

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT  
09-E-0521

The State of New Hampshire

v.

Michael P. Flynn

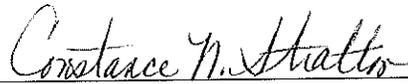
and

Flynn's Oil Company, LLC

**AFFIDAVIT TO**  
**STATE'S PETITION TO ENFORCE STIPULATION AND FINAL ORDER**

I, Constance N. Stratton, Senior Assistant Attorney General for the Department of Justice, Office of the Attorney General, do swear to the following:

1. The total amount of restitution owed in the above-captioned matter is \$578,070.95.
2. The Office of the Attorney General has received payments totaling \$39,109.29 to be used as restitution in the above-captioned matter.
3. The balance of restitution owed in this matter is \$538,961.66.



Constance N. Stratton, NH Bar No. 7939  
Senior Assistant Attorney General  
Office of the Attorney General

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Personally appeared the above-named Constance N. Stratton, known to me or proven to be, and swears that the above statement is true to the best of her knowledge and belief.

Date: 5/22/13

Mary J. Thayer  
~~Notary Public~~ Justice of the Peace  
Comm. expires: 10/26/16  
Mary J. Thayer

905891

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT  
09-E-0521

The State of New Hampshire

v.

Michael P. Flynn

and

Flynn's Oil Company, LLC

**STATE'S PETITION TO ENFORCE STIPULATION AND FINAL ORDER**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, (hereinafter "State"), and asks this Honorable Court to enforce the stipulation and final order entered in the above-captioned matter, and in support thereof offers the following:

1. Flynn's Oil Company, LLC (hereinafter "Flynn's") sold home heating oil to consumers pursuant to prepaid contracts. Consumers paid Flynn's in full for a season's heating oil. Subsequently, Flynn's was unable to provide the heating oil for which it had been prepaid.
2. The State filed a Petition for Injunctive Relief against Michael P. Flynn and Flynn's Oil Company, dated December 22, 2009, Rockingham County Superior Court Docket No. 09-E-0521. The Petition for Injunctive Relief is attached hereto as Exhibit A and incorporated herein by reference. The Petition alleged that the respondents had violated RSA 358-A, New Hampshire's Consumer Protection Act, by failing to provide the contracted for heating oil for which consumer had prepaid. It also alleged that the respondents had violated

RSA 339:79 because they failed to include language in their pre-buy contract explaining how the oil was secured.

3. On March 30, 2010, Flynn's and Hilton Family Oil (hereinafter "Hilton") entered into a Letter of Intent. The Letter of Intent is attached hereto as Exhibit B and incorporated herein by reference. Pursuant to the Letter of Intent, Hilton Family Oil agreed to purchase Flynn's Oil and operate its own business at the Flynn's Oil location in Exeter. The total amount of the cash proceeds of the sale would be paid to the State for the benefit of consumers. In addition, the Letter of Intent provided a formula by which, depending upon the total number of gallons of oil that Hilton Family Oil sold in the three years subsequent to the execution of the purchase and sale agreement, Hilton would pay to the State, in monthly payments, additional funds, which the State would distribute to consumers. Finally, the Letter of Intent provides: "Balance due on three year anniversary of P&S Agreement." The purchase and sale agreement was executed on April 15, 2010. The Purchase and Sale Agreement is attached hereto as Exhibit C and incorporated herein by reference.

4. On April 8, 2010, the parties filed a Stipulation and Request for Entry of Final Order (hereinafter "Stipulation") in the above-captioned matter, which this Honorable Court approved on that same date. The Stipulation and Request for Entry of Final Order is attached hereto as Exhibit D and incorporated herein by reference. The Stipulation provided that "[T]he Flynn Parties represent that they owe a total of \$554,603.08 to consumers who prepaid for their home heating oil for the fall/winter seasons of 2009/2010 (the "Obligation")."<sup>1</sup>

5. Paragraph 2 of the Stipulation provides, in relevant part, as follows: "As described in the Letter of Intent, dated March 15, 2010 (hereinafter "Letter of Intent"), between

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<sup>1</sup> This amount was later changed to \$578,070.95 pursuant to an Amendment to Stipulation and Request for Entry of Final Order which was approved by the court on October 1, 2010.

Fred Hilton of Hilton Family Oil, Inc. (hereinafter "Hilton") and Michael P. Flynn and John W. Flynn, III of Flynn's Oil, LLC, the Flynn Parties agree to pay to the State, for distribution to consumers, the amounts set forth in that Letter of Intent **and in the time frames set forth in the Letter of Intent.**" (Emphasis added).

6. Paragraph 4 of the Stipulation requires Michael P. Flynn and John W. Flynn, III to provide personal guaranties to the State, each "unconditionally promising to pay any deficiency between the amount of the Obligation, and the amounts actually recovered by the State pursuant to the provisions of this Stipulation."

7. On April 20, 2010, Michael P. Flynn and John W. Flynn, III each executed a personal guaranty to the State obligating them to pay the entire amount of money owed to consumers, if the provisions of the Stipulation failed to result in the full amount of restitution due to consumers (the "Guaranties"). The Guaranties are attached hereto as Exhibit E and incorporated herein by reference. The Guaranties require, *inter alia*, that the Flynn's guarantee "the due and punctual payment in full (and not merely the collectability) of the Obligation, when due and payable, according to the terms of the Stipulation; . . . .".

8. On April 8, 2012, Flynn's Oil Company, LLC waived indictment to a felony violation of the Consumer Protection Act. The Waiver of Indictment charged that Flynn's "entered into prepaid contracts with consumers for the sale and delivery of home heating oil which required prepayment from the consumers, and knowingly failed to have obtained and maintained a futures contract, surety bond or letter of credit, as required by RSA 339:79." The Waiver of Indictment is attached hereto as Exhibit F and incorporated herein by reference. Flynn's pled guilty to the waiver of indictment and it was sentenced as follows: "The defendant is fined \$100,000, plus statutory penalty assessment. \$100,000 of the fine is suspended. The

defendant is ordered to make restitution of \$554,603.08. Restitution is concurrent with the amount owed pursuant to the Stipulation in Rockingham County Superior Court Docket No. 09-E-0521." The mittimus is attached hereto as Exhibit G and incorporated herein by reference.

9. As of the date of this pleading, the Obligation owed by the Flynns is \$538,961.66.

10. On April 5, 2013, the State sent a demand letter to the Flynns, giving them until April 19, 2013 to pay the balance owed to the State of \$538,961.66. A copy of the demand letter is attached hereto as Exhibit "H." As of this date, the Flynns have not responded to the State's demand letter.

11. As of April 15, 2013, the personal guaranty given by Michael P. Flynn and John W. Flynn, III is in effect.

12. Because of the dispositive nature of this motion and the lack of response to prior demand, the State has not sought the assent hereto of the Respondents.

In light of the above, the State asks this Honorable Court to do the following:

- A. Grant the State judgment on the Guaranties given by Michael P. Flynn and John W. Flynn, III;
- B. Order Michael P. Flynn and John W. Flynn, III to pay \$538,961.66 to the State, for distribution to consumers, immediately ;
- C. If the Flynns are unable to pay the entirety of the \$538,961.66 to the State, order the Flynns to each make periodic payments to the State pursuant to a payment schedule;
- D. Schedule a hearing on the State's motion; and
- E. Grant any other and further relief this Honorable Court deems just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

Joseph A. Foster  
Attorney General

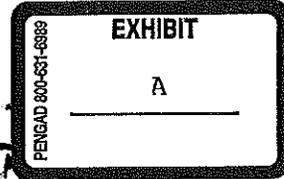
Date: May 22, 2013

  
\_\_\_\_\_  
Constance N. Stratton  
NH Bar No. 7939  
Senior Assistant Attorney General  
Consumer Protection Bureau  
33 Capitol Street  
Concord, NH 03301  
(603) 271-3643

**CERTIFICATION**

I hereby certify that a copy of the within motion has been mailed this date, postage prepaid, first-class mail, to Michael P. Flynn, 3 Blossom Lane, Stratham, NH 03885, and John W. Flynn, III, 52 Deep Meadow, Exeter, NH 03833.

  
\_\_\_\_\_  
Constance N. Stratton



ROCKINGHAM  
SUPERIOR COURT

THE STATE OF NEW HAMPSHIRE 2009 DEC 23 A 8:21  
SUPERIOR COURT

MERRIMACK, SS.

The State of New Hampshire

v.

Michael P. Flynn

and

Flynn's Oil Company, LLC

and

94 Portsmouth Avenue Trust (Trustee Defendant)

**PETITION FOR INJUNCTIVE RELIEF,  
RESTITUTION, CIVIL PENALTIES AND COSTS PURSUANT TO RSA 358-A**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and complains against Michael P. Flynn, Flynn's Oil Company, LLC, and 94 Portsmouth Avenue Trust, (hereinafter "Respondents"), located at 94 Portsmouth Avenue, Exeter, New Hampshire, and 94 Portsmouth Avenue Trust, and says:

**JURISDICTION AND VENUE**

1. The Rockingham County Superior Court has jurisdiction over the subject matter of this petition and the parties to it pursuant to RSA 358-A:8, I and RSA 358-A:4, III(a), and under the general equitable powers of the Superior Court pursuant to RSA 498:1. Venue lies in this court in that the Respondent's principal place of business is in Rockingham County.

**PARTIES**

2. Michael A. Delaney, Attorney General of the State of New Hampshire, is authorized by Section 4 of the New Hampshire Consumer Protection Act, RSA 358-A:4, III(a) and (b) (hereinafter "the Act") to seek injunctive relief and civil penalties against any person that

he has reason to believe has engaged in or is about to engage in unfair or deceptive acts or practices in the conduct of trade or commerce in this State in violation of RSA 358-A:2.

3. Respondent Flynn's Oil Company, LLC (hereinafter "Flynn") is a New Hampshire limited liability company doing business at 94 Portsmouth Avenue, Exeter, New Hampshire, within Rockingham County. Respondent Michael Flynn is the manager of the oil company. RSA 358-A:4, III(a).

### FACTUAL ALLEGATIONS

4. At all times relevant to this petition, Respondent has been in the business of selling heating oil to consumers.

5. During the period from May 2009 until the present, Flynn has engaged in the practice of entering into prebuy contracts with consumers for the purchase and delivery of home heating oil.

6. This employee has advised that he has personal knowledge that many consumers are calling the Respondents to complain that they are not receiving the correct amounts of oil or have run out of oil. Obtaining payment without providing the contracted for goods and/or services is a violation of the Consumer Protection Act, RSA 358-A.

7. Respondent has also violated RSA 339:79 which provides that a contract for home heating oil which requires prepayment from a consumer requires the following::

- I. A contract for the retail sale of home heating oil, kerosene, or liquefied petroleum gas to a consumer shall also indicate the total amount of money to be paid by the consumer, the gallons committed by the fuel dealer to be delivered under the contract, the price per gallon, the payment terms, the duration of the contract, the remedies enforceable by the dealer against a non-performing consumer, and that the contract is secured as provided in this section. The information required by this section shall be in plain language and shall be printed in no less than 12-point boldface type of uniform font after the price of service described.

- II. A contract that requires prepayment by the consumer or caps the price of heating oil shall comply with paragraphs I and II of this section. Such contract also:
- III. Shall include a clear explanation of the means by which the dealer will meet the obligations of the contract for the entire contract period, including supplier agreements, futures contracts, bonding, or a line of credit.
- IV. No home heating oil, kerosene, or liquefied petroleum gas dealer shall enter into a prepaid contract to provide home heating oil, kerosene, or liquefied petroleum gas to a consumer unless that dealer has, within 7 days of the acceptance of the contract, obtained and maintained any one of the following:
  - (a) A firm commitment in the form of a futures contract or other commitment that guarantees that the dealer may purchase, at a fixed price, heating oil, kerosene, or liquefied petroleum gas in an amount not less than 75 percent of the maximum number of gallons that the dealer is committed to deliver pursuant to all prepaid contracts entered into by the dealer. The amount of such futures contract may be reduced to reflect any amount of home heating oil, kerosene, or liquefied petroleum gas already delivered to and paid for by the consumer;
  - (b) A surety bond, made payable to the attorney general, in an amount not less than 50 percent of the total amount of funds paid to the dealer by consumers pursuant to prepaid heating oil, kerosene, or liquefied petroleum gas contracts; or
  - (c) A letter of credit, made payable to the attorney general, from an FDIC-insured institution in an amount that represents 100 percent of the cost to the dealer of the maximum number of gallons that the dealer is committed to deliver pursuant to all prepaid contracts entered into by the dealer. The cost shall be calculated at the time the contracts are entered into.

8. The Bureau has obtained numerous copies of the prebuy contracts used by Respondent and they do not include any explanation of the means by which the dealer will meet the obligations of the contract for the entire contract period, including supplier agreements, futures contracts, bonding, or a line of credit.

9. Respondents' failure to comply with RSA 339:79 is a violation of RSA 358-A, the Consumer Protection Act.

10. For each violation of RSA 358-A, a court "may award to the state civil penalties up to \$10,000 for each violation of this chapter." RSA 358-A:4, III(b).

### ONGOING CONCERNS

11. An employee of Respondents has reported that Respondents are unable to deliver heating oil to consumers who have prepaid for it because they are not financially solvent. This employee has advised that he has personal knowledge that many consumers are calling the company to complain that they are not receiving the correct amounts of oil or have run out of oil. On December 16, 2009, this employee also advised that the Respondents are about to send letters out to their pre-buy customers, saying they will not honor the pre-buy contracts.

12. WMUR has advised that it has received a couple of calls and email on December 22, 2009 from customers of Respondent, saying that Respondent is not delivering oil for which it was prepaid.

13. Upon information and belief, Respondents have not secured the delivery of heating oil pre-bought by consumers and consumers are, therefore, at risk.

### **COUNT I**

#### **(Request for Preliminary and Permanent Injunctive Relief)**

14. The State restates the preceding paragraphs as if stated herein in full.

15. The State has the authority to protect the public by seeking to restrain by temporary or permanent injunction the use of unlawful trade or commerce practices. RSA 358-a:4, III(a).

16. A party is entitled to injunctive relief when there is an "immediate danger of irreparable harm to the party seeking injunctive relief and there is no adequate remedy at law."

UniFirst Corp. v. City of Nashua, 130 N.H. 11,14 (1987) (citation omitted). Irreparable injury is injury that threatens actual and substantial damage that cannot be adequately compensated by money damages. See UniFirst Corp., 130 N.H. at 14-15.

17. Where repetition of the wrongful act is probable, it is appropriate to use the “restraining power of equity.” Meredith Hardware, Inc. v. Belknap Realty Trust, 117 N.H. 22, 26 (1977).

18. Injunctive relief is appropriate if its issuance will serve the ends of justice and will not cause more harm to the defendant than it prevents. New Hampshire Donuts, Inc. v. Skipitaris, 129 N.H. 774, 781.

19. “The granting of an injunction . . . is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.” UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987) (citation omitted).

20. A party is entitled to preliminary injunctive relief when: (1) there is an immediate danger of irreparable harm to the party seeking injunctive relief; (2) there is no adequate remedy at law; (3) there is a likelihood of success on the merits by a balance of the probabilities; and (4) the public interest would not be adversely affected if the court granted the preliminary injunction.

21. The general rule of law regarding injunctions is not applicable, however, where statutes such as RSA 358-A:4 expressly empower the Court to enjoin violations of the statute. The General Court, in establishing an injunction as a remedy for violations of RSA chapter 358-A has, in effect, already determined that such violations will result in irreparable injury to the public, and that the public interest in such matters outweighs any resulting harm to Respondent.

22. Pursuant to RSA 358-A, the Superior Court has jurisdiction to order such relief in equity as may be appropriate. The State requests that the Court order Respondents to (1) cease and desist from violating the Consumer Protection Act; and (2) cease obtaining deposits and/or prepayments for product or services prior to the delivery of such product or services.

23. Respondents entered into pre-buy contracts with New Hampshire consumers and accepted money from them for the sale and delivery of home heating oil. Respondents' failure to comply with RSA 358-A, by failing to provide the contracted for goods and/or services after being paid for them, and failure to comply with RSA 339:79, by failing to include in their pre-buy contract language explaining how the oil is secured, are violations of RSA 358-A, the Consumer Protection Act.

## COUNT II (Civil Penalties)

24. The State restates the preceding paragraphs as if stated herein in full.

25. By failing to provide the contracted for goods and/or services to consumers who prepaid for their heating oil, Respondents have violated RSA 358-A, the Consumer Protection Act.

26. By engaging in violations of RSA 339:79, Respondents have violated RSA 358-A, the Consumer Protection Act.

27. Upon a finding that any person has engaged or is engaging in any act or practice declared unlawful by RSA 358-A, the court may award to the state civil penalties up to \$10,000 for each violation. RSA 358-A:4, III(b).

28. The State currently has numerous copies of Flynn's Oil Company's pre-buy contracts (See Appendix A, 2 samples attached and incorporated herein). Flynn's employee has advised that the company sells approximately 2.5 million gallons a season and the average

customer purchases 800 gallons a season (this would result in there being 3,125 customers). If only 10% of Flynn's customers pre-bought their oil, this would mean that each violation of the Consumer Protection Act could result in civil penalties of \$3,125,000 (312 customers x \$10,000 = \$3,125,000.).

29. The penalties sought in this Court are requested for all presently known violations of the Act, as well as any identified after the filing of this Petition.

30. The State seeks an order for payment of civil penalties up to \$10,000 per violation of RSA 358-A.

31. New Hampshire consumers are also entitled to restitution from Respondents of all moneys paid to them for products which Respondents failed to deliver.

32. On information and belief, New Hampshire consumers are being, and will continue to be, injured by Respondents' conduct as alleged herein.

#### PRAYERS FOR RELIEF

WHEREFORE, the State respectfully requests this Court to issue an order of notice and, after hearing, to grant the following relief:

A. To find that Respondents have violated RSA 358-A:2 and RSA 339:79 as alleged herein;

B. To order Respondents to stop accepting prepayments for any goods and/or services not previously provided;

C. To order Respondents to make restitution to all consumers injured by their violations of RSA 358-A:2 and 339:79, in an amount to be determined at hearing, by payment of the same to the State of New Hampshire for distribution to injured consumers;

D. To order Respondents to pay to the State a civil penalty of \$10,000.00 for each violation of RSA 339:79 and 358-A:2 found by this Court;

E. To award the State its costs of prosecuting this action, including reasonable attorneys' fees; and

F. To grant any other relief deemed just and equitable by this Court.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

Michael A. Delaney  
Attorney General



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Constance N. Stratton  
NH Bar No. 7939  
Senior Assistant Attorney General  
33 Capitol Street  
Concord, NH 03301  
(603) 271-3643

Date: Dec. 22, 2009

FLYNN'S OIL CO. L.L.C.  
94 PORTSMOUTH AVE  
EXETER, N.H. 03833

TEL: 603-778-1123  
FAX: 603-772-0224



DATE 6/01/09

COPIED & MAILED \_\_\_\_\_

ACCOUNT # \_\_\_\_\_

C/CARD ON FILE \_\_\_\_\_

"PLEASE READ CAREFULLY"

#2 HEATING OIL  
"24 HR SERVICE AVAILABLE"

"LOCK-IN NOW"

### "HOME HEATING OIL CAPPED PAYMENT PROGRAM"

This Contract is made by Flynn's Oil Co L.L.C., a New Hampshire limited liability co.  
With an address of 94 Portsmouth Ave. Exeter, N.H. 03833 (hereinafter Flynn's) and

\_\_\_\_\_ of \_\_\_\_\_  
Customer Name Customer Address

"Hereinafter Customer"  
Please Print!!!

Home Phone \_\_\_\_\_ Work \_\_\_\_\_  
Name \_\_\_\_\_ Cell \_\_\_\_\_ Email \_\_\_\_\_  
Street \_\_\_\_\_ House Color \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
Fill Location Et of front door - around corner Tank Size \_\_\_\_\_ (MOST 275 GAL.)

SSN \_\_\_\_\_ Drivers Lic.# \_\_\_\_\_  
CREDIT CARD # \_\_\_\_\_ EXP \_\_\_\_\_ CVV \_\_\_\_\_

**CONTRACT IS VOID WITHOUT BOTH SSN & DRIVERS LIC. NUMBER. NO EXCEPTIONS PLEASE!**  
In consideration of the mutual covenants set forth in this contract it is agreed as follows:

- 1) QUANTITY PAID IN FULL  \$ \$  \$ \$
- A) Flynn's agrees to deliver \_\_\_\_\_ Gallons of  Heating Oil  Blend to customer.  
B) Customer agrees to purchase & receive said quantity of fuel from Flynn's Oil Co. L.L.C.

- 3) CAPPED PRICE CONTRACT
- A) Customer agrees to pay 1.50 per gallon by Check & 1.50 per Gallon by Credit Card for Purchased  
Fuel Total Gallons 150 X \$ 1.50 per gallon = \$ 225.00 Grand Total DOWNSIDE IS NON-REFUNDABLE
- B) Customer agrees to pay \_\_\_\_\_ per gallon by Check & \_\_\_\_\_ per Gallon by Credit Card for Downside  
Fuel Total Gallons \_\_\_\_\_ X \$ \_\_\_\_\_ per gallon = \_\_\_\_\_ Grand Total DOWNSIDE IS NON-REFUNDABLE

\_\_\_\_\_  
Print Name

d.theria  
Agent Name

6-1-09  
Date

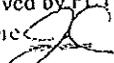
\_\_\_\_\_  
Customer Authorization Signature

ANY OTHER SPECIFICS \_\_\_\_\_

Example: "biting dogs"

**ALL CONTRACTS & GALLONS EXPIRE APRIL 30th OF 2010.**

4) I Agree to Pay Flynn's Oil Co. for any Oil Purchased before ~~Oct. 1st 2009~~ & After April 30th 2010, the  
Posted Retail Price on the Date of Delivery. C.O.D. **"NO EXCEPTIONS PLEASE"** 6/15/09 - 5/31/10  
Initial Here: 

5) When the customer's gallons are used up or the contract expires (whichever occurs first), The customer shall remain on AUTOMATIC DELIVERY and charged Flynn's Oil Co. daily rate, until written cancellation has been received by FLYNN'S OIL CO. OFFICE "NO EXCEPTIONS PLEASE"  
Initial Here: 

**6) CUSTOMER RESPONSIBILITIES**

**A) CUSTOMER EQUIPMENT**

Customer shall keep it's fuel tank and lines and other equipment in good condition, at all times. Flynn's Oil Co shall not, be liable for any damage and or loss that may occur and or brokerage or accident to lines or equipment due to causes beyond Flynn's Oil Co 's control. Flynn's Oil Co is also not responsible for loose or unsecured pipes and fitting's beyond our control.

**B) ASSIGNMENT**

A transfer or succession to the interests of customer under this contract, wholly or partially, shall not effect or bind Flynn's until Flynn's Oil Co shall have been furnished at it's office at 94 Portsmouth ave, Exeter N.H., with original instrument or proof that the assignee is legally entitled. Any assignment is invalid unless the assignee agrees to the terms hereof.

**C) TAXES**

In the event of any Heating oil Tax or environmental fee. Enacted by State, Federal. Or local county or municipal agencies. The customer shall be liable for any gallons subject to the new tax.

**D) DRIVEWAYS**

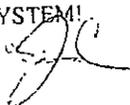
Customer MUST at all times have their driveway passable. In the event of ICE & SNOW the customers with inclined driveways must be sanded and or salted, to ensure that Flynn's Oil Co. delivery trucks can safely deliver said customers fuel. Flynn's Oil Co. shall not be held responsible for non-deliveries due to impassable driveways.

**E) FORCE MAJEURE**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond it's control including but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary licnsc), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**FLYNN'S OIL CO. L.L.C. COMMITMENT TO CUSTOMER  
WHILE SUPPLIES LAST!**

~~Prices subject to change~~

\*Flynn's Oil Co. L.L.C. customer shall be responsible for any Late Collection. and or attorney fees if necessary! OIL DELIVERIES WILL BE THE SOLE RESPONSIBILITY OF FLYNN'S OIL CO L.L.C. BASED ON OUR DEGREE DAY COMPUTER SYSTEM!  
"NO EXCEPTIONS PLEASE" Initial Here: 

## DOWN SIDE PROTECTION

Defined as: a cost paid by Flynn's Oil Company to its Suppliers to guarantee price protection in the event the market price drops below the current sale price.

With respect to the customer Flynn's Oil will purchase this option on your behalf in the form of "Downside Protection" at a cost of included per gallon which is the current cost of purchase. This is subject to change without notice and price cannot be guaranteed to remain stable on a day to day basis. *dh*

In the event you DO NOT PURCHASE THE DOWNSIDE PROTECTION with your contract you WILL NOT be protected from falling prices and will be locked to your current contract price. Due to the high volatility of Oil Prices in the current market it is recommended to purchase Down Side Protection with your contract.

### To Decline this Protection:

I \_\_\_\_\_ hereby decline the Downside Protection and fully understand that in the event the market price drops I am legally bound to accept all purchased gallons at the predetermined and agreed upon price for which I have already accepted and signed for. Initial Here \_\_\_\_\_ No Exceptions Please!!!

In the event the Customer refuses oil during the Contract Period and or receives oil deliveries from another Oil Company, an early termination fee will apply this fee is 50% of the original contract amount and will be deducted accordingly. Initial Here \_\_\_\_\_ No Exceptions Please!!!

CONTRACT IS VOID UNLESS COMPLETELY FILLED OUT!!!

ku ck [Redacted]

FLYNN'S OIL CO. L.L.C.  
94 PORTSMOUTH AVE  
EXETER, N.H. 03833

TEL: 603-778-1123  
FAX: 603-772-0224



DATE 5/6/09

COPIED & MAILED

ACCOUNT # [Redacted]

C/CARD ON FILE \_\_\_\_\_

"PLEASE READ CAREFULLY"

#2 HEATING OIL  
"24 HR SERVICE AVAILABLE"

"LOCK-IN NOW"

### "HOME HEATING OIL CAPPED PAYMENT PROGRAM"

This Contract is made by Flynn's Oil Co L.L.C., a New Hampshire limited liability co.  
With an address of 94 Portsmouth Ave, Exeter, N.H. 03833 (hereinafter Flynn's) and

[Redacted] of [Redacted]  
Customer Name Customer Address

"Hereinafter Customer"  
Please Print!!!

Home-Phone [Redacted] Work [Redacted]  
Name [Redacted] Cell [Redacted] Email [Redacted]  
Street [Redacted] House Color [Redacted]  
City [Redacted] State [Redacted] ZIP [Redacted]  
Fill Location left side Tank Size 275 (MOST 275 GAL.)

SSN [Redacted] Drivers Lic.# [Redacted]  
CREDIT CARD # \_\_\_\_\_ EXP \_\_\_\_\_ CVV \_\_\_\_\_

CONTRACT IS VOID WITHOUT BOTH SSN & DRIVER'S LIC. NUMBER "NO EXCEPTIONS PLEASE"

In consideration of the mutual covenants set forth in this contract it is agreed as follows:

- 1) QUANTITY 500 gal PAID IN FULL  SS  \$  
 A) Flynn's agrees to deliver \_\_\_\_\_ Gallons of  Heating Oil  Blend to customer.  
 B) Customer agrees to purchase & receive said quantity of fuel from Flynn's Oil Co. L.L.C.
- 3) CAPPED PRICE CONTRACT  
 A) Customer agrees to pay \$ 150 per gallon by Check & \_\_\_\_\_ per Gallon by Credit Card for Purchased  
 Fuel Total Gallons 500 X \$ \_\_\_\_\_ per gallon = \$ \_\_\_\_\_ Grand Total DOWNSIDE IS NON-REFUNDABLE  
 B) Customer agrees to pay \$ \_\_\_\_\_ per gallon by Check & \_\_\_\_\_ per Gallon by Credit Card for Downside  
 Fuel Total Gallons \_\_\_\_\_ X \$ \_\_\_\_\_ per gallon = \$ \_\_\_\_\_ Grand Total DOWNSIDE IS NON-REFUNDABLE

[Redacted] \_\_\_\_\_  
Print Name Agent Name

4/6/09 \_\_\_\_\_  
Date Date

Customer Authorization Signature [Redacted]

ANY OTHER SPECIFICS \_\_\_\_\_

Example: "biting dogs"

**ALL CONTRACTS & GALLONS EXPIRE APRIL 30th OF 2010.**

4) I Agree to Pay Flynn's Oil Co. for any Oil Purchased before Oct. 1st 2009 & After April 30th 2010. the Posted Retail Price on the Date of Delivery. C.O.D. **"No Exceptions Please"**  
Initial Here FW

5) When the customer's gallons are used up or the contract expires (whichever occurs first), The customer shall remain on AUTOMATIC DELIVERY and charged Flynn's Oil Co. daily rate, until written cancellation has been received by FLYNN'S OIL CO. OFFICE "NO EXCEPTIONS.PLEASE"  
Initial Here FW

**6) CUSTOMER RESPONSIBILITIES**

**A) CUSTOMER EQUIPMENT**

Customer shall keep it's fuel tank and lines and other equipment in good condition, at all times. Flynn's Oil Co shall not, be liable for any damage and or loss that may occur and or brokerage or accident to lines or equipment due to causes beyond Flynn's Oil Co 's control. Flynn's Oil Co is also not responsible for loose or unsecured pipes and fitting's beyond our control.

**B) ASSIGNMENT**

A transfer or succession to the interests of customer under this contract, wholly or partially, shall not effect or bind Flynn's until Flynn's Oil Co shall have been furnished at it's office at 94 Portsmouth ave. Exeter N.H.. with original instrument or proof that the assignee is legally entitled. Any assignment is invalid unless the assignee agrees to the terms hereof.

**C) TAXES**

In the event of any Heating oil Tax or environmental fee. Enacted by State, Federal. Or local county or municipal agencies. The customer shall be liable for any gallons subject to the new tax.

**D) DRIVEWAYS**

Customer MUST at all times have their driveway passable. In the event of ICE & SNOW the customers with inclined driveways must be sanded and or salted, to ensure that Flynn's Oil Co. delivery trucks can safely deliver said customers fuel. Flynn's Oil Co. shall not be held responsible for non-deliveries due to impassable driveways.

**E) FORCE MAJEURE**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond it's control including but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**FLYNN'S OIL CO. L.L.C. COMMITMENT TO CUSTOMER  
WHILE SUPPLIES LAST!**

Prices subject to change

\*Flynn's Oil Co. L.L.C. customer shall be responsible for any Late .  
Collection, and or attorney fees if necessary! OIL DELIVERIES WILL  
BE THE SOLE RESPONSIBILITY OF FLYNN'S OIL CO L.L.C.  
BASED ON OUR DEGREE DAY COMPUTER SYSTEM!

"NO EXCEPTIONS PLEASE"

Initial Here FW

## DOWN SIDE PROTECTION

Defined as: a cost paid by Flynn's Oil Company to it's Suppliers to guarantee price protection in the event the market price drops below the current sale price.

With respect to the customer Flynn's Oil will purchase this option on your behalf in the form of "Downside Protection" at a cost of 120 per gallon which is the current cost of purchase. This is subject to change without notice and price cannot be guaranteed to remain stable on a day to day basis.

*NO extra cost*

In the event you DO NOT PURCHASE THE DOWNSIDE PROTECTION with your contract you WILL NOT be protected from falling prices and will be locked to your current contract price. Due to the high volatility of Oil Prices in the current market it is recommended to purchase Down Side Protection with your contract.

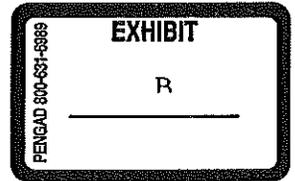
### To Decline this Protection:

I \_\_\_\_\_ hereby decline the Downside Protection and fully understand that in the event the market price drops I am legally bound to accept all purchased gallons at the predctermined and agreed upon price for which I have already accepted and signed for. Initial Here \_\_\_\_\_ No Exceptions Please!!!

In the event the Customer refuses oil during the Contract Period and or receives oil deliveries from another Oil Company, an early termination fee will apply this fee is 50% of the original contract amount and will be deducted accordingly. Initial Here \_\_\_\_\_ No Exceptions Please!!!

CONTRACT IS VOID UNLESS COMPLETELY FILLED OUT!!!

EXHIBIT A



LETTER OF INTENT

March 15, 2010

Flynn's Oil Company, LLC  
94 Portsmouth Avenue  
Exeter, NH 03833

and

John W. Flynn, III  
Michael P. Flynn  
c/o Christopher P. Mulligan, Esq.  
Bosen & Springer, P.L.L.C.

Via Email

Re: Letter of Intent to Purchase Assets of Flynn's Oil, LLC, and to  
contract with John W. Flynn, III and Michael P. Flynn, Individuals

Dear Attorney Mulligan:

This letter sets forth the terms and conditions under which my client, Hilton Family Oil, LLC (hereinafter "Hilton", or "Buyer") is willing to enter into a mutually acceptable Purchase and Sale Agreement (hereinafter "P&S Agreement") to purchase certain business assets owned by Flynn's Oil Company, LLC (hereinafter, "Flynn Oil" or "Seller"); and to contract with John W. Flynn, III and Michael P. Flynn as individuals, all being your clients. This letter does not attempt to define all the terms and conditions of the P&S Agreement which shall be subject to further agreement of the parties. Nonetheless, it sets forth the following specific terms to be included in the P&S Agreement at a minimum.

Assets to be purchased	2004 Peterbilt Oil Truck VIN: 2006 Peterbilt Oil Truck VIN: 2006 Peterbilt Oil Truck VIN: Customer list Software Website Telephone number(s)
Purchase Price :	\$325 per "account unit" defined as the total amount of gallons delivered by Family within three years of the execution of the P&S Agreement to either an existing Flynn's customer or one that originated in Flynn's existing territory, as specified herein, divided by 2,400.

\$500,000 →  
\$100,000 →

- Payment terms:
- a) \$50,000.00 payable upon execution of P&S Agreement;
  - b) Monthly payment of \$.05 per gallon for all gallons sold to an existing Flynn's customer or one originated in Flynn's specific territory in the three years subsequent to the execution of the P&S Agreement;
  - c) Balance due on three year anniversary of P&S Agreement.
  - d) In the event insufficient account units are generated in three years to exceed the sums paid by the Buyer pursuant to a) and b) above, those sums paid by Buyer shall be non-refundable and Buyer shall have no further payment obligation whatsoever.
- Additional Terms:
- a) Buyer will assume secured indebtedness relative to the trucks (which Seller represents stands at approximately \$80,000.00, to be fully documented upon acceptance of this Letter of Intent.
  - b) Michael P. Flynn and John W. Flynn, III, individuals, and as Manager/member of the Seller LLC, shall promote Buyer as successor oil company to Seller exclusively, throughout the three years of this contract; and for five years thereafter shall not engage, directly or indirectly, in the oil delivery business within the regions or areas specifically identified on the list appended hereto.

Subject to approval by NH Attorney General

*It is specifically understood and agreed that Buyer assumes no responsibility for any complaints pending or to arise in the future on account of pre-buy oil contracts entered into by Seller and/or by the individual members of Seller*

Closing Date: On or before March 31, 2010.

Time is of the essence throughout this agreement.

Upon the execution of this letter of intent by both parties, Buyers, its agents, employees and consultants may enter upon the Premises from time to time and upon reasonable notice to and agreement of the Seller, for the purpose of making measurements, surveys, studies, design and planning, testing and inspections of the oil trucks and of the website.

This letter of intent must be signed by both parties, with duplicate originals in the hands of both parties on or before March 19, 2010.

Buyer: Hilton Family Oil, Inc.

\_\_\_\_\_  
Witness

Fred Hilton 3-30-10  
Authorized Signature Date

Fred Hilton President  
Print Name/Title

Seller: Flynn's Oil, LLC

\_\_\_\_\_  
Witness

Mike Flynn 3-29-10  
Authorized Signature Date

Mike Flynn President  
Print Name/Title

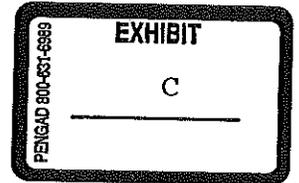
JOHN W. FLYNN III VICE PRESIDENT  
3/29/2010

Existing Flynna Oil Territory

Durham  
Dover  
Newington  
Portsmouth  
Newcastle  
Newmarket  
Rye

Raymond  
Nottingham  
Epping  
Brentwood  
Kingston  
East Kingston  
Kensington

Exeter  
Newfields  
Stratham  
Greenland  
North Hampton  
Hampton  
Scubrook



## PURCHASE AND SALE AGREEMENT

AGREEMENT made and dated this 15th day of April 2010, by and among the following parties, namely:

- Flynn Oil, LLC, a New Hampshire Limited Liability Company, having its usual place of business at 94 Portsmouth Avenue, Exeter, NH 03833 (hereinafter, **Flynn Oil**)
- MP Flynn, Inc, a New Hampshire Corporation, having its principal place of business at Bunker Hill Avenue, Stratham, NH 03885 (hereinafter, **MP Flynn**)
- Michael P. Flynn, an adult individual, of Exeter, NH (hereinafter, **Michael**)
- John W. Flynn, <sup>III</sup>Jr, an adult individual, of Exeter, NH (hereinafter, **Jack**)

( and all collectively sometimes referred to as **SELLER**)

And

- Hilton Family Oil, Inc, a Massachusetts Business Corporation, having its usual place of business at 65 Salem Street, Lawrence, MA 01843 d/b/a Family Oil (hereinafter, **Family Oil** or **BUYER**)

### RECITALS

Family Oil seeks to acquire certain assets of Flynn Oil and MP Flynn. Those assets are as follows:

- 2007 Peterbilt Oil Truck VIN 2NPLHD7X97M697156
- ✓ 2005 Peterbilt Oil Truck VIN 2NPLHD7X55M860494
- 2007 Peterbilt Oil Truck VIN 2NPLHD7X87M698928
- Customer List
- Software
- Website
- Telephone Numbers

Specifically, the oil trucks are owned by MP Flynn, and the Customer List and other items above are owned by Flynn Oil.

The oil trucks are encumbered by chattel mortgages held by PACCAR Financial Corp., of Horshaw, PA, and having an aggregate approximate principal balance of \$80,000. The agreed price to be paid for all assets covered in this agreement including the trucks, is understood to include the sum of \$50,000 cash at closing plus the assumption by the Buyer of all indebtedness to PACCAR for said chattel mortgage debt. The parties now

understand that there may be payments due on said debt for February and March. At the time of closing, the parties shall determine the extent of all such payments unpaid for February and March on all three vehicles. The total of all such delinquent payments then shall be subtracted from the \$50,000.00 payment due Seller; and the resulting balance paid over to the Attorney General for the State of New Hampshire as recited herein; and upon closing, Buyer shall assume full responsibility for the PACCAR chattel mortgages.

The final purchase price shall also include a component whereby Family Oil shall pay monthly to Seller a sum equal to \$ .05 per gallon times the number of gallons sold and paid that month, for any existing or new customers within the service area, per the Schedule of Territory attached hereto.

A further component of the purchase price is Buyer's agreement to pay Seller a sum of money determined as follows:

At the end of the three year period of the Agreement, the total number of gallons of home heating fuel sold by Buyer within the Schedule of Territory shall be determined, then divided by 2,400. The resulting dividend shall then be multiplied by \$325.00 to arrive at the total of funds owing the Buyer to Seller for that component, less, however, both of the following credits, namely:

- a) The total of the monthly payments at \$ .05 per gallon paid to Seller during the three years of this Agreement.
- b) The sum of \$50,000.00 paid as the initial payment under the Agreement.

As a further component of the sale, Michael and Jack agree to actively promote the name and goodwill of Family Oil to any heating oil customers within the service area; and have further agreed not to engage directly or indirectly in the heating oil business within the service area not only while said agreement remains in force but for a period of time thereafter, and as more specifically detailed within this agreement.

*It is specifically understood and agreed that Buyer assumes no responsibility for any complaints pending or to arise in the future on account of pre-buy oil contracts entered into by Seller and/or by the individual members of Seller.*

Seller further understands that it will transfer all telephone numbers, goodwill and all intellectual property of any nature relating to the fuel oil business, as requested by Buyer; and will further fully cooperate during the transition with any information or knowledge helpful to the Buyer at any time during the three years of this agreement, upon Buyer's reasonable request.

NOW THEREFORE, the parties agree as follows:

A. SALE OF ASSETS:

1. MP Flynn agrees to sell all its right, title and interest in and to the Peterbilt oil trucks mentioned in "Recitals" above upon payment of the \$50,000.00 figure as mentioned in "Recitals", and subject to the adjustment as to the balance of the chattel mortgage and note(s) therein mentioned.

Said vehicles shall be made available to Buyer on the closing date below set forth, with reasonable opportunity to Buyer to inspect each vehicle prior to delivery of funds in payment. Vehicles to be delivered in reasonable and satisfactory operating condition. Repair and maintenance records to be provided to Buyer no later than time of delivery.

2. MP Flynn and Flynn Oil agree to deliver all customer lists, software, website, telephone numbers and all indicia of goodwill to Buyer, as of or prior to closing date.

B. CLOSING DATE:

The closing date for all transfers covered herewith shall be April 20, 2010, at a time and place to be determined by the parties. Time is of the essence of this Agreement.

C. AGREEMENT NOT TO COMPETE:

MP Flynn, Flynn Oil and Michael and Jack all agree that:

1. For a period of 8 years after the execution hereof, Seller shall not within 50 miles directly or indirectly, either for Seller's own account or as a partner, shareholder (other than shares regularly traded in a recognized market), officer connected with, nor participate in, consult or otherwise associate with any other business, enterprise or venture that is the same as, similar to or competitive with Buyer, with the express intent of soliciting customers purchased by the Buyer. By way of example, and not as a limitation, the foregoing shall preclude Seller from soliciting business or sales from, or attempting to convert to other sellers or providers of the same or similar products or services as provided by Buyer, any customer, client or account of Buyer with which Seller has had any contact during the term of business operations as Flynn Oil Company, LLC.
2. For a period of 8 years thereafter, Seller shall not, directly or indirectly, solicit for employment, or employ, any employee of Buyer.

3. From the closing date, and thereafter for a period of 8 years, Seller shall not disclose to anyone any Confidential Information. For the purposes of this Agreement, "Confidential Information" shall include any of Seller's confidential, proprietary or trade secret information that is available to Seller or Seller otherwise has learned in the course of business such as, but not limited to, business plans, customer lists, financial statements, software diagrams, flow charts and product plans.
4. **Accounting for Profits.**  
Seller covenants and agrees that, if Seller shall violate any covenants or agreements in Article C, Section 1 hereof, Buyer shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations or benefits which Seller directly or indirectly has realized and/or may realize as a result of, growing out of or in connection with any such violation; such remedy shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which Buyer is or may be entitled at law or in equity or under this Agreement.
5. **Reasonableness of Restrictions.**
  - a. Seller has carefully read and considered the provisions of Sections 1 and 2 hereof and, having done so, agrees that the restrictions set forth therein (including, but not limited to, the time period of restriction and the geographical areas of restriction) are fair and reasonable and are reasonably required for the protection of the interests of Buyer, its officers, directors, shareholders and other employees.
  - b. In the event that, notwithstanding the foregoing, any part of the covenants set forth in Section 1 hereof shall be held to be invalid or unenforceable, the remaining parts thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein. In the event that any provision of Sections 1 and 2 relating to time period and/or areas of restriction shall be declared by a court of competent jurisdiction to exceed the maximum time period or areas such court deems reasonable and enforceable, the agreed upon time period and/or areas of restriction shall be deemed to become and thereafter be the maximum time period and/or areas which such court deems reasonable and enforceable.

D. **ADDITIONAL COMPONENT OF PURCHASE PRICE**

Family Oil agrees further to pay Seller for any existing customers or Seller, or any customers found by Buyer (or referred by Seller) within the service area of Seller as shown on Schedule of Territory, hereto attached, the sum of \$ .05 per gallon for heating fuel delivered and paid over the three year period of this agreement, as

set forth in the following article. Said payments to Seller shall be made by Family Oil monthly, during said three year period.

At the end of the three year period, the total gallonage sold by Buyer within the Schedule of Territory ~~for each customer~~ shall be determined, then divided by 2,400. Should the result yield a number greater than one, that number shall be multiplied by \$325.00, and that additional payment shall then be made by Buyer to Seller.

Notwithstanding the foregoing, and all as detailed on Recitals above, Buyer shall be entitled to the following credits against the amount then due, namely:

1. The initial sum of \$50,000.00 paid to Seller as mentioned in article above; and
2. The total of all monthly payments made over the three year period at \$ .05 per gallons.

E. DURATION OF CONTRACT AS TO PAYMENT OBLIGATION:

The effective period for the payment terms as detailed in the preceding article shall be deemed to begin upon the closing date of April 20, 2010, and shall terminate as of April 19, 2013, at which time any balance due Seller for "customer accounts", less applicable credits, shall be determined and paid to Seller.

F. CONDUCT PENDING CLOSING:

Seller agrees to maintain its trucks, and its business in due course, using proper business sense, and will not cause unreasonable wear and tear on the vehicles, and shall deliver them in clean and good operating condition at closing. Seller further agrees to keep the vehicles properly insured until closing, and to keep vehicles free from any outstanding claims or liens, with the exception of the PACCAR loan(s) above referenced.

G. DOCUMENTS:

Seller agrees to provide proper a Bill of Sale for the vehicles in question, and for all other assets; and to cooperate fully with the lien holder, and the registration process for the vehicles in Buyer's name, as may be required.

Both parties agree to furnish updated Certificates of Good Standing at closing. Seller agrees to furnish any copies of Waiver of Corporate Excise Tax Lien, if required.

Buyer agrees that Sellers shall retain a security interest in the vehicles identified in the Recitals above to secure the Buyer's performance hereunder. Seller may

file appropriate UCC-1 Financing Statements with the New Hampshire and/or Massachusetts Secretary of State's office evidencing same.

H. NO RESPONSIBILITY FOR PRE-BUY CONTRACTS OR CLAIMS:

*It is specifically understood and agreed that Buyer assumes no responsibility for any complaints pending or to arise in the future on account of pre-buy oil contracts entered into by Seller and/or by the individual members of Seller.*

I. APPROVAL OF AND POSSIBLE TAKE-OVER BY NEW HAMPSHIRE ATTORNEY GENERAL:

Reference is hereby made to "Stipulation and Request for Entry of Final Order" in Rockingham, NH Superior Court, Case docket #09-E-0521, and specifically Article 2 of said Stipulation, which states as follows:

2. *As described in the Letter of Intent, dated March 15, 2010 (hereinafter "Letter of Intent"), between Fred Hilton of Hilton Family Oil, Inc. (hereinafter "Hilton") and Michael P. Flynn and John W. Flynn, III of Flynn's Oil, LLC, the Flynn Parties agree to pay to the State, for distribution to consumers, the amounts set forth in that Letter of Intent and in the time frames set forth in the Letter of Intent. The Letter of Intent is attached hereto as Exhibit A and incorporated herein by reference. Upon Execution of the Purchase and Sale agreement, which shall be fully consistent with the Letter of Intent and the terms of this Stipulation, the Flynn Parties shall pay the State an initial payment in the minimum amount of \$36,882.15 and a maximum of \$50,000.00, plus the other sale proceeds of the oil business as described in the relevant paragraphs of the Letter of Intent. Payment shall be made by certified or bank check, made payable to "Treasurer, State of New Hampshire." Payment of initial payment shall be received by the State no later than 5:00 p.m. on April 22, 2010.*

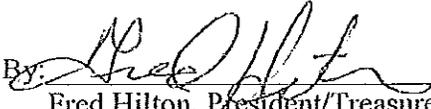
It is specifically understood and agreed that full approval of the Agreement by the New Hampshire Attorney General, and full compliance within the above Article 2, will be made by Seller; and if mandated by the Attorney General, the payment referenced therein shall be made directly by the Buyer from the initial payment due Seller of \$50,000.00, with any balance then remaining to be delivered to Seller.

Seller further agrees to hold harmless and indemnify Buyer for any failure of Seller to faithfully perform all conditions as required by the New Hampshire Attorney General, whether through the Stipulation referenced, or otherwise.

In Witness Whereof, the parties hereto set their hands and seals on the date first above written.

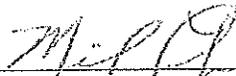
BUYER

Hilton Family Oil, Inc.  
d/b/a Family Oil

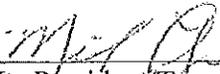
By:   
Fred Hilton, President/Treasurer

SELLER

Flynn Oil, LLC

By:   
Its Manager/Member  
Duly Authorized

MP Flynn, Inc.

By:   
Its President/Treasurer  
Duly Authorized

  
Michael P. Flynn

  
John W. Flynn, III

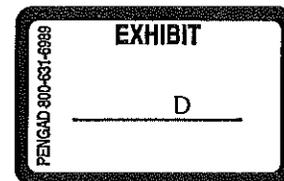
## SCHEDULE OF TERRITORY

### Existing Flynn Oil Territory

Durham  
Dover  
Newington  
Portsmouth  
Newcastle  
Newmarket  
Rye

Raymond  
Nottingham  
Epping  
Brentwood  
Kingston  
East Kingston  
Kensington

Exeter  
Newfields  
Stratham  
Greenland  
North Hampton  
Hampton  
Seabrook



THE STATE OF NEW HAMPSHIRE  
ROCKINGHAM, SS.

SUPERIOR COURT  
09-E-0521

The State of New Hampshire

v.

Michael P. Flynn

and

Flynn's Oil Company, LLC

and

94 Portsmouth Avenue Trust (Trustee Defendant)

**STIPULATION AND REQUEST FOR ENTRY OF FINAL ORDER**

The State of New Hampshire, by and through its attorneys, the Office of the Attorney General, (hereinafter "State") and Michael P. Flynn, Flynn's Oil Company, LLC, and 94 Portsmouth Avenue Trust (hereinafter "Respondents"), and John W. Flynn III (together, the "Flynn Parties"), by and through their attorneys, hereby enter into this Stipulation and Request for Entry of Final Order by which they agree to resolve the Petition for Preliminary and Permanent Injunctive Relief, Civil Penalties and Costs (the "Petition"), as follows:

1. The Flynn Parties represent and certify that they owe a total of \$554,603.08 to consumers who prepaid for their home heating oil for the fall/winter seasons of 2009/2010 (the "Obligation"). The parties agree to verify and confirm the amount of the Obligation no later than July 1, 2010. If the confirmation reveals that the Obligation should be higher or lower, then the

Flynn Parties' obligations hereunder shall be deemed adjusted to account for the greater or lesser amount owed.

2. As described in the Letter of Intent, dated March 15, 2010 (hereinafter "Letter of Intent"), between Fred Hilton of Hilton Family Oil, Inc. (hereinafter "Hilton") and Michael P. Flynn and John W. Flynn, III of Flynn's Oil, LLC, the Flynn Parties agree to pay to the State, for distribution to consumers, the amounts set forth in that Letter of Intent and in the time frames set forth in the Letter of Intent. The Letter of Intent is attached hereto as Exhibit A and incorporated herein by reference. Upon execution of the purchase and sale agreement, which shall be fully consistent with the Letter of Intent and the terms of this Stipulation, the Flynn Parties shall pay the State an initial payment in the minimum amount of \$36,882.15 and a maximum of \$50,000, plus the other sale proceeds of the oil business as described in the relevant paragraphs of the Letter of Intent. Payment shall be made by certified or bank check, made payable to "Treasurer, State of New Hampshire." Payment of the initial payment shall be received by the State no later than 5:00 p.m. on April 22, 2010

3. Should the Flynn Parties, or any of them, enter into an agreement with any entity which results in the sale of the real estate at 94 Portsmouth Avenue (hereinafter the "Property") and a lease agreement by which the Flynn Parties or any of them leases back and operates any business on any portion of the Property, the Flynn Parties shall pay the State 50% of earnings before interest, taxes, depreciation and amortization ("EBITDA") from the car wash business or any other business conducted by any of the Flynn Parties, or any entity under their control at the Property. The Flynn Parties shall pay the State's portion of the EBITDA to the State, for distribution to consumers, on the first of each month commencing no more than one month after

the close of such a sale, and shall continue until such time as the entire amount of money owed to consumers is paid.

4. Michael P. Flynn, and John W. Flynn, III shall each give a personal guarantee to the State, in form satisfactory to the State, unconditionally promising to pay any deficiency between the amount of the Obligation, and the amounts actually recovered by the State pursuant to the provisions of this Stipulation. Such guarantees shall be executed by the Flynns not later than April 16, 2010, shall be filed with the Court and shall become a part of this Stipulation and the Court's order approving it.

5. The State agrees that it will not pursue personal criminal liability against Michael P. Flynn and/or John W. Flynn, III.

6. Respondents agree that Flynn's Oil Company, LLC will plead guilty to a felony charge of a violation of RSA 339:79 which is a violation of RSA 358-A:2, the Consumer Protection Act. In exchange for Flynn's Oil Company, LLC's guilty plea, the State agrees to recommend to the court a fine, all of which is suspended upon compliance with the terms of this Agreement, and restitution which shall be concurrent with the amount owed to consumers pursuant to this Agreement.

7. The parties agree that this Agreement will settle all claims, including fines, costs and attorneys fees.

8. In the event of any breach by any of the Flynn Parties of any of their obligations hereunder, the State may submit an order to the Court requesting the immediate appointment of a receiver over all the assets of Flynn's Oil, LLC, 94 Portsmouth Avenue Trust, Flynn's Carwash, Inc. and any other business subsequently conducted by any of the Flynn Parties at the Property.

The parties agree that they waive the right to any hearing on the appointment of a receiver or the right to appeal the entry of such an order by the Court.

9. Monetary distribution to consumers shall be made by the State at its discretion.

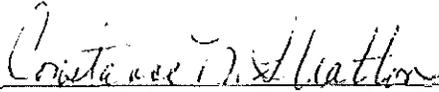
Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,  
STATE OF NEW HAMPSHIRE  
CONSUMER PROTECTION BUREAU

Dated: April 8, 2010

By:

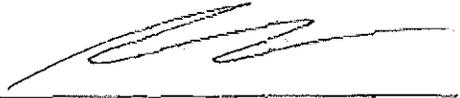
  
Constance N. Stratton, Esquire (NHBA # 7939)  
Senior Assistant Attorney General  
33 Capitol Street  
Concord, NH 03301  
Tel.: 603-271-3643

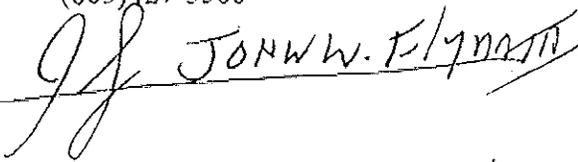
and

94 Portsmouth Avenue Trust  
Michael P. Flynn  
Flynn's Oil Company, LLC  
By their attorneys,  
Bosen & Springer, PLLC

Date: April 8, 2010

By:

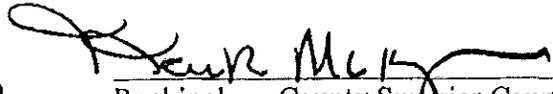
  
John K. Bosen, Esquire  
NH Bar #8129  
One New Hampshire Ave, Ste 215  
Portsmouth NH 03801  
(603)427-5500

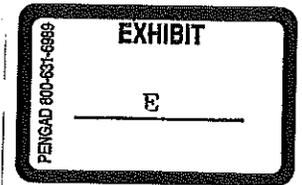
  
John W. Flynn

  
Mike Flynn

So Approved:

April 8, 2010

  
Rockingham County Superior Court



GUARANTY

THIS GUARANTY is made this 20<sup>th</sup> day of April, 2010 by John W. Flynn III, an individual with a domicile of 52 Deep Meadow Estates, Exeter, New Hampshire, 03883 and Michael P. Flynn, an individual with a domicile of 3 Blossom Lane, Stratham, New Hampshire, 03885 ("Guarantors"), to and with the State of New Hampshire with an address of c/o the Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301 ("State").

WHEREAS, pursuant to a Stipulation and Request for Entry of Final Order, filed with the Rockingham County Superior Court (the "Court"), and entered as an order of the Court on or about April 8, 2010 (the "Stipulation"), the Guarantors and Flynn's Oil Co., LLC ("Flynn's Oil") (together the "Obligors") and others agreed to certain repayment obligations with respect to moneys owed to consumers because of violations of state law, pursuant to which there arises the duty to repay the State certain amounts for the benefit of consumers, in the amount of \$554,603.08, as may be adjusted pursuant to the Stipulation (the "Obligation");

WHEREAS, pursuant to the Stipulation, proceeds from the sale of Flynn's Oil to Hilton Family Oil, LLC. are to be paid to the State (the "Oil Business Proceeds"), and in addition, in the event the Guarantors or either of them enter into an agreement with any entity which results in the sale of the real estate at 94 Portsmouth Ave., Exeter, NH and a lease agreement whereby the Guarantors or either of them leases back and operates any business on that property Guarantors and others are ordered to pay fifty percent (50%) of the EBITDA of any business conducted by either Guarantor, or any entity owned or controlled by either or both of them, operated upon the real estate located at 94 Portsmouth Ave., Exeter, NH to the State (the "State's EBITDA Share");

WHEREAS, under the Stipulation, the Guarantors are ordered to enter into personal guaranties of any amount of the Obligation that is not paid out of the Oil Business Proceeds or the State's EBITDA Share and the State advised Guarantors that it would not enter into the aforesaid stipulations unless, among other things, Guarantors guarantee all obligations under the Stipulation, including but not limited to the punctual payment of all obligations thereunder, and related obligations under the Stipulation to the State as hereinafter provided;

WHEREAS, Guarantors are willing and have agreed to guarantee the payment of the aforesaid obligations as hereinafter provided; and

WHEREAS, Guarantors will benefit from the Stipulation.

NOW THEREFORE, in order to induce State to engage in the aforesaid Stipulation and in consideration of the premises stated above and for other good and valuable consideration, the receipt of which is hereby acknowledged, Guarantors agree as follows:

1. Guarantors hereby unconditionally and irrevocably, guarantees: (i) the due and punctual payment in full (and not merely the collectability) of the Obligation, when due and payable, according to the terms of the Stipulation; (ii) the due and punctual payment in full (and

not merely the collectability) of all other sums and charges which may at any time be due and payable in accordance with, or under the terms of the Stipulation; (iii) the accuracy of the representations and warranties made in the Stipulation, and (iv) the due and punctual performance and observance of all of the other terms, covenants and conditions contained in the Stipulation (collectively, the "Guaranteed Obligations").

2. Guarantors expressly agree that the State may, in its sole and absolute discretion, without notice to or further assent of Guarantors, and without in any way releasing, affecting or impairing the obligations and liabilities of Guarantors, hereunder: (i) waive compliance with, or any default under, or grant any other indulgences with respect to, the Stipulation or any instrument or agreement securing the Stipulation; (ii) modify, amend or change any provisions of the Stipulation; (iii) grant extensions or renewals of or with respect to the Stipulation, and/or effect any release, compromise or settlement in connection therewith; (iv) agree to the substitution, exchange, release or other disposition of all or any part of any collateral securing the Stipulation; (v) assign or otherwise transfer the Stipulation and any other instrument or agreement securing the Stipulation, including without limitation this Guaranty, or any interest therein; and (vi) deal in all respects with Obligors as if this Guaranty were not in effect. The obligations of Guarantors under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Stipulation or any security given therefor or in connection therewith or any other circumstances that might otherwise constitute a legal or equitable discharge of a surety or guarantor.

3. The liability of Guarantors under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by State of any remedies it may have against Obligors or any other party with respect to the Stipulation or any instrument or agreement securing the Stipulation, whether pursuant to the terms thereof or otherwise. No exercise or nonexercise by State of any right given to it under this Guaranty, the Stipulation or any instrument or agreement securing the Stipulation, and no change, impairment or suspension of any right or remedy of State shall in any way affect any of Guarantor's obligations hereunder or give Guarantors any recourse against State. Without limiting the generality of the foregoing, State shall not be required to make any demand on Obligors and/or any other party, or otherwise pursue to exhaustion its remedies against Obligors or any other party, before, simultaneously with or after, enforcing its rights and remedies hereunder against Guarantors. Any one or more successive and/or concurrent actions may be brought hereon against Guarantors, either in the same action, if any, brought against Obligors and/or any other party, or in separate actions, as often as State, in its sole discretion, may deem advisable.

4. Guarantors hereby expressly waive: (i) presentment and demand for payment and protest of nonpayment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Stipulation or under any other agreement executed in connection with the Stipulation and of all indulgences; (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or the Stipulation, or any instrument or agreement securing the Stipulation; and (v) all other notices and demands otherwise required by law that Guarantors may lawfully waive.

5. Any claim against the Obligor or any guarantor to which Guarantors may be or become entitled (including, without limitation, claims by subrogation or otherwise by reason of any payment or performance by Guarantor in satisfaction and discharge, in whole or in part, of his obligations under this Guaranty) shall be and hereby is made subject and subordinate to the prior payment or performance in full of the Guaranteed Obligations. Nothing herein contained shall be construed to give Guarantors any right of subrogation in and to the rights of State under the Stipulation or any instrument or agreement securing the Stipulation until all amounts owing to State under the Stipulation have been paid in full.

In addition to any other security given by Guarantors to State, State is hereby authorized and empowered, at its option, to appropriate and apply to the payment and extinguishment of the Guaranteed Obligations, at any time after such liability becomes payable, any and all moneys or other property of Guarantors and any proceeds thereof (including proceeds of sales provided for below) now or hereafter in the possession of State for any purpose, including safekeeping or pledge for this or any other liability of Guarantors, and including any balance on deposit or otherwise for the account of, to the credit of, or belonging to Guarantors.

6. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and sent by certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at its address first above set forth or at such other address as such party may hereafter designate by Notice given in like fashion. Notices shall be deemed given when mailed.

7. Any payments made by Guarantors under the provisions of this Guaranty shall, if made to State, be made at its address first set forth above, unless some other address is hereafter designated by State.

8. All rights and remedies afforded to State by reason of this Guaranty and the Stipulation and any instrument or agreement securing the Stipulation, or by law, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by State in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by State unless in writing and duly executed. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of State, and no single or partial exercise of any right or remedy hereunder shall preclude further exercise of any other right or remedy.

9. The obligations of Guarantors to make payment in accordance with the terms of this Guaranty shall not be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Flynn's Oil, Flynn's Carwash, Inc. or 94 Portsmouth Avenue Trust, or either bankrupt individual Guarantor, in respect of the non-bankrupt Guarantor, or their estate(s) in bankruptcy or reorganization resulting from the operation of any present or future provision of federal bankruptcy laws or other statute or from the decision of any court.

10. Guarantors hereby covenant and agrees that Guarantors will, at Guarantors' expense, annually deliver to State on or before April 15<sup>th</sup> of each year financial statements in form and content satisfactory to State accurately reflecting all changes in net worth for the preceding year and, as soon as practicable after filing with the Internal Revenue Service, each year, Guarantors' complete federal income tax return with the schedules thereto.

11. This Guaranty shall remain in full force and effect until State is paid the Guaranteed Obligation in full. This Guaranty shall continue to be effective or be reinstated, notwithstanding any such termination, if at any time any payment made or value received with respect to a Guaranteed Obligation is rescinded or must otherwise be returned by State upon the insolvency, bankruptcy or reorganization of any of the Obligors, or otherwise, all as though such payment had not been made or value received.

12. Guarantors agree that if this Guaranty shall be enforced by suit or otherwise, or if State shall exercise or endeavor to exercise any of its remedies under the Stipulation, the Guarantors will reimburse State, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

13. This Guaranty shall be construed in accordance with the laws of the State of New Hampshire.

14. This Guaranty shall inure to the benefit of, and be enforceable by, State and its successors and assigns, and shall be binding upon, and enforceable against, Guarantors and their personal representatives, ~~heirs~~, and assigns.

*ESTATES*

15. Whenever the context so requires reference herein to the masculine gender shall include the feminine gender or the neuter or vice versa; and the singular shall include the plural and vice versa. All references herein to the Stipulation shall be construed to refer to such instrument as it may be amended from time to time.

16. If more than one person executes this Guaranty, the liability of all such persons hereunder shall be joint and several.

17. Guarantors hereby consent to the jurisdiction of the Court in connection with any suit to enforce any rights of the State under this Guaranty.

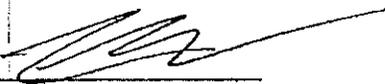
18. All references herein to the Stipulation shall be deemed to include such instruments as they may be amended from time to time.

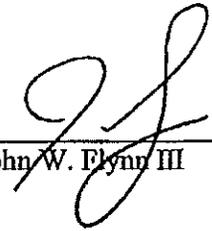
19. If any provision or condition of this Guaranty is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Guaranty.

20. Nothing contained in this Guaranty or the Stipulation shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

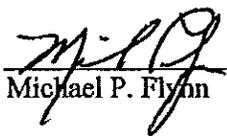
M.F.  
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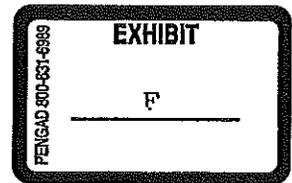
IN WITNESS WHEREOF, Guarantors have each executed this Guaranty as of the day  
and year first above written.

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
John W. Flynn III

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Michael P. Flynn



**THE STATE OF NEW HAMPSHIRE**

RSA 339:79, 358-A:2

ROCKINGHAM, SS.

WHEREAS, the within named defendant has waived indictment and applied to the Superior Court for prompt arraignment upon the complaint herein set forth;

NOW, therefore, the State of New Hampshire upon oath does hereby complain that:

Flynn's Oil Company, LLC

of 94 Portsmouth Avenue, Exeter, New Hampshire, in the County of Rockingham, between May and October, in the year of our Lord two thousand and nine, in the County of Rockingham, with force and arms, did commit the crime of Unfair or Deceptive Act or Practice, in that

Flynn's Oil Company, LLC entered into prepaid contracts with consumers for the sale and delivery of home heating oil which required prepayment from the consumers, and knowingly failed to have obtained and maintained a futures contract, surety bond or letter of credit, as required by RSA 339:79.

contrary to the form of the statute, in such case made and provided, and against the peace and dignity of the State.

WHEREFORE, the State of New Hampshire prays that the within named defendant may be held to answer to this complaint, and that justice may be done.

DATED: April 8, 2010

Constance N. Stratton  
Constance N. Stratton  
Senior Assistant Attorney General

STATE OF NEW HAMPSHIRE  
MERRIMACK, SS.

Personally appeared before me Constance N. Stratton, who signed the above complaint and made oath based on information and belief that the above complaint is true.

My commission expires: 8/13/13

James T. Boffetti  
Notary Public/Justice of the Peace  
JAMES T. BOFFETTI

10-5-968

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

I, Flynn's Oil Company, LLC of Exeter, N.H.

- Having been bound over to the Superior Court by the District Court of \_\_\_\_\_ on the attached complaint,
- Having been served with the within complaint in addition to a complaint upon which I have been bound over to the Superior Court,
- Having been served with the within complaint under RSA 601:3-A, do hereby waive indictment and apply for prompt arraignment.

April 8, 2010

[Signature] "President"  
Defendant

April 8, 2010

Consent of: [Signature]  
Senior Assistant Attorney General

April 8, 2010

Consent of: [Signature]  
Presiding Justice

AFFIDAVIT OF SERVICE

ROCKINGHAM, SS.

On the 8th day of April, 2010, I gave the within named Defendant a true copy of this complaint and waiver of indictment.

[Signature], 2010

[Signature]  
Sheriff

Subscribed and sworn to, before me

April 8, 2010

[Signature]  
Justice of the Peace  
my comm. expires 10/31/2012

# The State of New Hampshire

Rockingham County

Superior Court

No. 10-S-968



## RETURN FROM SUPERIOR COURT

Name: Flynn's Oil Company, LLC

DOB: N/A

Indictment     Waiver     Information     Complaint

Offense: Unfair or Deceptive Act Or Practice    RSA: 358-A:2

Date: May-Oct, 2009

Disposition: Guilty By  Plea     Jury     Court

T/N:

Conviction:  Felony     Misdemeanor

Sentence: A finding of GUILTY is entered. Other conditions of this sentence are: The defendant is fined \$100,000.00, plus statutory penalty assessment. \$100,000.00 of the fine is suspended. The defendant is ordered to make restitution of \$554,603.08. Restitution is concurrent with the amount owed pursuant to the Stipulation in Rockingham County Superior Court Docket No. 09-E-0521.

4/8/10

Date

Hon. Kenneth R. McHugh

Presiding Justice

Raymond W. Taylor

Clerk

### MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **County House of Correction**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_

Clerk

\_\_\_\_\_

Date

### SHERIFF'S RETURN

I delivered the defendant to the **County House of Correction** and gave a copy of this order to the Superintendent.

\_\_\_\_\_

Date

\_\_\_\_\_

Sheriff

cc:  State Police  
 John Bosen, Esq.

Dept. of Corr.  
 Exeter Dist. CT

Pros. Attorney

**DISPOSITION/MITTIMUS**

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

May 22, 2013

Raymond W. Taylor, Esquire, Clerk  
Rockingham County Superior Court  
PO Box 1258  
Kingston, NH 03848-1258

Re: State v. Michael P. Flynn and Flynn's Oil Company, LLC  
Docket #09-E-0521

Dear Clerk Taylor:

Enclosed please find one original and two copies of the State's Petition to Enforce Stipulation and Final Order and the Affidavit to State's Petition to Enforce Stipulation and Final Order for filing in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Constance N. Stratton".

Constance N. Stratton  
Senior Assistant Attorney General  
Consumer Protection & Antitrust Bureau  
(603) 271-3643  
Fax: (603) 223-6202

CNS/mjt  
Enclosure

cc: John W. Flynn, Jr.  
Michael P. Flynn