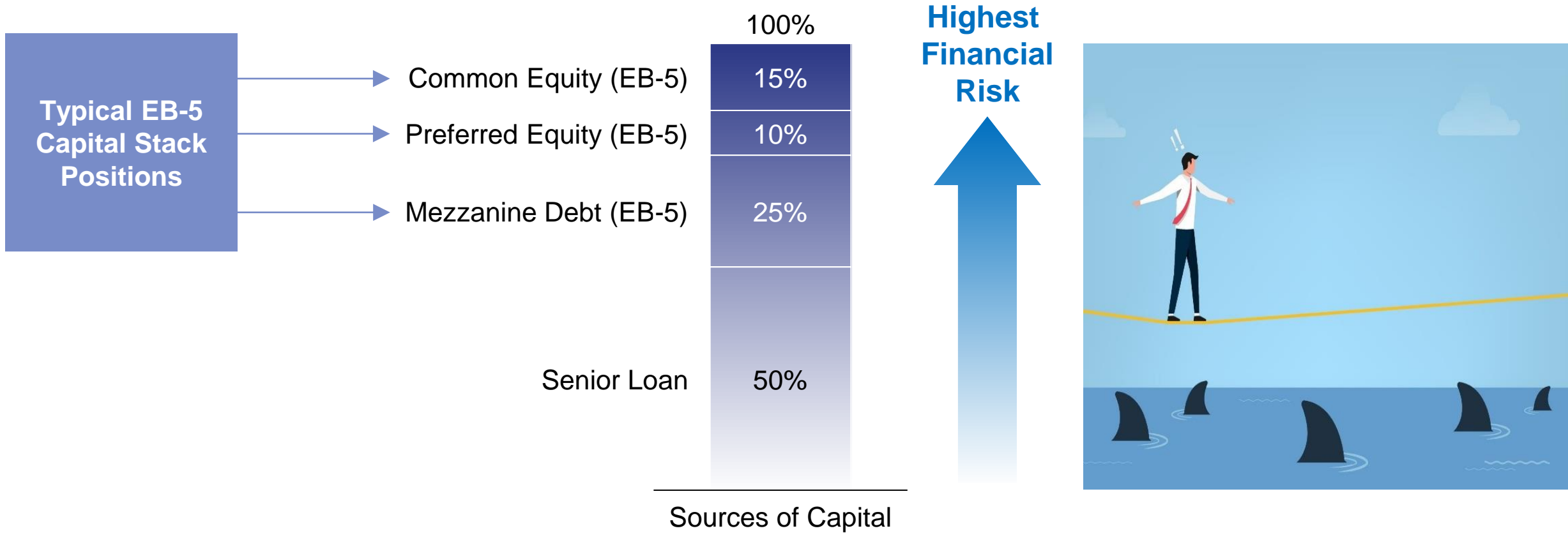
Does the E-5 loan have a lien on collateral?
How is it valued?



Who's guaranteeing, and can I see the guarantor's balance sheet?

Capital Stack Position

Different tranches of real estate development capital investment have varying levels of risk.



If a project fails and cannot cover debt payments, then the first EB-5 investors to lose funds will be common equity, followed by preferred equity, and then mezzanine debt.

Fully Financed Projects

Fully Financed Projects

Before making an EB-5 investment it's important to understand if the project will be fully financed without any EB-5 capital.

Sources of Capital

The sources of capital should be determined with agreements signed. EB-5 investors can see which lenders have already determined the project is safe.

Bridge Financing

If fully financed, the EB-5 investment will be replacing other financing. Investors should know what capital will be replaced.

Terms of Senior Financing

The senior financing should not be dependent on EB-5 investment. The cost of senior financing usually indicates the level of risk.

Key Diligence Questions



Do you have agreements signed to fully finance the project?



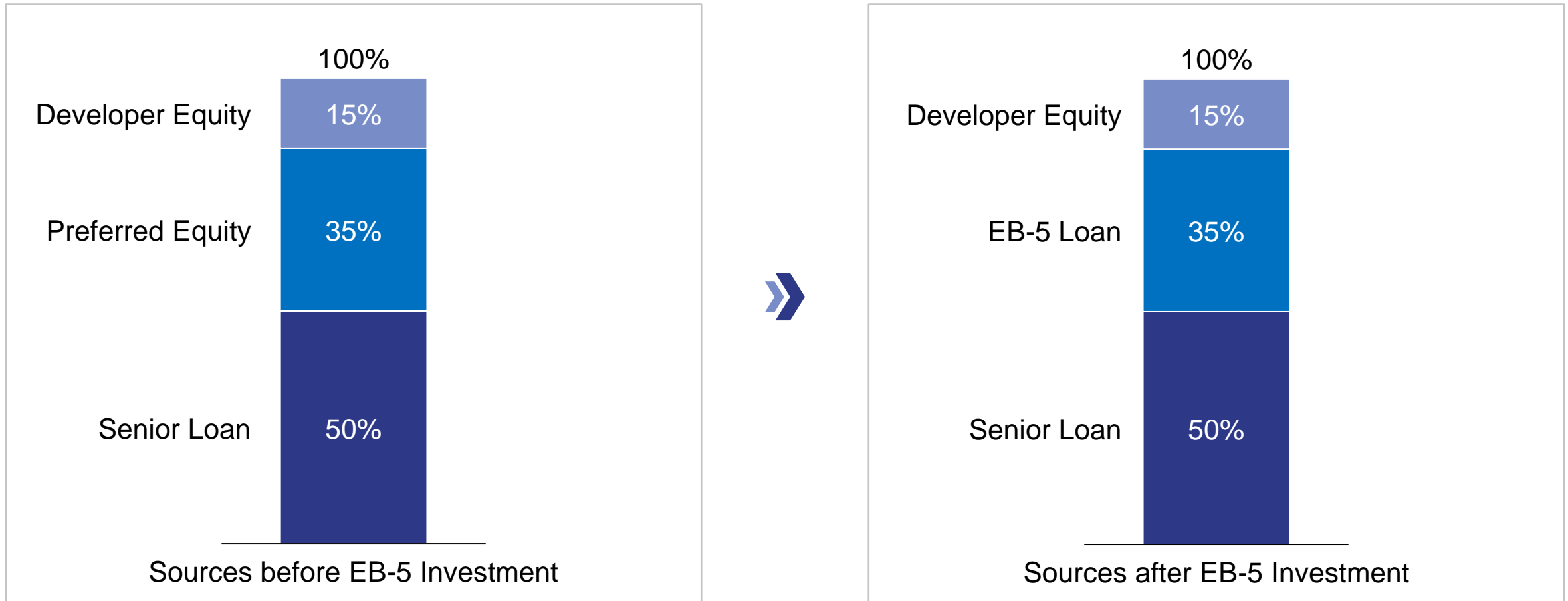
What capital will the EB-5 investment replace?



What is the interest rate of the senior financing?

Project Fully Financed

Example of a fully financed project with the EB-5 loan replacing preferred equity financing



If the project is not fully financed before EB-5 investment, the construction could be delayed, or never start, if the company is not successful at raising EB-5 financing.



KOLTER

Twin Lakes Georgia (Loan) \$800K Project Details

Twin Lakes Georgia: Single-Family Home Community with Amenities

This rural TEA project qualifies for an \$800,000 investment with priority processing and a 20% visa set aside.

KolterHomes.com



520+ Homes Already Sold
370+ Homes Built & Delivered to Buyers

Single-Family Home Community with Amenities

Kolter has
20,000+
homes
developed
and in-process

EB-5 Capital
\$80M, ~12%
of total cost

Total project cost
\$662.3M

**Construction
already
underway**

Rural TEA
provides priority
processing and
visa set asides to
avoid backlog

Construction
loan with
**Third Coast
Bank**

Total EB-5
job creation
6,934 jobs

10+ jobs
already created
for each
\$800K investor

1,800+ jobs
already created as
of March 2023

Twin Lakes Georgia Is One of 13 Cresswind Communities

Cresswind is a national award-winning lifestyle program and residential community brand.

Cresswind is a national, award-winning lifestyle program very popular among retirees for its focus on fitness, relationships, education, and entertainment.

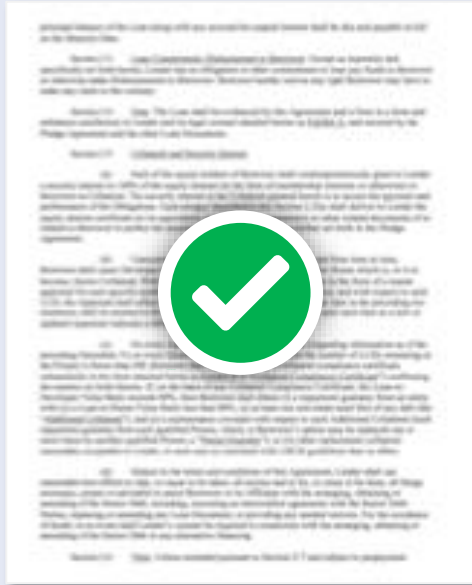
Residents of Cresswind communities enjoy access to dedicated lifestyle directors who support residents and help them achieve goals and live their lives to the fullest.



Kolter Parent Company KL Holdco LLC Is Providing Three Guaranties

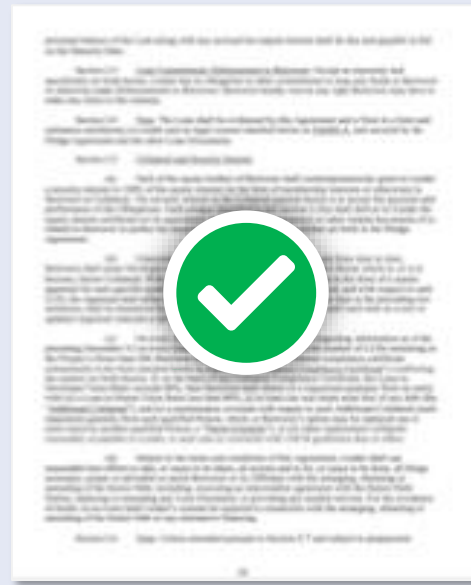
EB-5 investors enjoy unparalleled security with multiple guaranties from a company with a large, diversified balance sheet

EB-5 loan repayment guaranty



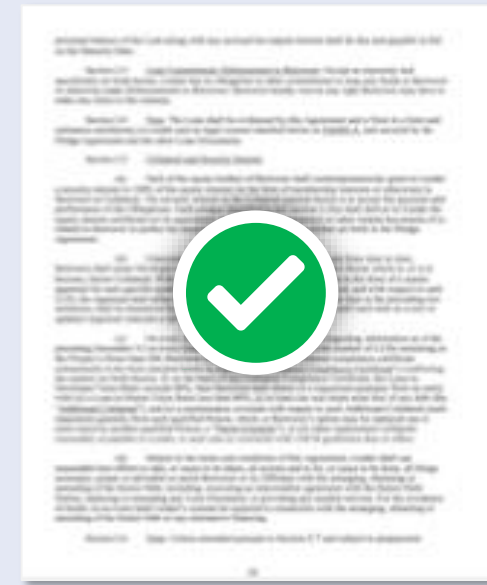
Increases the safety and likelihood of the timely repayment of EB-5 funds

I-526E approval refund guaranty



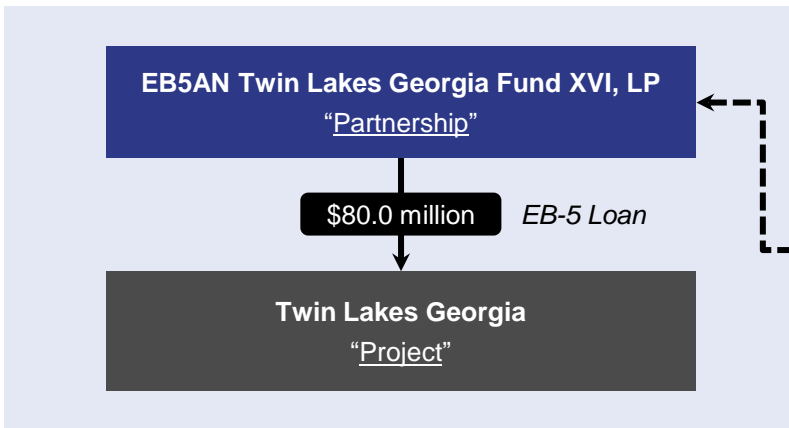
Accelerated repayment of EB-5 funds if the I-526E petition is not approved

Job creation guaranty

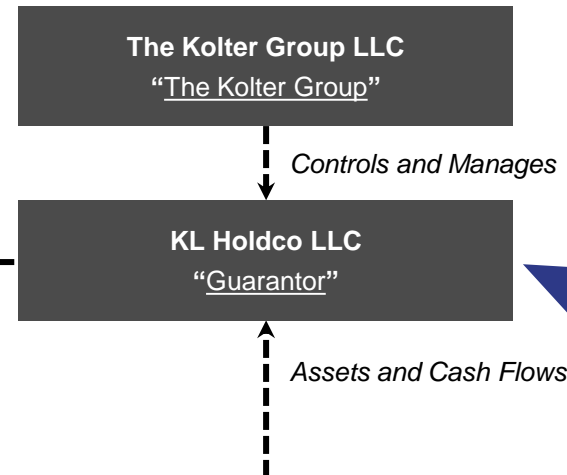
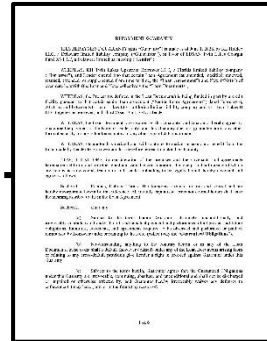


Reduces the risk of not obtaining the permanent green card

EB-5 Loan Repayment Guaranty Increases Investor Financial Safety



EB-5 Loan Repayment Guaranty



Guarantor has guaranteed to repay the EB-5 loan made to the Project.

Guarantor is a diversified parent company that owns 20+ real estate development projects.

We are happy to share the Guarantor's financial statements.

Just ask.

KOLTER

Since 1997, Kolter has invested in over 180 projects with expected value of over \$24.0 billion, including over 20,000 single-family homes. Kolter has repaid billions of dollars in borrowed funds and has never failed to repay a loan or to complete a real estate development project.

20+ Kolter real estate development projects across 10+ diversified markets

"At-Risk" Requirement Compliance

USCIS EB-5 Program Rules allow for a Parent Company Repayment Guaranty; this structure does not violate the "at-risk" requirement. Although it is highly unlikely that Kolter will fail to repay the EB-5 loan, it is still theoretically possible, and thus satisfies the "at-risk" requirement.

An EB-5 loan secured by a diversified parent company with substantial assets is extremely rare. Almost all EB-5 loan investments are unsecured or secured with only an equity pledge on a single asset. Our EB-5 loan repayment guaranty structure significantly reduces repayment risk for our EB-5 investors.

Enough EB-5 Eligible Jobs Have Already Been Created for Each \$800,000 EB-5 Investor to Receive 10+ Jobs as of March 31, 2023

EB-5 Job Requirement

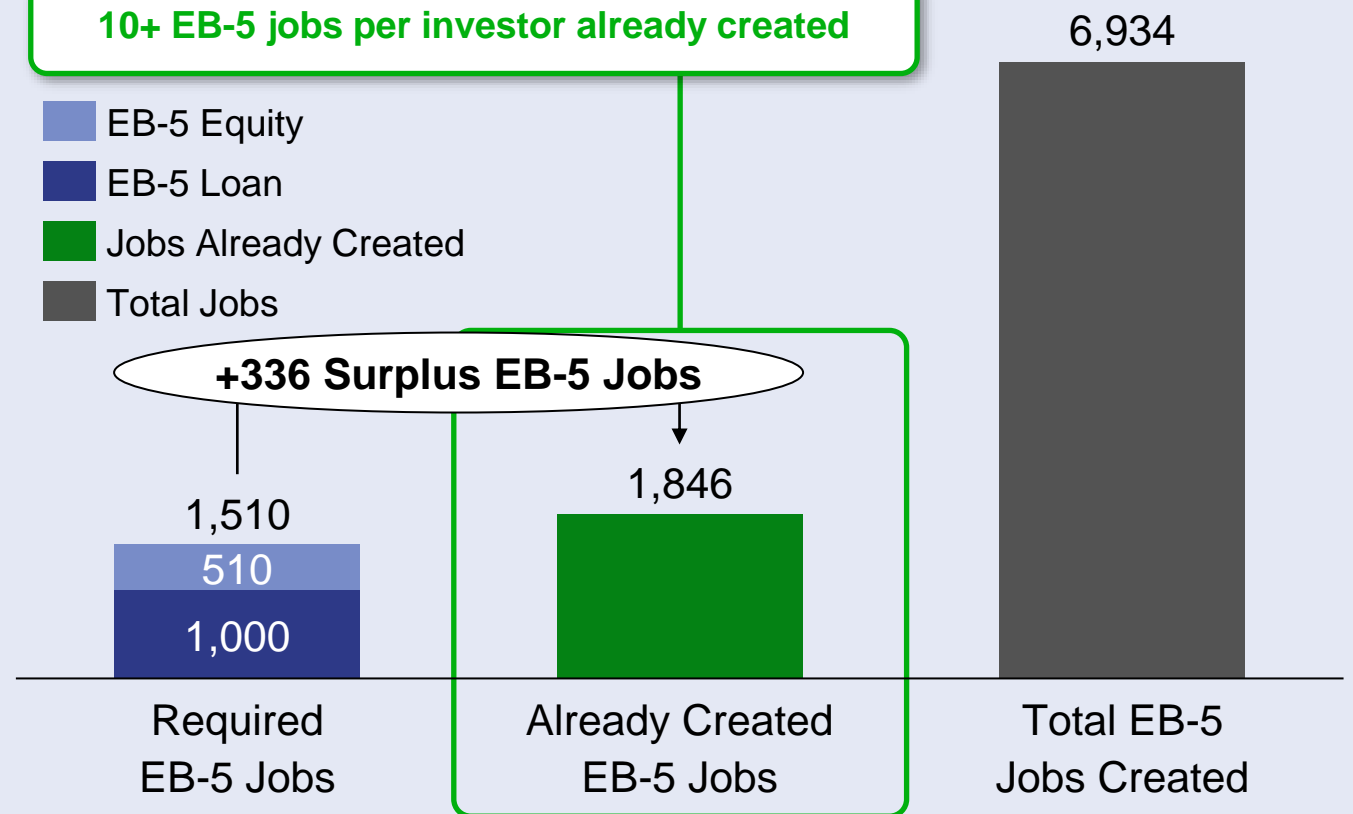
1,510 jobs required
= (100 debt investors @ \$800K each
+ 50 preferred equity investors @ \$800K
each + 1 investor @ \$900K) x 10 jobs

Twin Lakes Georgia has
already created more than
the 10 required jobs for each
EB-5 investor to receive
his/her permanent green card.

1,846 EB-5 Jobs Already Created from Construction

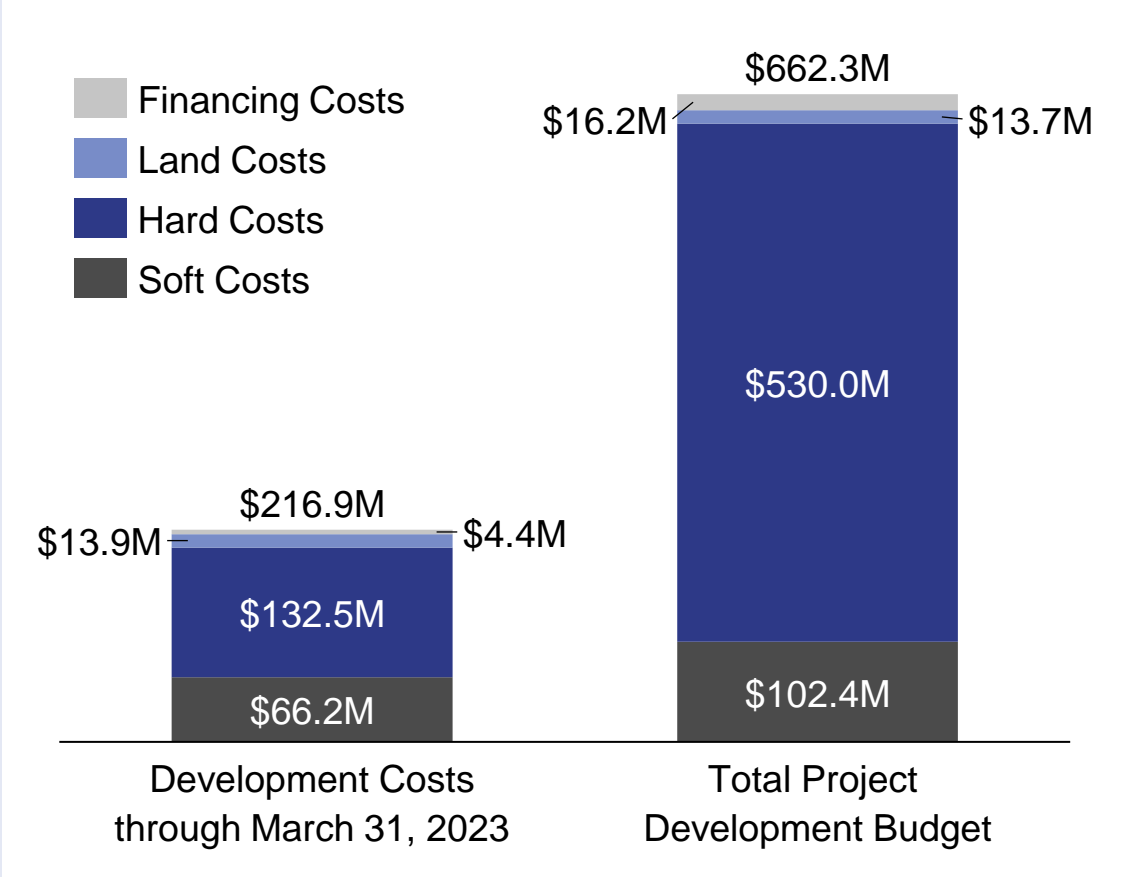
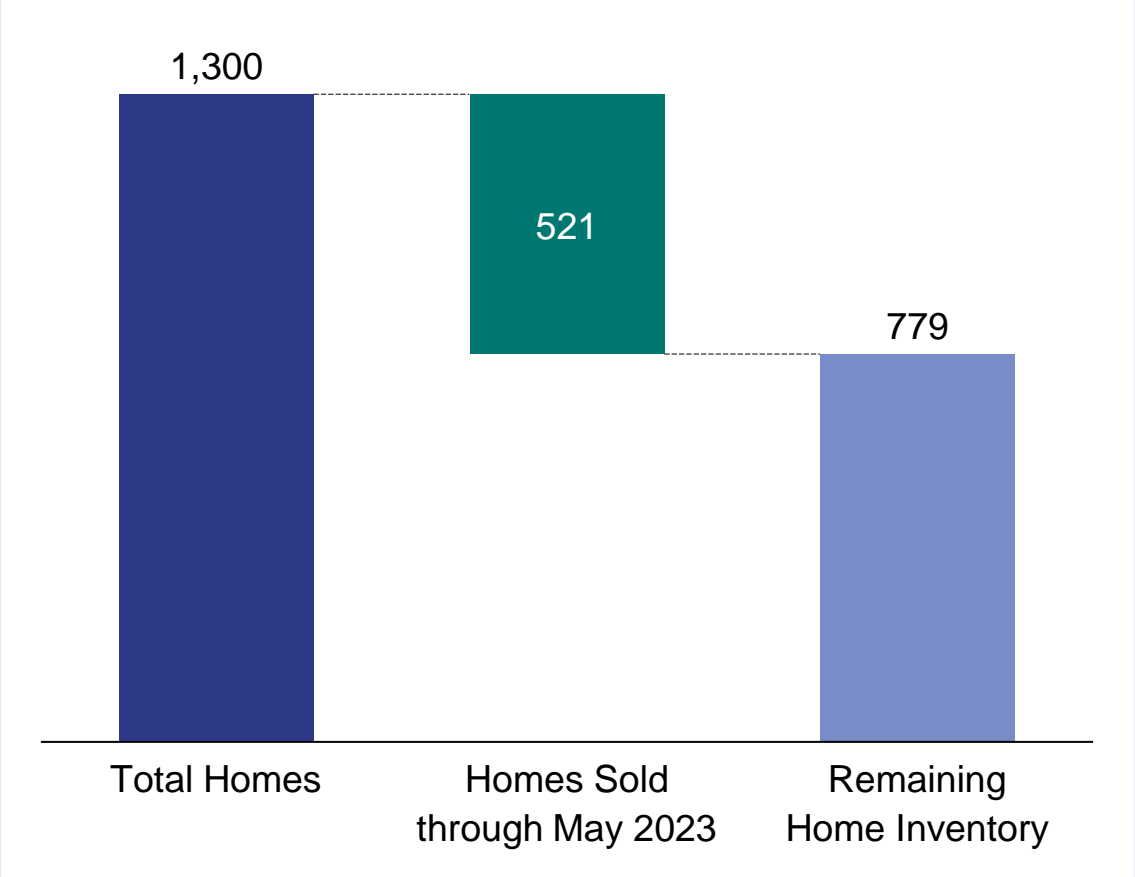
10+ EB-5 jobs per investor already created

- EB-5 Equity
- EB-5 Loan
- Jobs Already Created
- Total Jobs



Twin Lakes Georgia Home Sales and Development Cost Status

Kolter has sold 521 homes and has spent more than \$200 million on development costs
(through May 2023 and March 2023, respectively)





**Thank you for attending.
Please call or write to us if you have
any questions.**



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GreenbergTraurig

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