



Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000
FAX: 617.854.1091 | www.masshousing.com
Videophone: 857.366.4157 or Relay: 711

June 28, 2019

Daniel C. Hill, Esq.
Hill Law
6 Beacon Street, Suite 600
Boston, MA 02108

Re: Abbyville Commons and The Preserve at Abbyville; MH ID No. 910 & 911

Dear Mr. Hill:

I am writing in response to your request for clarification regarding the status of Site Control for the above-captioned Project pursuant to 750 CMR 56.04(6) (correspondence attached as Exhibit A; received June 13, 2019).

Abbyville Commons (“The Commons”) and The Preserve at Abbyville (“The Preserve”) (the “Projects”) received Determinations of Project Eligibility (“Site Approval”) from MassHousing on March 8, 2018 and are currently under deliberation by the Norfolk Zoning Board of Appeals (the “Board of Appeals”) following the filing of applications for a Comprehensive Permits pursuant to M.G.L Chapter 40B.

At the time of Site Approval, the Applicant demonstrated control of the site proposed for the Commons with a Purchase and Sale Agreement between S. M. Lorusso & Sons, Inc, which has been extended to April 26, 2021 and is still in effect. (Exhibit B)

Simultaneously, the Applicant demonstrated control of the site proposed for The Preserve with a Purchase and Sale Agreement (the “Original P&S”) between Buckley & Mann, Inc. (the “Seller”) and the Applicant with an expiration date of November 13, 2017. The Applicant subsequently obtained extensions to the Original P&S through March 29, 2019 (Exhibit C). It is MassHousing’s understanding that recent environmental testing indicated the potential for a significant area of reportable contamination on Site requiring remediation. Consequently, the cost of mitigation may far exceed the original value of the Property as agreed to in the Original P&S. Accordingly, the Applicant entered into a Site Access Agreement (Exhibit D) and intends to renegotiate the terms of the Original P&S to incorporate into the Comprehensive Permit Application for The Preserve at Abbyville and subsequently, the submission for Final Approval.

Throughout the Comprehensive Permit process, we anticipate that changes will be made to projects to accommodate requests made by the Municipality during the public hearing, market demands, overall feasibility, etc. We understand that modifications to agreements regarding Site Control often occur. We urge the Town or Norfolk to continue to work with the Applicant to reach an outcome that will result in the development of housing for both proposals.

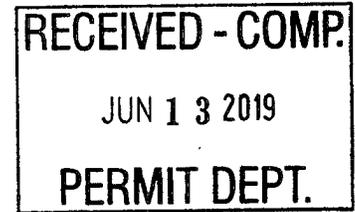
After receiving Comprehensive Permits and prior to commencement of construction or issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the projects (as they may have been amended) in accordance with Massachusetts General Laws Chapter 40B ("Chapter 40B"), 760 CMR 56.00 (the "Regulations") and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development ("DHCD") (the "Guidelines" and, collectively with Chapter 40B and the Regulations, the "Comprehensive Permit Rules"). **Final Approval will not be issued for the projects unless MassHousing is able to reaffirm each of the project eligibility requirements enumerated in 760 CMR 56.04(1).** We will revisit our determinations of findings upon receipt of the Final Approval Applications pursuant to the Comprehensive Permit Rules.

Please let me know if any additional information may be helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gregory P. Watson".

Gregory P. Watson
Manager, Planning and Programs



June 12, 2019

BY HAND

Mr. Gregory P. Watson, AICP
Manager of Comprehensive Permit Programs
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108-3110

Re: Town of Norfolk – Abbyville Residential, LLC (PE-910 and 911)

Dear Mr. Watson:

I am Special Counsel to the Norfolk Zoning Board of Appeals. At its hearing on May 22, 2019, the Board voted to refer a question of site control to MassHousing pursuant to 760 CMR 56.04(6). Specifically, the Applicant for the above-referenced projects, Abbyville Residential, LLC (“the Applicant”) was basing its site control on two purchase and sale agreements, one of which was with Buckley & Mann, Inc., dated November 13, 2012 (excerpt attached as Exhibit A). The Applicant informed the Board that this Agreement has expired without an extension, and that therefore the Applicant does not have a legally-binding option to acquire a substantial portion of the site that is the subject of its comprehensive permit applications.

The Board respectfully requests that you make a determination pursuant to §56.04(6) whether the Applicant still has “site control,” as required under 760 CMR 56.04(1)(c).

Relatedly, the Board wishes to bring to your attention recent developments concerning environmental testing at the project site. As you know, the project site was the subject of extensive environmental remediation activities under the Massachusetts Contingency Plan (Chapter 21E), which concluded with the filing of a Response Action Outcome statement in 2001 and an Activity and Use Limitation (“AUL”) restriction affecting a portion of the site that was a disposal site for contaminated soils. The proposed project is outside the limits of this AUL area, and is not in close proximity to the areas of historic soil contamination. However, the disclosure of deficiencies with the historic response actions by the property owners (Buckley & Mann) led the Department of Environmental Protection (“DEP”) to order the termination of the AUL, “because additional response actions are necessary to support the conclusion that a condition of No Significant Risk has been achieved at the Property.” See, AUL Termination, attached hereto as Exhibit B.

Mr. Greg Watson

June 12, 2019

Page 2

Additional investigations performed by the Applicant's Licensed Site Professional ("LSP") this year have revealed the presence of polychlorinated byphenyls (PCBs), a particularly toxic compound, in "much higher concentrations than previously known," representing a "potential Imminent Hazard condition," and triggering reporting to the federal Environmental Protection Agency. See, Letter from Mabbett & Assoc., Inc. to DEP dated Feb. 7, 2019, p. 3 (copy attached as Exhibit C). This discovery has raised questions as to the adequacy the prior response actions that led to the 2001 RAO. The Board is pleased that the Applicant and its team are taking this matter seriously, and credit the participation of many neighbors and residents who have brought attention to these concerns.

Mabbett was employed by the Applicant, but after the contract to purchase between the Applicant and Buckley & Mann terminated on March 29, 2019, Mabbett withdrew as the LSP of record on the site. Relevant documents filed with the DEP can be found at this link: <https://eeaonline.eea.state.ma.us/EEA/fileviewer/Rtn.aspx?rtn=2-3000173>

Please contact me if you would like to discuss this matter. Thank you.

Very truly yours,


Daniel C. Hill

Encs. .

cc: John Smolak, Esq.

B

**FIRST AMENDMENT to
CO-DEVELOPMENT AGREEMENT**

This First Amendment to that certain Co-Development Agreement (the "Agreement") dated April 26, 2016, by and between **S. M. LORUSSO & SONS, INC.** ("Lorusso") and **THOMAS W. DIPLACIDO, JR.** ("DiPlacido"), and signed by Thomas W. DiPlacido, Jr., on May 13, 2016, is made this 21st day of May, 2019.

RECITALS

- A. The sale of the "Buckley & Mann Properties" to DiPlacido has not yet occurred, and the Purchase and Sale Agreement between DiPlacido and Buckley & Mann, Inc., has expired by its terms. Nevertheless, the parties thereto are proceeding with their negotiations in a continuing effort to consummate this transaction as soon as practicable;

- B. Lorusso and DiPlacido recognize that there is a distinct possibility that DiPlacido may never acquire the Buckley & Mann Properties;

- C. If that possibility becomes reality, Lorusso and DiPlacido nevertheless wish to continue with and consummate the sale of the Lorusso Properties to DiPlacido in order that DiPlacido may continue with his proposed development of solely the Lorusso Properties.

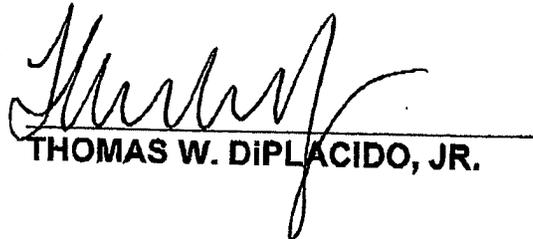
Accordingly, for good and valuable non-monetary consideration, the receipt of which is mutually acknowledged, Lorusso and DiPlacido further agree as follows:

1. The Agreement, as herein amended, shall remain in full force and effect at least until April 26, 2021, subject to earlier termination, or extension beyond April 26, 2021, by further agreement of the parties;
2. The parties recognize that some of the economic, and possibly other, terms of the Agreement may, should, or must, be changed if, in fact, DiPlacido never acquires the Buckley & Mann Properties. The parties therefore agree to negotiate the revised terms of, and enter into, a new agreement between them (or their nominees) which shall serve to terminate and supersede this original Co-Development Agreement in all respects.

In Witness Whereof, the parties hereto have caused this First Amendment to Co-Development Agreement to be executed to take effect as a sealed instrument on the day and date first above-written.

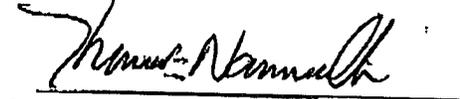
Witness:

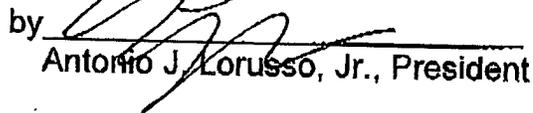

THOMAS E. NANNICELLI


THOMAS W. DIPLACIDO, JR.

S. M. LORUSSO & SONS, INC.,

Attest:


THOMAS E. NANNICELLI

by 
Antonio J. Lorusso, Jr., President

202

C

FOURTH AMENDMENT

Premises: 17 Lawrence Street, Norfolk

This Fourth Amendment to that certain Purchase and Sale Agreement dated November 13, 2012, as extended by the "First Amendment," dated November 23, 2016, the "Second Amendment," dated October 19, 2017, the "Third Amendment," dated March 29, 2018, the letter agreement dated December 18, 2019, and the letter agreement dated January 9, 2019 (Collectively, the "PSA") is made as of January 29, 2019, by and between **Buckley & Mann, Inc.**, a Massachusetts Corporation, as Seller, and **Thomas W. DiPlacido, Jr.**, as Buyer. The Seller and Buyer shall collectively be referred to herein as the "Parties." Any capitalized terms appearing herein and not otherwise defined shall have the meanings assigned to them in the PSA.

WHEREAS, on or about August 1, 2001, Camp, Dresser & McGee ("CDM") submitted a Class A-3 Response Action Outcome Statement and Release Abatement Measure Completion Report (the "CDM RAO") to the Massachusetts Department of Environmental Protection (the "DEP") for RTN 2-3000173 (the "Site") and, about the same time, recorded an Activity and Use Limitation ("AUL") at the Norfolk Registry District of the Land Court in accordance with 310 CMR 40.000 (the "MCP"), for a portion of the Site as identified in the AUL;

WHEREAS, on or about September 6, 2017, MassDEP issued a Notice of Audit and Request for Inspection of the Site, notifying the Seller of its intention to audit the CDM RAO, and subsequently on November 17, 2017, MassDEP issued a Notice of Audit Findings and Notice of Noncompliance for the Site (the "NOA/NON");

WHEREAS, the Seller promptly notified the Buyer of its receipt of the Notice of Audit and Request for Inspection of the Site;

WHEREAS, the Buyer has engaged Mabbett & Associates, Inc. ("Mabbett") to respond to the NOA/NON, and Mabbett undertook the following actions: (1) retraction of the CDM RAO; (2) termination of the AUL; (3) submittal of a Tier Classification Request; (4) submittal of a Notice of Delay to MassDEP; and (5) various additional actions to address the NOA/NON and continues to conduct various additional Response Actions (as required by and defined in the MCP), all as necessary to complete compliance with the NOA/NON and support a Permanent Solution with Conditions ("PSC") for RTN 2-3000173, based on the implementation of an AUL (collectively hereinafter referred to as the "Environmental Response Work");

WHEREAS, the Seller has agreed to put an amount into escrow, up to \$450,000, for the cost of the Environmental Response Work (the "Environmental Escrow");

WHEREAS, it is the Buyer's intention to have his environmental experts conduct additional environmental sampling at the Site over the course of the next several weeks, in order to quantify the cost of the Environmental Response Work, and establish the amount of the Environmental Escrow;

WHEREAS, pursuant to multiple extensions of the time for performance under the PSA, the Closing Date is currently scheduled for January 29, 2019;

WHEREAS, the Parties desire to enter into a fourth extension agreement, in order to provide time for the environmental sampling to occur and the amount of the Environmental Escrow to be established; and

WHEREAS, it is the Parties' intention that this shall be the final extension of the PSA, regardless of whether the environmental sampling is completed on time.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all Parties hereto, the Parties agree as follows:

1. **Closing Date.** Pursuant to Section 9 of the PSA, the Closing Date shall be extended to March 29, 2019.
2. **Purchase Price.** Pursuant to Section 7 of the PSA, the purchase price shall be established at Two Million Three Hundred Thousand (\$2,300,000) Dollars of which \$180,000 has been paid by Buyer for this and all prior extensions of the time for performance under the PSA.
3. **Environmental Escrow.**
 - a. Buyer shall, at Buyer's expense (except to the extent of the Environmental Escrow, as discussed below), continue to advance the Environmental Response Work and diligently pursue the submittal of a Permanent Solution Statement ("PSS") for the Site. Seller shall receive complete copies of any and all submissions made by Buyer to DEP after the date of this Agreement.
 - b. At closing, there shall be deposited with an escrow agent, from the purchase price, an amount not to exceed Four Hundred and Fifty Thousand (\$450,000) Dollars, actual amount to be agreed upon by the Parties upon receipt of Buyer's sampling results prior to the Closing Date, which shall comprise the Environmental Escrow, and which shall constitute Seller's contribution toward Buyer's out-of-pocket costs to be incurred in order to complete the Environmental Response Work. The Environmental Escrow shall be held and disbursed by the escrow agent in accordance with an "Environmental Escrow Agreement," in form and substance as attached hereto as Exhibit A, which shall be signed and delivered by Seller, Buyer and the escrow agent at closing. Buyer may request disbursements from the Environmental Escrow from time to time following the Closing Date solely as set forth in the Environmental Escrow Agreement.
 - c. Except with respect to a breach by Seller of the representations and warranties set forth in Section 27 of the PSA (subject to any limitations set forth in Sections 27 and 28), the Environmental Escrow shall represent the sole and entire extent of Seller's obligation following the Closing Date with respect to the Environmental Response Work or any other environmental matter involving the Premises. Except for establishing the Environmental Escrow at closing, Seller shall have absolutely no obligation or responsibility to Buyer to carry out, pay for or complete the Environmental Response Work or any other environmental investigation or remediation in respect of the Premises from and after the Closing Date. Seller does not warrant or represent that the amount of the Environmental

Escrow shall be sufficient to complete the Environmental Response Work, and Buyer assumes and shall be responsible for any compliance costs and expenses in excess of the amounts available under the Environmental Escrow. Upon filing of the PSS, any remaining unapplied balance of the Environmental Escrow shall be released to Seller. Notwithstanding anything herein to the contrary, in no event shall the Environmental Escrow be released later than May 16, 2020.

d. Effective from and after the Closing Date, Buyer shall in all events indemnify, defend and hold Seller and Seller's constituents harmless in full against any claim, liability, damages, or (except with regard to Environmental Escrow) cost or expense associated with the Environmental Response Work, including, without limitation, any costs or expenses associated with any failure on the part of Buyer to submit a compliant PSS for the Site. The foregoing indemnity shall not apply or extend to third-party claims for personal injury or property damage arising out of or relating to events occurring at or about the Premises prior to the Closing Date.

e. Buyer's and Seller's respective rights under this paragraph 3 shall survive the Closing Date.

4. **Closing Credit.** The Buyer shall receive a credit at closing in the amount of \$47,504.60 for environmental costs and expenses previously expended by Seller. The Parties acknowledge that the Buyer has requested an additional credit in the amount of \$4,998.90, which has been disputed by the Seller. In the event the Parties are able to come to a mutually satisfactory agreement regarding the disputed credit amount, this Fourth Agreement will be modified accordingly.

5. **Assignment of Claims.** The Seller shall, at the closing, execute a mutually agreeable document assigning to Buyer any and all claims it may have against CDM arising out of or related to the CDM RAO. In the event Buyer pursues a claim against CDM under such assignment, any recovery amount received by Buyer in excess of his costs and fees, whether as a result of court order, arbitration or settlement, shall be split evenly with Seller, provided that Seller's recovery amount shall not exceed the amount actually expended from the Environmental Escrow.

6. **Full Force and Effect.** In all other respects, the terms and provisions of the PSA and all amendments thereto, as hereby modified, are confirmed and ratified. The Parties acknowledge and represent that the PSA, as herein modified, remains in full force and effect, and neither party is in breach thereof.

7. **Binding Effect.** Except as expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

8. **Waiver; Modification.** The failure of any Party to insist upon or enforce any of its respective rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of a Party's right to insist upon compliance with the terms of this Agreement. Any Party may waive the benefit of any provision or condition for its benefit contained in this Agreement. No oral modification of this Agreement shall be binding upon the Parties. Any modification must be in writing and signed by the Parties.

9. **Governing Law.** This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts, not including the choice of law rules thereof.

10. **Headings.** The Section headings as set forth in this Agreement are for convenience or reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any Section herein.

11. **Construction.** Each Party hereto acknowledges that all Parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than any other Party.

12. **Counterparts.** This Agreement may be executed in multiple counterparts, all of which, however, shall constitute but one and the same instrument.

SELLER:

BUCKLEY & MANN, INC.

By: Lois Mann
Lois Mann, its President and Secretary

BUYER:

THOMAS W. DIPLACIDO, JR.

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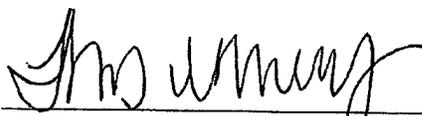
SELLER:

BUCKLEY & MANN, INC.

By: _____
Lois Mann, its President and Secretary

BUYER:

THOMAS W. DIPLACIDO, JR. *MTC*



FOR ABBYVILLE DEVELOPMENT, LLC

D

SITE ACCESS AGREEMENT

BUCKLEY & MANN, INC. ("Grantor") hereby authorizes ABBYVILLE DEVELOPMENT, LLC, ABBYVILLE RESIDENTIAL, LLC, and their employees, contractors, agents, and environmental consultants (one or more independent contractors hired by Grantee), together with their subcontractors (collectively, "Grantee"), to access the property located at 17 Lawrence Street, Norfolk, MA (the "Property") pursuant to the following conditions:

1. Said access shall be at Grantee's sole cost, expense, risk, and hazard and without any damage being imposed upon the Property. Grantee shall provide Grantor with 24 hours prior notice of said access on the Property.
2. Grantee shall not transfer or assign Grantee's rights or obligations under this Site Access Agreement without the prior express written permission of Grantor.
3. Grantee shall indemnify, defend and hold harmless Grantor, its heirs, and permitted assigns, from and against all claims, liabilities, losses, costs, damages and expenses arising out of Grantee's or Grantee's environmental consultant's access on the Property.
4. Grantee hereby acknowledges that the Property is currently uninsured. Grantee and its environmental consultant shall maintain at least the following insurance, with limits of liability no less than those stated below, while accessing the Property:

Comprehensive General Liability: Combined single limit for bodily injury and property damage of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 annual aggregate.

5. The access rights granted herein by Grantor extend only for the purpose of performing noninvasive site inspections. Grantor's consent must be obtained for access to the Property for any other reason. Additional work by Grantee that is not specifically described in this Site Access Agreement (e.g., environmental sampling, etc.) may be done only upon prior written authorization by Grantor.
6. This Site Access Agreement shall not be construed as creating an easement, lease or any other interest in or site control of land, or as affecting in any way any rights regarding each other that the parties hereto may otherwise have.
7. This Site Access Agreement may be terminated by either party at any time upon written notice, with or without cause. Paragraph 3 hereunder shall survive such termination.

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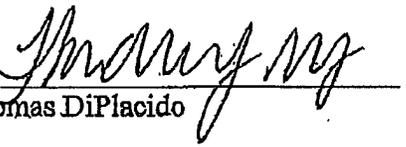
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IN WITNESS WHEREOF, the parties have signed this Agreement as of this 19th day of June, 2019.

ABBYVILLE DEVELOPMENT, LLC

By: 
Thomas DiPlacido

ABBYVILLE RESIDENTIAL, LLC

By: 
Thomas DiPlacido

BUCKLEY & MANN, INC.

By:  Attorney for Buckley's Mann, Inc.
Lois Mann