

**UNITED STATES BANKRUPTCY COURT  
FOR THE  
DISTRICT OF NEW HAMPSHIRE**

In re:

**USA SPRINGS INC.,**  
Debtor.

Case No. 08-11816-JMD

Chapter 7

---

**Town of Nottingham,** Movant

v.

**USA Springs, Inc.,** Debtor

**OBJECTION MOVANT'S MOTION FOR RELIEF FROM AUTOMATIC STAY**

NOW COMES, Kevin Delaney and makes OBJECTION to the Town of Nottingham's Motion for Relief from Automatic Stay for the following reasons:

- [1] The undersigned admits and agrees with assertions stated in Paragraphs 1 through 12, inclusive, and 14 through 17, inclusive of the Motion for Relief from Automatic Stay (docket # 1105).
- [2] Kevin Delaney, purchaser under the Purchase and Sales Agreement approved by the Sale Order (docket # 1098) in this matter has procured a letter of financial commitment from HighPort Ventures or \$3,000,000.00 ( copy attached as EXHIBIT A) to provide acquisition financing to purchase the property pursuant to the terms of the Sale Order. Financing is to be closed on "on or before March 1, 2017."

- [3] Additionally, Kevin Delaney is willing, as a condition to this Objection and the relief requested being granted, to modify the Purchase and Sales Agreement by increasing the sales price by a sum equal to (a) the per diem taxes, inclusive of interest, from the date the Purchase and Sales Agreement originally stated as the closing date to the date Kevin Delaney actually closes on the purchase of the Property and (b) reasonable attorney fees and costs incurred by the Town of Nottingham in filing and otherwise addressing their Motion for Relief from Automatic Stay and this Objection thereto. The modified Purchase and Sales Agreement shall reflect that this additional sum shall be earmarked exclusively to the Town of Nottingham.
- [4] Pursuant to the increase in sales price Kevin Delaney, conditioned on this Objection and the relief requested being granted, is willing to pay the Trustee \$5,000.00 by February 24, 2017, as a credit against the increased sales price. This \$5,000.00 shall be immediately non-refundable.
- [5] The delay in closing was, in part, caused by the holiday season of 2016-2017 and Kevin Delaney's original lender deciding to place its money elsewhere due to the delay in December 2016 when the Cell Tower lease was being negotiated.
- [6] Although Kevin Delaney anticipates the closing will occur on or before March 1, 2017, as a cautionary request, given the history of this case, prudence supports the Court recognizing a more prudent deadline to close would be by on or before March 8, 2017 --- to allow for any unforeseen issues being addressed.
- [7] Given the Financial Commitment letter and the increased sales price to cover any of the Town of Nottingham's deficiency in taxes and costs, there is no damage to the Town of Nottingham if this Objection is granted and the Town of Nottingham's Motion for Relief from Automatic

Stay is either denied, *or alternatively*, if the hearing now scheduled for 10:00 a.m. on February 21, 2017 to address the Motion is continued to some date after March 9, 2017.

[8] Although this 8-year bankruptcy case has dragged on far too long, contrary to what the Town of Nottingham asserted in Par. 18 of its Motion, there is now an end in sight --- just a few weeks away.

[9] The Atty. Timothy P. Smith, Trustee in this matter, and SBA Towers, LLC, lessee under the Cell Tower lease, by and through its attorney, Kelly, Ovitt-Puc, Esq. assent to the relief requested herein.

WHEREFORE, Movant request that this Court grants the following relief:

- A. Deny Movant's Motion for Relief from Automatic Stay, or, alternatively:
- B. Continue the hearing to address this Motion and Objection to a date after March 9, 2107.
- C. Relief Requested in A or B above is granted, make such Order contingent on Kevin Delany and the Trustee in this matter amending their Purchase and Sales Agreement to reflect the following:

[i] an increase the sales price by a sum equal to (a) the per diem taxes, inclusive of interest, from the date the Purchase and Sales Agreement originally stated as the closing date to the date Kevin Delaney actually closes on the purchase of the Property and (b) reasonable attorney fees and costs incurred by the Town of Nottingham in filing and otherwise addressing

their Motion for Relief from Automatic Stay and this Objection thereto. The modified Purchase and Sales Agreement shall reflect that this additional sum shall be earmarked exclusively to the Town of Nottingham.

[ii] Kevin Delaney shall pay the Trustee in this matter \$5,000.00 by February 24, 2017, as a credit against the increased sales price. This \$5,000.00 shall be immediately non-refundable.

RESPECTFULLY SUBMITTED  
**KEVIN DELANEY**

By and through his attorney:

Date: February 14, 2017

/s/ Andrew H. Sullivan, Esq.  
Andrew H. Sullivan, Esq.  
24 Eastman Avenue  
Bedford, NH 03110  
Bar No. 2463  
(603) 644-5291

CERTIFICATION

I, Andrew H. Sullivan, do hereby certify that the foregoing was served on February 14, 2017 by the court's ECF system upon those parties requesting ECF service.

Dated this February 14, 2017    /s/ Andrew H. Sullivan, Esq.  
Andrew H. Sullivan, Esq.

# HighPort Ventures, LLC.

"Where Equity Meets Capitol"

## HighPort Ventures

COMMITMENT

LETTER February 14, 2017

Mr. Kevin Delaney  
Nottingham Springs, LLC.  
155 Old Turnpike Road  
Nottingham, NH 03290

RE: Loan in the amount: 3,000,000.00

**Borrower:** Nottingham Springs, LLC.

Dear Mr., Kevin Delaney,

We have approved your request, and this letter, when accepted and properly signed, will constitute an agreement between HighPort Ventures (Lender), which agrees to lend, Nottingham Springs, LLC. (Borrower), located at 155 Old Turnpike Road, Nottingham, NH 03290, in the amount of Three Million Dollars (\$3,000,000.00) which agrees to borrow, in accordance with the following terms and conditions:

**Borrower:** Nottingham Springs, LLC. And Mr. Kevin Delaney

**Purpose of Loan:** Facility A – To provide the Borrower with a loan that will be used to finance the acquisition of land located at 155 Old Turnpike Road, Nottingham, NH 03290.

Startup & Working Capital	\$ 3,000,000.00
• Acquisition cost	
• Closing costs	
• Legal expense	
• Escrow deposit	
• Taxes, Stamps & Permits	
• General Liability Insurance	
• Marketing & Promotion	
Total Loan (Facility – A)	\$ 3,000,000.00

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*(The Land, Improvements and all related fixtures and personal property are hereinafter referred to as the "Project")*

**Amount:** Facility A - \$3,000,000.00

**Term:** Facilities A - 12 Month Provided there are no uncured events of default, the loans shall be eligible for one 6-month extension option in exchange for an extension fee equal to 2 % of the committed exposure that exists as of the date of extension.

**InterestRate:** A variable rate based on the Wall Street Journal Prime Rate plus 10%.

All interest payable shall be computed on the basis of the actual number of days elapsed using a Three Hundred Sixty (360) day year.

**Repayment:** The Loans shall be repaid of accrued interest with principal payments due upon the refinancing for the construction, equipment and operating capital refinancing.

All remaining principal and interest shall be due at maturity.

**LoanFees:** *Origination Fee* - An origination fee equal to 2% of the committed loan amounts will be due and payable at closing.

**DefaultRate:** Twelve (12%) percent greater than noterate.

**Collateral:** The Loan Facilities will be cross-collateralized with collateral consisting of the following:

First mortgage on the Following:

NOTTINGHAM: RCRD Book 3290, Page 392  
dated 5/5/98

(Parcel 10 on Nottingham Tax Map 3); rerecorded at Book 3308, Page 1138

SWEET REVIEW REALTY TRUST

NOTTINGHAM: RCRD  
Book 4781, Page 1 dated 4/25/06 76.62 acres  
(Parcel 6 on Nottingham Tax Map 3)

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## JUST CAUSE REALTY TRUST

NOTTINGHAM:RCRD Book4054,Page 2394 dated6/11/03  
14.00acres(Parcel 19 on Nottingham Tax Map3)

## GARRISON PLACE REAL ESTATE INVESTMENT TRUST

BARRINGTON: SCRD Book 2003,Page726 dated5/5/98 20.00acres  
(located in Barrington (Parcel 3 on Barrington Tax Map 259] but really a  
continuation of Parcel 10 on Nottingham Tax Map 3)

ALL THE SAME ABOVE AS MORE PARTICULARLY  
BOUNDED AND DESCRIBED IN EXHIBITS A-1,A-2, A-3  
and A-4

First security interest and collateral assignment and pledge of all  
contracts, plans, permits, leases, rents, business assets and accounts  
related to the proposed development of the Project and all rights  
relatedthereto.

### **Guarantors:**

**Kevin Delaney and Nottingham Springs, LLC.**  
shallprovideunlimited,jointand several payment and  
performanceguarantees.

### **Financial Statements:**

Borrower shall furnish Lender annually with complete Federal  
IncomeTaxReturns and company prepared financial statements within one  
hundred and twenty (120) days after the close of each fiscalyear.

Guarantor to provide Lender with annual copy of their as filed Federal  
Income Tax Returns along with an annual personal financial statement and  
a schedule of real estate holdings within one hundred and twenty (120)  
days after the close of each fiscal year. Receipt of tax returns shall be  
accepted by October 15<sup>th</sup> of each year provided the guarantors submit the  
Lender with a copy of the filing extension.

### **Insurance Requirements:**

The Customer will provide insurance policies, insurance binders, or

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certificates of insurance providing coverage for hazards (all risks), public liability, and flood insurance, if applicable, in such amounts as the Lender may require from time to time, and other such insurance coverage shall be in form, substance, amounts, and with companies acceptable to the

Lender. Insurance policies shall have premiums prepaid by the Customer, shall have the Standard New Hampshire Mortgagee Clause with Lender's Loss Payable Endorsement attached to provide for any loss payable under the policy to be paid to the Lender, and shall provide that the policy may not be canceled without at least 10 days prior written notice to the Lender. Lender shall be named as mortgagee/loss payee on all hazard insurance policies and as additional insured on all liability policies. Evidence of such coverage shall be deposited with the (HPV) throughout the life of the Loans. Lender's address for notice is as follows:

HighPort Ventures, LLC.  
18 Shipyard Drive  
Hingham, MA02043

## **Title Insurance and Survey:**

Borrower shall provide an acceptable ALTA loan policy of title insurance reflecting Lender's mortgage interest as a first lien on the Project Property. All standard exceptions shall be deleted. In addition, the title insurance policy shall contain such endorsements as Lender shall require. The title insurance policy must be issued by a title insurance company acceptable to Lender. All real estate taxes and other municipal charges which are due shall be paid current. A survey will be required as necessary to provide survey coverage. The cost of the title insurance and survey shall be paid for by Borrower.

## **Legal Services:**

The Lender's Counsel (Counsel), will prepare, review and approve all loan documents pertaining to these credit facilities. All documents or other instruments executed and delivered in connection with the closing of the credit facilities and all insurance binders, title policies, authorizing resolutions, constituent documents and opinion letters shall be in a form and substance satisfactory to the Lender and its Counsel.

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**Jury Trial  
Waiver:**

AS A FURTHER CONDITION OF THIS COMMITMENT, AND IN ORDER TO OBTAIN A PROMPT DETERMINATION OF RIGHTS AND REDUCE COSTS, EACH CO-BORROWER AND THE LENDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOANS OR ANY LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE LENDER TO ACCEPT THIS COMMITMENT AND MAKE THE LOANS.

**Conditions:**

1. Borrower will pay all out-of-pocket costs and expenses incurred by the Lender in connection with the proposed loan and financing arrangement. This will include, but will not be limited to, attorney's fees, lien search fees, filing fees, environmental audit fees, environmental consultant fees, and appraisal costs. These fees will be paid by the Borrower whether or not the transaction contemplated herein is closed.
2. Borrower shall execute such further documents to secure the loan transaction contemplated hereunder as counsel for Lender shall determine necessary or advisable in the interest of the Lender.
3. A default by Borrower under any agreement with Lender or under any agreement with any institution holding a lien upon Borrower's assets whose priority is superior to any lien held by Lender will be considered as a default in all loans.
4. Any business conducted by Borrower shall have all licenses, permits and approvals required under any federal, state, or local statute, regulation, ordinance, rule, or other legal requirement relating to the establishment, ownership or operation of such business, including appropriate environmental approvals.
5. Borrower shall, at all times, maintain compliance with all applicable federal, state, and local environmental and land use laws and regulations, including, but not limited to, those provisions relating to fuel and chemical storage tanks.

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6. Borrower shall promptly notify Lender of any change in environmental status from the previously supplied to Lender. Further,

Borrower shall promptly notify Lender of the commencement of state, federal, or private environmental or land use investigation or enforcement proceeding or threat thereof.

7. Borrower and Guarantor(s) agree to indemnify and hold Lender harmless from all liability or loss arising out of the application of any environmental law to bank or to any collateral for any loan to Borrower, including, without limitation, any environmental law creating a lien upon property or imposing any liability upon Lender for any clean up costs; provided, however, that this indemnity shall not apply to liability arising out of willful violation of environmental laws by the Lender.

8. All collateral shall be kept in good repair, and all taxes and assessments thereon shall be paid when due.

9. No loan commitment given by Lender to Borrower shall be assignable by Borrower.

10. Any additions, deletions, substitutions, or other changes in this commitment must be documented in writing to become effective.

11. The Lender shall be given as security a mortgage which shall create a valid first lien on real estate pledged with good and merchantable title.

12. Borrower shall confirm by satisfactory documentation supplied to Lender, the existence of all leases, insurance, or other collateral reserved or taken by Lender.

13. No liens, attachments or other encumbrances whether or not superior to the lien of Lender shall be placed or arise on the collateral except with the prior approval of the Lender.

14. Borrower must certify to Lender prior to closing, the status of any actions, suits, proceedings, or investigations, now pending or to the knowledge of Borrower threatened against or affecting Borrower and/or Guarantor(s).

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The rate and term of this commitment (and all existing commitments) are in express reliance on your relationship with Lender and on your continuing compliance with the terms and conditions of this commitment and loan documents. If, for any reason, this relationship changes, Lender specifically reserves the right to review and modify the rate and term.

The commitment was approved on the basis of information and financial data furnished by the Borrower and Guarantor(s) and is extended subject to and conditioned on there being no material adverse change in the financial condition of the Borrower or Guarantor(s), and no substantive change in governmental regulations or monetary policy. In the event of such material adverse change, in the opinion of the Lender, the right is reserved to terminate the commitment or line of credit.

Under Massachusetts Law, no promise, contract or agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation for the repayment of a debt for more than \$250,000 may be enforced in court against the Lender unless the promise, contract or agreement is in writing and signed by the Lender. Accordingly, the Borrower cannot enforce any oral promise unless it is contained in a loan document signed by the Lender, nor can any change, forbearance, or other accommodation relating to the loan, this agreement or any other loan document be enforced, unless it is in writing signed by the Lender. Borrower also understands that all future promises, contracts or agreements of the Lender relating to any other transaction between Borrower and Lender cannot be enforced in court unless they are in writing signed by the Lender. Borrower further agrees that the requirement of a writing described in this paragraph shall apply to this commitment, the loans or credit described herein, any extension, modification, renewal, forbearance or other accommodation relating to the transactions contemplated by this commitment, and to any other credit relationship between Borrower and Lender, (whether existing now or created in the future) whether or not the amount involved exceeds \$250,000.

This commitment contains the entire agreement of the parties hereto with respect to all subject matter herein and supersedes all prior discussions or agreements. There are no oral agreements or representations made by Lender. To the extent that the terms and conditions as stated herein are not incorporated into the loan documents, this letter will survive the loan closing and will govern our relationship while the loan detailed herein, together with interest and fees, remains outstanding.

If the terms and conditions as herein stated are satisfactory to you, please sign this letter signifying your acceptance and return the signed and accepted copy by February 14, 2017 as your authorization for us to proceed with the preparation of the necessary loan documentation. We will anticipate a closing on or before March 1, 2017. Unless otherwise extended, this commitment will expire either of the above two dates.

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# HighPort Ventures, LLC.

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Sincerely,

*Richard Strachan*

Richard Strachan  
Managing Director  
HighPort Ventures, LLC.

SEEN AND AGREED TO:

BORROWER:

Nottingham Springs, LLC

By: *Kevin B Delaney*

Its:

Date: 2/13/17

GUARANTORS:

*Kevin B Delaney*

Date: 2/13/17

Kevin Delaney

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## Property Description:

NOTTINGHAM: RCRD Book 3290, Page 392 dated 5/5/98  
(Parcel 10 on Nottingham Tax Map 3); rerecorded at Book 3308, Page 1138

### SWEET REVIEW REALTY TRUST

NOTTINGHAM: RCRD Book 4781, Page 1 dated 4/25/06 76.62 acres  
(Parcel 6 on Nottingham Tax Map 3)

### JUST CAUSE REALTY TRUST

NOTTINGHAM: RCRD Book 4054, Page 2394 dated 6/11/03  
14.00 acres (Parcel 19 on Nottingham Tax Map 3)

### GARRISON PLACE REAL ESTATE INVESTMENT TRUST

BARRINGTON: SCR D Book 2003, Page 726 dated 5/5/98 20.00 acres  
(located in Barrington (Parcel 3 on Barrington Tax Map 259] but really a continuation of Parcel 10 on Nottingham Tax Map 3)

ALL THE SAME ABOVE AS MORE PARTICULARLY BOUNDED AND DESCRIBED IN EXHIBITS A-1, A-2, A-3 and A-4

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## **Issuer**

The Investor requires the Issuer to be a bankruptcy-remote Delaware limited liability company or limited partnership that exists for the sole purpose of owning, developing and managing the operation of a water bottling plant Nottingham Springs and the adjacent parcel of land to be developed or sold in their entirety the Properties. The Issuer shall be owned and controlled by one or more bankruptcy-remote Delaware limited liability companies or limited partnerships (the "Members") owned and controlled by each of the Sponsor and the Investor. The Issuer and Members must be special purpose entities which, in the case of Issuer, holds no assets other than the Properties, and engages in no business other than owning and operating the Properties and, in the case of the Members, holds no assets other than its ownership interest in the Issuer, and engages in no business other than owning and operating the Issuer.

At Closing, the Purchase Agreements will be assigned to by the Sponsor to the Issuer, and HPV will receive a credit against its contribution obligations for any deposits funded by Sponsor under the Purchase Agreement and approved costs allowed under the acquisition budget in the amount of Three million dollars (\$3,000,000.00) The Issuer will be assigned the Sponsor's all of the rights, title and interests in the Nottingham Springs, LLC.

## **Transaction Purchase Price and Timing**

Nottingham Springs, LLC ("NS") was created to acquire all of the assets of U.S.A. Springs, Inc. affiliate of Kevin Delaney, is currently under contract to purchase all of the assets of U.S.A. Springs, Inc. the Portfolio from the United States Bankruptcy Court for the District of New Hampshire. ("Seller") for \$1,200,000.00 million pursuant to the purchase agreements listed on Exhibit B (the "Purchase Agreements"). Sponsor posted a non-refundable deposit of \$50,000 on December 14th, 2016 and is expected to close the transaction on March 1, 2017 ("Closing").

HPV shall provide prompt notice to Delaney in the event that upon delivery and review of a conditions precedent due diligence item, should that item potentially cause a delay HPV to close on the transaction.

# HighPort Ventures, LLC.

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## Exhibit A:

NOTTINGHAM: RCRD Book 3290, Page 392 dated 5/5/98  
(Parcel 10 on Nottingham Tax Map 3); rerecorded at Book 3308, Page 1138

### SWEET REVIEW REALTY TRUST

NOTTINGHAM: RCRD Book 4781, Page 1 dated 4/25/06 76.62 acres  
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ALL THE SAME ABOVE AS MORE PARTICULARLY BOUNDED AND DESCRIBED IN EXHIBITS A-1, A-2, A-3 and A-4

# HighPort Ventures, LLC.

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## Exhibit B

Purchase Agreements & Amendments

(ATTACHEC PDF FILE)

# HighPort Ventures, LLC.

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## Exhibit C:

### Due Diligence List

#### Property Due Diligence

- a) Site plans and other architectural and engineering drawings.
- b) Historical tax bills.
- c) Environmental, biological, geotechnical, physical or other relevant reports.
- d) Environmental remediation plan, approvals, budgets, indemnifications, legal review or any other relevant materials pertaining to the Properties.
- e) Any existing appraisals of the Properties.
- f) Any existing surveys, title insurance policies, land use reviews and evidence of zoning compliance.
- g) Will serve letters for utilities, sewer and water.
- h) Wetland non-designation legislation.
- i) Existing Lease(s), tenant interview summaries, tenant financials (to the extent available).
- j) Any permits and licenses for the Property.
- k) Descriptions and owners of any easements on or adjacent to the Properties.
- l) Summary of any pending litigation relating to the Properties.
- m) Parking and traffic studies or approvals.
- n) Signage allowed.
- o) Redevelopment and Approval Analysis.
  - a. Site Plan process.
  - b. Rezoning process, timing and likely density.
  - c. Infrastructure capacity for schools, sewer, water, cable, etc.

#### Market Due Diligence

- p) Demographics and trade area information.
- q) Competitive set (size, rent, location, access, sales psf, trade area comparison).
- r) Sale Comparables.

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## Exhibit D:

### Capital Budget

### Use of Funds:

Acquisition cost	\$1,200,000,000
Closing costs	\$ 480,000,000
Legal expense	\$120,000,000
Escrow deposit	\$50,000,000
Taxes, Stamps & Permits	\$550,000,000
Marketing & Promotion	\$450,000,000
<u>Startup &amp; Working Capital</u>	<u>\$150,000,000</u>
Total funding requirement	<b>\$ 3,000,000,000</b>