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2019-12-026

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March 30, 2020

VIA E-MAIL & FEDEX

City of La Crosse
 Economic Development Planner
 400 La Crosse Street
 La Crosse, WI 54601
 Attn: Andrea Schnick

VIA E-MAIL

First American Title Insurance Company
 National Commercial Services
 Attn: Patricia Rogers
 National Counsel
 30 North LaSalle Street, Suite 2700
 Chicago, IL 60602

VIA E-MAIL & FEDEX

City of La Crosse
 City Clerk
 400 La Crosse Street
 La Crosse, WI 54601
 Attn: Teri Lehrke

VIA E-MAIL

Jason Cance, LS
 Short Elliott Hendrickson Inc.
 10 N. Bridge Street
 Chippewa Falls, WI 54729



RE: Objections to Title and Survey

Real Estate Purchase Agreement by and between the City of La Crosse (the "Seller") and Scannell Properties, LLC (to be assigned to Scannell Properties #424, LLC, an Indiana limited liability company) (the "Buyer") dated December 26, 2019 (the "Purchase Agreement") regarding real property located in the City of La Crosse and the City of Onalaska, State of Wisconsin (the "Property")

Gentlemen and Ms. Rogers:

In connection with the above-referenced transaction, we have received and reviewed the following documents, copies of each of which are enclosed herein for your reference (except for the Schedule B exception documents):

1. Owner's Commitment for Title Insurance issued by First American Title Insurance Company (the "Title Company"), Commitment No. NCS-938619-CH12, dated March 13, 2020 (the "Title Commitment") and the corresponding Schedule B exception documents; and

2. Preliminary ALTA Survey prepared by Jason Cance of Short Elliott Hendrickson Inc. (the "Surveyor") dated March 25, 2020 (the "Survey").

This letter constitutes written notice of the objections of the Buyer to Title Defect pursuant to Section 5(b) of the Purchase Agreement. By copy of this letter to the Title Company, Buyer requests that the Title Commitment be revised and/or an Owner's Proforma Title Insurance Policy (the "Proforma Policy") be issued as requested under the heading "Title Comments" below. And, by copy of this letter to the Surveyor, Buyer requests that the Survey be revised as requested under the heading "Survey Comments" below. Buyer further requests that the Seller take such action as may be required to enable the Title Company to issue such revised Title Commitment and/or to issue a title policy with the requirements satisfied and objectionable exceptions to title removed and to take such action as may be required to enable the Surveyor to revise and reissue the Survey. Buyer has provided a section of comments specifically to be addressed by Seller under the heading "Seller Comments" below. Unless otherwise defined herein, all capitalized terms used herein shall have the same meaning ascribed in the Purchase Agreement.

SELLER COMMENTS

Title Comments for Seller:

1. Schedule A, Item 5 (Insured Land). As an informational note, Buyer is determining whether the western boundary of the Property needs to be moved to add more land so the description of the Property is still an open question.
2. Schedule B, Part II, Exception 6 (Special Taxes). The Title Company will need written evidence from the municipality that either there are no special assessments or there are special assessments but they have been paid in the last 30 days. Presumably the City is exempt from paying taxes. However, until such time as Seller confirms its agreement to provide the written confirmation regarding special taxes, Buyer objects to this matter.
3. Schedule B, Part II, Exceptions 12 and 13 (Easements to Northern States Power Company, recorded as Document Nos. 385262 and 577132). Buyer contacted the successor power company (Xcel Energy) who confirmed that these easements affect the proportion of the Property located in the Southeast Quarter of the Southwest Quarter. They are unplottable, however, the easement area only covers the minor sliver of land along the western boundary. Until Buyer can determine whether its intended plans may require any improvements over these easements and is able to obtain Xcel's approval, it objects to these exceptions.
4. Schedule B, Part II, Exception 14 (Rights of La Crosse Sign and Advertising Company under Lease dated June 11, 1956 and recorded as Document No. 709820). This is a very old sign lease that references a part of the legal description of the Property. The Survey shows no evidence of a sign. Buyer request Seller to provide First American Title Company (the "Title Company") with a signed termination of lease in recordable form or

whatever document that is necessary in order to remove this exception from Buyer's Proforma Policy. Until such time as Seller agrees to provide the Title Company with the necessary documentation to remove this sign lease as part of its closing documents, Buyer objects to this exception.

5. Schedule B, Part II, Exception 15 (Rights of La Crosse Sign and Advertising Company under Lease dated May 4, 1950 and recorded as Document No. 709821). Similar to the above Exception #14, this also is a very old sign lease that references a part of the legal description of the Property but again, no sign is shown on the Survey. Buyer requests Seller to provide the Title Company with a signed termination of lease in recordable form or whatever document that is necessary in order to remove this exception from Buyer's Proforma Policy. Until such time as Seller agrees to provide the Title Company with the necessary documentation to remove this sign lease as part of its closing documents, Buyer objects to this exception.
6. Schedule B, Part II, Exception 27 (Variance Notice recorded as Document No. 1421533). In this 2005 Variance Notice, the Department of Natural Resources granted a variance to La Crosse County for locating its private water system closer than the required 1,200-foot distance from a landfill. This variance is conditioned on (i) recording the Variance (which has happened) and (ii) the future owners of the property provide any party that contracts to buy land described in this Variance Notice to be given a copy of this variance approval within 10 days after acceptance of a contract for sale. While it seems like a redundant step to take, please provide Buyer with a copy of this notice in order to comply with the terms of this Variance. Until Buyer receives a formal letter providing a copy of this notice, it objects to this exception.

Survey Comments for Seller:

1. Sheet One of the Survey shows a "field entrance" in the southeast corner of the Property. Please provide Buyer with information concerning the use of this entrance such as who uses it, how often and for what purpose. Until Buyer has a better understanding of this field entrance, it objects to this matter.
2. Section 6 of the Purchase Agreement provides that the Survey will include the gross and net acreages as defined therein. Buyer is working with the Surveyor to determine "net" acreage, specifically any easements that would fit under subparagraph (d) of the definition in the Purchase Agreement (boundaries of any pipeline or similar easement which prevents and/or prohibits any development of any improvements on, over, across or through that easement area). Buyer can confirm that there are no wetland areas to be excluded. Buyer intends to send to Seller a revised Survey that provides the net acreage calculation as soon as the information is available. On a related note and as indicated above, Buyer is determining whether the western boundary of the Property needs to be moved to add more land so the "gross" acreage is also an open question.

TITLE COMMENTS

Enclosed is a mark-up of the Title Commitment (the “Title Mark-Up”) which identifies the majority of Buyer’s objections with regard to the Title Commitment for the purpose of the Title Company preparing the Proforma Policy to be acceptable to Buyer on or prior to Closing. In addition, Buyer has the following objections and/or, as indicated, requests:

1. Buyer requests the Title Company to issue its policy using the 2006 ALTA Extended Owner’s Policy form.

2. Revisions to Schedule A:
 - a. The effective date of the Owner’s Policy of Title Insurance to be issued to the Buyer is to be the later of the date of recording of the deed from Seller or the date of funding the purchase transaction (*i.e.*, the “gap” must be insured).

 - b. The amount of insurance to be stated on Schedule A will not only include the purchase price, but also Buyer’s total project costs which will be provided to the Title Company at a later date;

 - c. The Proposed Insured for the Proforma Policy is a newly formed entity by the name of Scannell Properties #424, LLC, an Indiana limited liability company. The Purchase Agreement will be assigned to this new entity by Buyer;

 - d. Buyer will close simultaneously on a loan and will provide the lender’s name and insured amount in the near future;

3. Schedule A – Insured Land. Schedule A, Item 5 of the Proforma will need to be revised to describe Parcel A as the new Lot 2 created by the Certified Survey Map to be recorded on or before Closing. Note, however, as mentioned in the above Seller Comments, Buyer is determining whether the western boundary of the Property needs to be moved to add more land so the description (and the new area shown on the Certified Survey Map) is not yet final. Once the new Certified Survey Map is finalized and recorded, the legal description for the land located in the City of La Crosse (Parcel A) will need to be changed to include the newly recorded Certified Survey Map and Schedule B will have an additional exception for this same Certified Survey Map. In the meantime, please revise the legal descriptions of Parcels A and B to read as shown on the Survey.

4. Schedule B, Part II, Exception 14 (Rights of La Crosse Sign and Advertising Company under Lease dated June 11, 1956 and recorded in the office of the Register of Deeds for La Crosse County in Volume 321 of Records, page 613, as Document No. 709820). As provided in the Seller Comments, Buyer has asked

Seller to provide the Title Company with a signed termination of lease in recordable form or whatever document that is necessary in order to remove this exception. Please provide Buyer and Seller with direction on the documentation needed in order to have it removed.

5. Schedule B, Part II, Exception 15 (Rights of La Crosse Sign and Advertising Company under Lease dated May 4, 1950 and recorded in the office of the Register of Deeds for La Crosse County as Document No. 709821). Similar to the above Exception #14, please provide Buyer and Seller with direction on the documentation needed in order to have it removed.
6. Schedule B, Part II, Exception 17 (Easement in favor of Northern States Power Company, recorded as Document No. 795889, and modified by Document Numbers 837535 and 970351). This is a 1969 Petition for Condemnation by Northern States Power Company for a 120-foot wide power easement across lands which includes the Property. This easement contains a building restriction. Consequently, Buyer objects to this exception. Buyer has contacted the successor power company (Xcel Energy) who has confirmed that Document No. 970351 does not affect the Property. However, Buyer also needs confirmation that the other two documents do not affect and will work with Xcel to make this determination. Until such time as the Title Company agrees to remove all three of these recorded documents from the Title Policy as indicated on the Proforma Policy, Buyer objects to this exception.
7. Schedule B, Part II, Exceptions 18, 20, 23, 24, 25, 28 - 32. Under the title notes on the Survey, it states that the following Schedule B-II Exceptions do not affect the Property. Buyer requests the Title Company to remove them from Schedule B of the Proforma Policy. Until such time as the Title Company agrees to remove these exceptions from the Title Policy as indicated on the Proforma Policy, Buyer objects to these exceptions.
 - Schedule B, Part II, Exception 18. Easement by an instrument recorded: December 16, 1985, Volume: 748, Page: 889, Document No.: 970351
 - Schedule B, Part II, Exception 20. Instrument recorded October 17, 1991, in Volume 907, on Page 850, as Document No. 1058234.
 - Schedule B, Part II, Exception 23. Access Covenant described in Volume 1258 of Records, page 746 as Document No. 1204502.
 - Schedule B, Part II, Exception 24. Access Covenant described in Volume 676 of Records, page 495 as Document No. 927344.
 - Schedule B, Part II, Exception 25. Instrument recorded July 21, 1999, in Volume 1332, on Page 15, as Document No. 1232867.
 - Schedule B, Part II, Exception 28. Instrument recorded August 1, 1979, in Volume/Jacket/Reel 631, on Page/Image 818, as Document No. 898715.

- Schedule B, Part II, Exception 29. Certificate of Attorney, recorded on March 18, 2011, as Document No. 1571038.
 - Schedule B, Part II, Exception 30. Transportation Project Plat No. 7570-02-28-4.01 recorded January 15, 2015 in Book TPP CAB, Page 53A as Document No. 1650679. Amendment No. 1 of Transportation Project Plat No. 7570-02-28-4.01 recorded January 21, 2016 in Book TPP CAB, Page 72B as Document No. 1669153.
 - Schedule B, Part II, Exception 31. Transportation Project Plat No. 7570.02.28-4.02 recorded March 30, 2015 in Book TPP CAB, Page 61B as Document No. 1653931. Amendment No. 1 of Transportation Project Plat No. 7570-02-28-4.02 recorded January 21, 2016 in Book TPP CAB, Page 73A as Document No. 1669154.
 - Schedule B, Part II, Exception 32. Drainage Easement as Document No. 1708448.
8. Title Endorsements. The following endorsements are requested to be added to the final Owner's Title Insurance Policy on the assumption that they are available in the State of Wisconsin:
- a) ALTA 3.2-06 Zoning (land under development) (Adopted 4-2-12)
 - b) ALTA 8.2-06 Environmental Protection Lien (Adopted 6-17-06)
 - c) CLTA 103.7-06 (Land Abuts Berlin Drive)
 - d) ALTA 17.2-06 (Utility Access)
 - e) ALTA 18-06 (Tax Parcel) – if available at Closing
 - f) ALTA 19-06 (Contiguity of Parcel A and Parcel B)
 - g) ALTA 25-06 (Same as Survey)
 - h) ALTA 26-06 (Subdivision)
 - i) ALTA 28.3-06 (Encroachment for Land Under Development) regarding Schedule B, Part II, Exceptions 12 and 13 which are both located in the SE quarter of the SW quarter which is only a small area on the western boundary of the Property but both easements are unplottable.
 - j) ALTA 39-06 (Policy Authentication)

At your earliest convenience, please provide the undersigned with a Proforma Policy in conformance with the enclosed Title Mark-Up as well as proforma endorsements. Buyer reserves the right to obtain an owner's title insurance policy as evidenced by a Proforma Policy which is acceptable to Buyer in all respects.

SURVEY COMMENTS

Buyer has the following comments to the Survey and asks the Surveyor to review and address them either by revising the Survey or providing an explanation to Buyer in an e-mail communication:

SHEET ONE:

1. Buyer will provide the Surveyor with a zoning report or other written confirmation of the zoning classification in order to update the Surveyor Note regarding zoning matters. Buyer would like to have the set-backs and parking requirements stated as well.
2. In the Surveyed Description, please re-describe Parcel A by adding the following language (or something similar), if possible:

Also to be described as follows:

All of Lot 2, Certified Survey Map No. ____, filed in the Office of the Register of Deeds for La Crosse County, Wisconsin on ____, 2020 in Volume ____, Page ____, as Document No. ____, being part of the SE ¼ of the SW ¼ and part of the SW ¼ of the SE ¼, all in Section One (1), Township Sixteen (16) North, Range Seven (7) West, City of La Crosse, La Crosse County, Wisconsin.

3. As provided in the Survey Comments for Seller above, Buyer is working to determine net acreage, specifically any easements that would fit under subparagraph (d) of the definition (boundaries of any pipeline or similar easement which prevents and/or prohibits any development of any improvements on, over, across or through that easement area) and will work with the Survey to finalize this calculation prior to Closing.

SHEET TWO:

4. As you are aware, we are working toward further clarification from Xcel Power to determine if all three of the recorded documents listed under Title Exception #17 (Document No. 795889, and modified by Document Numbers 837535 and 970351) do not affect. Currently, the power company has only confirmed that Document No. 970351 does not affect. Once we have confirmation, please include a statement that they do not affect.

To the extent stated herein, the foregoing constitutes the notice referred to in Section 6(b) of the Purchase Agreement, and is based on the information revealed in the Title Commitment and the Survey.

Please address the requested modifications, additions, and issues at your earliest convenience and provide us with a Proforma Policy along with specimen endorsements and a revised Survey for our further review. Please note that Buyer reserves the right to further object to any matters revealed by the revisions requested, as well as any subsequent updates of the Title Commitment showing additional information.

March 30, 2020

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Please contact me at (317) 218-1661 or debbiec@scannellproperties.com if you have any questions or comments with respect to the foregoing.

Sincerely,



Deborah H. Crabtree
Paralegal

dhc/enclosures

cc: David Duncan, Counsel
Tom McCary