



# Urban Land Institute Spring Member's Meeting Houston, Texas

## EB-5 Financing: Now In the Major Leagues

### **Jeff Berkowitz**

President & Founder, Berkowitz Development Group  
Miami, Florida

### **Scot Patrick O'Brien**

Partner, Akerman LLP  
Washington, D.C.

May 14, 2015



# Program Overview

## **What is the EB-5 Immigrant Investor Program?**

- Regional Centers

## **Current EB-5 Numbers – Now in the Major Leagues**

- Typical Structure and EB-5 in the Capital Stack

## **Case Studies – Projects**

- SkyRise Miami
- Other Sample Projects
- Q&A

## **Current EB-5 Challenges**

## **Future Opportunities**

- Q&A

# WHAT IS THE EB-5 IMMIGRANT INVESTOR PROGRAM?



# What is the EB-5 Immigrant Investor Program?

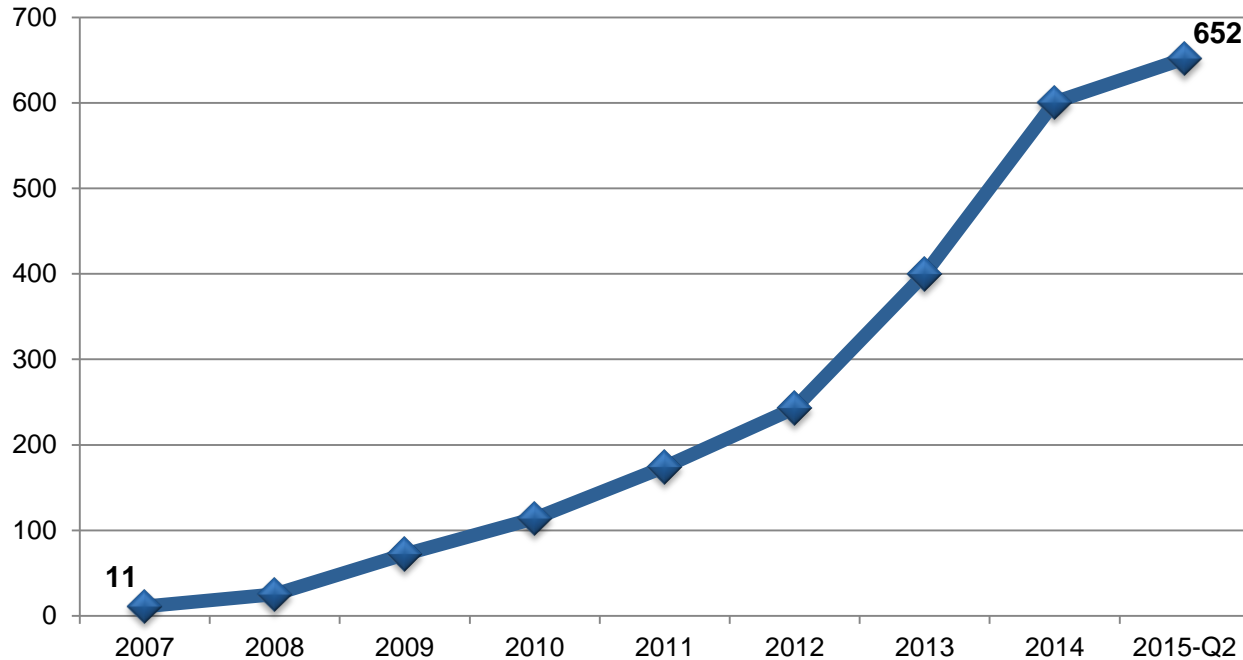
- First introduced by Congress in 1990 to create jobs and spur economic development through the use of low cost foreign capital.
- The EB-5 visa category allows a foreign national to invest \$1 million in a “new commercial enterprise” that will benefit the U.S. economy and create at least “10 full-time jobs”. Amount of investment reduced to \$500,000 if made in a “rural area” or a “targeted employment area (TEA)”.
- In 1992, the Regional Center Program was enacted as a three year “Pilot,” enabling the job requirement to be established through “indirect” as well as “direct” job creation.
- Program renewed by Congress in September 2012 until September 30, 2015.

# What is a Regional Center?

- A "legal entity" means a corporation, partnership or LLC, which can be private company or government entity (such as a Development Authority, City or State) or both.
- Must promote "economic growth" through:
  - improved regional productivity,
  - increased export sales (if any),
  - job creation, and
  - increased domestic capital investment
- "Foreign investment" means a "qualifying investment" which means an investment in a new commercial enterprise that invests in a job creating entity that creates, directly or indirectly, 10 new full-time jobs.
- The "contiguous geographic region" must be comprised of one or more contiguous U.S. Census Tracts in one geographic region.

# Growth of Regional Centers

## Number of Approved Regional Centers



Source: USCIS, Brookings, Homeland Security

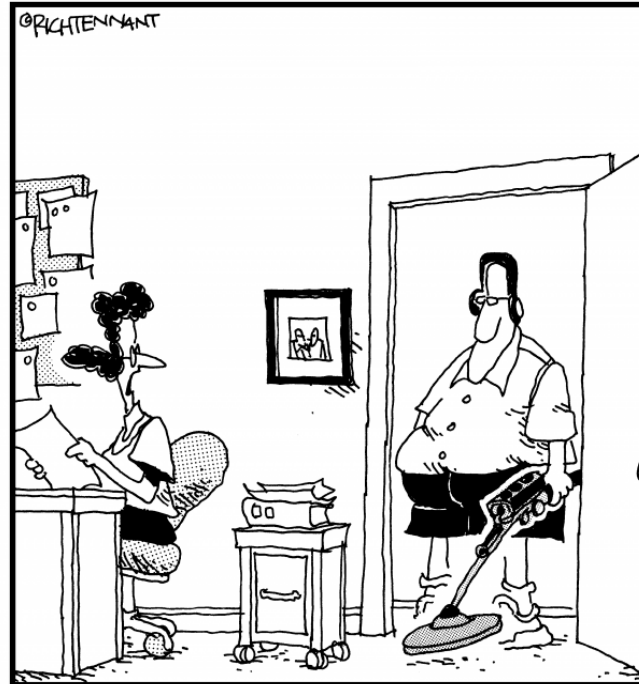
\*Note: FY12 data through October

# CURRENT EB-5 NUMBERS – NOW IN THE MAJOR LEAGUES

# The State of Alternative Funding for Real Estate Projects

The 5th Wave

By Rich Tennant



"So...how did our first stage financing go today?"



# EB-5 in the News

## THE WALL STREET JOURNAL.

NY REAL ESTATE COMMERCIAL

### Towers Rise on EB-5 Funds

Developers Turn to Visa Programs to Help Finance Buildings

- May 27, 2013

SATURDAY, JAN 18, 2014 06:00 PM EST  
**How China could save Detroit**  
- Salon Media Group

**Argus Leader**  
A GANNETT COMPANY

EB-5: Vermont says EB-5 can work in state hands

- August 6, 2014

 SENIOR HOUSING  
News  
- May 4, 2014

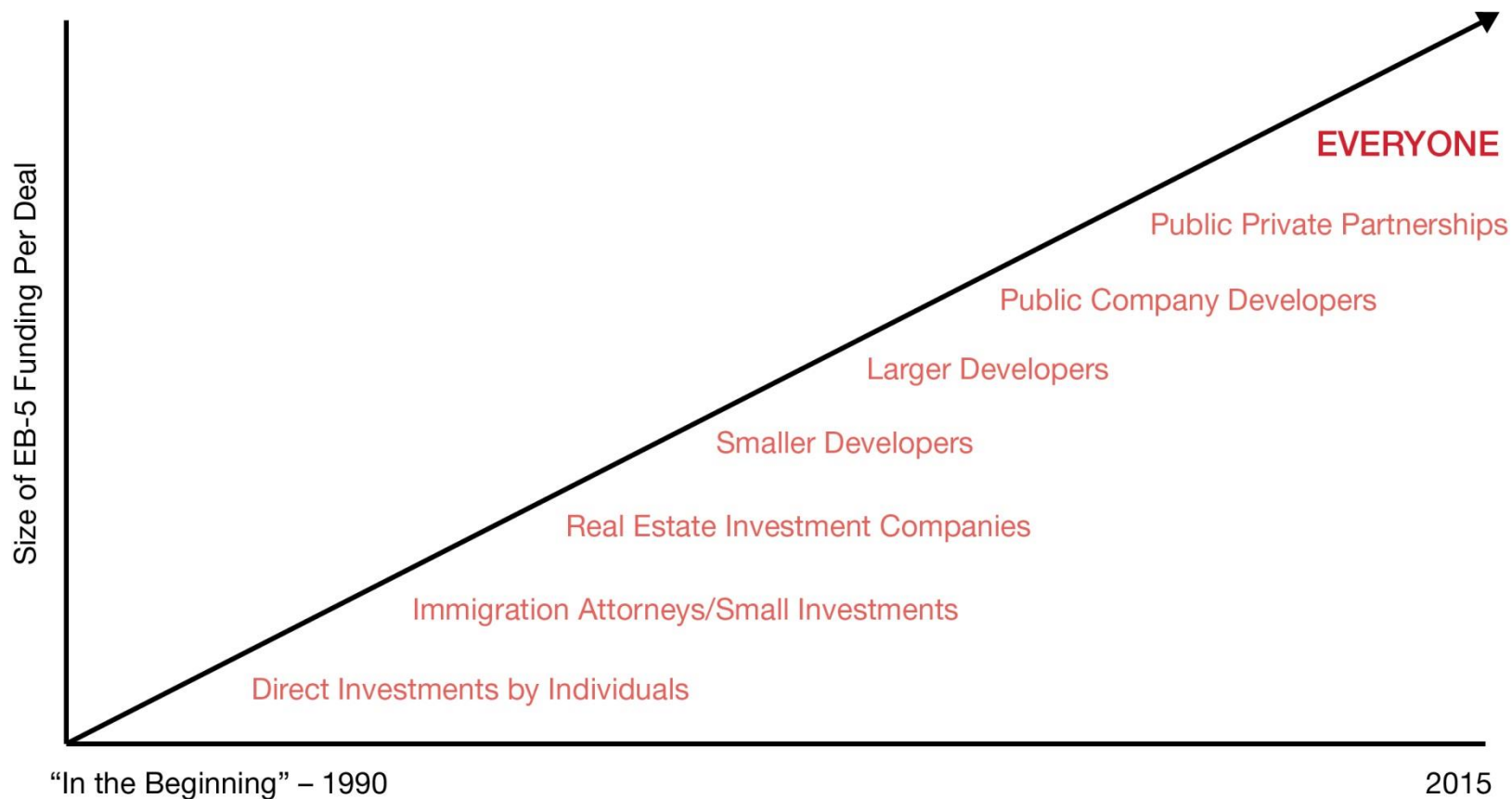
**EB-5 Funding Booms for Senior Living**

New England Real Estate Journal

**nerej**  
THE LARGEST WEEKLY COMMERCIAL/INVESTMENT NEWSPAPER IN THE WORLD

**EB-5 has become the hottest source of alternative funding for Commercial Real Estate projects**  
- November 28-December 4, 2014

# Who is Using EB-5 Financing?





# Sampling of Companies, Cities and States Using EB-5

## **Cities and States (Regional Centers)**

- City of Dallas
- City of Detroit
- City of Frisco
- City of Miami
- Commonwealth of Puerto Rico
- The State of Vermont

## **Universities**

- University of Houston, Texas
- University of Miami, Florida

## **Restaurant/Eateries**

- BurgerFi
- Golden Chick, Texas
- La Madeleine
- PDQ
- Sakaya Kitchen
- Sonic Corp.
- Twistee Treat

# Sampling of Companies Cities and States Using EB-5

## General

### (continued)

- American Life
- Berkowitz Development Group
- Brooklyn Navy Yard Development Corp
- Discovery Times Square
- Driftwood Hospitality Management
- Florida East Coast Realty (developer on EB-5 project with City of Miami)
- Florida Restaurant Franchise Group
- Forest City Ratner Companies
- Gorman & Company
- Hilton Worldwide
- Hudson Yards
- Hyatt Hotels
- Lennar Corporation
- Marriott International
- Omega Communities
- PDC Capital Group
- Related Companies
- RockBridge Senior Living
- Silverstein Properties, Inc.
- Sony Pictures Entertainment

- Starwood Hotels & Resorts
- Stockbridge Capital Group
- The Durst Organization
- Victor Group
- Vornado Realty Trust
- Warner Bros
- Wyndham Worldwide

## Texas Entities

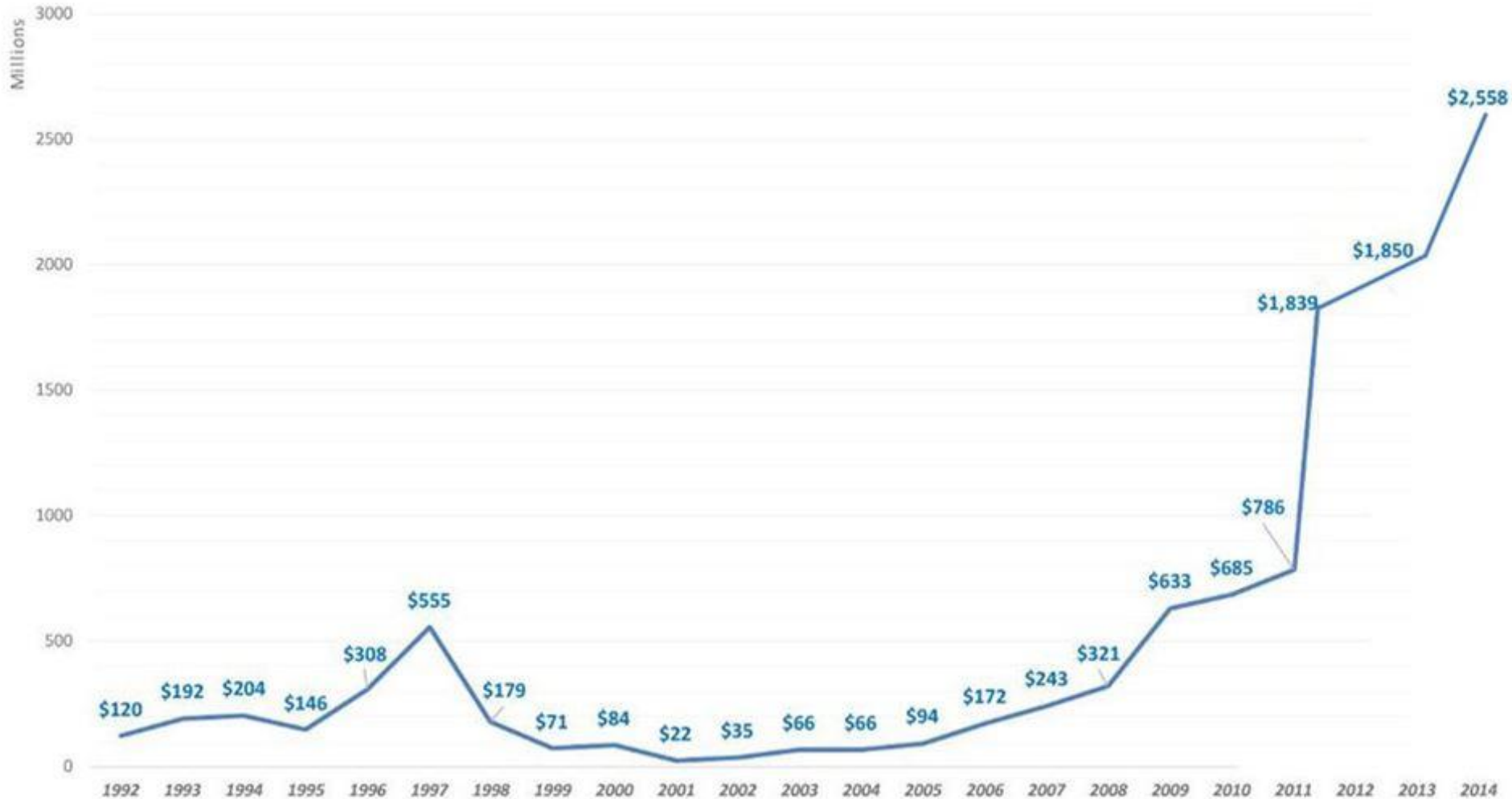
- Allied Realty, Texas
- Civitas Capital Group, Texas
- Encore Enterprises, Inc., Texas
- Hines, Texas
- Randall Davis, Texas

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Based on publically available information.

# Total EB-5 Capital Invested

FIGURE 2-A: FOREIGN DIRECT INVESTMENTS (\$MILLIONS) CONTRIBUTED BY EB-5 PROGRAM BY FISCAL YEAR (1992-2014)

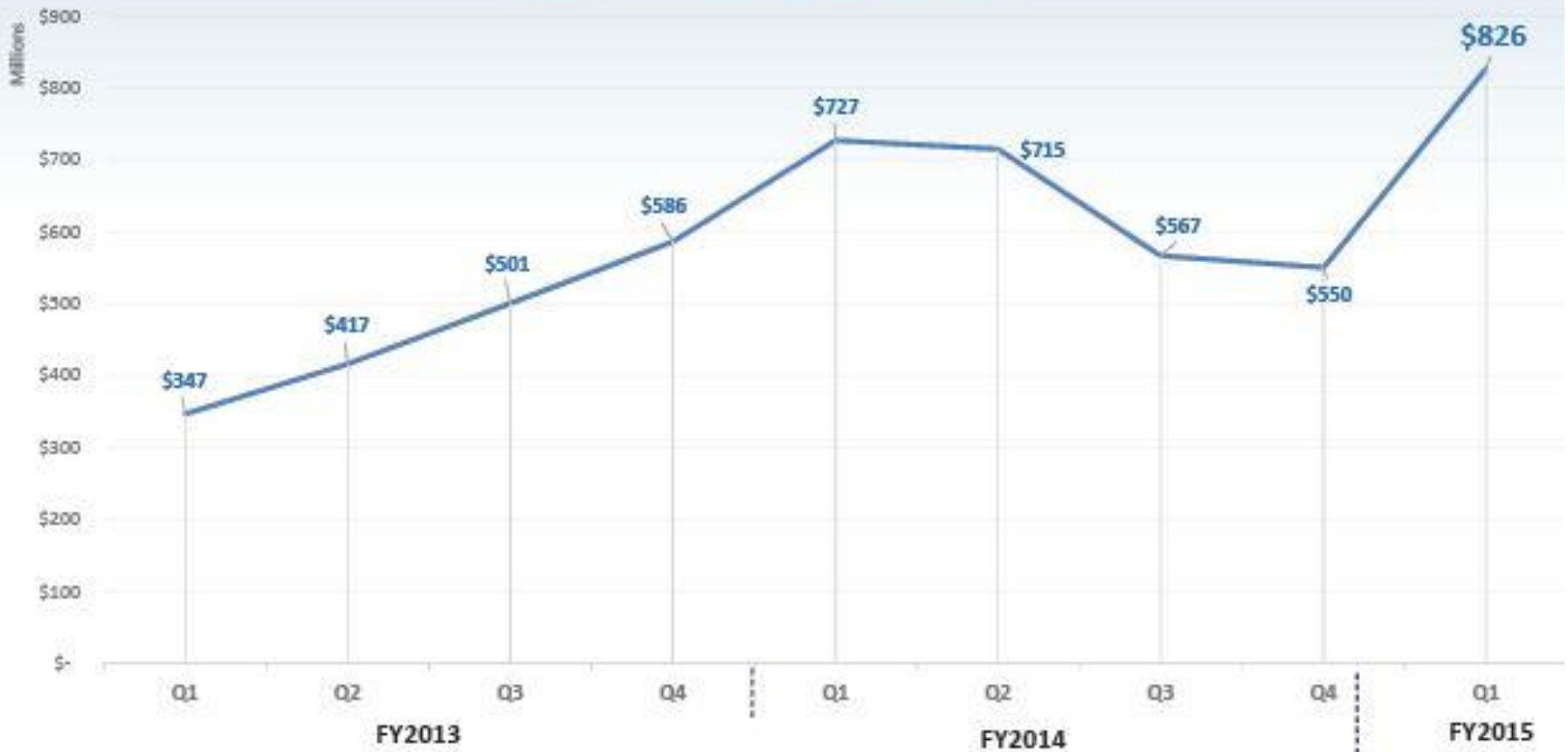


Note: FDI = Number of I-526 Approvals \* \$0.5 Million

Source: USCIS Performance Analysis System (PAS) by Office of Performance & Quality (OPQ), Data Analysis and Reporting Branch (DARB)

# Total EB-5 Capital By Quarter

FIGURE 3: FOREIGN DIRECT INVESTMENTS (\$MILLIONS) CONTRIBUTED BY EB-5 PROGRAM BY QUARTER (FY2013-FY2015, Q1)



Note: EB-5 FDI = Number of I-526 Approvals \* \$0.5 Million

Data Source: U.S. Citizenship and Immigration Services (USCIS) Data Set

IIUSA Quarterly Data Report

# EB-5- Capital Investment and Jobs

## EB-5 Program Results FY 1992-2015 (1<sup>st</sup> Quarter)

- Over \$12.0 Billion in direct foreign investment

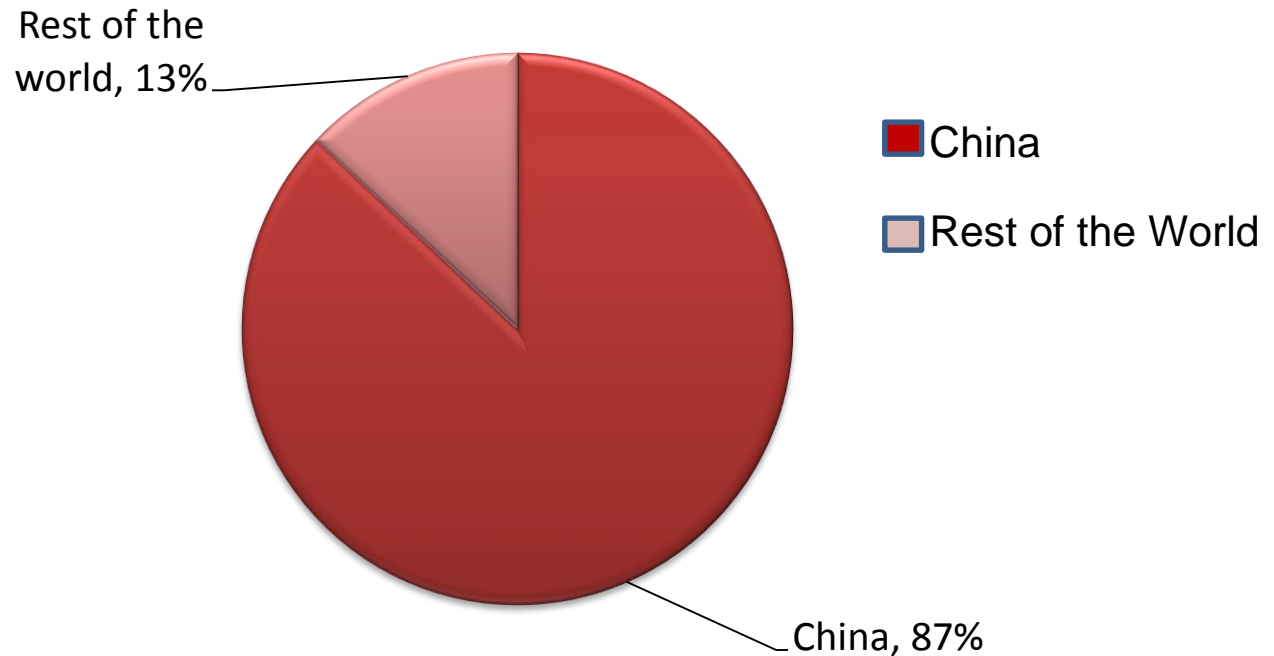
## EB-5 Program Results FY 2005-2013

- Over \$6.5 Billion in direct foreign investment
- Over 131,000 jobs



# Where are EB-5 Funds Coming From?

**2014 EB-5 Visa Statistics by Immigrant Origin**



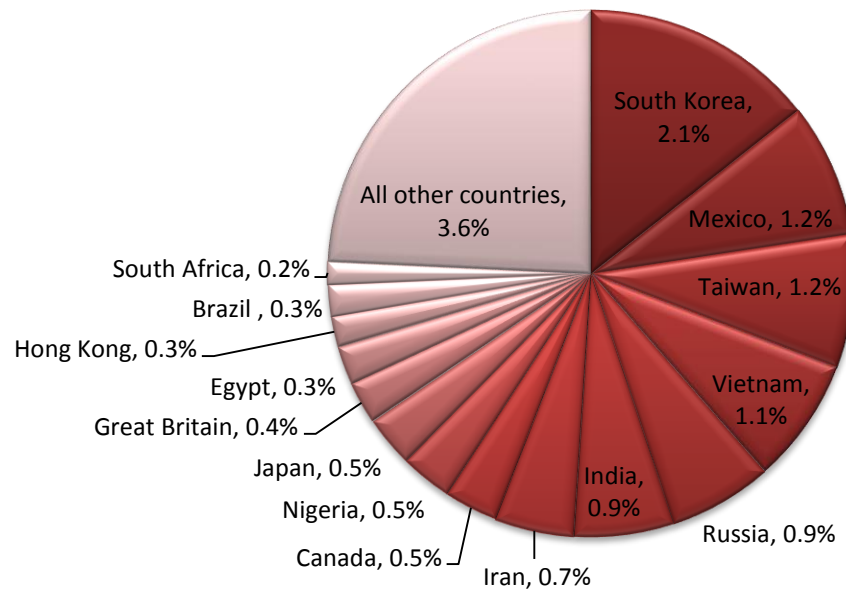
Source: U.S. State Department Report of the Visa Office FY14

\*Includes China Mainland born and China Taiwan born



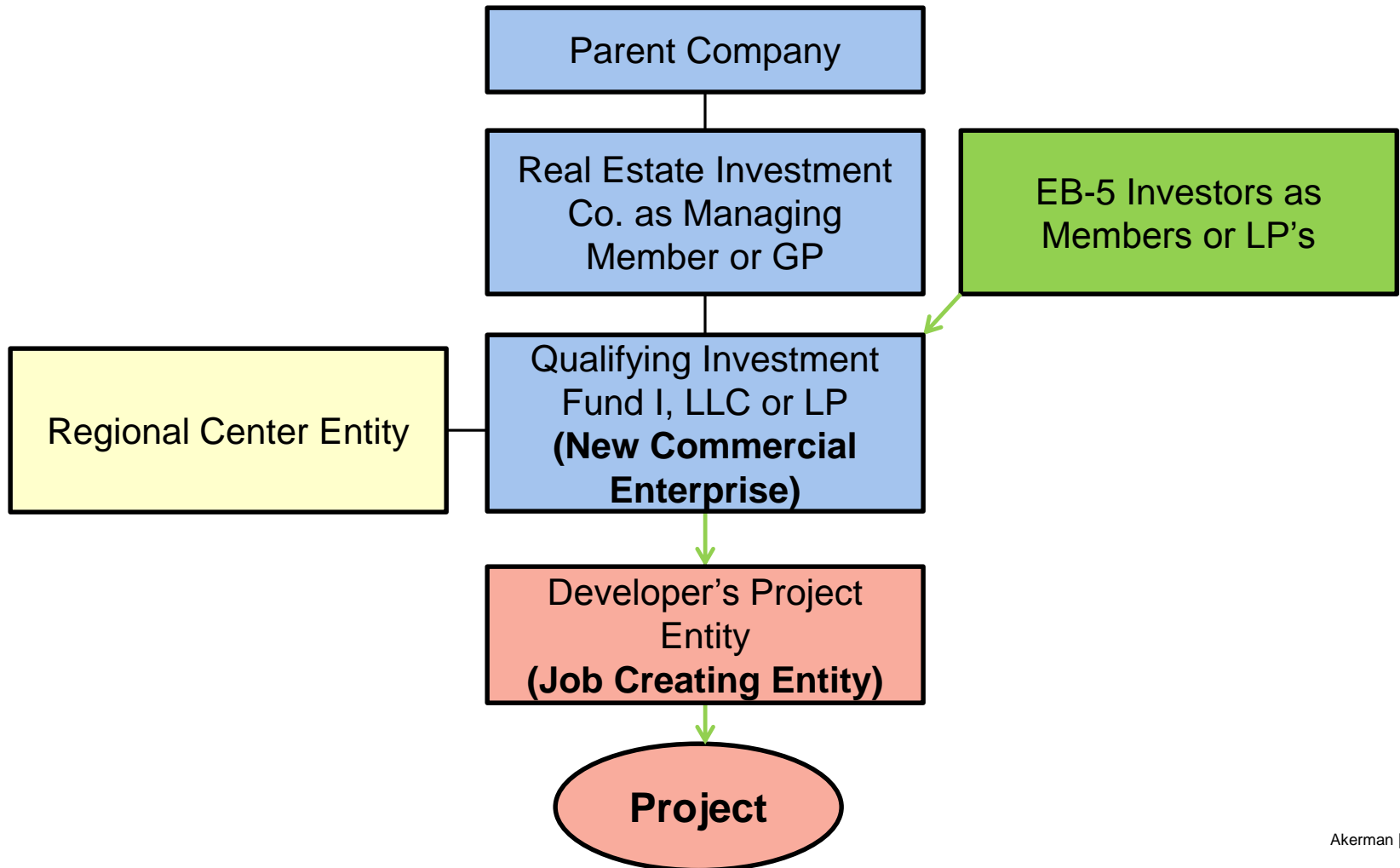
# Where are EB-5 Funds Coming From?

**2014 EB-5 Visa Statistics by Immigrant Origin:  
Countries Other than Mainland China**



Source: U.S. State Department Report of the Visa Office FY14

# Typical EB-5 Structure With A Regional Center





# Preferred Types of Projects

There are types of projects for which EB-5 financing is easier to obtain than for others. The “preferred” projects are:

- Generally, any project that will attractive for institutional loan capital will meet the basic feasibility tests for EB-5 investors, however, institutional loans are more efficient as a source of capital. The program is not attractive for startup companies or other ventures that generally require venture capital. The track record and financial resources of the developer (or investors or guarantors) is a critical issue.
- Projects that are “shovel ready”. Investors do not want to tie up capital in Escrows and they want construction to start no later than (and possibly earlier than) approval of their i-526 applications. The program cannot be used at all for pre-development or risk capital, only for construction financing or take out. Ideally, all approvals and firm commitments from other sources, as well as firm construction bids should be in place prior to setting up the Escrow.
- Generally, real estate projects are preferred as the investors look for a “hard asset”, with a potential for repayment of principal after 5-7 years.

# Where EB-5 Capital fits within Capital Stack

## Equity

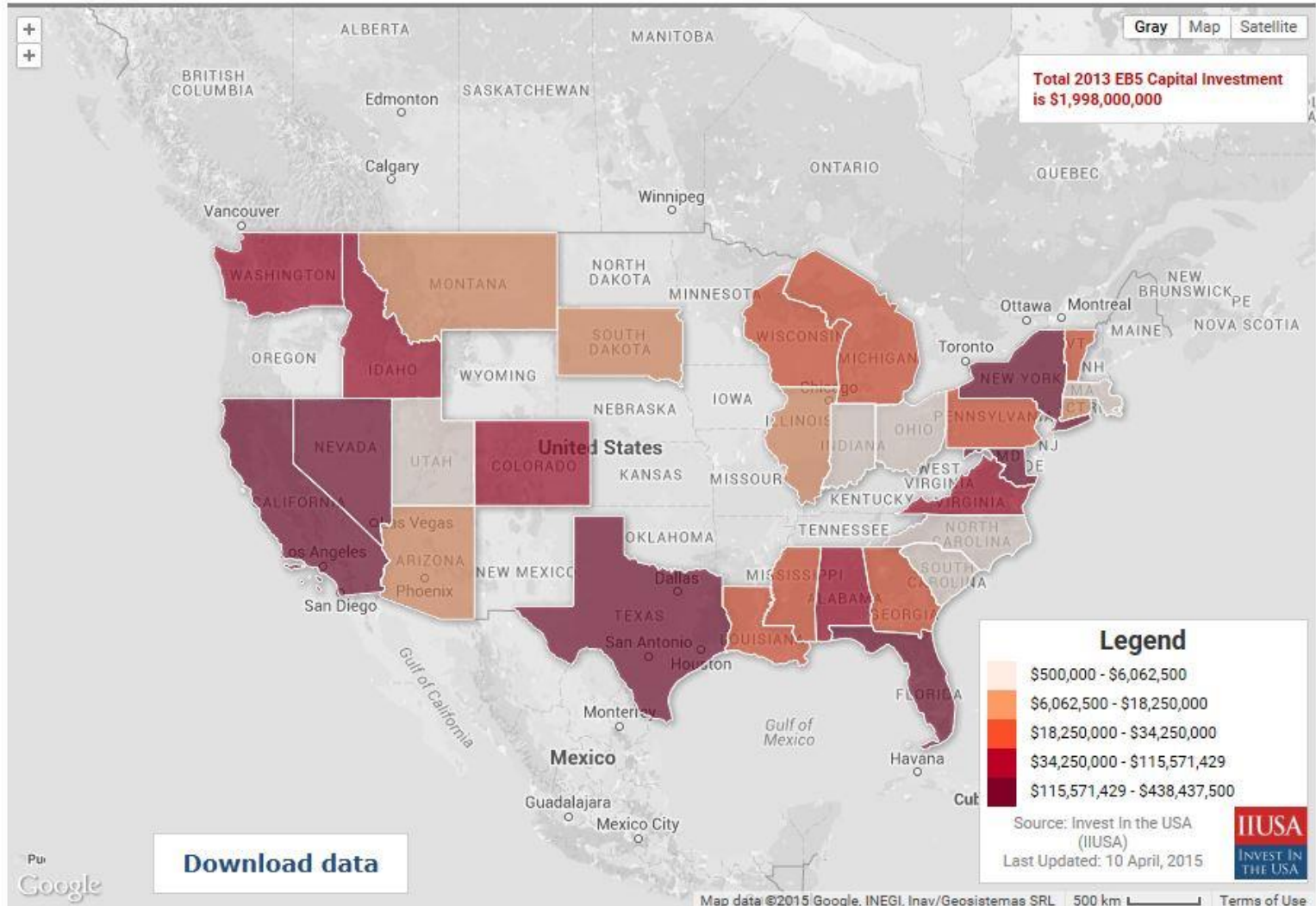
Capital Stack	The Order of Capital into the Deal	Cost of Capital
20% or more	Developer Equity	--
10-20%	EB-5 Equity (Preferred Stock)	5-8%; 10% extended term
60-70%	Traditional Bank Debt	4-6%

# Where EB-5 Capital fits within Capital Stack

## Debt

Capital Stack	The Order of Capital into the Deal	Cost of Capital
20% or more	Developer Equity	--
10% or less	Mezzanine Financing (Preferred Stock)	10-15%
40%	EB-5 Debt – 1 <sup>st</sup> Position Mortgage; or	3-5%
30%	EB-5 Debt – 2 <sup>nd</sup> Position Mortgage Behind Bank Debt	5-7%

# Where the Deals Are



Data Source: Peer-Reviewed EB-5 Economic Impacts Studies

Map Source: IIUSA



# Where the Deals Are

## Top 5 States Receiving EB-5 Capital in 2013

2013 California (CA)	2013 New York (NY)	2013 Texas (TX)
Economic Impact Ranking: 1 EB5 Capital Investment: \$438,437,500 Jobs Supported: 6,085 Contribution in US GDP: \$572,653,094 Federal Tax Revenue: \$84,115,675 State/Local Tax Revenue: \$50,940,204	Economic Impact Ranking: 2 EB5 Capital Investment: \$379,041,667 Jobs Supported: 6,024 Contribution in US GDP: \$543,901,026 Federal Tax Revenue: \$84,786,407 State/Local Tax Revenue: \$53,828,105	Economic Impact Ranking: 3 EB5 Capital Investment: \$174,187,500 Jobs Supported: 2,737 Contribution in US GDP: \$208,034,491 Federal Tax Revenue: \$32,259,897 State/Local Tax Revenue: \$7,240,110
2013 Florida (FL)	2013 Maryland (MD)	
Economic Impact Ranking: 4 EB5 Capital Investment: \$150,500,000 Jobs Supported: 2,755 Contribution in US GDP: \$176,893,641 Federal Tax Revenue: \$28,815,858 State/Local Tax Revenue: \$10,918,299	Economic Impact Ranking: 5 EB5 Capital Investment: \$132,857,143 Jobs Supported: 2,042 Contribution in US GDP: \$180,321,238 Federal Tax Revenue: \$28,542,837 State/Local Tax Revenue: \$16,467,267	

# CASE STUDIES



# EB-5 PROGRAM: A SLOW JOURNEY

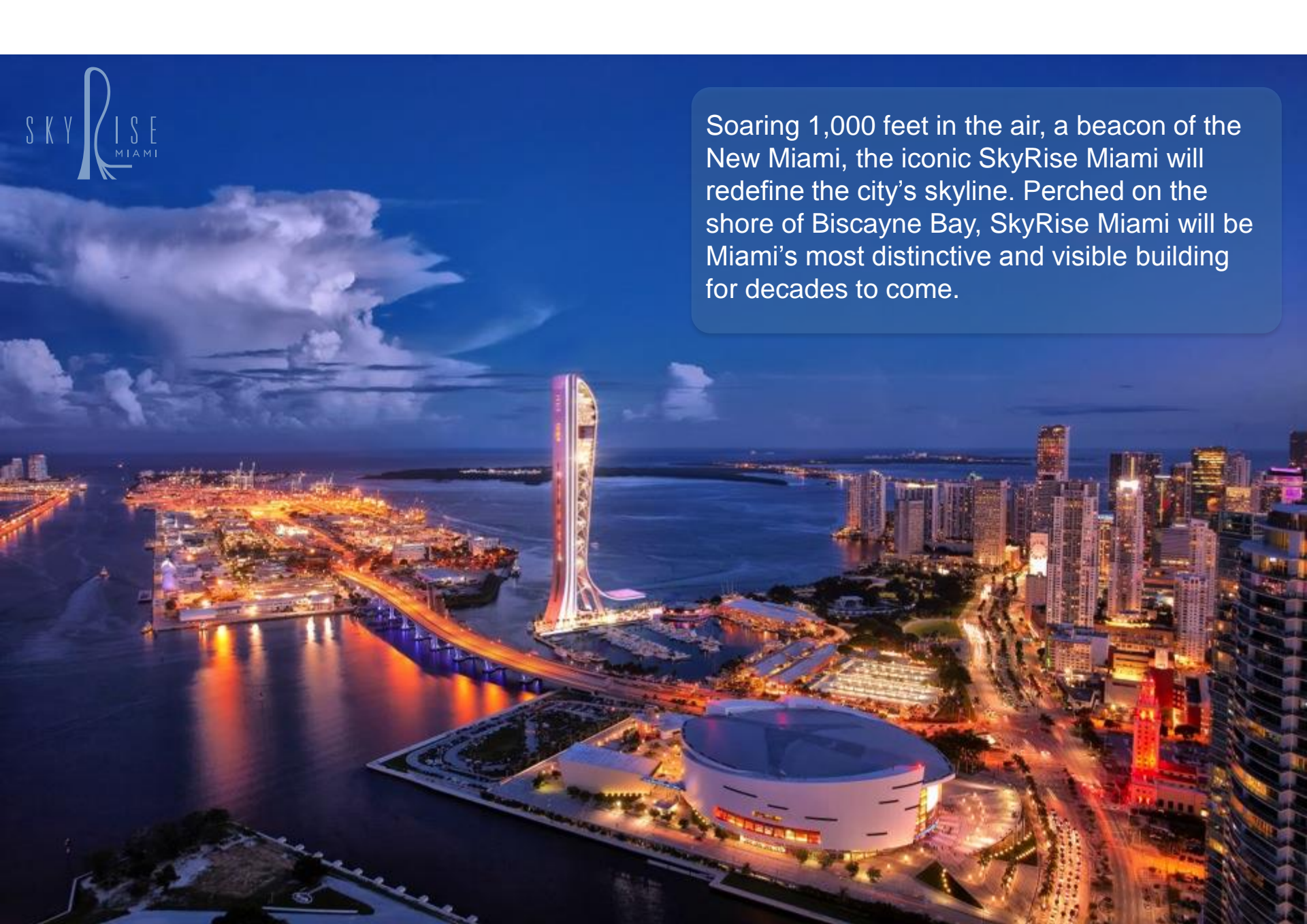


The logo for Skyrise Miami is centered on a blue sky with scattered white clouds. It features the word "SKY" in a tall, thin, white, sans-serif font. To its right is a large, stylized white letter "R" that curves at the top and has a horizontal base with a slight upward curve. To the right of the "R" is the word "RISE" in the same tall, thin, white, sans-serif font. Below "RISE" is the word "MIAMI" in a smaller, white, sans-serif font.

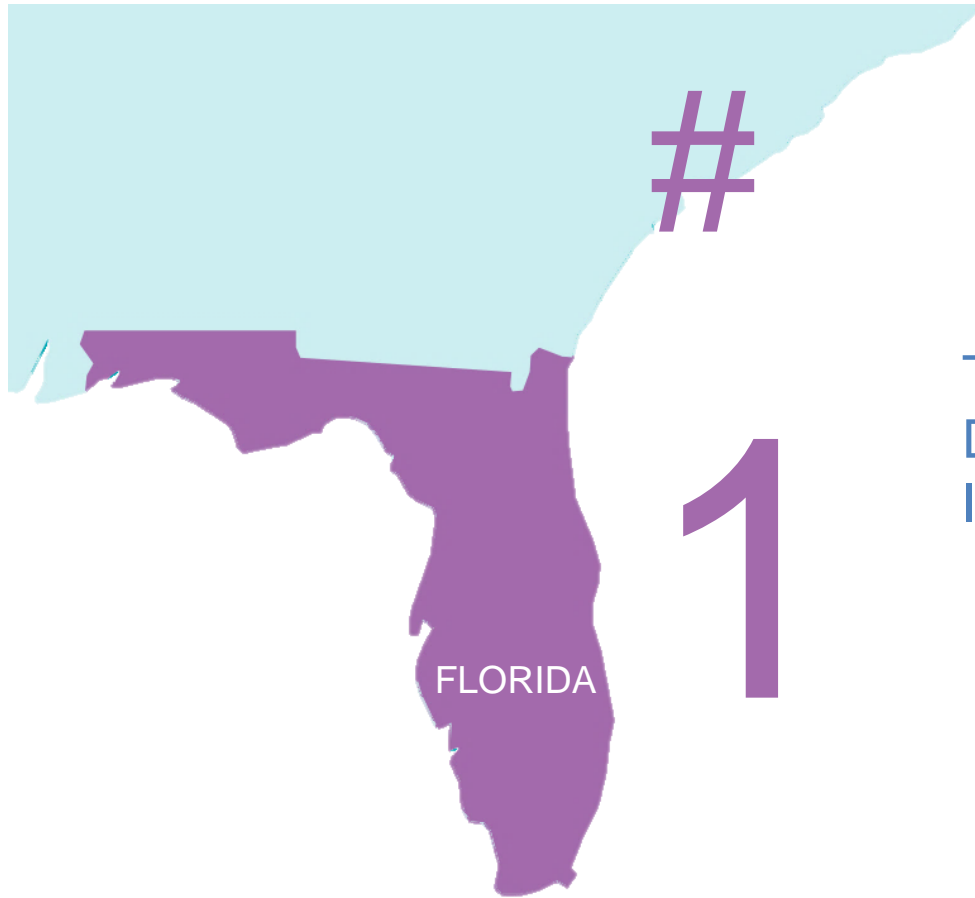
SKY RISE  
MIAMI

[skyrisemiami.com](http://skyrisemiami.com)

Soaring 1,000 feet in the air, a beacon of the New Miami, the iconic SkyRise Miami will redefine the city's skyline. Perched on the shore of Biscayne Bay, SkyRise Miami will be Miami's most distinctive and visible building for decades to come.



FLORIDA



TOURIST  
DESTINATION  
IN THE WORLD



## FLORIDA ATTRACTIONS



**7 of the Top 10 U.S. Attractions.  
5 of the Top 10 World Attractions.**

## FLORIDA VISITORS



127 million projected by 2020



## FLORIDA TOURISM SPENDING



**\$82 billion spent in 2014**



An aerial photograph of Miami, Florida, showing a dense urban landscape with numerous skyscrapers and modern buildings. The city is situated near a large body of water, likely Biscayne Bay. The image is used as a background for the title text.

# Miami: 1920-2020

## A Century of Change



## MIAMI

MIAMI is the 2nd most visited city in the U.S. by overseas travelers

1. New York
2. Miami
3. Los Angeles

# SKYRISE MIAMI



# A BUILDING LIKE NO OTHER

Wind base shear = 23 million pounds (1,500+ elephants)

Over 30,000 tons of reinforcing and structural steel (more than 3 Eiffel Towers)

1.15 million ft. of post-tension cable (218 miles or 425 tons of 0.6" strand)

Driving 130 piles 150 ft. deep to support the tower

Designed to withstand wind speeds of 186 mph (1,700 year 3-second gust)

1,000 ft. high

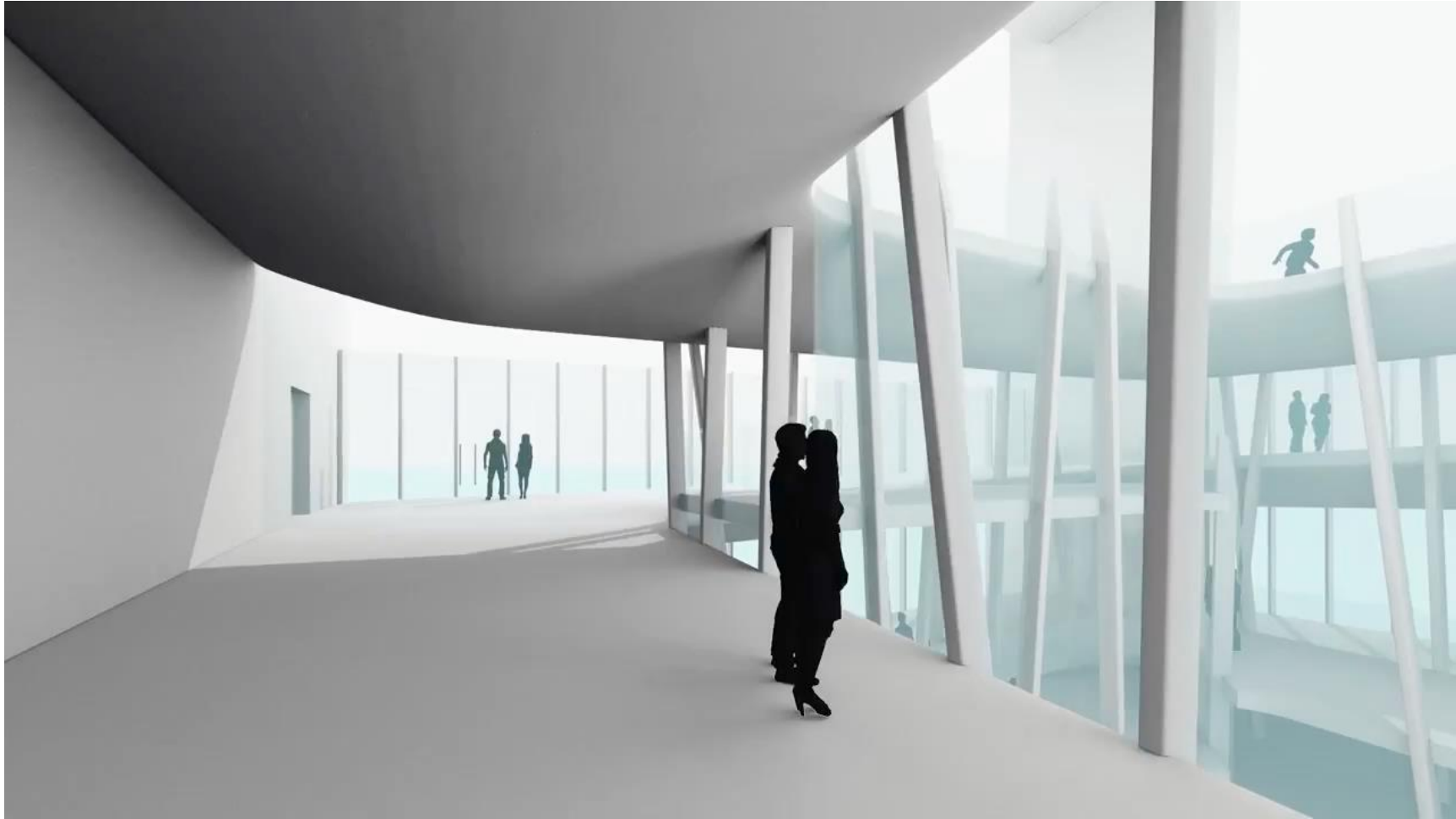
100,000 cubic yards of concrete (a 4 ft. wide sidewalk from Miami to Tallahassee)

# SKYRISE TOWER ENTRANCE





# SKYRISE MIAMI CONCEPTUAL RENDERING MAIN INDOOR AND OUTDOOR OBSERVATION DECKS



# SKYRISE MIAMI MEMBER'S CLUB AND PREMIUM OBSERVATION DECK



Miami's skyline and ocean views are already some of the most beautiful in the world. Now imagine how those views will be magnified by the soaring height and unlimited vistas of the SkyRise Premium Observation Decks.



# SKYRISE MIAMI MEMBER'S CLUB AND PREMIUM OBSERVATION DECK





# THE VIEW





# SKYRISE MIAMI ENTERTAINMENT



## SKY HIGH CLUB

Miami and South Beach are already known for the finest, most exclusive private clubs anywhere. But the SkyRise's Club, perched almost 1,000 feet above the glittering skyline, will be one of the most exclusive in the world.



## SKYRISE RESTAURANT

If fine dining is an experience, then the new SkyRise Restaurant will rival the finest dining anywhere. The only difference? This experience will begin almost 1,000 feet above Miami's incredible views.



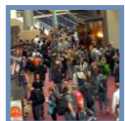
## SKYRISE NIGHTCLUB

All of the elegance and excitement of Miami's club scene will now be topped by this ultimate nightclub perched almost 1,000 feet above the earth.



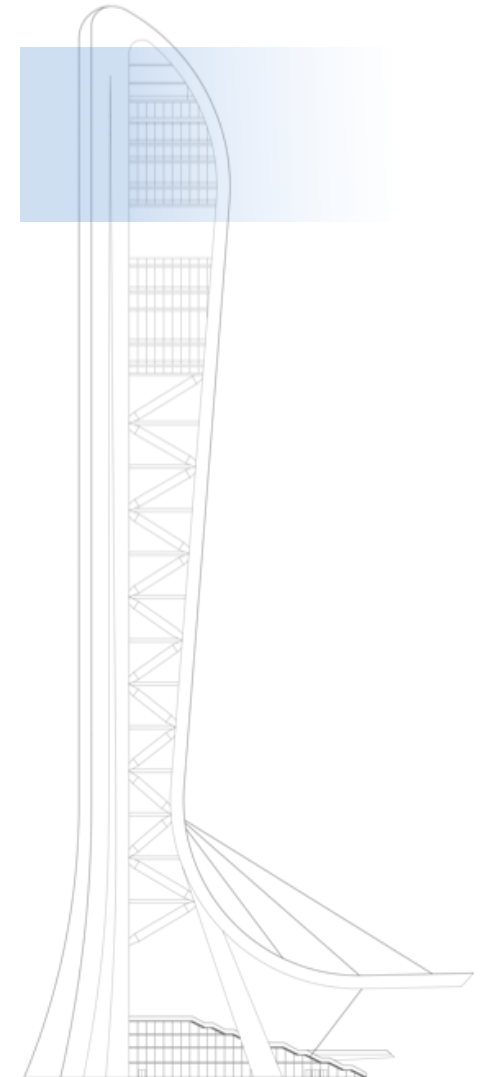
## SKYRISE BALLROOM

Major events in South Florida and the Americas will be planned in the SkyRise Ballroom, where each elegant event promises to be out of this world.



## SKYRISE CONFERENCE CENTER

Major exhibitions and corporate meetings in South Florida and The Americas will be planned in the SkyRise Conference Center.



# SKYRISE MIAMI ATTRACTIONS



## SKY PLUNGE

Sky Plunge can be described as base-jumping using a sophisticated bungee-like safety system by which jumpers are attached to a high-speed controlled-descent wire.



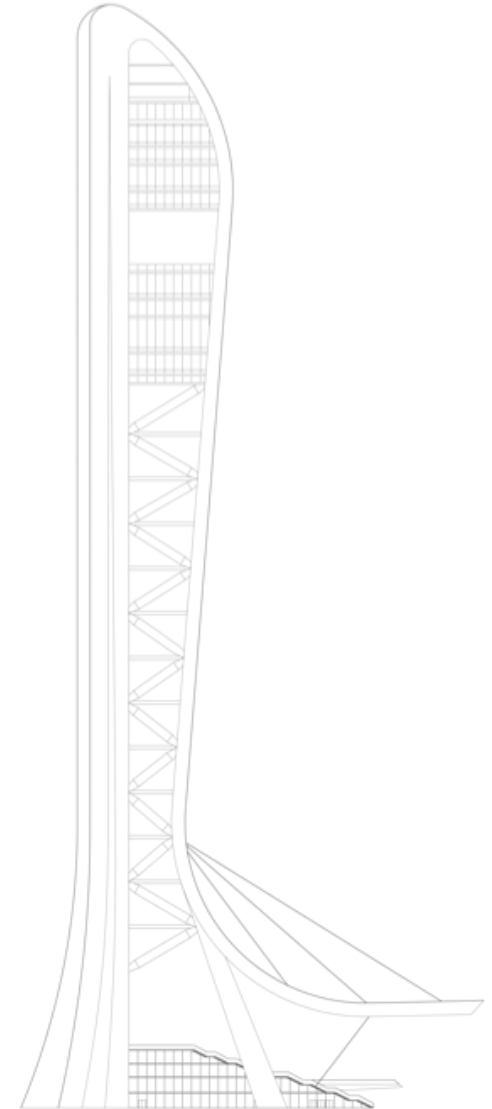
## SKYRISE DROP

Just like parachuting out of an airplane, riders will experience the thrill of free fall followed by the jolt of extremely rapid deceleration. SkyRise Drop Miami is destined to become one of the most exciting rides in the world.



## SKYRISE FLYING THEATER

The dream of flying comes to life in our motion-based simulator. That only starts to explain the thrill of flight that theater-goers will enjoy in the SkyRise Flying Theater. Similar to Soarin'® at Disney World's® Epcot®, the SkyRise Flying Theater will make dreams a reality.



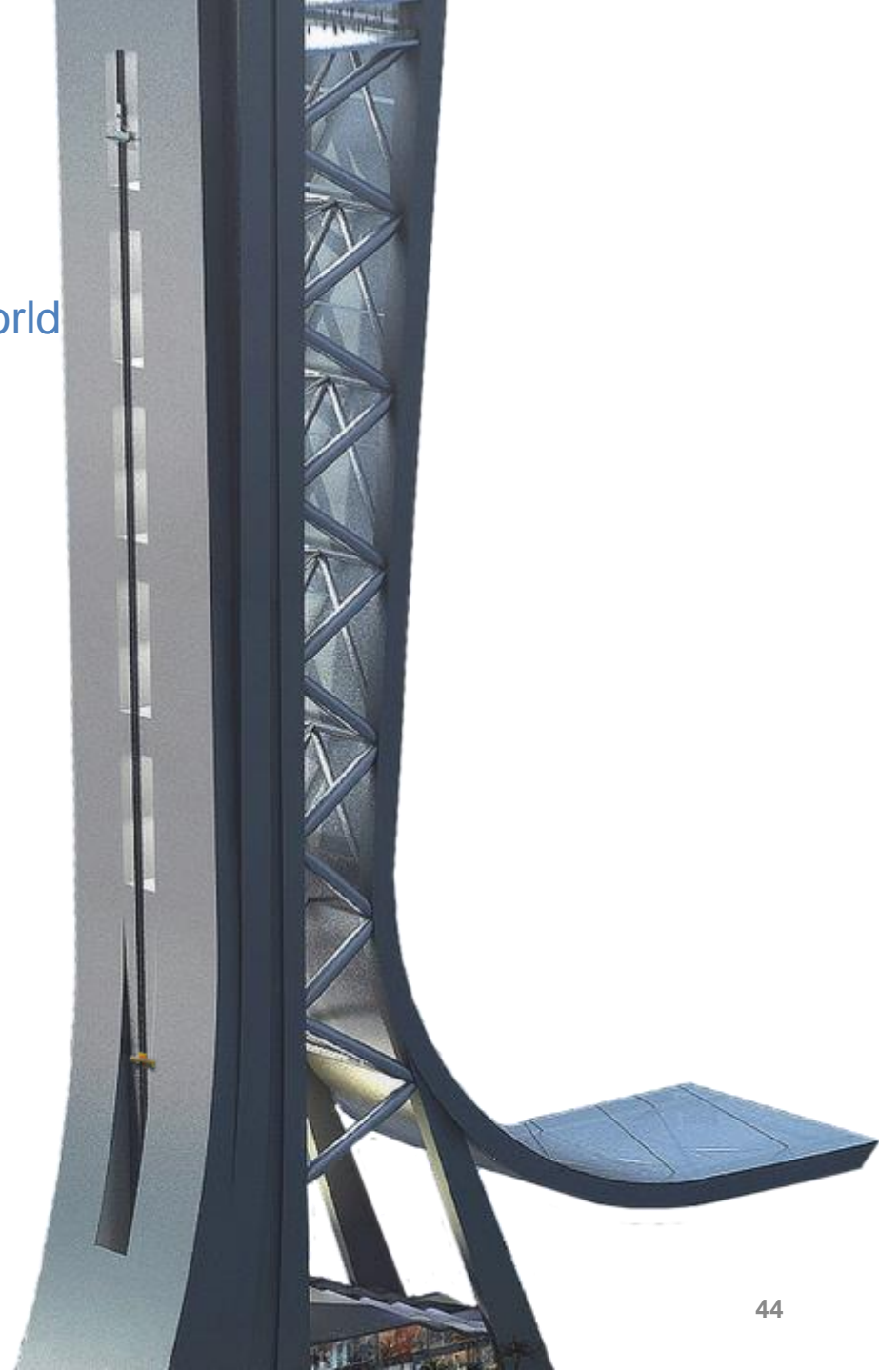
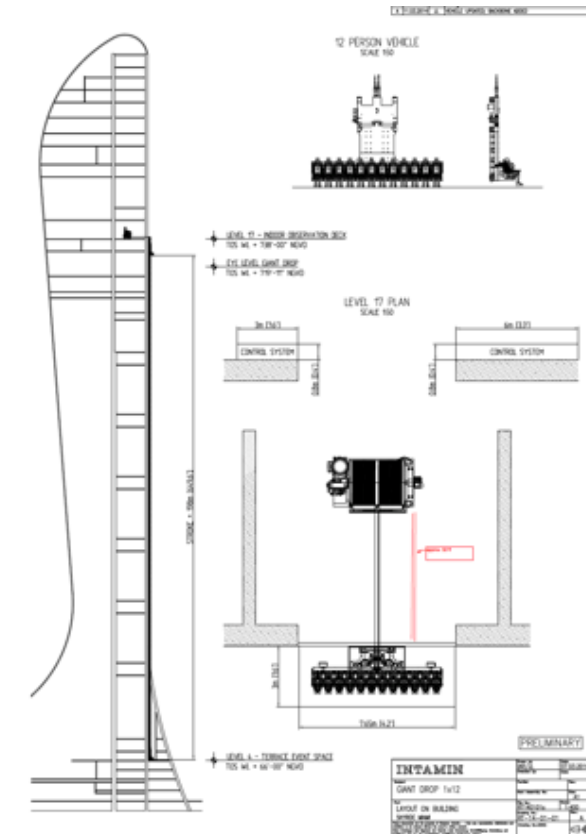
## SKY PLUNGE



- 570Ft. Thrill Ride
- Only Plunge in the World Inside a Building
- Reaching Speeds of **55 MPH**

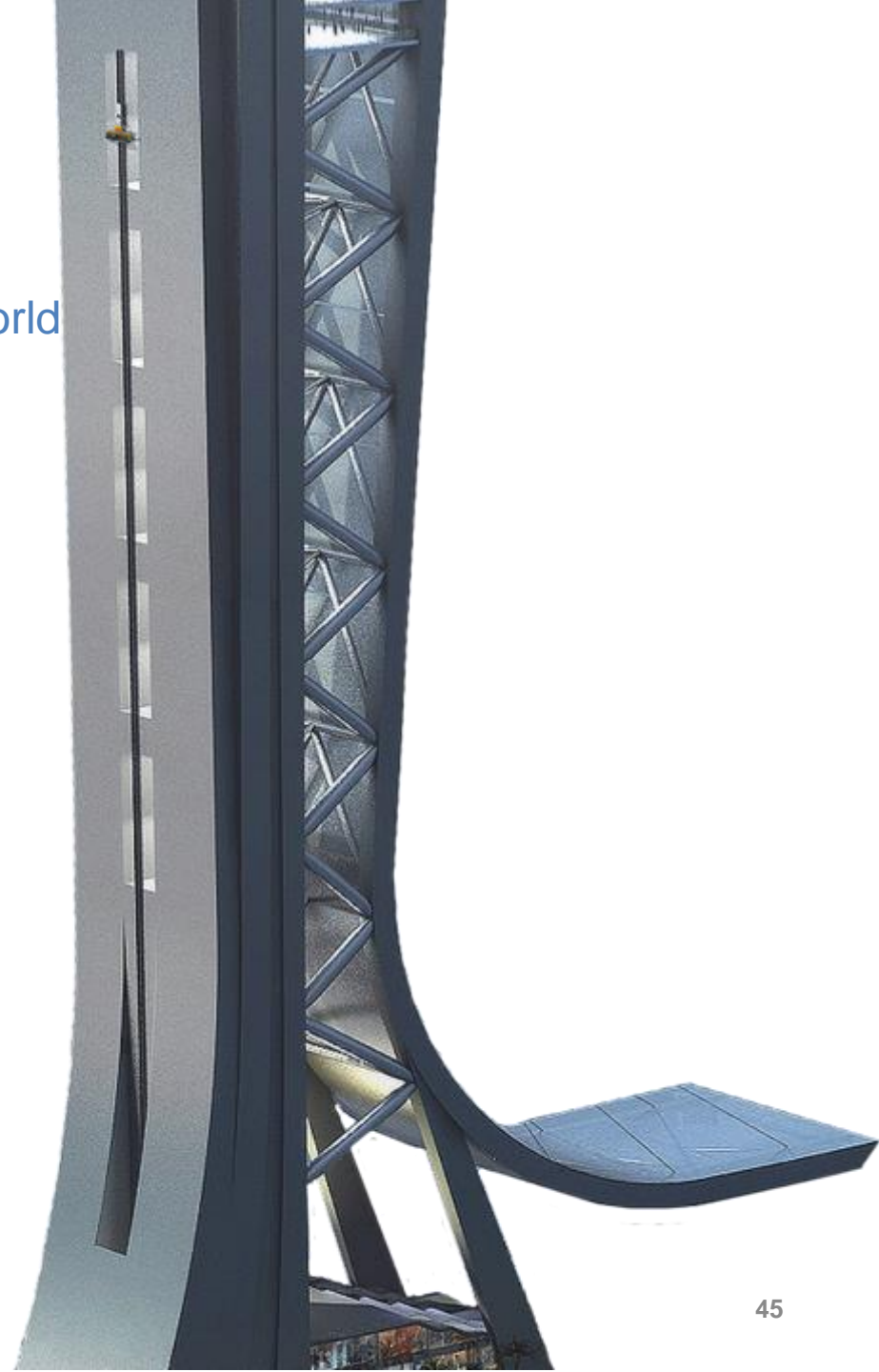
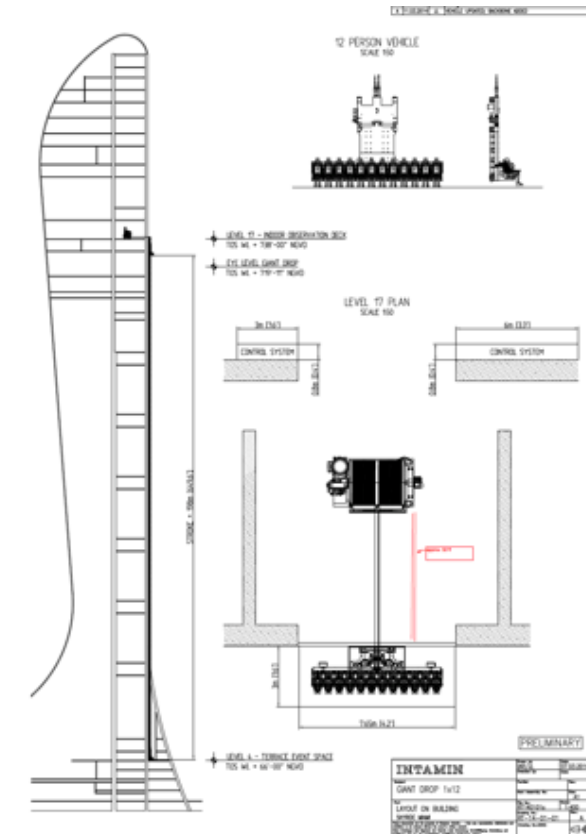
# SKYRISE DROP

- 650 Ft. Drop
- Fastest/Longest Drop in the World
- 12 Passengers
- **95 MPH Speed**



# SKYRISE DROP

- 650 Ft. Drop
- Fastest/Longest Drop in the World
- 12 Passengers
- **95 MPH Speed**



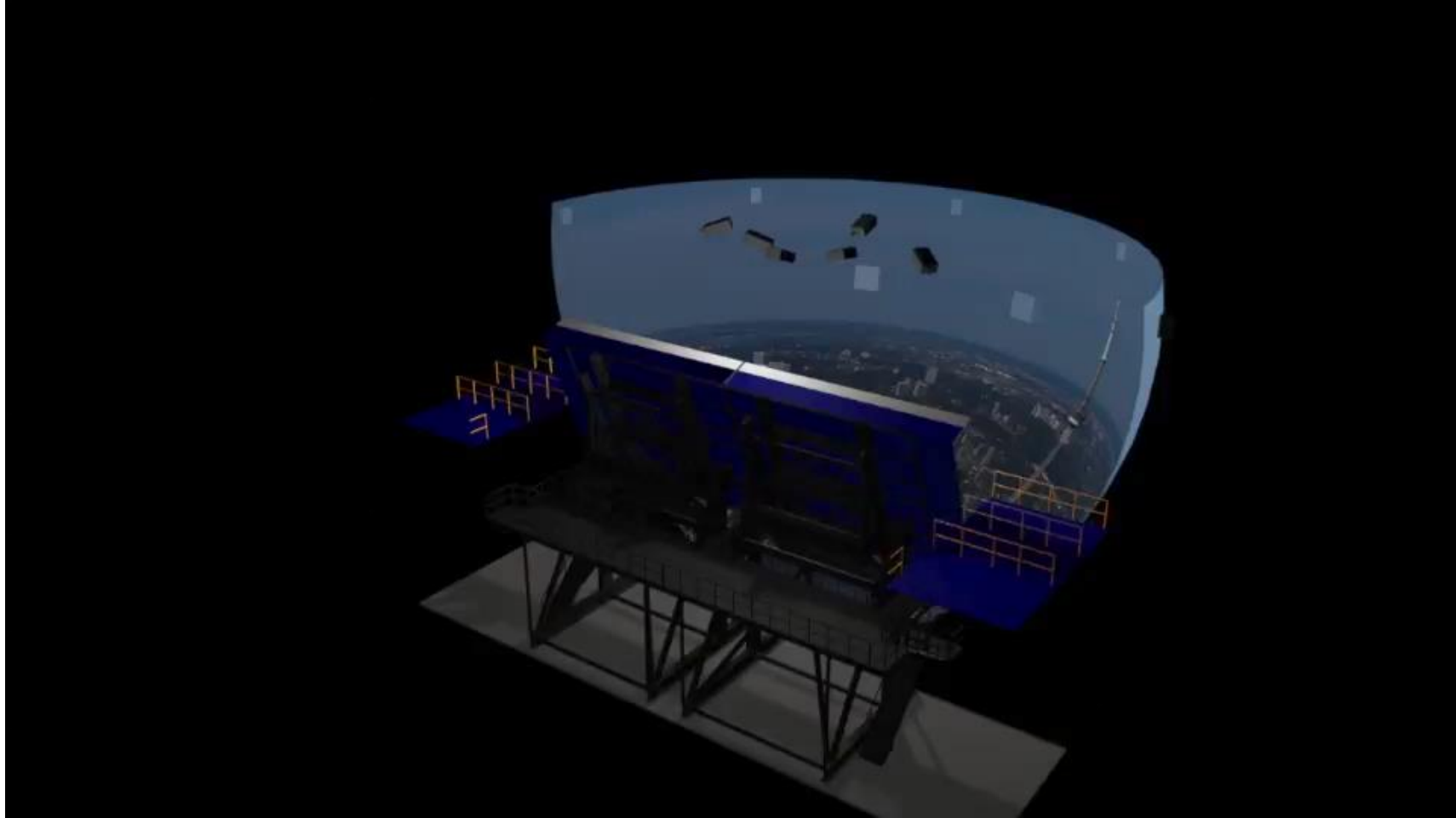


## SKYRISE FLYING THEATRE



- Capacity 72 Riders
- 6 Minutes Duration
- Movie will Feature the Best Views of South Florida and Miami
- Same Manufacturer as Soarin® at Disney World's® Epcot®

# SKYRISE FLYING THEATRE



## THE TEAM

Has built almost One Half a **Billion** sq. ft. of commercial and residential buildings.



**Coastal  
TISHMAN**

***ARQUITECTONICA***

*Cosentini*  
A TETRA TECH COMPANY

**gsmpjct<sup>o</sup>**

MAGNUSSON  
KLEMENCIC  
ASSOCIATES



# ONE WORLD TRADE CENTER



## One World Observatory

- Amenities
  - Indoor Observation Deck (102<sup>nd</sup> Floor)
  - Dining (101<sup>st</sup> Floor)
  - Gift Shop & Special Events (100<sup>th</sup> Floor)
- Winning Bid: Legends Hospitality Group (NY Yankees/Dallas Cowboys)
- Rent- \$875 million/15 year lease
  - \$60 million per year
- 3.8 million projected annual visitors

# EMPIRE STATE BUILDING



## Indoor and Outdoor Observation Decks

	2013	2012	2011
Attendance	4.3 MM	4.186 MM	4.05 MM
Revenues	\$101.8 MM	\$ 91.9 MM	\$ 80.6 MM

Source- 10K (12-31-14) Empire State Realty Trust

2014 Revenues – 111.5MM

9.5% increase over 2013

# TIMELINE



January, 2011

- Started process
- Hired
  - SEC counsel (PPM)
  - Economist
  - Immigration counsel

July 11, 2011

- Filed I-924 Application for Regional Center Designation
  - Gables Station – Exemplar project

February 23, 2012

- Received Request For Evidence (RFE) (Tenant occupancy)

June 4, 2012

- Filed Response to RFE

April 18, 2013

- Received Intent to Deny

May 16, 2013

- Response to Intent to Deny (changed Gables Station to hypothetical project)

July 29, 2013

- Received Request for Clarification (RFC)

August 5, 2013

- Response to RFC

September 30, 2013

- MMRC approval

February 18, 2014

- Filed Exemplar for SkyRise Miami

March 4, 2014

- Request to Expedite Exemplar

April 14, 2014

- Request to Expedite Denied

September 22, 2014

- Exemplar Approval

**Total Time:  
3 years 9 months**

# MARKETABILITY Of Your Project



## 2 MAJOR CONCERNS:

Am I Going To Get My Green Card?

Am I Going To Get My Money Back?

## USCIS DESIGNATED REGIONAL CENTER

Miami Metropolitan Regional Center (MMRC) received its USCIS Regional Center Designation on September 30, 2013. MMRC is the EB-5 sponsor of the SkyRise Miami project and is responsible for providing the foreign investor's lawyer with all the necessary documentation establishing SkyRise Miami's USCIS approval. MMRC will also provide the investor's lawyer with proof, at the I-829 petition stage, that the invested funds were at risk for the required two years and that the required 10 jobs were created.

REGIONAL CENTER APPROVED



# OFFICIAL TARGET EMPLOYMENT AREA DESIGNATION

On September 8, 2014, the State of Florida designated the SkyRise Miami project as being located within a Target Employment Area.





# USCIS PROJECT APPROVAL

On September 22, 2014 USCIS issued its letter approving the SkyRise Miami project. This approval, sometimes called an “Exemplar Approval”, means that when a foreign investor files his/her I-526 Petition, USCIS’ review will focus mainly on the investor’s qualifications and source of funds documentation since the project’s EB-5 qualifications including the total number of jobs to be created, have been preapproved. Having project approval will shorten the time for the investor’s I-526 petition approval.

SKYRISE MIAMI PROJECT  
APPROVED BY USCIS



## USCIS APPROVED JOB STUDY AND JOB COUNT

USCIS has approved SkyRise Miami's Job Study which means that it has approved both the methodology (how the jobs were counted) and the total number of jobs to be created (6,701).



## FIRST SECURED LIEN POSITION

EB-5 investors in the SkyRise Miami project receive a first lien priority on the assets of the project. This is the best legal position to hold since USCIS prohibits any guarantee of a return of the investment. A first lien means that the investor has first rights in the event of a default to recover their investment.





# INDEPENDENT THIRD PARTY ECONOMIC FEASIBILITY STUDY

SkyRise Miami had an independent third party, International Theme Park Services, Inc., perform an in-depth economic feasibility study establishing the project's long term financial success and ability to repay the EB-5 loan upon its maturity. This study is available for review by a potential EB-5 investor.

*International Theme Park Services, Inc.*



# UNDER CONSTRUCTION

SkyRise Miami has all of its entitlements and commenced construction in September, 2014. Completion is currently projected for late 2018.



## DEVELOPER HAS FIRST \$30 MILLION AT RISK

SkyRise Miami's developer is legally obligated to spend the first US \$30 million of project development cost before any EB-5 funds are released from escrow.

As of March 1, 2015, the developer has spent approximately US \$20 million. This means that the developer, as well as the other equity investors, have a significant financial investment in the project and have millions of dollars at risk (total of US\$130 million).





## \$130,000,000 IN EQUITY (30%) BEHIND EB-5 LOAN

The total equity (cash) is US \$130 million. This represents 30% of projected development cost. This amount is at risk and sits behind the EB-5 first priority lien.



## DEVELOPER HAS 35 YEAR TRACK RECORD

SkyRise Miami's developer has a 35 year history of developing numerous major commercial real estate projects. The developer enjoys an enviable success record and many of its projects have earned numerous awards.



## WORLD CLASS CONSTRUCTION TEAM

SkyRise Miami has assembled a world class construction team which has developed more than one half a billion square feet of commercial and residential properties. The team has been involved in building and designing such iconic structures as The One World Trade Center in New York City, Shanghai Tower in Shanghai and the Burj Khalifa in Dubai.



# SIGNIFICANT COMMUNITY/POLITICAL SUPPORT

SkyRise Miami has the support of all the major community organizations in Miami-Dade County, Florida and officials at the federal, state, county and city level. In addition, 69% of the City of Miami residents voted in favor of having SkyRise Miami built on public land and agreed to a 99 year ground lease on land owned by the Government.





# PROJECT WILL BE CONSTRUCTED ON GOVERNMENT OWNED PROPERTY

The land on which the project is being built is owned by the City of Miami. The City of Miami Commission unanimously voted and 69% of the resident's voted in favor of not only building SkyRise Miami, but also agreed to a 99 year ground lease.

**Miami Herald** Downtown/Biscayne Corridor

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MIAMI BALLOT QUESTIONS

### Voters give SkyRise Miami liftoff

BY DAVID SMILEY  
DSMILEY@MIAMIHERALD.COM


Miami voters on Tuesday overwhelmingly endorsed SkyRise Miami, a swooping observation tower and tourist attraction proposed on a spit of land behind Bayside Marketplace.

The public supported the 1,000-foot tower — coupled with a long-term lease extension for Bayside's operator — by a roughly two-to-one margin. The vote gives developer Jeff Berkowitz the green light to begin construction and triggers a \$10 million upfront payment to the city of Miami.

At a campaign party held in a private room at the Hard Rock Cafe at Bayside, Berkowitz declared victory upon the release of only early and absentee voting tallies, which favored the agreement by more than 70 percent.

"It's a mandate," he said. "Up, up and away."

Berkowitz said the SkyRise team would get to work next week reconfiguring utilities that serve the Bayside marina, which are currently under the pier where the tower will be built. The pier will then be excavated and a foundation can be laid, which



Artist rendering of SkyRise Miami. HANDOUT

Related Content

- Charlie Crist cruises in Democratic primary win, but race against Rick Scott is tough toss-up

# MIAMI-DADE COUNTY, FLORIDA

## Invests \$9 Million in SkyRise Miami

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(1)  
12-16-14

RESOLUTION NO. R-1121-14

RESOLUTION WAIVING ADMINISTRATIVE RULES FOR ECONOMIC DEVELOPMENT FUND PROJECT 124 OF BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM; APPROVING ALLOCATION OF \$9,000,000.00 FROM PROJECT 124 TO SKYRISE MIAMI, LLC TO FUND SKYRISE MIAMI PROJECT; AND DIRECTING COUNTY MAYOR OR DESIGNEE TO NEGOTIATE THE TERMS OF A GRANT AGREEMENT WITH SKYRISE MIAMI, LLC PURSUANT TO BOND PROGRAM'S ADMINISTRATIVE RULES AND PRESENT SUCH GRANT AGREEMENT OR, ALTERNATIVELY, A REPORT FOR CONSIDERATION BY BOARD

WHEREAS, Appendix A to Resolution No. R-914-04 ("Public Infrastructure Resolution"), lists projects eligible for funding from the Building Better Communities General Obligation Bond Program ("Bond Program") by project name, location, Commission district, project description, street address, and project number;

WHEREAS, one of the projects listed in Appendix A to Resolution and approved by the voters for funding is Project 124 ("Project 124") with a project description that states "Fund to spur economic development and attract new businesses to the area"; and

WHEREAS, the goal of Project 124 is to encourage economic development and cause economic development which will have a long term impact;

WHEREAS, Skyrise Miami, LLC proposes the development of an entertainment center and tourism attraction at Bayside Market

3

OBLIGATION BOND PROGRAM; APPROVING ALLOCATION OF \$9,000,000.00 FROM PROJECT 124 TO SKYRISE MIAMI, LLC TO FUND SKYRISE MIAMI PROJECT; AND DIRECTING COUNTY MAYOR OR

The Chairperson thereupon declared the resolution duly passed and adopted this 16<sup>th</sup> day of December, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Christopher Agrippa  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

JRA

Juliette R. Antoine





## INDEPENDENT CO-MANAGER

In addition to providing audited financial statement, an independent third party co- manager will be appointed whose sole duty is to the EB-5 investor and whose is responsible for ensuring that the EB-5 funds are properly spent on the project.



## AUDITED FINANCIAL STATEMENTS

SkyRise Miami will provide the EB-5 investor with audited financial statements from a “Big Four” accounting firm. The developer wants to ensure complete financial transparency and give the EB-5 investor confidence that his/her investment is properly being utilized in the project.







Barclays Center – \$228M



Hunters Point San Francisco- \$200M



Hudson Yards- \$800M



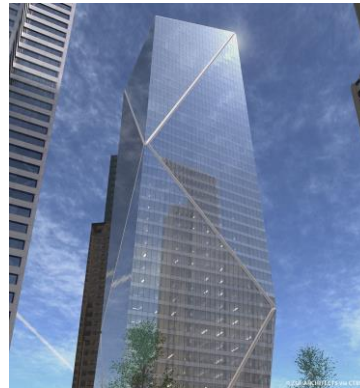
Four Seasons World Trade Center - \$250M



SLS Hotel Las Vegas - \$400M



Brooklyn City Point Development-\$ 200M



5th & Columbia, Seattle - \$250M



Hollywood Park Redevelopment (LA) \$188M

# SELLING YOUR PROJECT



# CHINA DOMINATES

- 85% of the EB-5 Market
- Agent Network
- In Country Staff
- Seminars (Principals Participation)
- I-526 Approval (14 to 24 months)
- Escrow/Funding Issues
- Cost
  - Administrative Fee
  - Back-End Point

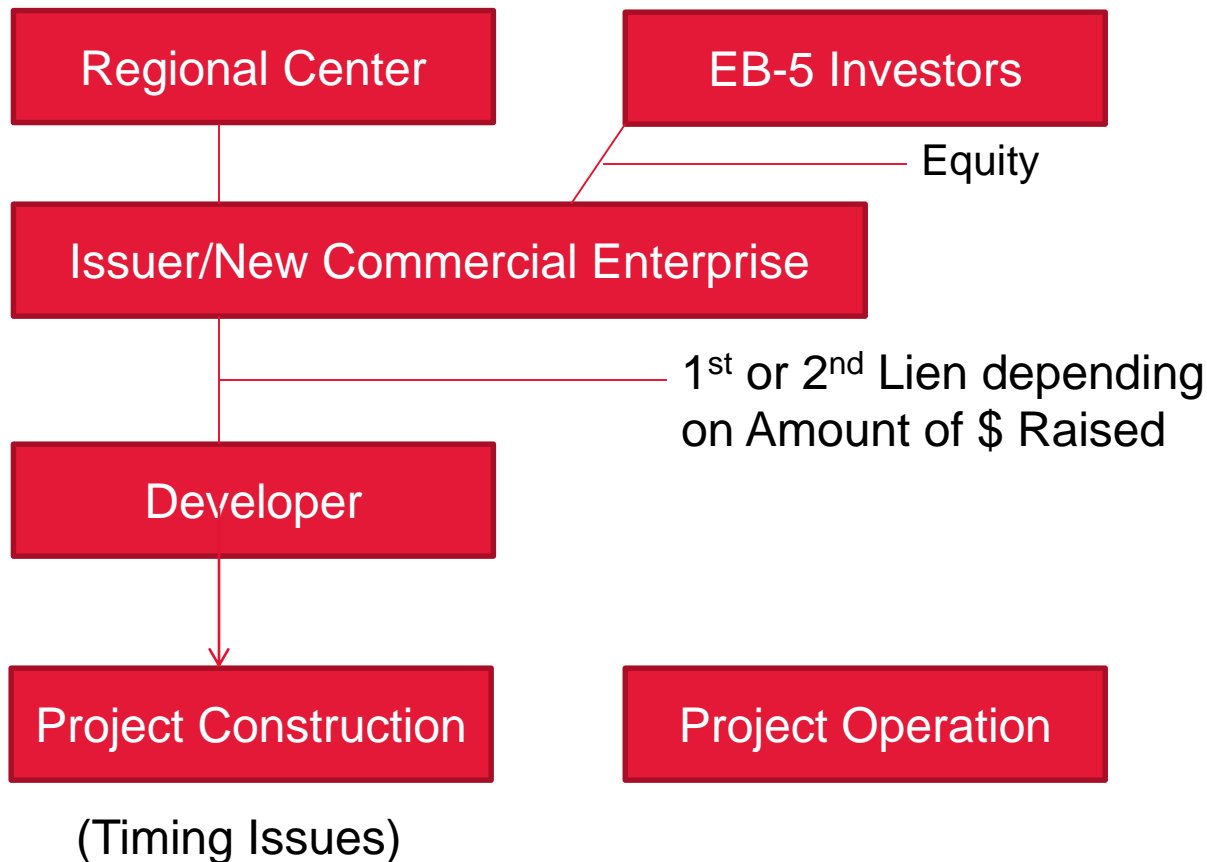
# FUTURE of EB-5 PROGRAM





SKYRISE  
MIAMI

# EB-5 Investment into DC Development As First Part of Large Multi-phase Development



# CURRENT EB-5 CHALLENGES

# Challenges with EB-5

Bad News for U.S. Developers: A Lucrative Flow of Chinese Money is About to Slow Down – *The Epoch Times*, May 5, 2015

**FORTUNE**

Promoter of failed EB-5 project is indicted - August 27, 2014

**THE WALL STREET JOURNAL.**  
SEC Case Shows Greater Scrutiny of EB-5 Programs

Visa Program Allows Foreigners to Live in U.S. if They Invest in Job-Creating Businesses - October 18, 2013



U.S. Securities and Exchange Commission

ABOUT DIVISIONS ENFORCEMENT

PRESS RELEASE

SEC Halts Texas-Based Scheme Targeting Foreign Investors Seeking U.S. Residency Through EB-5 Visa Program

SEC, USCIS Issue Joint Alert to Caution Investors About Fraudulent EB-5 Investment Schemes - October 1, 2013

**The Seattle Times**

GAO will audit EB-5 program for investor visas

Originally published December 10, 2014 at 7:11 pm | Updated December 10, 2014 at 9:16 pm

# Challenges with EB-5

**Forbes**

FORBES ASIA | 1/05/2015 @ 1:50PM | 5,650 views

## EB-5 Fraud Highlights Risks Of Investor Program

**Forbes**

The dark,  
disturbing world of  
the visa-for-sale  
program

- July 24, 2014

SEC Charged Los Angeles-Based EB-5 Lawyers with Securities Fraud

LexisNexis® Legal Newsroom  
Banking and Finance 9-04-2014



# Leading Current EB-5 Challenges

- Renewal of Regional Center Program
- Retrogression for China Visas
- Length of Time – “Slow Money”
- Reliance on China as Source of Investment
- Fraud Concerns
- Historical Lack of Resources and Rulemaking at USCIS



# Timing of Project Funding

- Term Sheet, Transaction Documentation and offering and EB-5 filings – 2-4 months
- Regional Center recruits potential investors through marketing: 3 - 6 months (sometimes 12-18 months)
- Investor signs the “offering” documents and sends funds to escrow: 1 month
- Lawyers prepare I-526 documentation: 1 month
- I-526 Filed (alternatively an Exemplar could be 4-6 months)

Official USCIS Processing Time: 14 months

- Once I-526 approved, funds are released (typically, to the “debt-fund” entity who then loans to Developer). Many projects now permit “early release” with a holdback. Bridge Lenders can fund construction prior to release.



# Timing for Foreign Investors: Traditional

- OBTAINING A GREEN CARD IS A TWO-STEP PROCESS
- PART 1: I-526 – Current Estimates: 14 months (February 11, 2015)
- PART 2: I-485 (if in US): 8-12 months
- Overseas Investors: Consular Processing timing varies by Consular Post  
Ranges from 3-6 months
- Child must be under 21 by the time the I-526 is filed: USCIS will require additional evidence to demonstrate the requirements for removal of conditions if at the I-829 “condition removal” stage it is determined there has been a “Material Change” in the project.



# Timing for Foreign Investors: Retrogression

- Adverse impact on EB-5 on Chinese investors from mainland China. Investors from Hong Kong, Macau and Taiwan (China) and from other countries will not be affected.
- PART 1: I-526 – Current Estimates: 14 months
- PART 2:
  - Overseas Investors: Consular Processing
    - Subject to availability of visas – Chinese retrogression
  - First ever quota retrogression, moratorium for 5 weeks in 2014, could be longer in 2015
  - Quota retrogression may increase the onset of the 21-24 month conditional residence period by 2 years or more.



# Retrogression

## Concept and consequences to the Investor

- Applies to all visa categories, not just EB-5
- When total of qualified applicants in a category exceed the supply of numbers available for allotment for the particular month, the category is considered to be “oversubscribed” and this particular visa category retrogresses.
- Impact on investors with children nearing 21 years old. If retrogression occurs, the child may be “aged out” and can no longer accompany the immigrant investor.
- With regard to the job creation requirement, in the Direct EB-5 context, the investor is the manager of the business. Visa retrogression may delay the investor’s entry in the US for years. Nonimmigrant visa options?
- EB-5 category has approximately 10,000 visas per fiscal year, not 10,000 spots for I-526 petitions. Assume each EB-5 investor has spouse & one child, approximately 3,000 families can apply for the EB-5 visa per year.



# Retrogression (continued)

## Consequences to the RC/developer, good or bad news?

- **Bad news:** Job creation projections and capital redemption timelines will be directly impacted.
- May Investor dictate that the funds be held in escrow until a visa becomes available, not simply until the I-526 is approved?
- Without alternate financing, this delay could result in an inability to proceed with a project's development and, potential failure.
- **Good news:** no impact on timing of the release of EB-5 funds. Project will obtain additional time to create the required jobs.
- Qualifying jobs need to be created within two years commence six(6) months after the adjudication of the I-526 petition.
- Likely that the jobs will be created utilizing the EB-5 capital before the investor even enters the US, no need for I-829





# Lack of USCIS Rulemaking

- May 2013 Policy Memorandum
- Inconsistent adjudications
- No effective way to communicate with USCIS review officers

# FUTURE OPPORTUNITIES





# Future Opportunities

- Experienced EB-5 Teams
  - Regional Centers, issuers and developers
- Public Private Partnerships
- Sources of Capital Outside China
  - Latin America (Brazil and Venezuela), India and Russia
- “Class A” Projects and Smaller Projects
- Legislative Changes

# SPEAKER INFORMATION



# Speaker Contact Information



**Jeff Berkowitz | President & Founder | Berkowitz Development Group  
305.854.2800**

Jeff Berkowitz is the President and Founder of Berkowitz Development Group. Jeff holds an active Real Estate Broker's License and is a member of the International Council of Shopping Centers. Prior to founding Berkowitz Development Group in 1985, Jeff was an active partner in the law firm of McCrary Berkowitz & Davis from 1974, and later, the senior partner of Berkowitz & Diaz until he retired from the active practice of law to pursue Real Estate Development on a full-time basis in 1986.

Berkowitz Development Group is a full-service retail development company widely recognized as one of the pre-eminent retail developers in Miami-Dade County having developed a number of high profile, strategically located, and innovative retail projects. BDG specializes in gateway niche projects, involving complex development issues. BDG's expertise includes areas relating to all aspects of development, including leasing, management, construction management, dispute resolution, customer and tenant relations, budgeting, projections, and governmental relations.



# Speaker Contact Information



**Scot Patrick O'Brien | Partner | Washington, D.C.**  
**202.824.1731 | [scot.obrien@akerman.com](mailto:scot.obrien@akerman.com)**

Scot Patrick O'Brien is a partner at Akerman LLP. Scot represents public and private companies and private equity and real-estate based funds in a variety of corporate, securities and M&A transactions. He structures and negotiates complex business transactions, including mergers and acquisitions, leveraged buyouts, recapitalizations, venture and growth capital investments, debt and equity financings, and securities offerings. Scot provides counsel to public companies on corporate governance and reporting requirements. Scot helps create real estate investment funds and provides counsel with their acquisitions, operations and dispositions. Scot also effectively serves as outside general counsel to various corporate entities in a full range of corporate related matters.

**EB-5 Experience:** Represents regional centers, EB-5 real estate investment companies, and developers. Consults with developers on EB-5 financing. Has lectured on the EB-5 process and regional centers.



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