



Affidavit #4 of Tobi Reyes made in this case on February 4, 2021

No. VLC-S-H-210441
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PROSPERA CREDIT UNION

PETITIONER

AND:

**PORTLIVING FARMS (3688 PARK.VIEW) INVESTMENTS INC.
LIVING BEACHSIDE DEVELOPMENT LIMITED
PARTNERSHIP
PORT CAPITAL FARMS (BEACH) INC.
PORT CAPITAL GROUP INC.
PORT CAPITAL DEVELOPMENT INC.
MACARIO TEODORO REYES
ERLENMATTE AG
ROLAND KRUGER
ROLAND KRUGER FAMILY TRUST IN TRUST
HAGEN KRUGER
HAGEN KRUGER FAMILY TRUST IN TRUST
JOHN DOE**

RESPONDENTS

A F F I D A V I T

I, Tobi Reyes, Developer, with an address for service of 900-900 West Hastings Street, Vancouver, British Columbia, SWEAR THAT:

1. I am one of the Respondents herein, and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except whereso stated to be on information and belief and where so stated I verily believe them to be true.
2. I have read my Affidavit #1 filed September 16, 2021, Affidavit #2 filed October 1, 2021, and Affidavit #3 filed November 23, 2021 and this Affidavit is an update in that regard.
3. The Portliving and Living Marine Respondents have obtained financing sufficient to satisfy the amounts owing under the Petitioner's security.

4. Now produced and shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of a commitment letter that I received from 1341550 B.C. Ltd. and executed on January 31, 2022.

5. The Portliving and ~~Living Marine~~ Respondents will be able to satisfy the conditions for advance in the Commitment Letter, prior to or at the time of closing.

6. Now produced and shown to me and marked as Exhibit "B" to this my Affidavit is a true copy of a letter to my counsel dated the 3rd day of February, 2022, from counsel for the lender, Digby Leigh.

SWORN BEFORE ME at the City of
Vancouver, Province of British Columbia, on
February 4, 2022

A commissioner for taking affidavits
for British Columbia

H.C. RITCHIE CLARK, Q.C.
Barrister & Solicitor
Suite 900-900 West Hastings Street
Vancouver, British Columbia
V6C 1E5

TOBI REYES

1341550 B.C. LTD.
P.O. BOX 316 SUMMERLAND BC V0H 1Z0

January 24, 2022

Living Beachside Development Limited Partnership
#324 West 4th Ave.
Vancouver, BC V5Y 1H3

Attention: Tobi Reyes

Re: 1st Mortgage Financing
3624-3688 Parkview St., Penticton, BC ("Parkview Motels")

This is Exhibit "A" referred to in the
Affidavit of TOBI REYES
sworn (or affirmed) before me at
VANCOUVER, B.C.
this 4th day of FEBRUARY, 2022.

A Commissioner/Notary Public for the
Province of British Columbia

1341550 B.C. Ltd. (the "Lender"), is prepared to provide a credit facility (the "Loan") subject to the conditions outlined in this Commitment Letter.

- BORROWERS:** Living Beachside Development Limited Partnership, Port Capital Farms (Beach) Inc., Portliving Farms (3624 Parkview) Investments Inc., Portliving Farms (3688 Parkview) Investments Inc., Portliving Farms (3648 Parkview) Investments Inc. (the "Borrowers")
- GUARANTORS:** Macario Teodoro (Tobi) Reyes, Portliving Properties Inc. and Port Capital Group Inc., joint and several.
- LENDER:** 1341550 B.C. Ltd.
- PROPERTY:** Means the Lands consisting of three separate motel properties described in Schedule "A" attached including all furnishings, fixtures, equipment, computers, signage and related material used in the conduct of the business of the Borrowers ("the Property")
- AMOUNT OF LOAN:** \$6,000,000
- PURPOSE:** To refinance existing 1st mortgage and bring about a termination of the Receivership, discontinuance of foreclosure proceedings and cessation of enforcement against the Property.
- INTEREST RATE:** 13% per annum compounded and calculated monthly (equivalent 13.357% per annum compounded semi-annually), until December 31, 2022 and 18% compounded and calculated monthly from January 1, 2023 until maturity (equivalent 18.689% per annum compounded semi-annually).
- MATURITY DATE:** Means March 31, 2023
- LOAN TERM:** The Loan shall become due and payable March 31, 2023 ("Maturity Date"), or such earlier date of the occurrence of an event of default.
- PAYMENTS:** \$260,000 will be deducted from the advance of funds to pay interest on the loan for the first 4 months, after which, the Borrower is required to pay interest on the 1st day of each month of the Loan Term with the principal amount payable on the Maturity Date or such earlier date that the same becomes payable as a result of an Event of Default

PREPAYMENT: The Loan cannot be repaid or discharged until an amount of \$390,000 in interest has been earned, after which the loan can be repaid subject to the payment of additional consideration equal to sixty (60) days interest calculated on the outstanding balance at the time of prepayment.

FEES: Lender Fee: \$240,000 payable to the Lender with \$25,000 payable upon acceptance of this Commitment Letter, and the balance to be deducted from the first advance of the Loan. The \$25,000 initial payment shall be deemed earned by the Lender upon the issuance of this Commitment Letter.

Origination /
Brokerage Fee: \$105,000 payable to Rowanwood Mortgage Services Ltd., to be deducted from the advance of the Loan.

Administration Fees: \$30,000 plus tax payable:

- (i) \$15,000 to the Broker to cover the costs of administering the loan, Lender communications, and all matters necessary to satisfy the Lender's requirements.
- (ii) \$15,000 to the Lender to cover the cost of administering the loan, communications with the Broker and Borrower and miscellaneous matters relating to satisfaction of this Commitment and the advance of proceeds.

Estimated Lender
Legal Fees &
Disbursements \$15,000 plus tax

The Borrower acknowledges that upon acceptance of this Commitment Letter, the Fees described herein shall be fully earned and non-refundable.

USE OF PROCEEDS:

Prospera 1st (Nov 30, 2021 Statements)	\$5,007,882
Accrued Interest / Receivership	\$250,000
1st mortgage Interest Reserve	\$260,000
Lender/Broker Fees / Estimated Legal	\$390,000
To Borrow for working capital approx	*\$92,118
	<u>\$6,000,000</u>

*This number is an estimate only and will vary depending upon the amount payable to Prospera and the actual amount of other estimated costs.

ADVANCE CONDITIONS: The following must be satisfactory to the Lender prior to advancing funds:

1. Receipt, review and approval of most recent three (3) years of Borrowers Financial Statements
2. Execution and registration of all required Security
3. Purchase of required Title Insurance Policy and verification of required property insurance coverage
4. Payment of all taxes and other liabilities related to the operation of the Property in current position
5. Discontinuance of foreclosure action and discharge of the Receiver;
6. Provision of evidence that all Canada Revenue Agency Accounts and Workers Compensation Board Accounts are in good standing.

SECURITY:

- a) Loan Agreement on terms set out herein and other terms acceptable to the Lender
- b) Promissory Note in the amount of 6 million Dollars identifying repayment obligations in accordance with this Commitment.
- c) 1st Mortgage charge encumbering the lands described in Schedule A on terms acceptable to the Lender;
- d) General Security agreement provided by each Borrower encumbering as a first charge all equipment, furnishings, and personal property used in the operation of the three motels and a further charge on all other present and after acquired property of each Borrower,
- e) Joint and Several Unlimited Guarantee and Postponement of Claim executed by each of the Guarantors in such form as is acceptable to the Lender
- f) Other security as recommended by the Lender's solicitor.

PROPERTY AND OTHER TAXES:

All property and other taxes for the Lands shall be current at all times. The Lender reserves the right to deduct any required payment of taxes due at the time of funding from the advance of funds.

CONFIDENTIALITY:

This Offer Letter is delivered on the understanding that neither it nor its contents shall be disclosed except to legal counsel, employees and agents of the Borrower who are specifically involved in the transaction.

PRIOR OR SUBSEQUENT CHARGES:

There shall be no other encumbrances, mortgages or other financial related charges encumbering the Property registered either prior to the Lender's Security or after the Lender's Security unless the Lender has provided written approval for the same.

INSURANCE:

The Borrower shall subscribe to a comprehensive replacement value property insurance policy on terms acceptable to the Lender, which Policy shall:

- (i) designate the Lender as first loss payable, and
- (ii) contain a standard mortgage clause approved by the Lender

TITLE INSURANCE: The Borrower shall reimburse the Lender for the cost of a Lender’s Title Insurance Policy.

REPORTING REQUIREMENTS: The Borrowers shall provide to the Lender:

- A. Monthly – activity report consisting of balance sheet, revenue expense statement and report including revenue per available room for the Borrowers within thirty (30) days of each month end
- B. Annual Review Engagement Financial Statement for each of the Borrowers
- C. Annually Notice to Reader Financial Statements for each of the Guarantors

CONDITIONS PRECEDENT: The Borrowers shall provide the following:

- A. A duly executed copy of this Commitment Letter
- B. The Security provided for herein registered as required to the satisfaction of the Lender
- C. Such financial and other information or documents relating to the Borrowers or the Guarantors as the Lender may reasonably require
- D. Provision of a Phase 1 Environmental Site Assessment relating to the Lands described in Schedule A containing findings acceptable to the Lender
- E. Additionally, all documentation to be received by the Lender shall be in the form and substance satisfactory to the Lender.

GENERAL COVENANTS: Without affecting or limiting the right of the Lender to terminate or demand payment of or cancel or restrict availability of any unutilized portion of, any demand or other discretionary facility, the Borrowers, covenant and -agree with the Lender that the Borrowers:

- A. will pay all sums of money when due under the terms of this Agreement:
- B. will immediately advise the Lender of any event which constitutes or which, with notice, lapse of time or both, would constitute an Event of Default
- C. will file all material tax returns which are or will be required to be filed by them, pay or make provision for payment of all material taxes (including interest and penalties) and Potential Prior-Ranking Claims, which are or will become due and payable and provide adequate reserves for the payment of any tax, the payment of which is being contested
- D. will give the Lender 30 days prior notice in writing of any intended change in either of the Borrowers ownership structure and will not make or facilitate any such changes without the prior written consent of the Lender
- E. will comply with all Applicable Laws, including, without limitation, all Environmental and Health and Safety Laws
- F. will immediately advise the Lender of any action requests or violation notices received concerning the Borrowers or any of

- them, and hold the Lender harmless from and against any losses, costs or expenses which the Lender may suffer or incur for any environment related liabilities existent now or in the future with respect to the Borrowers and each of them
- G. will deliver to the Lender such financial and other information as the Lender may reasonably request from time to time, including, but not limited to, the reports and other information set out under Reporting Requirements
 - H. will immediately advise the Lender of any unfavourable change in their financial positions which may adversely affect their ability to pay or perform their obligations in accordance with the terms of this Agreement
 - I. will keep their assets fully insured against such perils and in such manner as would be customarily insured by Persons carrying on a similar business or owning similar assets and, in addition, for any buildings located in areas prone to flood and/or earthquake, will insure and keep fully insured such buildings against such perils
 - J. except for Permitted Encumbrances, will not, without the prior written consent of the Lender, grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance affecting any of its properties, assets or other rights including the Property
 - K. will not, without the prior written consent of the Lender, sell, transfer, convey, lease or otherwise dispose of any of their properties or assets other than in the ordinary course of business and on commercially reasonable terms
 - L. will not, without the prior written consent of the Lender, guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations by any other Person, except as may be provided for herein
 - M. will not, without the prior written consent of the Lender, merge, amalgamate, or otherwise enter into any other form of business combination with any other Person
 - N. will permit the Lender or its representatives, from time to time, i) to visit and inspect the Borrowers' premises, properties and assets and examine and obtain copies of the Borrowers' records or other information, ii) to collect information from any entity regarding any Potential Prior Ranking Claims and iii) to discuss the Borrowers' affairs with the auditors, counsel and other professional advisers of the Borrowers. The Borrowers hereby authorize and direct any such third party to provide to the Lender or its representatives all such information, records or documentation requested by the Bank; and
 - O. will not use the proceeds of any Credit Facility for the benefit or on behalf of any Person other than the Borrowers or either of them.

EVENTS OF DEFAULT:

The Loan amount shall become immediately due and payable in the event that:

- A. Any payment to be made by the Borrowers to the Lender is not made on the date when due.
- B. There is a material adverse change in risk as determined solely by the Lender in the Lender's absolute discretion
- C. The Borrowers or the Guarantors violate any term or condition of this Commitment, the Loan Agreement or the terms and conditions of the Security.
- D. The Borrowers or any of them, become insolvent, are petitioned into bankruptcy, make an assignment in bankruptcy, seek protection under the Bankruptcy Act, the Companies Creditors Arrangement Act or any similar registration.
- E. Any third party creditor takes steps to enforce security or commences an action or other proceeding to collect an outstanding liability.
- F. Failure to maintain all Canada Revenue Agency accounts in good standing.
- G. Failure to pay Municipal Taxes on the date when due.
- H. Failure to maintain required insurance in good standing.

GENERAL INDEMNITY:

The Borrowers hereby agree to indemnify and hold the Lender and its directors, officers, employees and agents harmless from and against any and all claims, suits, actions, demands, debts, damages, costs, losses, obligations, judgements, charges, expenses and liabilities of any nature which are suffered, incurred or sustained by, imposed on or asserted against any such Person as a result of, in connection with or arising out of i) any Event of Default, ii) the Lender acting upon instructions given or agreements made by electronic transmission of any type, iii) the presence of Contaminants at, on or under or the discharge or likely discharge of Contaminants from, any properties now or previously used by the Borrowers or either of them, or the Guarantor and iv) the breach of or non-compliance with any Applicable Law by the Borrowers or either of them, or the Guarantors.

**CANCELLATION
& EXPIRY:**

The Lender shall have the right to terminate this Commitment, or, if the Loan has been advanced, to demand repayment of the Loan, if any of the following events occur:

1. The mortgage is not registered by February 15, 2022;
2. The loan advance has not been made by March 1, 2022;
3. The conditions of this letter are not met;
4. There is a material adverse change in risk, as determined solely by the Lender;
5. The representations and warranties made to the Lender by the Borrower and/or the Guarantors are shown to be incorrect.

WAIVER:

The failure of the Lenders to enforce strict performance of any term, covenant or obligation in this commitment letter or any security granted to the Lenders will not be a waiver or release by the Lenders of the performance of such term, covenant or obligation in the future

and such terms, covenants and obligations will remain in full force and effect and be binding upon the Borrower.

LEGAL REPRESENTATION:

Representing the Lender: TBD

Phone: _____

Email: _____

Representing the Borrower:

Scott Smythe

MCCARTHY TETRAULT

Phone: 604-643-7152

Phone: 604-616-7599 (Mobile)

Email: SSMYTHE@mccarthy.ca

INCONSISTENCIES:

To the extent that there is any irreconcilable inconsistency or conflict between this Commitment and the Security, the Lenders shall determine which of the provisions shall prevail.

SURVIVAL:

All of the covenants and agreements herein contained on behalf of the Borrower and the Lenders will survive execution and registration of the Security and will not be merged as a result of the said execution and registrations or any of them.

AMENDMENT:

Any amendment of any term, obligation or covenant herein or in any security granted to the Lenders must be in writing and signed by the Lenders and the Borrower.

**FURTHER
ASSURANCES:**

The Borrower will execute and perform any other act or thing and provide such further documents and assurances as may reasonably be required to give effect to the terms of this commitment letter and to perfect and preserve the security granted to the Lenders.

**TIME:
GOVERNING LAW:**

Time is of the essence hereof.

This commitment letter is governed by the laws of British Columbia and the laws of Canada applicable thereto.

Living Beachside Development Limited Partnership
Mortgage Financing
January 24, 2022

ACCEPTANCE:

This letter is open for acceptance until 12:00 PM, ^{Monday} Friday January 31, 2022 after which, if not accepted, will be withdrawn.

Yours truly,

1341550 B.C. LTD.

Authorized Signatory

I/WE HEREBY AGREE to the above terms and conditions.

Dated this 31st day of January 2022.

PORT CAPITAL FARMS (BEACH) INC., General Partner of
Living Beachside Development Limited Partnership and Living Beachside Development Partnership
Per:

Authorized Signatory

PORTLIVING FARMS (3624 PARKVIEW) INVESTMENTS INC.

Per:

Authorized Signatory

PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC.

Per:

Authorized Signatory

PORTLIVING FARMS (3648 PARKVIEW) INVESTMENTS INC.

Per:

Authorized Signatory

Signature Page 2

PORTLIVING PROPERTIES INC.

Per:



Authorized Signatory

PORT CAPITAL GROUP INC.

Per:



Authorized Signatory



TOM REYES

WITNESS

SCHEDULE "A"
THE PROPERTY

Property Ref: Beachside Motel
Civic Address: 3624 Parkview Street, Penticton, BC
Legal Description: Lot 1, Block 212, DL 189, Similkameen Division Yale District, Plan 397, Except Plan 40551
PID: 012-474-983

Property Ref: Sunny Beach Motel
Civic Address: 3648 Parkview Street, Penticton, BC
Legal Description: Lot A, DL 189, Similkameen Division Yale District, Plan 1389
PID: 011-610-263

Property Ref: Waterfront Inn
Civic Address: 3688 Parkview Street, Penticton, BC
Legal Description: Lot 1, DL 189, Similkameen Division Yale District, Plan 14620
PID: 008-974-462



Digby Leigh & Co.
 201-3053 Edgemont Blvd.
 North Vancouver, BC V7R 2N5
 Professional Law Corporation
 604 984 3394
 leighco.ca

February 3, 2022

BY EMAIL: RCLARK@BRIDGEHOUSELAW.CA

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, BC V6C 1E5

Digby R. Leigh
 dleigh@leighco.ca
 604 988 7163

File No. 12391.001

Attention: Ritchie Clark

Dear Sirs/Mesdames:

Re: Commitment Letter in respect of a loan in the amount of \$6,000,000.00 from 1341550 B.C. Ltd. (the "Lender") to Living Beachside Development Limited Partnership, Port Capital Farms (Beach) Inc., Portliving Farms (3624 Parkview) Investments Inc., Portliving Farms (3688 Parkview) Investments Inc. and Portliving Farms (3648 Parkview) Investments Inc. (collectively, the "Borrowers") secured by a first mortgage to be registered over the properties located at 3624-3688 Parkview Street, Penticton, BC (PID: 012-474-983, PID: 011-610-263 and PID: 008-974-462)

Further to our telephone conversation today, we confirm we have been retained to act for the Lender in connection with the above-captioned loan.

We are writing to you to advise you of the status of this financing. We have commenced preparation of the security documents and expect to forward same to counsel for the Borrowers by Monday, February 7, 2022.

In terms of the Advance Conditions contained in the Commitment Letter, we have confirmed with our client that condition 1 in respect of the Borrowers' financial statements has been satisfied and conditions 2 through 6 will be satisfied in advance or as part of the closing.

Let me know if you require any further information.

Yours truly,

Digby Leigh & Co.

Per:

Digby R. Leigh

DRL/ew
 Enclosures

This is Exhibit "B" referred to in the
 Affidavit of TDB REFS
 sworn (or affirmed) before me at
Vancouver, B.C.
 this 4th day of February, 2022.

 A Commissioner/Notary Public for the
 Province of British Columbia