

MARSH, MORIARTY, ONTELL & GOLDER, P.C.

ATTORNEYS AT LAW

PLEASE REPLY TO:

January 7, 2022

Via EMAIL

City of Concord
41 Green Street
Concord NH 03301
Attn: Thomas J. Aspell, Jr., City Manager

Robert J. Moriarty, Jr.
rmoriarty@mmoglaw.com
99 ROSEWOOD DRIVE – SUITE 220
DANVERS, MASSACHUSETTS 01923
TEL. (617) 778-5100
TELECOPIER (617) 720-2565

Re: 32-34 South Main Street and 33 South State Street, Concord, New Hampshire

Dear Mr. Aspell:

Reference is made to a certain Purchase and Sale Agreement by and between the City of Concord, New Hampshire (“Seller”) and The John J. Flatley Company (“Buyer”) dated as of May 17, 2021(as amended, the “Agreement”). Capitalized terms used herein shall have the meaning ascribed to them in the Agreement unless otherwise defined herein.

The purposed of this letter is to request that the Agreement be amended by extending the applicable dates set forth in the Project Schedule that is attached to the Agreement as Exhibit E.

Buyer commenced its due diligence review by reviewing the Due Diligence Documents that had been provided by Seller. Buyer’s review of the documentation regarding removal of the underground storage tanks led it to the conclusion that the removal was not a complete removal and that there was a possibility that residual oil could have been left following the removal. This residual oil could have leached into the ground water, which might require extensive removal of soils and remediation to the site and the groundwater. The presence of oil in the groundwater would have materially, adversely impact the Project due to the proposed excavation at the garage level. It became clear that Buyer needed to ensure that there was no remaining oil and that there would be no negative impact on the Project.

Buyer independently engaged Aries Engineering, LLC to perform Phase 2 drilling and sampling of the groundwater. Until those results became available, it was not possible to continue with the due diligence and planning with the design and other professional consultants.

Fortunately, the results of the Phase 2 study were positive and did not reveal any contamination of the ground water, but the delay in waiting for that testing has resulted in Buyer no longer being able to comply with the previous Project Schedule, and we are therefore requesting that the Project Schedule be modified to reflect the attached Revised Project Schedule shown on the attached “Exhibit E- Revised Project Schedule”.

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Buyer understands that this change will require an Amendment to the Agreement and will require approval by the City Council. We look forward to working with you to accomplish these tasks as expeditiously as possible

Thank you for your cooperation and please feel free to call with any questions/concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Moriarty, Jr.", written in a cursive style.

Robert J. Moriarty, Jr.

RJM/smc

CC: City of Concord City Solicitor
Matthew Walsh
John J. Flatley
Douglas Richardson

Exhibit E – Revised Project Schedule

Exhibit E in Purchase and Sales Agreement #1 is hereby deleted and replaced with the following revised schedule.

1. September 13, 2021: City Council public hearing and votes concerning Purchase and Sales Agreement Amendment #1 and appropriation of City funds related thereto.
2. September 17, 2021: Purchase and Sales Agreement #1 is executed.
3. October 1, 2021: Seller bids Seller's Hazardous Building Materials Abatement.
4. November 1, 2021: Seller commences Hazardous Building Materials Abatement set forth in 12.6.2 of the Amendment.
5. December 31, 2021:
 - a. Deadline for Seller to complete Hazardous Building Materials Abatement identified in 12.6.2 of the Amendment.
 - b. Termination date of Buyer's Review Period (a.k.a. the Buyer's Due Diligence Period).
 - c. Deadline for Buyer to file title objections (if any) with the Seller.
6. January 18, 2022: Buyer files draft renderings for preliminary, informal consultation with City's Architectural Design Review Committee for Buyer's Project.
7. January 31, 2022: Buyer files applications for variances and/or special exceptions for Buyer's Project with Zoning Board of Adjustment.
8. February 1, 2022: Buyer's preliminary, informal consultation with City's Architectural Design Review Committee for Buyer's Project.
9. February 15, 2022: Buyer files Lot Merger and Site Plan Approval applications with Planning Board, as well as submits formal application to the Architectural Design Review Committee.
10. March 1, 2022: Architectural Design Review Committee meeting for formal review of Buyer's Project.
11. March 2, 2022: Zoning Board of Adjustment public hearings on variance and/or special exception applications.
12. March 16, 2022: Planning Board accepts Buyer's Lot Merger and Site Plan applications and determines them to be complete; applications are set for public hearing on April 20, 2022.

13. April 5, 2022: Additional meeting with City's Architectural Design Review Committee (if needed).
14. April 20, 2022: Buyer's site plan application receives conditional approval of Planning Board approvals.
15. April 29, 2022:
 - a. Expiration date of Buyer's Permitting Period.
 - b. Expiration date for Seller's commitment concerning delay of posting notice of the initial hearing public hearing for any potential zoning ordinance amendments affecting the Property.
16. May 20, 2022: End of thirty (30) day appeal period for Buyer's Planning Board approvals (NH RSA 677:15).
17. May 31, 2022: Closing. Buyer acquires property from Seller.
18. June 2022: Buyer commences construction of Buyer's project, including Buyer's Hazardous Building Materials Abatement identified in section 12.6.3 of the Amendment and demolition of the existing 26,000SF building located at the Property.
19. August 2023: Buyer receives Certificate of Occupancy for Buyer's Project. Project complete.

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